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THE DESIGN AND USE OF REGULATORY CHECKLISTS IN OECD COUNTRIES

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FOREWORD TO THE SERIES ON REGULATORY MANAGEMENT AND REFORM

Regulations are the sinews of modern government, the legal instruments that connect abstract government policies with the day-to-day activities of commerce and private life. To put it more precisely, **regulations make government decisions operational**, and hence perform a key role in the governing process. In the highly-developed administrative states characteristic of OECD countries, government effectiveness has become to a significant degree dependent on the systems that develop, monitor, enforce, adjudicate, and terminate regulations.

The pervasiveness of regulation has become one of the defining aspects of contemporary life in OECD countries. Governments in the OECD area have, over the years, constructed massive and complex regulatory systems through which they attempt to serve and balance the economic and social values of their citizens. Yet few governments are satisfied with the quality, effectiveness and cost of regulation. New demands -- from opening world markets and international integration, from problems of unprecedented scale such as environmental degradation, and from emerging interest groups such as consumers, to mention only a few -- have focused considerable attention on the role of regulation in causing and solving problems.

In the l980s, most OECD countries launched new public sector initiatives aimed at improving the performance, impact and institutions of regulation. These initiatives vary greatly in objective and design, but they have distinctive features that mark them as genuinely new management capacities enabling governments to regulate more carefully. This development can be compared to, and may be no less important than, the adoption of modern fiscal budgeting agencies by governments earlier in this century to better control and manage national expenditures.

The work of the OECD Public Management Committee (PUMA) on regulatory management and reform attempts to respond to the specific needs of the new reform initiatives. The purpose is to provide better information -- drawn from practical experience, comparisons, and international exchanges -- on the benefits, costs, and risks of reforms in the management, processes and institutions of regulation.

The series of occasional papers on regulatory management and reform is intended to disseminate more widely the background papers, reports, and preliminary results prepared for the programme. The regulatory management and reform work and series of papers is led by Scott Jacobs of the Public Management Service.

The papers are published on the responsibility of the Secretary-General. The views expressed in the papers do not commit or necessarily reflect those of governments of OECD Member countries.

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SUMMARY

This paper examines a specific management strategy for improving the quality of regulation: the use of government-wide regulatory principles and checklists to guide regulators in making better decisions. Many governments of OECD countries have adopted such principles and checklists in recent years, and there is broad agreement that, properly designed and used, they can greatly improve the orderliness, effectiveness, and transparency of national regulatory systems. An earlier draft of this paper was discussed at an OECD meeting in May 1993; this version incorporates comments arising from that meeting and from a final review in Autumn 1993 by all OECD countries.

Checklists serve several important functions in regulatory systems. First, because they apply broadly across the full range of regulatory activities, they establish **common standards for regulatory development**. They often provide the only common standards for regulatory quality, decision-making principles and procedures, and public consultation that exist in national governments. In that sense, they "regulate the regulators." Second, checklists act as **avenues of communication** between political levels, regulators, and the public. They provide explicit policy statements on "how" and "how not" the government should exert its regulatory powers, and therefore are important management tools for mobilising and directing regulatory actions government-wide.

The 15 checklists from 10 countries and the European Community included in the analysis illustrate the degree to which governments of Member countries agree on basic principles and approaches to making good regulatory decisions. Briefly, regulators should consider several key issues as they determine whether and how to regulate:

- The need for government action;
- Alternatives to regulation, and the optimal form of regulation;
- The appropriate level of government to take action;
- Costs, benefits, and secondary effects of regulation, such as its impact on government administration, competitiveness, or small businesses;
- Verification of the legal basis for regulation;
- Clarity and "plain language" drafting;
- The degree to which administrators will have discretion to define regulatory duties and sanctions;
- Enforcement feasibility and compliance strategies;
- Relationship of the rule to existing rules and international agreements.

Application has been the Achilles heel of checklists, since regulators have not enthusiastically welcomed the disciplined framework that they impose, nor have governments generally followed up with necessary investments in information and human resources. Effective compliance is dependent on the development of **systematically organised procedures** with sustained political backing. Management strategies for carrying out checklists have included central oversight bodies, independent regulatory review processes, staff training, and public disclosure of written responses to checklists.

THE DESIGN AND USE OF REGULATORY CHECKLISTS IN OECD COUNTRIES[1]

I. INTRODUCTION

Many governments of OECD countries have adopted regulatory principles or checklists for use by officials developing or reviewing regulation and by decision-makers authorizing new or continuing regulation. Such instruments go under many names: "checklists," "directives," "guidelines," "codes," and "principles." This paper reviews the design and use of these instruments in OECD countries. For convenience, the paper uses the term "regulatory checklists" to apply to all of them, but will use other terms as needed when discussing specific types of instruments.

Although regulatory checklists vary widely in form, status, and purpose, they can be defined as "broadly applicable instructions or guidelines for the design, development, review, or substantive content of regulations." In practice, these checklists are management tools intended to transmit cross-cutting policy or administrative concerns directly to officials responsible for regulation. They create a framework in which specific concerns are targeted, options are identified, information is provided to decision-makers, and the legal instrument of regulation is drafted. They also provide reference points against which the decisions themselves will be made, and quality standards to assess how well regulators are doing.

The 15 regulatory checklists considered in this paper include[2]:

- Austria: *Guidelines for Drafting and Formulating Law (1990)*
- Canada: *Guiding Principles of the Federal Regulatory Policy (1986), Citizen's Code of Regulatory Fairness (1986)* and *Regulatory Policy (1992)*
- European Communities: *Council Resolution on the quality of drafting of Community legislation (1993)*
- Finland: *Proper Drafting of Norms (1993)*
- Germany: *Checklist for Proposed Legal Provisions at Federal Level (the "Blue Checklist") (1984)*

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1. This paper was prepared for the Public Management Service by Eric Milligan and Margot Priest, The Regulatory Consulting Group Inc. (Ottawa).

2. These documents are reprinted in the Annex, with the exception of the Swedish checklist, which is not yet available in English or French. Occasional reference is made in the paper to other country documents not listed here.

- Japan: *Agreement on the Examination and Periodic Review of New and Existing Permissions, Authorisations, Etc. (1987)* and *Principles of Deregulation (1988)*

- The Netherlands: *Directives on Legislation (1992)*

- Sweden: *To Govern Through Rules? Checklist for Regulators (1990)*

- Spain: *Questionnaire for the Evaluation of Legislative Proposals Laid Before the Council of Ministers (1992)*

- United Kingdom: *Revised Guidance on Preparing Compliance Cost Assessments (1991)*

- United States: *Executive Order 12291, "Federal Regulation" (1981)* and *Regulatory Policy Guidelines (1984)*

These checklists, however, do not necessarily give an accurate picture of the full range of factors that influence regulatory decision-making in these countries. Countries with lists also look to other requirements, procedures and criteria when making decisions about regulation. Applicable requirements or criteria may go far beyond those found in formal regulatory checklists. Similarly, countries without formal checklists do not necessarily lack information, analysis, criteria, etc. for regulatory decision-making. A regulatory checklist may be derived from undocumented procedures, and criteria or procedural requirements can be found in a variety of sources.

Regulatory checklists can be derived from, or supplemented by, any of the following:

a) Statutes that impose objectives or other decision-making criteria on regulatory decisions or establish procedures for administrative or regulatory decision-making, such as the U.S. *Administrative Procedure Act* or the Dutch *Administrative Law Act*.

b) Standing Orders or Procedures of parliaments or legislatures.[3]

c) Executive or Cabinet requirements; for example, the U.S. *Executive Orders*, the Canadian *Citizen's Code of Regulatory Fairness* or *Guiding Principles of Federal Regulatory Policy*, the U.K. *Compliance Cost Assessments*, the German *Blue Checklist*, the Swedish *"To Govern Through Rules?"* and the Austrian *Guidelines for Drafting and Formulating Laws*.

d) Subordinate rules enacted pursuant to regulatory statutes that may give further guidance on decision-making criteria or procedures.

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3. But compliance can be problematic. For example, a U.S. Senate rule requiring its committees to assess the regulatory and paperwork impacts of new legislation has been widely ignored.

e) Terms of reference for an advisory council, royal commission, independent advisory body, or a consensus group.

f) Reports of advisory bodies, commissions, legislative committees, etc. that have credibility and respect.

g) International agreements or standards that impose criteria or process requirements; for example, the GATT, European Community legislation, the North American Free Trade Agreement.

Although the form, content, and specific uses of the regulatory checklists examined for this paper vary, it is possible to make some general observations about their uses, the classes of institutional users, the principles embodied in them, their characteristics, and the types of resources required to apply them.

II. CHECKLISTS: TOOLS FOR MANAGING REGULATORY SYSTEMS

Regulatory checklists are flexible management tools that can be used by different players for a variety of purposes within governments. Exactly how, and by whom, they will be used depends on policies about regulation, the structure of a government, the flow of information both within the government and to the public, and the loci of regulatory development and decision-making responsibilities. The most important uses are described below.

1. Communicating Values and Policies of Government

Whether implicit or explicit, a regulatory checklist is a touchstone for the values of a government. For example, a checklist might reflect policy emphases on enhancing competitiveness; reducing government intrusiveness into the affairs of citizens; ensuring due process: fostering openness and transparency; reducing costs for small and medium enterprise; or pursuing non-regulatory, private sector-based alternative solutions to problems. The checklist can articulate these fundamental regulatory policy principles, communicating them both within the government and to external stakeholders.

Openness in over-arching regulatory principles can also help improve accountability within regulatory systems where responsibility is often blurred. A checklist may, in effect, establish criteria by which regulators and political decision-makers can be judged and held accountable for the consequences of administrative decisions.

2. Fostering Public Sector Responsiveness to Political Priorities

A checklist can act as a mechanism through which the political system directs and mobilises the regulatory system in support of relevant values, principles, and priorities. By linking the political level with individual regulatory decisions made throughout the administration, checklists can be important means of improving administrative responsiveness to the democratic process.

Checklists can also be used to structure *ex post* political oversight of administrative actions. Legislators may, for example, use a checklist to assess conformity of subordinate legislation to legal principles (e.g. *vires*) and to regulatory policies established in legislation.

3. Establishing an Orderly Regulatory Process

Checklists that structure and standardize the regulatory process can promote efficiency in regulatory development and decision-making. A checklist can ensure that regulators take the right steps in the right order and observe due process by, for example, ensuring that inter-ministerial coordination occurs, that the public is consulted about new regulation, or that adequate public notice is given of intention to regulate. Laying down such steps can help avoid costly regulatory mistakes.

Checklists can also help ensure that decision-makers are provided with consistent information when they need it, and are served by an orderly and predictable decision process. The importance of this in today's large and complex regulatory systems should not be under-estimated. Senior officials who must have access to a continuing stream of regulatory decisions from various regulatory bodies are greatly aided by consistency in approach. Checklists can help organise the ways that regulators define problems, determine who to consult and what data to collect, formulate recommended courses of action, and present information for comment and decision. In some countries, checklists are used as outlines for decision papers prepared for senior or political officials.

4. Improving the Quality of Regulation

In addition to serving values of political accountability, responsiveness, and efficient decision-making, checklists can, in a variety of ways, improve the form and content of regulation itself.

Many countries wish to produce more balanced regulation, that is, regulation that accounts for broader social and economic effects, such as impacts on business or local governments, as well as for specific regulatory objectives. This requires that new voices and perspectives be brought into the regulatory process; checklists can give them an opportunity to be heard. By establishing a process of consultation and explicit consideration of broader effects, a checklist can influence the nature and weight of

information collected during the decision-making process, and help constrain regulators from making poor decisions.

In addition, the substantive contents of a checklist may *de facto* require that the regulatory process be re-structured. New criteria for plain language drafting, assessment of legality, or consideration of costs and benefits may not fit well into established decision procedures inside regulatory bodies. Other legal, analytical, technical or scientific expert bodies, such as independent advisors or reviewers, may have to be brought in to complete the checklist requirements.

Checklists can go considerably beyond urging regulators to consider specific issues: they can also set down explicit quality standards targeting specific problems. In some cases, these take the form of guidance on the form of regulation. Some countries, for example, have set down instructions to legal drafters on the technical structure of regulation, on clarity and language usage, and on assessing consistency with other legislation. In other cases, these are mandatory directives that affect the substance of the policy decision (perhaps these should be called “super-rules”). Regulators in the United States, for example, are instructed not to take any regulatory decisions for which costs outweigh benefits, unless specifically instructed to do so by law.

5. Improving the Design and Implementation of Regulatory Programmes

Checklists can also aid in the design and implementation of regulatory programmes. The impact of a regulatory programme on the private sector is, in fact, a combination of substantive regulatory requirements and programme activities such as regulatory approvals, consultation, monitoring, and enforcement. These are also the activities that consume the bulk of a government’s expenditures on regulation.

Some lists ask about enforceability, whether administrative or penal sanctions are appropriate, and the costs to government (including the judicial system) of enforcement. Questions such as these help ensure that decision-makers have considered the practical issues of implementation before deciding on the legal instrument of regulation. Whether or not a checklist requires the development of implementation plans before decisions are made on regulation, the information and considerations identified by the use of a list can be invaluable in designing promotion, monitoring, and enforcement elements of regulatory programmes.

6. Promoting Cultural Change and Education

In most cases, simply communicating values and policies will not be enough to accomplish lasting behavioural change within a government. Genuine reform of the way regulation is used requires cultural change -– a process that must include, but not be limited to, education of both officials and politicians. By asking users to consider critical questions about regulations and their alternatives, a checklist can help them approach problems from new perspectives and begin to think differently about

regulation. By standardizing new approaches across the government, checklists can also help to legitimise these approaches in the face of opposition.

7. Facilitating Managerial Oversight of the Regulatory System

A checklist can facilitate managerial oversight of the operation of the regulatory system by providing a coherent framework for broader regulatory policy reviews. In stipulating procedural and substantive requirements for new or existing regulations, checklists can give authority to central oversight or legislative bodies to ask unpopular questions and even to prevent poor decisions. Not least, checklists can also improve documentation, thus opening up the regulatory system to scrutiny that was not possible before. By imposing information and process requirements at the regulation-development stage, checklists may aid in the evaluation of existing regulation.

Although multiple checklists may be required and, in fact, desirable for all these purposes, a single checklist can conceivably be used, with different questions or principles emphasized at different stages in the regulatory process.

III. WHO USES CHECKLISTS?

1. Regulatory Ministries and Departments

The ultimate users of regulatory checklists are the ministries and departments that develop, draft, administer, and review regulations. Substantive and procedural checklists are most commonly applied by these bodies to the development of new regulations. Checklists designed for this purpose are likely to cover broad regulatory policy principles, specify (directly or indirectly) analytical requirements, specify procedures for development and approval (including consultation requirements), and specify procedures to ensure legality and enforceability. Such checklists may also detail format and content for submissions to decision-makers.

Checklists can be used to structure reviews of the existing stock of regulations by responsible regulatory authorities. Although checklists may be developed specifically for such reviews, a list of general application may serve for both new and existing regulation. As a general rule, criteria that are relevant for *ex post* review are identical to criteria for development and approval of new regulation. Analytical requirements (such as assessment of compliance costs or cost-effectiveness), legality, conflict, comprehensibility, and so forth can produce valuable information about existing regulations.

2. Senior Decision-Makers, such as Ministers or Cabinets

Decisions at the highest levels of government (by ministers, cabinets, councils, other senior officials) are often required to issue new regulations or to revise existing regulations. Checklists designed for use by such decision-makers are likely to be less

detailed than those intended for analysts in regulatory departments or central agencies. They will focus on fundamental policy considerations and may also address basic procedural requirements, including clearance by a central oversight function if one exists. Senior officials may also simply verify compliance by regulators with more detailed checklists.

In practice, decisions on regulation are taken at a number of levels in the bureaucracy before being placed before politically-responsible decision-makers. A checklist can help regulators at all levels to better serve senior officials by prompting them to consider a wider range of factors, to understand the impact of their decisions, and to highlight areas in which relevant information is unknown or uncertain.

3. Central Agencies and Ministries

Central agencies with broad “horizontal” management or oversight responsibilities are often the sources and the targets of regulatory checklists for new and existing regulations. Where a strong oversight role is authorised, these agencies may also enforce compliance with checklist requirements. At this level, because responsibility for the technical and policy content of regulations rests with the regulators in every OECD country, checklists are more likely to focus on elements such as consistency with key over-arching policies and values, presentation of information to decision-makers, and adherence to administrative, consultative, and analytical procedures. Central agencies may also play a role in the review of existing regulations. Here, the focus is likely to be on adherence to fundamental government policies, interrelationships with other areas of regulation, setting of priorities, and general programme effectiveness.

4. Ministries of Justice or Legal Branches of Ministries

Legal experts in ministries of justice and legal branches within regulatory ministries deserve special mention. These officials use checklists for both the creation of new, and the review of existing, regulations. Typically, elements in such checklists focus on legal and technical considerations such as *vires*, consistency with constitutional and other higher law, structure, consistency, comprehensibility, compliance and enforcement techniques, or compatibility with existing legislation. However, checklists developed by, or applicable to, legal advisors, may also address substantive matters. Similarly, checklists of more general application, addressing both substantive and legal/procedural matters, may provide guidance to government lawyers.

5. Advisory Bodies

Independent advisory bodies may become involved in both the development of new, and review of existing, regulations. These "outsider" bodies can play an important role in ensuring government accountability, monitoring progress, and holding a government to standards for regulatory reform. Their influence may be greatest in

countries with either highly autonomous ministries or a history of private sector involvement through consultation or consensus building.

While not legally responsible for regulatory decisions, such bodies can use government-developed checklists to target and support their advice on regulation. As advisors on regulatory reform, they are also a potential source for the development of checklists. Typically, checklists developed by such bodies will focus on broad policy considerations. The lists may also address basic procedural matters such as notice and consultation.

6. Parliaments and Legislatures

Legislative bodies in all OECD countries are responsible for the approval of regulatory statutes, and some are involved in the approval of subordinate legislation that provides much of the detail and content of modern regulation. Yet, curiously, few legislative bodies use formalised checklists for law-making, although checklists could assist them in producing better laws within the constraints of limited time and technical expertise.

No checklist, of course, can bind a legislature, but instead is self-imposed by standing orders or rules of the legislature. A checklist can be used by legislators to determine if information and process requirements have been followed by those who introduce draft bills or rules for their consideration. Checklists can improve the quality and relevance of information on draft bills and rules. Where a “sunset” review by a legislature is required, the list can be used both to structure the review and to provide benchmark information for later reviewers.

7. Public Interest Groups, Industry Groups, Lobbyists

Private sector individuals and firms subject to regulation may be actively involved in the application of a checklist through consultation, regulatory negotiation, or consensus-building processes. They may use a list to support their positions, or to predict the outcome of government decisions. They may be more likely, for example, to challenge decisions that run counter to established checklists, or to use checklists to hold government accountable for regulatory decisions.

IV. ELEMENTS OF REGULATORY CHECKLISTS

The contents of regulatory checklists are, of course, central to their effect. Determination of the principles and procedures to be included in a checklist requires careful analysis of the broad environment in which the checklists will operate. Governments must consider the management purposes of, and targets for, the checklist. They must consider the stages of the regulatory process to which the checklist will apply. They must design the checklist to reflect the realities of the

regulatory and policy processes, contriving to accomplish their ends within the constraints of institutional capacities and relationships.

The contents of the 15 checklists examined for this paper are not always expressed in similar terms. However, the elements fall into four main categories that deal with:[4]

1) The role of government as regulator;
2) The costs and effects of regulation;
3) Regulation as a legal instrument of government; and
4) Regulation in the context of government and international policies.

Not surprisingly, similar elements often have multiple purposes. Some countries, for example, stress plain language drafting as an effort to improve legal structure or legal technique, while others view clarity as a way to encourage compliance or reduce enforcement and compliance costs. It is more important to ensure that the relevant principles are addressed rather than to insist that they fall within a particular category in a checklist. It should be noted that the examples listed below from various checklists are illustrative, not comprehensive.

1. The Role of Government as Regulator

a) The Need for Government Action

Existing checklists often ask about the need for government action. This includes identification of the problem, identification of the objectives of government action, and assessment of the capacity of the private sector to deal with the problem. It is no longer assumed that governments have the capacity to solve all problems or that, even if solutions are possible, governments are the best ones to implement them.

- The Dutch *Directives* require that the objective of the action be clearly defined and that society's capacity for self-regulation (possibly with government help) be assessed.

- The German *Blue Checklist* asks if action is necessary at all and what would happen if nothing is done? It also asks if immediate action is required.

- The European Communities *Council Resolution on the Quality of Drafting* requires a preamble that justifies the enacting provisions in simple terms.

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4. We also note that the "Legislative Procedures" of the former Czechoslovakia, dating from 1987, contain many of the same concerns contained in checklists from OECD countries. These procedures require that regulators and drafters of laws ask, for example, if regulation is necessary at all, if non-regulatory means such as economic tools can be used instead, if economic and administrative costs have been evaluated, if consultation with municipalities and trade unions has been carried out, and so forth. It is interesting that many basic principles of good regulatory decision-making were shared not only by the free-market democracies, but were also independently developed within a centrally-planned non-democratic régime.

- The Japanese *1988 Principles of Deregulation* state that "freedom in principle and regulation only as an exception" should guide decision-making. The *1987 Agreement* states that new regulations should be necessary to secure and promote public welfare.

- The Canadian *Citizen's Code of Regulatory Fairness* states that the government will not use regulation unless there is clear evidence that a problem exists and that government intervention is justified. The general objective of the 1992 *Regulatory Policy* is to ensure that the use of the government's regulatory powers results in the greatest net benefit to Canadians.

- The Finnish Manual on the *Proper Drafting of Norms* states that guidance by norms is justified only if the goals cannot be achieved by any other method and the issue of norms is based on real necessity.

- U.S. *Executive Order No. 12291* requires decisions to be based on adequate information concerning the need for the proposed government action. U.S. *Policy Guidelines* recommend that regulations intended to reduce health or safety risks show, through scientific risk assessment, that risks are real or significant rather than hypothetical or remote.

- The Spanish *Questionnaire* asks that the basic objectives of the proposals be articulated, including whether they respond to a legal requirement, such as a need to develop EC law.

- The U.K. *Guidance on Preparing Compliance Cost Assessments* requires an outline of the proposed purpose of the regulation and a description of how it would remedy a specific problem.

b) The Preferred Form of Action and, if Relevant, Alternative Forms of Action

These checklists relate to regulatory action, but they are often aimed at alerting decision-makers to government solutions other than traditional "command and control" regulation. For some governments, a requirement to consider alternate forms of action will require coordination and cooperation among otherwise autonomous departments.

- The Dutch *Directives* suggest that all conceivable options for reaching the desired objective be examined, including licensing, levies, subsidies, prescriptions and prohibitions. It also asks whether enhanced self-regulation or better use of an existing legal instrument, possibly with amendment, could deal with the problem.

- The German *Blue Checklist* asks whether it is possible to achieve the objectives with other methods, such as investment, incentives, encouragement of self-help, public relations, or better application of existing regulatory provisions.

- The Canadian *Citizen's Code of Regulatory Fairness* and the 1992 *Regulatory Policy* state that regulation will not be used unless it is the best alternative open to government.

- The Japanese *Principles of Deregulation* has, as a central principle, "regulation only as an exception" that will be limited to unusual acts or situations. This implies that other alternatives must be examined and rejected before regulating. The *Principles* also propose that if regulation is necessary, it should be "qualitative," dealing with the characteristics of the problem, rather than "quantitative," dealing with supply and demand. For example, standards for safety are to be preferred over restrictions on production. The application of existing regulations to new goods or services is to be limited as much as possible.

- The Finnish Manual on the *Proper Drafting of Norms* states that norms are to be used with discretion. The same result may be obtained by training and information or by less onerous regulation.

- U.S. *Executive Order No. 12291* requires that "the alternative involving the least net cost to society shall be chosen" when examining alternative approaches to dealing with a problem. U.S. Office of Management and Budget *Regulatory Policy Guidelines* state that, if regulation is needed, health, safety, and environmental regulations should address ends rather than means.

- U.K. *Guidance on Preparing Compliance Cost Assessments* requires officials to show the extent to which alternatives, such as codes of conduct or voluntary agreements, were considered and why they were rejected.

c) The Appropriate Level or Division of Government to Take the Action

This principle is influenced by constitutional or power-sharing arrangements in different Member countries, as well as considerations of which level of government is the most efficient or effective regulator. In some countries the level that makes a rule is not necessarily the same as the one that carries it out. Local government, in particular, may be responsible for enforcement and may also promulgate additional rules to elaborate on the original regulation. Financing and cost impacts on lower levels of government due to new regulations are common concerns in regulatory checklists.

- The German *Blue Checklist* asks whether federal action is required to deal with a problem.

- The Dutch *Directives* ask whether territorial or functional decentralisation is appropriate in view of the task to be carried out or the scale on which it is to be done. It further states that responsibilities and powers shall be

decentralised unless the issue cannot be dealt with efficiently and effectively at the local level.

- Japan is a unitary state, but the *1987 Agreement* states that administration of permission/authorisation requirements shall be performed as much as possible by local entities or local branch offices of the national government.

- U.S. Office of Management and Budget *Regulatory Policy Guidelines* require that federal regulations should not preempt state laws or regulations except to guarantee right of national citizenship or avoid significant burdens on interstate commerce. *Executive Order No. 12612 on "Federalism"* adopts the principle that regulation should only preempt state authority if required by Congress or to address problems of national scope.

- The Canadian *Guiding Principles of Regulatory Policy* place a priority on increased regulatory cooperation with the Canadian provinces to address the overall regulatory burden on citizens and the 1992 *Regulatory Policy* requires regulators to demonstrate that the regulatory burden on Canadians has been minimised through such methods as cooperation with other governments.

- The Spanish *Questionnaire* requires an identification of constitutional grounds of jurisdiction in relation to the Autonomous Communities.

- The Finnish *Proper Drafting of Norms* Manual states that norms should be issued on a level of administration (e.g. central or regional and local) corresponding to their social impact. The central administration should deal with matters requiring nationwide uniformity, while local authorities should issue norms that require local expertise and have local importance. The *Norms Act* requires an analysis of the effects of a norm on municipal finances, economy or autonomy.

2. The Costs, Benefits and Effects of Regulation

a) Costs to Those Affected by Regulation

Private sector costs of regulation are a major focus in existing checklists. Concerns about international competitiveness have made this point particularly important for several Member countries. Checklists vary widely in their approaches to regulatory costs. Some require simply a general awareness that costs exist; others, a complete quantitative analysis. Some are concerned less with the absolute level of costs (cost tests) than with their balance vis-a-vis benefits (benefit-cost tests), or their relative magnitude compared to regulatory and non-regulatory alternatives (cost-effectiveness tests).

- The U.K. *Guidance on Compliance Cost Assessment* requires that both recurring and nonrecurring compliance costs for affected businesses be estimated.

- The German *Blue Checklist* asks if there is an acceptable cost-benefit relationship.

- The Dutch *Directives* require that careful consideration be given to potential direct or indirect effects on socio-economic development. They also state that disadvantages of regulation to one or more interested parties should not be disproportionate to the objective and that, in selecting a particular type of regulation, every effort should be made to minimise costs (unless imposition of costs is the specific purpose). Costs to government and individuals or companies must be taken into account in comparing various forms of government intervention. The Dutch *Directives* is the only checklist that asks regulators to consider new regulatory costs in relation to existing costs, and to decide if new rules pose an unacceptable incremental addition to the total regulatory burden on the public.

- U.S. *Executive Order No. 12291* states that no regulatory action shall be taken unless the potential benefits to society outweigh the potential costs to society. If the cost of the regulation is "major," usually $100 million or more per year, a full-fledged benefit-cost analysis is required. Regulatory priorities set by U.S. agencies should aim at maximizing the net benefits to society, taking into account the conditions of particular industries. The U.S. *Paperwork Reduction Act* requires a separate assessment of “paper-work burdens.”

- The Finnish *Norms Act* obliges regulators to analyze the functional, administrative, economic and other (e.g. environmental) effects of regulation. The effect on trade, including the promotion of competition, must also be considered. Direct effects are the primary object of the analysis, but indirect effects are not ignored.

- The Canadian 1992 *Regulatory Policy* requires that the benefits of regulation exceed the costs; and that the regulatory programme be "structured" to maximise the gains to beneficiaries in relation to the costs to businesses and individuals and that the regulatory activity impede Canada’s competitiveness as little as possible.

- The Swedish *1987 Limitation Ordinance* requires regulators to assess the costs of their proposed rules and the *Cabinet Office Guidelines* state that costs can include “paperburden,” as well as the social and economic impact of regulation.

- The Spanish *Questionnaire* requires an economic report dealing with economic and social effects.

- The Japanese *1987 Agreement* requires that the positive effects of a new regulation be confirmed and the burdens placed on the private sector and government be less than the benefits. Coverage and requirements shall be the minimum necessary to achieve the regulatory objectives.

b) Benefits of Regulation

The ultimate objective of regulatory intervention is to provide benefits to society, usually to identified segments of society. Some checklists ask that benefits of proposed regulation be identified or estimated, although costs are more often emphasized. The checklists requiring benefits analysis that are already mentioned above in the section on costs are not repeated here.

- The Swedish *Limitation Ordinance* requires assessment of the effects of regulation, including regulatory benefits.

c) The Distribution of Effects and Identity of Those Affected

Checklists concerned with the effect of regulations often go beyond an assessment of total costs or benefits. Also important to decision-makers in several OECD countries is the distribution of costs and benefits across segments of society. In particular, governments are sensitive to regulatory impacts on small businesses. Perhaps recognising the tendency of regulators to under-value regulatory costs relative to benefits, most checklists place more emphasis on identifying losers than on identifying winners.

- The U.K. *Guidance on Compliance Cost Assessments* requires that the sectors or types of businesses affected and their number be identified.

- The Canadian *Citizen's Code of Regulatory Fairness* requires that businesses of different sizes not be burdened disproportionately and implicitly requires that such businesses be identified.

- The Swedish Cabinet Office *Guidelines* require consideration of the impact of regulation on small and medium-sized enterprises.

- The U.S. *Regulatory Flexibility Act* mandates an assessment of the impact of regulations on small and medium-sized businesses, as well as on small governments.

d) Indirect and Secondary Effects of Regulation

These types of questions focus on the need to verify that the regulation addresses the specific problem under scrutiny, and is designed with explicit consideration of secondary effects not usually considered in analysis of compliance

costs. Such considerations are particularly useful for those reviewing existing regulations whose longer-term or indirect effects may have become more visible or even changed over time.

- The Dutch *Directives* state that a regulation should be introduced only if it appears capable of achieving the objective desired, regardless of other positive effects, and hence require decision-makers to remain focused on the original problem. The *Directives* also point out that a regulatory proposal can have unintended adverse effects that may be sufficient to justify not introducing the regulation. Unintended effects might include a reduction in the effectiveness of existing regulations or an unacceptable incremental addition to the total regulatory burden on the public. Consideration must also be given to potential direct or indirect effects on socio-economic development, including market flexibility, investment climate, salary structures, and national and international competitive status of the private sector. The Dutch *Directives*, in addition to asking about costs, ask about other effects on companies or institutions such as the impact within companies on participation and consultation or organisational consequences such as the need to call in experts.

- The Japanese *1988 Principles on Deregulation* require that any administration of regulation that diverges from its original objectives should be corrected and that care should be taken that regulation does not operate to protect vested interests or create economic barriers under the guise of regulation. In reviewing social regulation, Japanese officials must consider whether the regulation has interfered with free and fair economic activities beyond its original objectives.

e) Costs to Government, Including Administration and Enforcement Costs

The costs to governments of their regulatory programmes have become an increasingly large concern in an era of fiscal constraint. Requirements for setting priorities for government action, for ensuring compliance with existing regulation, and for fulfilling public expectations, particularly in the health and safety area, indicate that the cost of regulation to government must be considered before decisions are made to introduce new regulation or to maintain existing regulatory programmes.

- The German *Blue Checklist* asks what the extra costs and expenditures of new regulation are likely to be for federal, Lander and local authorities.

- The U.S. *Regulatory Flexibility Act* requires an analysis of costs not only to small and medium-sized businesses, but also to small local governments. The *Government Cost Estimates Act of 1981* requires Congress to estimate the cost of significant legislation on state and local governments.

- The Canadian *Regulatory Impact Analysis* must include costs to government, including enforcement costs. The 1992 *Regulatory Policy*

requires the regulator to demonstrate that the regulatory program is "structured" to maximise the gains to beneficiaries in relation to the costs to Canadian governments (as well as to individuals and businesses).

- The Swedish Cabinet Office *Guidelines* requires that administrative costs to government be considered.

- The Dutch *Directives* require examination of government costs in assessing possible alternatives to regulation or alternative forms of regulation. It states that every effort shall be made to minimise the cost to government, including not only implementation costs, but enforcement, government-funded legal assistance to regulatory violators, and additional costs to the justice system.

- The Spanish *Questionnaire* requires a report dealing with the budgetary implications of the proposals, as well as an assessment of how to remedy any discrepancies in human resources for implementation. The Questionnaire also asks if the proposal changes the existing allocation of powers among ministerial departments.

- The Japanese *1987 Agreement* requires that burdens to government agencies, as well as to the public, be minimised.

- The Finnish *Proper Drafting of Norms* and the *Norms Act* require that the effect of a norm on the service citizens receive and the workload and administrative costs of the authorities be analyzed.

3. Regulation as a Legal Instrument of Government

Regulation is a government action that controls or limits private sector behaviour. It is usually embodied in a law, subordinate regulation or ordinance, and is backed by the full force and authority of government. Checklists therefore usually call attention to the legal consequences of regulating citizens, and to the need to verify the legal legitimacy of rules.

a) The Legal Authority for the Regulation

This principle is often expressed as the “rule of law,” meaning that government should not impose requirements and burdens on the public without having the express legal authority to do so.

- The Canadian *Citizen’s Code* requires that all rules, sanctions, processes and actions of regulatory authorities be securely founded in law.

- The Swedish Cabinet Office *Guidelines* require that regulation be reviewed to ensure it is “juridically clear” and that it distinguishes between legally binding regulations and "advice."

- The Austrian *Guidelines* point out that norms must contain rules and should not express wishes or motives for specific regulations.

- The Dutch *Directives* point out that all regulations are subject to "superior rules," including principles of legal certainty, equality before the law and proportionality.

- The Spanish *Questionnaire* asks if there is a constitutional or legislative mandate for the regulation and the constitutional grounds for state action.

- The German *Blue Checklist* asks if a new law is needed, considering such matters as the theory that basic value judgments should be left to the legislature.

- The European Communities *Council Resolution* requires that the rights and obligations of those to whom the act is to apply be clearly defined. Provisions without legislative character, such as wishes and political statements, should be avoided.

b) The Language and Form of the Regulation

A requirement to consider the language and form of regulation, including clarity and simplicity or "plain language drafting," is found in several existing checklists. Similar requirements may be found in policies of government legal advisors. Plain language forces regulators to consider carefully the objectives and means of regulation, reduces uncertainty, and permits the regulated public to better understand what government requires of them.

- The Dutch *Directives* state that every effort must be made to ensure that regulations are clear and straightforward. Regulation should also be "durable," that is, not require frequent amendment. This criterion also means that the government and the drafters must have a clear sense of the essential policy objective of regulation.

- The Canadian *Citizen's Code of Regulatory Fairness* obliges the government to communicate to citizens, in clear language, the regulatory requirements with an explanation of why they have been adopted.

- The European Communities *Council Resolution* states that the wording of the act should be clear, simple, concise and unambiguous. Abbreviations, jargon, long sentences, and imprecise references to other texts should be avoided. Terms should be used consistently and acts should be drafted according to a standard structure (chapters, sections, etc.).

- The German *Blue Checklist* asks "Can the person concerned understand the proposed mode of regulation as regards vocabulary, sentence construction,

length of sentence, length of individual provisions, systematic treatment, logic and abstraction?"

- The Austrian *Guidelines for Drafting and Formulating Laws* require clearly drafted laws that have a sound logical sequence with short and grammatically clear sentences that use common and consistent expressions.

- The Finnish *Proper Drafting of Norms* indicates that the substance and wording of norms are subject to rigid quality requirements. The essential substance of a norm should be presently as clearly and briefly as possible, with header information, a uniform layout and standard language.

c) Substantive Criteria for the Exercise of Discretion in Regulation

Setting criteria for the exercise of regulatory discretion can reduce discrepancies between government regulators when they deal with similar issues, decrease uncertainty, and lower compliance costs for the private sector. A number of existing checklists therefore attempt to standardize the exercise of bureaucratic regulatory discretion. Discretion and flexibility, however, may also permit regulators to deal quickly and easily with exceptional circumstances or recognise individual needs. Many checklist questions are aimed at encouraging officials to seek an appropriate balance between rigidity and standardization on the one hand, and uncertainty and flexibility on the other hand.

- The Dutch *Directives* require that norms be set whenever possible when administrative powers are conferred. On the other hand, a body imposing sanctions must be allowed considerable discretion to determine the nature and scope of the sanctions.

- The *1988 Japanese Principles on Deregulation* propose that the transparency and fairness of administration be improved by clarifying the criteria for the granting of permissions, authorisations, etc.

- U.S. *Regulatory Policy Guidelines* from the Office of Management and Budget state that standards should be clearly defined in advance for licensing and permitting decisions, as well as for review of new products.

- The Canadian *Citizen's Code of Regulatory Fairness* states that the government will enhance the predictability of the exercise of discretionary powers by federal regulatory authorities and ensure regional consistency in administration.

- The German *Blue Checklist* asks if the authorities implementing the regulation have the necessary room to manoeuvre or if details can be left to ordinances issued by the lander or federal government or incorporated in administrative regulations. It also asks if regulation can be couched in broader terms, using general clauses and scope for discretion.

- The Finnish Manual on *Proper Drafting of Norms* states that detailed and binding norms can cause unnecessary rigidity that precludes common sense and subtract from motivation. Detailed norms should be avoided, leaving those who apply the norms some discretion. The Manual asks whether it is necessary to issue a binding and detailed order to accomplish the goal. A norm must clearly indicate by its title whether it is binding or advisory.

- The Austrian *Guidelines* recommend specific consideration of the discretionary power of administrative authorities and the drafting of norms on administrative sanctions.

d) Criteria for Procedural Safeguards

The exercise of discretion can also be structured by the application of procedural safeguards, for example, the right to a hearing or to examine documents. This type of requirement is often found outside of the checklist format in, for example, the U.S. *Administrative Procedure Act*, legal caselaw, and, in the U.K. and Canada, the rules of natural justice and fairness. Constitutional law and international treaties are also sources for these criteria.

- The Dutch *Directives* require that, in order to ensure sufficient legal safeguards, discretionary powers be examined to determine the degrees of legal protection required.

e) Intrusiveness in Private Life

The degree of intrusiveness of regulation in private life is a factor to which some governments call attention in their checklists.

- The Canadian *Citizen's Code of Regulatory Fairness* states that citizens are entitled to expect that regulation will be characterised by minimum interference with individual freedoms, consistent with the protection of community interests.

- The Japanese *1988 Principles on Deregulation* require that regulation shall be minimised and shall respect the initiative and self-responsibility of enterprises and individuals.

f) Enforcement Feasibility

Several checklists require regulators to examine the feasibility of enforcing the new regulation, that is, of detecting noncompliance and applying appropriate sanctions. Choices of enforcement mechanisms have implications not only for the costs to government, but also for private sector costs, the credibility of the regulation, and the efficacy of regulation.

- The German *Blue Checklist* asks if civil law can be used rather than administrative action or if enforcement authorities have been asked their opinion on the clarity of purpose to be achieved by the regulation and whether simulation techniques have been used to test the proposed regulation.

- The Canadian *Regulatory Impact Analysis*, required for all regulations, must explain the mechanisms for ensuring compliance and the means for detecting noncompliance. The Canadian *Citizen's Code of Regulatory Fairness* states that sanctions and enforcement powers will be proportionate and appropriate to the seriousness of the violation. The 1992 *Regulatory Policy* requires regulators to demonstrate that systems are in place to manage regulatory resources effectively; in particular, they must show that enforcement policies have been put in place and that resources have been approved and are adequate to discharge enforcement responsibilities effectively.

- The Dutch *Directives* state that enforceability should be discussed before a decision to introduce regulation is taken. Rules should be addressed to situations that are visible or objectively established and there should be little scope for disputes over interpretation. Rate levels for fines should be established in the rule and the potential for conflicts should be reduced.

- Swedish Cabinet Office *Guidelines* require that a review of new regulation consider its enforceability.

- The Japanese *1987 Agreement* requires that coverage and regulatory requirements be the minimum possible to achieve objectives. The *1988 Principles of Deregulation* state that inspections of similar kinds or under the jurisdiction of several agencies shall be rationalised and streamlined.

g) Compliance Strategies

Compliance strategies involve designing and implementing the regulatory programme in a fashion that will ensure the greatest degree of compliance at the lowest cost to the public and the government. These issues go beyond the rather limited issue of the enforceability of regulation to encompass the wider environment affecting compliance, such as regulatory clarity, public education and consultation, and choice of regulatory approach.

- The Austrian *Guidelines* point out that proper transitional regulations can help ease the workload of authorities immediately after entry into force of a new law.

- The Dutch *Directives* point out that compliance (and enforcement) depend on the extent to which the public regards the norms and administrative instruments of the regulation as being self-evident. The *Directives* also state

that criminal law sanctions and processes should only be used if it can be convincingly shown that administrative law, private law and the law on professional misconduct will be inadequate to secure compliance with the regulatory requirements. Regulation should be structured and worded in such a way as to reduce conflicts over interpretations and application.

- The German *Blue Checklist* asks if proposed measures such as obligations to report, to make personal appearances, or to furnish information on proof are necessary, and could be replaced by milder restrictions, and also if the new provision will be readily understood and accepted by the average citizen.

- The Canadian *Citizen's Code* states that once regulatory requirements have been established, the government will communicate the requirements in clear language to citizens and provide an explanation of why they were adopted. The 1992 *Regulatory Policy* requires that a compliance policy be articulated and that resources are available to ensure compliance when regulation binds the government. The *Policy* also requires regulators to demonstrate that Canadians have been consulted and have had an opportunity to participate in developing or modifying regulations and regulatory programs.

- The Spanish *Questionnaire* requires officials to ask how acceptable the regulatory proposals are likely to be to the community.

- The Finnish *Proper Drafting of Norms* points out that the norm must be delivered to applying authorities well in advance and that effective publicity of norms is based on comprehensive and well-targeted distribution.

h) The Period of Time During Which the Regulation Will be Applicable

One effort to reduce the amount of regulation imposed upon the public is to limit the time during which regulatory authority would be valid or to "sunset" the regulation. Alternatively, regulatory burdens can also be reduced if the public is required to interact less frequently with government in order to renew permits or file information.

- The German *Blue Checklist* asks if the length of period the provision should remain in force should be limited. It further questions if it is possible to justify a time-limited "experimental" provision.

- The U.S. *Paperwork Reduction Act* establishes a three-year limit on the length of time any federal paperwork requirement can be implemented. After that, the responsible agency must eliminate the paperwork unless independent reviewers in the Office of Management and Budget decide that it continues to be of use to the Federal government and imposes the lowest possible burden on the public.

- The Japanese propose that the time period a permission or authority is in force should be examined to determine if it can be extended to eliminate frequent reapplications.

- The Dutch *Directives* require that if a regulation is to be introduced on an experimental basis, its temporary nature shall be made clear in the text. Experimental regulations, which are imposed even if their overall impact is unknown, should be temporary.

- According to the Finnish Manual, *Proper Drafting of Norms,* orders and guidelines are issued for a fixed period not exceeding five years. The Finnish *Norms Act* requires an assessment of the necessity and appropriateness of a norm every five years to determine whether repeal or updating is required.

4. Regulation in the Context of Government and International Policies

a) The Relationship and Compatibility of Regulatory Action to Existing Government Rules or Policies

This checklist element recognises that new regulations must coexist with a host of existing laws and regulation. These kinds of elements require regulators to examine: whether the problem can be solved by the application of existing laws; whether the proposed regulation is compatible with existing laws; whether amendments to other rules will be required; and whether existing related laws are outdated and can be repealed. This principle is related to questions about need for government action or alternative forms of government action.

- The Dutch *Directives* note that the effect on existing regulations should be examined, including the possibility that it may be less attractive for the public to comply with an existing regulation or that the cumulative burden on the public has been increased to the point that the public is less willing to comply.

- The European Communities *Council Resolution* states that inconsistency with existing legislation and the pointless repetition of existing provisions should be avoided. Any amendments, extension or repeal of other legislation should be clearly set out.

- The German *Blue Checklist* asks if existing provisions can be dropped if the new regulation is enacted. It also asks if relevant technical norms or standards already exist and how the proposal compares with the present position as to the facts and the law.

- The Austrian *Guidelines* recommend consideration of the effect of new laws on the validity of administrative decisions taken before the law entered into force.

- The Spanish *Questionnaire* asks if any existing provisions will be repealed by the new action.

- The Japanese *1987 Agreement* states that new regulations shall not overlap and shall be consistent with existing regulations and systems.

b) The Relationship and Compatibility of Regulatory Action to International Norms or Agreements

An awareness of international agreements in regulatory areas is becoming an increasingly important matter for Member countries. In some cases, the agreements may provide necessary regulatory authority to solve the problem; in other cases, the issue may be a need for harmonisation.

- The Dutch *Directives* point out that, when drafting regulation, drafters must determine whether and if freedom to regulate has been restricted by superior rules such as the *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

- The Japanese principles for review of social regulation require that harmonization and integration of systems and standards with international norms be promoted.

- Swedish Cabinet Office *Guidelines* require review for consistency with international regulations, particularly EC regulations.

- The German *Blue Checklist* asks if the same matters have already been dealt with by other provisions, including an EC regulation or international treaty.

- The Spanish *Questionnaire* asks if the regulatory proposals affect any EC provisions and if the Commission of European Communities received prior notification of the proposals when required.

- The Finnish *Proper Drafting of Norms* states that Finland cannot prepare norms and inspection systems that are incompatible with the development of international cooperation. Specific requirements are set out for the drafting of technical regulations.

V. RESOURCE IMPLICATIONS

Governments applying checklists must be prepared to invest the necessary financial and human resources. In some circumstances, a checklist may consolidate requirements found in other areas and impose little additional pressure on resources. However, widespread introduction of new analytical techniques, development of

information bases and education of decision-makers in a new approach to regulation may require dedicated resources.

Governments should be aware that, by their nature, regulatory checklists require one of the most scarce and costly resources -- information. Checklists explicitly and implicitly define certain kinds of information as relevant for regulatory analysis and decision-making in a government, and hence presume that certain types and levels of information resources are available.

Application of lists may entail knowledge or access to data about existing laws, their performance, industrial sectors, industrial processes, business practices, chemical exposure levels, human sensitivity to chemicals, human psychology, income distribution, population growth, and a host of other factors. Gathering and processing this information can require significant financial resources for government and potentially significant information burdens for the private sector. It may also imply the availability of skills in research, economic analysis, scientific analysis, legal drafting, conceptual policy formulation, consensus building, negotiation and programme management.

For example, U.S. *Executive Order No. 12291* requires quantitative analysis; the relative sophistication of U.S. analytical techniques reflects their importance in the U.S. approach to regulatory reform. The majority of people working on regulatory analysis in the United States are likely to have technical backgrounds and be comfortable with quantitative techniques.

By contrast, the Dutch *Directives on Legislation* were developed by the Ministry of Justice and show particular concern with the legal requirements of regulation, clear legal drafting, enforcement, compliance, and effects on the justice system. Lawyers or persons with some legal training are probably involved at various stages of the application of the *Directives*.

These two examples can be generalised: the human resources most frequently required by checklists are legal and economic analytical skills. At least two types of legal skills are involved; the first is the ability to identify and analyze legal issues. This can include the ability to develop an innovative solution to a problem, to see if the existing structure of law and regulation can be used or modified to reach a regulatory objective, and to identify the legal constraints or implications of various policy options. The second type of legal skill involves legal drafting and communication of legal requirements to the public. The identification of enforcement and compliance requirements and the design of an enforcement strategy may also involve legal skills, particularly if linked to practical operational experience in regulatory programmes.

Economic or quantitative analysis skills will be needed to implement checklist requirements for identification of costs and benefits or cost effectiveness. Depending on the orientation of the analysis and the problem or regulatory alternatives being analyzed, scientific or other technical skills may be necessary. In the environmental or health and safety area, where scientific or technical skills may be required for the

checklist analysis, the requisite human skills are likely to be found in those who are developing the new regulation or examining the problem to be solved.

A central oversight body that is monitoring compliance with a checklist may need specific analytical skills to assess the adequacy of the decision-making techniques used by those who are developing new regulation.

An additional resource that is often underestimated when developing new structures or frameworks for regulatory analysis and decision-making is time. Responding to the requirements of a regulatory checklist with a list takes bureaucratic time. It also requires a commitment of time by decision-makers, whether civil servants or politicians. Substantial delays have resulted in some OECD countries, and have led to political and institutional opposition to the use of checklists. Of course, delays of bad decisions are a positive result and should not be avoided.

On the other hand, a regulatory checklist, properly managed, can also save time for all concerned. The analytical and process requirements implied by checklists can help avoid bad decisions, poor coordination, and prolonged decision-making exercises, all of which result in wasted time for senior decision-makers. As most civil servants are aware, the time of senior officials, ministers, Cabinet and the Legislature is one of the rarest commodities in government.

The core issue is to ensure that investments in regulatory checklists are well-spent. Checklists must deliver on their promises to improve regulation. Costs must be more than offset by the benefits that come from more judicious use of regulatory intervention, reliance on more efficient forms of regulation, more efficient development and decision-making processes within government, and from the unquantifiable benefits of improved accessibility, transparency, and accountability.

VI. CONCLUSIONS

This paper does not assess the effectiveness of existing regulatory checklists or determine the adequacy of their contents. Such an analysis would require a review of the additional sources of criteria and principles affecting regulation, and a detailed knowledge of institutional arrangements in Member countries.

Some preliminary lessons can be, however, be identified at this stage regarding the form, use and content of such lists in OECD countries. These insights may help guide countries who wish to create new, or revise existing, checklists.

1. Common Principles

Perhaps the most striking conclusion to be drawn from this survey is the commonality of themes and principles revealed in various regulatory checklists. Although the legal and institutional frameworks, form, application, details and focus of the checklists differ, there is common concern about the need for regulation and a

questioning of its costs, effects, and effectiveness. There is a concern that government actions limiting citizens be based in law and that inconvenience to citizens be minimised.

2. Alternate Sources of Checklists

A second important insight is that although not all OECD Members have explicit regulatory checklists, the elements of checklists may already be present in alternate sources. Even when existing lists are narrow in focus, additional principles are likely to be found in other sources such as statutes, drafting guidelines, advisory reports or other documents.

3. A Flexible Policy Tool

As the range of styles and purposes of the checklists examined in this paper demonstrates, checklists can be extraordinarily flexible tools of regulatory reform within governments. A number of characteristics can be varied to suit the situation:

a) The degree to which a checklist is used for decisions on all kinds of regulation (e.g. statutes, subordinate legislation, rules, guidelines) or for legal instruments of particular kinds, such as subordinate legislation.

b) The degree to which a list is used throughout government, e.g. is it used by all departments at all levels of decision-making, or only by one regulator or level?

c) The degree to which the use of a list is mandatory or enforceable and the consequences of not using the list. Must evidence of compliance with the checklist be shown before a decision is made? Is the decision void?

d) The degree to which the list is used for different purposes, such as early analysis of perceived problems as well as for providing a framework to review existing regulation.

e) Breadth of the user audience. Are they specialists in one subject (e.g. groundwater pollution control) or specialists of a particular type, such as economists or lawyers, or do a variety of officials use the checklist?

f) Relationship of the check list to a public consultation or consensus process. Does the list require public involvement in regulatory decisions?

g) Political and public acceptance of the list. Is it legislated following discussion and input across the political spectrum that results in a political consensus or is it an internal directive reflecting narrower influence?

The form of a checklist can also influence its effect. General administrative procedure statutes, for example, usually embody checklist requirements that profoundly affect regulatory development and decision-making throughout a government. These statutes usually emphasize process and procedure, including notice, consultation, openness and transparency of decision-making. Noncompliance can invalidate the decision and regulation. Checklists established by decision of the Government or executive can also have wide application, and, unlike law, can be tailored to reflect the priorities and values of the current government. Noncompliance with a government directive will not usually legally invalidate a regulatory decision. Rather, decision-makers can refuse to approve regulations that do not meet the requirements of the checklist.

Governments designing checklists must determine which characteristics are needed to accomplish their goals, and ensure that the vehicle for the checklist is suited to those characteristics.

4. The Need for Political and Senior Level Bureaucratic Commitment

A common requirement for the effective use of a checklist is political commitment to the principles and criteria in the list. This commitment must extend to senior officials and bureaucratic department heads.

Checklists embody important governing values and reflect political priorities. The creation of a checklist requires a government to articulate its views on regulation as an instrument of public policy. The list must reflect what the decision-makers consider important.

Where there is an absence of strong political leadership, both creation and implementation of a checklist can become a painful and prolonged adventure. There is a great risk that the policy principles in the checklist will be become so watered-down and generalised that they no longer serve as useful guideposts for regulatory decision-making. Officials may not respond to checklist requirements that they see as vague, contradictory, inappropriate, counterproductive, unnecessarily burdensome, or simply restatements of former practice. Ultimately, the approach taken in designing and applying a checklist will probably have a greater bearing on its actual effect and success as a management tool than the substantive contents or specific wording of the list itself.

5. Targeting the Audience

A recognition of the potentially varied group of people who may use a checklist also has implications for its format. It is possible to structure a list to reflect the expertise of one group or another, such as lawyers or economists. If it is to be used by only that group, this is appropriate. If it is to be used more widely, however, a format that provides generalised headings with more detailed sublists might be best suited to the various expertise of users. Detailed sublist issues relating to economic analysis, for

example, might baffle the generalists, but they would understand the broader headings and appreciate their relevance. At the very least, they would be able to ask the right questions.

Agreement on values and standardization of a checklist can, however, be difficult. If one department is responsible for one policy alternative, such as taxes, while another is responsible for a regulatory programme, the full consideration of alternative approaches to regulation may be institutionally limited. Where policy decisions and implementation occur at different levels of government, less emphasis may be given to information collection and compliance or enforcement considerations.

6. The Merits of Supplementary Guides

Alternatively, checklists expressed in broad terms can be accompanied by supplementary guides that elaborate or refine the principles, procedures, and yrequirements in the list. Examples might include guides on regulatory alternatives, risk analysis, benefit-cost analysis, legal drafting techniques and conventions, and development of compliance strategies. These supplementary materials can be tailored to the needs of the different users at various points in the regulatory process.

7. The Need for Checklist Guardians

Successful implementation of regulatory checklists probably requires establishment of a monitoring function within government and designation of a "guardian" to provide oversight services. Because lawyers often have similar expertise or values and because many of the instruments of regulation must be approved by lawyers, using the legal branches or departments as overseers of checklist compliance is possible when the emphasis is on process or legal issues. Lists that emphasize economic analysis and information, however, are less likely to be sympathetically nurtured in the legal environment.

Using central agencies for monitoring or controlling lists may overcome divergent priorities in departments. However, central agencies usually lack the detailed regulatory programme expertise of departments and may lack the practical capacity to meaningfully examine numerous initiatives from across government.

If a central agency that has key responsibilities in the regulatory process is not the guardian of the checklist, then it may be necessary to establish a network of senior officials with analogous responsibilities in each department to perform that function. Although the lists may be used by a variety of officials, from junior analysts to departmental heads, the responsibility for implementation should be assigned to someone sufficiently senior in a department or agency to reinforce the message of political commitment to regulatory reform.

8. Training and Skills Development

Some Member countries train officials in the use of checklists, including analytical methods. The more critical need, however, may not be training in the use of the lists *per se*, but developing the bureaucratic behaviour that the lists are intended to foster. Information-gathering, consultation, negotiation, clear writing, and effective enforcement techniques, for example, are skills that may need to be taught within the public service.

9. A Dose of One's Own Medicine

In approaching the design and use of regulatory checklists, governments should recognise the similarities between the tasks of modifying private sector behaviour through regulation and modifying government behaviour through administrative and procedural controls. In both cases, governments perceive a problem that may require intervention of some form. In both cases, the ultimate objective is to change behaviour.

Simply establishing procedures and administrative arrangements to support a list may not be sufficient to ensure its successful implementation. Just as “command and control” regulatory techniques are not always suitable for changing private sector behaviour, they also may not reform the public sector’s attitude toward regulation. Implementation requires that the government seek broad commitment to the values and principles in the list and educate the bureaucracy in their application.

Governments must also take the time to develop a clear understanding of the sources of the problem they are addressing. They must carefully articulate the policy and procedural requirements of the checklist, tailoring (where necessary) the content to specific users and stages in the regulatory process. They must address the underlying incentives and impediments to application of the lists, particularly resource implications, analytical expertise, and information requirements. They must integrate use of checklists among government institutions so that application becomes mutually reinforcing. They must ensure that there are meaningful rewards for successful application of the lists, and effective sanctions for failure. And finally, and perhaps most importantly, they must be realistic about the scale, magnitude, pace, and cost of change within government.

ANNEX

AUSTRIA (1990)

Guidelines for Drafting and Formulating Laws

(Excerpts)

1. The Austrian Government adopted these Guidelines in January 1990, replacing earlier guidelines from 1979. The Guidelines, intended for civil servants who have the task of drafting bills, constitute a recommendation that civil servants should observe.

2. The Guidelines contain in three parts rules on:

   1. language of legal documents,

   2. legal technique, and

   3. formal questions with respect to the drafting of bills.

3. It must be stressed that the Guidelines contain rules for the drafting of laws and thus pertain to the phase in the process of legislation when the decision for the issuing of a specific norm has been taken.

   They thus do not deal with such problems as whether a norm should be issued at all (*cf.* the "Blue Checklist" in the Federal Republic of Germany) or with cost-benefit deliberations. The latter question is (partly) dealt with in a separate brochure "What does a law cost?"

   The Guidelines thus can be characterised as a means to raise more technical questions in the law-drafting process.

4. The rules concerning language contain amongst others the following recommendations:

   -- Norms must contain rules and should not express wishes, declare aims or render motives for specific regulations.
   -- Laws must be structured properly...
   -- Single sections of the law should be structured logically as well (First the main contents should be stated. Next should be stated the requirements facing the authority or the requirements that have to be fulfilled so that a permission can be granted. Possible exceptions to the rule should be listed clearly and separately. At the end, the competent authority should be specified. The norm thus should clearly express in brief the following: what, under which conditions, with which exceptions, by whom).
   -- To this end, norms should contain short sentences; more important than the length of the sentence, however, is the structure of the sentence....
   -- Norms should be formulated in an abstract way (not by mentioning specific examples).
   -- Norms should be drafted as clearly as possible....

      (Note: Clarity does not only concern the question of understanding -- seen as a problem of the citizen -- but also the legal question of the contents of a norm; most or nearly all linguistic recommendations can also lead to better and more

precise formulation of laws with respect to their contents; in trying to improve the linguistic side of a text regulators often will come to realise that they do not really know what is meant by a certain clause; improving a text linguistically can often change the meaning of the clauses; thus, examining the relation between form and contents also guarantees deeper deliberation on the effects of norms.)

5. The chapter on "legal technique" deals with the following problems:

(....)

2. How to amend a law. Here the Guidelines contain important changes compared to the technique previously used in Austrian legislation.

   Besides the "Principle of the single amendment" (separate laws for the amendment of different "original laws", see below 3.) the Guidelines recommend incorporation of all norms into the "original norm" and to avoid "separate norms" (see below 4.).

3. "Composed Amendments" Laws that contain amendments to different laws should be avoided....

4. The notion of the "separate norm" What is understood by "separate norms" requires a brief explanation. In case of an amendment one has to distinguish the norm that is amended and the amending law. The amendment can formally change the wording of a law ("Paragraph X, section Y has to read as follows"), or it can establish a new rule that modifies the contents of the "original law" ("materielle derogation", abrogation of a norm without expressly changing the wording of a rule, e.g. "Paragraph X of the Water Act is to applied with the following changes, if ...", or: "Paragraph Y of the X-Act does not apply to ...").

   In the latter case, a "separate norm" is created, for the contents of a law cannot be seen from the wording of the original norm as amended, but only by reading the original norm and the "separate norm".

   Such a "separate norm" can modify the scope of application (with respect to the contents or with respect to the time aspect), or can modify the substantive effect of a law by stating exceptions, adding rules for a specific situation, etc. It can also contain transitional regulations.

   All those types of "separate norms" should be avoided, according to the Guidelines.

   Instead of creating a norm in the amending law (e.g. "Article 2" of the amending norm), a transitional regulation should be incorporated into the "original norm" ("It is added the following paragraph" -- within the Water Act --).

   One of the advantages of their technique is that in case of a new amendment the amendment has to pertain to the "original norm" (e.g. the "Water Act"), not to an amendment of a norm, that may be does not even contain a hint to the Water Act itself. It thus helps to make the legal order more transparent.

   This technique should help to avoid the issuing of "hidden norms" ("leges fugitivae") and should also facilitate the recording of the norms with electronic data processing.

5. Transitional regulations may be issued with respect to the substance, to possible constitutional problems, as well as to technical issues; transitional regulations, moreover, may have an aspect of administrative reform and administrative economy. It must be kept in mind that new regulations might require permissions to be issued for those who have been exercising a certain activity before the new law; proper transitional regulations might help to ease the work load of authorities immediately after the entry into force of the new law, particularly when people are allowed to keep up the activity for a while.

CANADA (1986)

Guiding Principles of the Federal Regulatory Policy

The Regulatory Reform Policy which guides federal regulatory action is aimed at promoting greater economic and administrative efficiency while maintaining the protection of the public. The following guiding principles, constituting the policy, were announced on 17 February 1986.

1. Regulation is and will remain a necessary and important instrument for achieving the government's social and economic objectives. However, the government intends to "regulate smarter".

2. The government recognises the vital role in the economy of an efficient marketplace and a dynamic entrepreneurial spirit and that regulation should not impede their operation without the most persuasive justification.

3. The government intends to limit as much as possible the overall rate of growth and proliferation of new regulations while protecting the public wherever appropriate.

4. With regard to existing regulatory programs, priority will be placed on reforming ineffective or economically counterproductive regulation, but there will be no program of wholesale deregulation. On a case-by-case basis, there will be reduced regulation where the practical interests of the economy and job creation call for it, just as there will be improved and even intensified regulation where public protection requires it.

5. Regulation entails social and economic costs, and the government will evaluate these costs to ensure that benefits clearly exceed costs before proceeding with new regulatory proposals.

6. Regulation is legislation and, as such, will be brought more fully under the control of elected government representatives and subject to more effective review by Parliament.

7. The public has an important role to play in the development of regulation, and the government will increase public access and participation in the regulatory process while simplifying procedures and restricting legalities to a minimum.

8. The federal regulatory system will be streamlined and made more efficient and effective to reduce costs, uncertainties and delays.

9. The government will place priority on increased regulatory co-operation with the provinces to address the overall regulatory burden on Canadians and to eliminate wasteful duplication.

10. A minister will henceforth be assigned specific responsibility for regulatory affairs including improved management of the system and overall implementation of the government's regulatory policy and reform strategy. Individual ministers with regulatory mandates will be responsible for implementing and exercising their responsibilities in conforming with the spirit and objectives of this policy.

CANADA (1986)

Citizen's Code of Regulatory Fairness

On March 6, 1986, the Canadian government announced "15 ground rules on how the government wants the public to be treated by federal regulators." These were called the Citizen's Code of Regulatory Fairness. The Government explained, "When a government regulates, it limits the freedom of the individual. In a democratic country, it follows that the citizen should have a full opportunity to be informed about and participate in regulatory decisions. Moreover, the citizen is entitled to know the Government's explicit policy and criteria for exercising regulatory power in order to have a basis for 'regulating the regulators' and judging the regulatory performance of the Government."

"In recognition of these important principles, the federal government has developed this Citizens' Code of Regulatory Fairness. It is based on the Government's fundamental commitment to openness, fairness, efficiency and accountability."

1. Canadians are entitled to expect that the Government's regulation will be characterised by minimum interference with individual freedom consistent with the protection of community interests.

2. The Government will encourage and facilitate a full opportunity for consultation and participation by Canadians in the federal regulatory process.

3. The Government will provide Canadians with adequate early notice of possible regulatory initiatives.

4. The Government will take measures to ensure greater efficiency and promptness in discretionary and adjudicative regulatory decision making.

5. Once regulatory requirements have been established in law, the Government will communicate to Canadians, in clear language, what the regulatory requirements are, and why they have been adopted.

6. The rules, sanctions, processes, and actions of regulatory authorities will be securely founded in law.

7. The Government will ensure that officials responsible for developing, implementing or enforcing regulations are held accountable for their advice and actions.

8. The Government will take all possible measures to ensure that businesses of different size are not burdened disproportionately by the imposition of regulatory requirements.

9. The Government will ensure that the governments of the provinces and territories are given early notice and adequate opportunity to consult on federal regulatory initiatives affecting their interests.

10. The Government will not use regulation unless it has clear evidence that:

    -- a problem exists;

    -- government intervention is justified; and

    -- regulation is the best alternative open to the government.

11. The Government will ensure that the benefits of regulation exceed the costs and will give particularly careful consideration to all new regulation that could impeded economic growth or job creation.

12. The Government will avoid introducing regulations that control supply, price, entry, and exit in competitive markets except when overriding national interests are at stake.

13. The sanctions and enforcement powers specified in federal regulatory legislation will be proportionate and appropriate to the seriousness of the violation.

14. The Government will enhance the predictability of the exercise of discretionary powers by federal regulatory authorities and ensure, to the maximum extent possible, inter-regional consistency in the administration of regulations.

15. The Government will encourage the public to exercise its duty to criticise ineffective or inefficient regulatory initiatives and to offer suggestions for better or "smarter" ways of solving problems and achieving the Government's social and economic objectives.

CANADA (1992)

Federal Regulatory Policy
(Excerpts)

Policy Objective

The objective of this policy is to ensure that use of the government's regulatory powers results in the greatest net benefit to Canadians.

Policy Statement

It is government policy that departments and agencies:

- -- justify the need for regulation;
- -- weigh the benefits of the regulations against their cost;
- -- establish the framework (compliance and enforcement policies, management systems and resources) needed to implement regulatory programs;
- -- determine the relevance, success and cost-effectiveness of existing regulatory programs; and
- -- provide for an open regulatory process.

Application

This policy applies to federal regulatory authorities.

Policy Requirements

For existing regulatory programs, and substantive new or amended regulations, departments and agencies must demonstrate that:

1. A problem or risk exists, government intervention is justified, and regulation is the best alternative;

2. Canadians have been consulted and have had an opportunity to participate in developing or modifying regulations and regulatory programs;

3. The benefits of the regulatory activity outweigh the costs, and the regulatory program is "structured" to maximise the gains to beneficiaries in relation to the costs to Canadian:

   - -- governments;
   - -- businesses; and
   - -- individuals.

4. Steps have been taken to ensure that the regulatory activity impedes as little as possible Canada's competitiveness.

5. The regulatory burden on Canadians has been minimised through such methods as cooperation with other governments.

6. Systems are in place to manage regulatory resources effectively. In particular:

-- compliance and enforcement policies are articulated, as appropriate; and
-- resources have been approved and are adequate to discharge enforcement responsibilities effectively, and to ensure compliance where the regulation binds the government.

EUROPEAN COMMUNITIES (1993)

Council Resolution of 8 June 1993 on the quality of drafting of Community legislation (93/C 166/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaties establishing the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community,

Having regard to the conclusions of the Presidency of the European Council meeting in Edinburgh on 11 and 12 December 1992 to the effect that practical steps should be taken to make Community legislation clearer and simpler,

Whereas guidelines should be adopted containing criteria against which the quality of drafting of Community legislation would have to be checked,

Whereas although such guidelines would be neither binding nor exhaustive they would aim to make Community legislation as clear, simple, concise and understandable as possible,

Whereas these guidelines are intended to serve as a reference for all bodies involved in the process of drawing up acts for the Council, not only in the Council itself but also in the Permanent Representatives Committee and particularly in the working parties; whereas the Council Legal Service is asked to use these guidelines to formulate drafting suggestions for the attention of the Council and its subsidiary bodies,

HAS ADOPTED THIS RESOLUTION:

The general objective of making Community legislation more accessible should be pursued, not only by making systematic use of consolidation but also by implementing the following guidelines as criteria against which Council texts should be checked as they are drafted:

1) the working of the act should be clear, simple, concise and unambiguous; unnecessary abbreviations, "Community jargon" and excessively long sentences should be avoided;

2) imprecise references to other texts should be avoided as should too many cross-references which make the text difficult to understand;

3) the various provisions of the act should be consistent with each other; the same term should be used throughout to express a given concept;

4) the rights and obligations of those to whom the act is to apply should be clearly defined;

5) the act should be laid out according to the standard structure (chapters, sections, articles, paragraphs);

6) the preamble should justify the enacting provisions in simple terms;

7) provisions without legislative character should be avoided (wishes, political statements);

8) inconsistency with existing legislation should be avoided as should pointless repetition of existing provisions. Any amendment, extension or repeal of an act should be clearly set out;

9) an act amending an earlier act should no contain autonomous substantive provisions but only provisions to be directly incorporated into the act to be amended;

10) the date of entry into force of the act, and any transitional provisions which might be necessary should be clearly stated.

FINLAND (1993)

Proper Drafting of Norms
A Manual for Administrative Authorities
(Excerpts)

FOR THE USER

The Norms Act and the supplementing Decision of the Council of State provide guidance for the proper drafting of norms. The provisions will remain in force until the end of 1996, by which time, according to the estimate, the proper practice of the issue of norms will have become established.

It is the purpose of the Norms Act to limit, clarify and reform the issue of orders and guidelines by the authorities. A special goal is to reduce the orders addressed to municipalities and federations of municipalities.

The present manual outlines to the user the relevant contents of the Norms Act, the Decision of the Council of State and the other sources for guidance in the drafting of norms. It is intended primarily for the use of drafting officials in the ministries and the central agencies. The general principles are useful also in higher-level issue of norms and the internal guidance of the authorities.

PROPER DRAFTING OF NORMS

Principles of the Proper Drafting of Norms

First Principle
ONLY NECESSARY ORDERS AND GUIDELINES ARE TO BE ISSUED

Second Principle
ORDERS AND GUIDELINES ARE TO BE UP-TO-DATE

Third Principle
THE EFFECTS OF THE ORDERS AND GUIDELINES ARE TO BE MONITORED

Fourth Principle
ORDERS AND GUIDELINES ARE TO BE CLEAR

Issue of Norms by the Administrative Authorities

When evaluating the issue of norms it may at times be difficult to distinguish between the exercise of legislative powers and the exercise of executive powers. This separation has little practical value relating to the guidance systems of the central administration, to the division of the tasks and competence between the different levels of administration, or to the subject and applier of the norms. What is relevant is:

- *which authority may issue norms and for what reasons;*
- *what are the possible contents of the norms;*
- *how binding the norms are.*

The Legal Basis for the Issue of Norms

The legal basis for the issue of norms by administrative authorities have not been provided for by the Constitution. The grounds for the competence to issue norms have been the subject of a report relating to the issue of norms in the State central administration and of the subsequent Decisions of the Council of State....

More and more restraint should be shown in the delegation of the competence to issue norms, and more and more precision should be observed in the authorisations, as

- the matters become more important
- the issuer of the norm has a lower hierarchical position
- the effects of the norm spread farther outside the State administration
- the norms become more binding.

The Starting Points for Drafting

Choice of the method of guidance

...The issuance of norms is the heaviest of the methods of guidance available to the administrative authority. It is to be used with discretion and only in cases where it is truly necessary and truly appropriate. Detailed guidance can often be replaced by lighter guidance, with emphasis on results and economy. Training, information and management for results are also an effective and efficient way to the result aimed for.

Need for a norm

One has to understand the practical situation in order to be able to realistically evaluate the need for the issue of norms. For instance, in order to set the minimum or the goals for the standard or quality of service one must have information on the current quality of service, supply and demand, the sociopolitical aims of the development of service, and the resources for the production of services.

The need for issuance of a norm is to be determined on a case to case basis. The issue of norms by the ministries and other authorities in the central administration are based on statutory authorisations. If the issuance of a norm has in the authorisation been left to the discretion of the issuer, there must be a justified reason for the issue.

The existence of an authorisation should not lead to the issue of a norm, if the system works without one.

The issue of norms is...permissible as a guidance method if it can be used in securing:

- uniform treatment of citizens and the realisation of legal protection;
- high standards and wide availability of public services;
- attainment of the set goals;
- economy and rationality of the activities.

These criteria are quite loose. The fulfilment of one or, indeed, several of them is not necessarily sufficient grounds for the issue of a norm.

Guidance by norms is justified only if the goals cannot be achieved by any other method.

The Course of Drafting

What are the grounds for the issue of a norm?

It is an important task in the drafting of a norm to determine the competence of the agency in question to issue the necessary norm. This determination is to be performed from case to case, examining all the relevant competence provisions...

Consider the hierarchical level of regulation

When new legislation or amendments to existing legislation are planned, the necessity for and contents of lower-level regulation are determined. One subject matter should be regulated at most on three hierarchical levels (eg. an Act, a Decree and a ministry decision). At their best the norms of a field of activity form a tiered, clear and easily applied whole.

Always consider whether an administrative norm is necessary in addition to an Act and a Decree.

The issue of norms by the *ministries* aims at efficient and economical activity and the security of the uniform treatment of the citizens. *The central administration* may be charged with the technical and standardizing guidance of activities requiring nationwide uniformity. Authorities in *regional* and *local* administration may issue norms that require local expertise and have local importance.

Norms are issued on a level of administration corresponding to their social impact.

Consider the binding effect and the amount of detail

Detailed and binding norms cause unnecessary rigidity in the service function of State administration, "preclude common sense" and subtract from motivation. Issuance of detailed norms should be avoided in order to leave the municipalities and the other appliers of the norms the discretion intended for them in higher-level provisions.

Binding orders should be issued only if necessary. It may be justified to provide guidance with orders in cases relating to the safety, health, sustenance and equality of the citizens.

Consider, whether it is necessary to issue a binding and detailed order in order to accomplish the goal.

Proper organisation and timing

...It is necessary to reserve sufficient time for the applier of a norm and the other instances concerned, in order for them to organise their activities to comply with the amendment or reform. For this reason a norm has to be drafted so that eg. the forms necessary for its application are available well in advance of its entry into force.

Analyze the effects

The Norms Act provides for the obligation to analyze the functional, administrative, economic and other (eg. environmental) effects of orders and guidelines. During this process it is determined how the norm affects eg.

- the service the citizens receive from the authorities (the quality, quantity, availability, accessibility and cost of services)
- the municipalities and municipal finances (municipal autonomy, freedom of activities, economy)
- trade (promotion of competition)
- the workload and administrative costs of the authorities.

Direct effects are the primary object of analysis. All the same, indirect effects must not be ignored.

The demands of internationalisation

European integration sets general demands also on the quality and substance of lower-level norms. The harmonization of standards and technical provisions and the creation of reciprocal recognition systems for technical inspections preclude Finland from preparing norms and inspection systems that are incompatible with the developments of international cooperation.

Finland is a party to international agreements that lay down an obligation for inter-State exchange of information relating to technical provisions. Such a procedure is included in the TBT (Technical Barriers to Trade) agreement under GATT and in the agreement between EFTA and the EC. In connection with these agreements the Council of State has issued a Decision on the Notification of the Drafting of Technical Regulations, Standards and Recommendations, and on the Postponement of the Implementation of the Same.

The Ministry for Trade and Industry is responsible for the Finnish implementation of the information exchange systems under the EFTA/EC agreement and the TBT-agreement under GATT. In this connection the Ministry, together with Finnish Standards Association SFS, has published a manual on the notification procedure for technical regulations....

The Substance and Form of a Norm

The substance and wording of a norm are subject to rigid quality requirements. These have been presented above as the principles of the proper drafting of norms.

It is not necessary to repeat or elaborate unnecessarily on information that is presented as such in a higher-level norm. The essential substance of a norm is presented clearly and as briefly as possible.

Headers

The header information that is to be presented in a consistent manner consists of:

- *the authority issuing the order or guideline*
- *the date of issue and the serial number of the publication or another piece of information that specifies the order or guideline*

- *a title, indicating the subject-matter*
- *the addressees of the order or guideline*
- *the binding effect of the norm*
- *the period of applicability of the norm*
- *the provisions on which the competence of the authority to issue the order or guideline is based*
- *which orders and guidelines are repeated or amended by the issued order or guideline*
- *the office from where the order or guideline can be obtained.*

In addition, it is necessary to indicate

- *how the monitoring of the compliance with or the effects of the order or guideline is organised*
- *whether there will be training based on the order or guideline*
- *who will give additional information on the matter.*

If an order relates to activity that is eligible for a State subsidy, it must clearly indicate the economic and other sanctions of non-compliance....

Period of application

Orders and guidelines are issued for a fixed period not exceeding five years. This time limit is necessary especially in the fields where the legislation is undergoing rapid changes. However, for a justified reason orders and guidelines may remain in force until further notice. The necessity for and appropriateness of these norms must be ascertained at least every five years. The authority which has issued the norm evaluates whether the orders and guidelines could be repealed or whether they should be amended. In this way it is made sure that the orders and guidelines remain up to date.

Hear the opinions of the addressees

During the process of drafting orders, other authorities and the corporations representing the addressees of the orders are to be heard, to the extent deemed necessary. The same addressees are to be heard also when orders are being amended or repealed. They are heard also when important guidelines are drafted.

Hearing brings the expertise of the applier into the drafting of a norm.

The addressees to be heard should be offered an opportunity to present their opinions in a sufficiently early phase of the drafting process; they should also be reserved a reasonable period of consideration. Good results are achieved when the representatives of the addressees and the applying authorities participate in the drafting or get to present their opinions in consultation sessions during the drafting process. Joint drafting and consultations are recommended instead of the quite formal and often trivial procedure of circulation for comments.

Decision

It is for the executive organ or upper management of each authority to see to that the order or guideline fulfils the requirements set for the proper issue of norms.

Make orders and guidelines public and available

In order to ensure both smooth administration and complete legal protection for the citizens, it is necessary to make orders and guidelines public well in advance of their entry into force. It is also important to make sure that they are available to the users in time....

Publicity and availability

When drafting a norm, it is necessary to have the norm delivered to the applying authorities well in advance of its entry into force. This is essential for the application of and compliance with the order or guideline from its entry into force. It is a feature of proper administrative practice that an authority makes the amendment of orders and guidelines, as well as the end of their applicability, public with all the corporations representing the addressees.

Effective publicity of norms is based on comprehensive and well targeted distribution. The distribution lists need to be kept constantly up to date. The coverage of the distribution needs to be carefully assessed....

Follow-up

It is important to monitor whether the effects of an order or a guideline correspond to its estimated effects. The Decision of the Council of State provides for an obligation of follow-up regarding the functional, administrative, economic and other effects of orders and guidelines. The follow-up information is used when assessing the need for guidance by norms.

The Norms Act obligates an authority to ascertain, every five years at most, the necessity for and appropriateness of its orders that are in force until further notice. If necessary, they must be amended or repealed. This makes the continued follow-up and evaluation of legislation and the established administrative practice necessary in all the various fields of administration. The follow-up of effects as intra-administrative cooperation is a fruitful pursuit, as it makes for the avoidance of redundant issue of norms between the various fields of administration.

The issuing authority is primarily responsible for the follow-up of the effects of norms...

It is important for a ministry to follow up on the issue of norms in its own field of administration and the effects of the same, in order to cut back on the issue of norms and to coordinate it. It deliberates on the choice of the means of guidance (by norms, by information, by result), on the need for, contents of and form of the issued norms, as well as on the level of regulation...

The collection of information for follow-up purposes must not be uncoordinated, massive or laborious. The elements of proper follow-up include:

- proportionality with the issue at hand (necessity, content, manner)
- no unnecessary bureaucracy
- support material is collected in various ways, eg. from customers at service points and from personnel during training, inspections or consultations
- effective flow of information
- existing registers and computer systems are used (eg. the norms register).

Follow-up may be carried out also by sampling study or by separate investigations etc.

Follow-up is not a goal in itself; the knowledge gained by it is used in the evaluation of the need for and quantity of issued norms and in the improvement of their quality.

The Decision of the Council of State obligates authorities to publish regular follow-up reports on the effects of the norms issued by them. These may be published eg. in the annual report of the authority.

GERMANY (1984)

Checklist for Proposed Legal Provisions at Federal Level
(The "Blue Checklist")

I. It is the aim of the Federal Government to simplify the law and avoid excessive regulation. Thus all involved in the consultative process leading towards regulation should ask not only themselves but each other whether the measure is necessary and likely to be effective and whether it is comprehensible.

The following questions in particular need to be considered:

1. Is action at all necessary?
2. What are the alternatives?
3. Is action required at **federal level**?
4. Is a new **law** needed?
5. Is **immediate** action required?
6. Does the scope of the provision need to be as wide as intended?
7. Can the length of the period for which it is to remain in force be limited?
8. Is the provision unbureaucratic and understandable?
9. Is the provision practicable?
10. Is there an acceptable cost-benefit relationship?

The Federal Minister of the Interior and the Federal Minister of Justice have drawn up a checklist on this basis.

II. Every Federal Minister should ensure that all proposed legal measures in his field of responsibility are at every stage subjected to scrutiny, in whole and in part, as to their necessity, effectiveness and comprehensibility.

III. As part of the procedure to determine whether formal requirements have been observed, the Federal Minister of Justice will also examine bills and other draft ordinances in the light of the above criteria.

The same applies to the other Federal Ministers for matters within their domain, and to the Head of the Federal Chancellery and the Federal Ministers insofar as drafts are referred to them for the purpose of preparing a Cabinet decision.

Unresolvable differences of opinion will be discussed at meetings of senior civil servants (State Secretaries).

IV. Significant questions arising in the course of examination of the question of necessity should be dealt with in the explanatory memorandum.

V. ...(Mandate for a report, which has since been fulfilled.)

(**GERMANY** (1984) continued)

Detailed Checklist to Determine the Necessity, Effectiveness and Comprehensibility of Proposed Federal Legal Measures

1. Is action at all necessary?

1.1 What is the objective?
1.2 Who is calling for action; what reasons are given?
1.3 How does this compare with the present position as to the facts and the law?
1.4 What defects have been identified?
1.5 What developments in, for example, the economy, science, technology and court interpretation have a particular bearing on the problem?
1.6 How many people are affected, and how many actual cases are there requiring a solution?
1.7 What will happen if nothing is done? (e.g. the problem is likely to become more acute....remain unchanged.... solve itself with the passage of time or through the self-regulatory effect of social forces without state intervention. With what results?)

2. What are the alternatives?

2.1 What has the analysis of the problem shown? Where do the causes of the problem lie? What factors are capable of being influences?
2.2 What generally suitable instruments are available making it possible to achieve the objective, either completely or with reasonable concessions? (including, for example, measures to ensure the effective application of existing provisions; public relations work, working agreements, investment, incentives; encouragement of and support for self-help of a kind that can reasonably be expected of those concerned; clarification by the courts)
2.3 What instruments are most favourable if one gives special consideration to the following criteria?
   a) Demands and burden on the private citizen and industry
   b) Effectiveness (such as relevance and the extent to which the objective is likely to be achieved)
   c) Public cost
   d) Effect on existing norms and proposed programmes
   e) Side-effects, consequences
   f) Comprehensibility and acceptability of the instruments to those for whom they are intended and to the executing authorities.
2.4 What course of action will make it possible to avoid new regulatory provisions?

3. Is action required at federal level?

3.1 Can the object of the action to be taken be achieved -- in part or in full -- by the Laender, local authorities or other state agencies with the means they have available.
3.2 Why is action required at federal level? (e.g. what justification is given for the need to maintain uniformity of living conditions under Article 72, paragraph 2(3), of the Basic Law?)
3.3 To what extent must the powers of the Federation be called upon?

4. Is a new law needed?

4.1 Do the matters to be regulated leave no alternative to legislation (due consideration being given to the theory that basic value judgements cannot be delegated by the legislature)?

4.2 Is the matter so significant for other reasons that it should be handled by parliament only?

4.3 To the extent that a formal law is not required: is some other ordinance having the force of law necessary?
Why would an administrative regulation or possibly the charter of a federal corporation not suffice?

5. Is immediate action required?

5.1 What facts and interrelationships still have to be researched?
Why is immediate regulation nonetheless necessary?

5.2 Why can a foreseeable need for amendment and regulation -- e.g. with measures becoming effective at different times -- not be allowed to actually emerge so that it can then be covered by one and the same legal provision?

6. Does the scope of the provision need to be as wide as intended?

6.1 Is the draft free of necessary statements of objectives or planning descriptions?

6.2 Can a restriction be placed on the depth of regulation (differentiation and detailed treatment) by couching it is broader terms (typification, generalisation, indeterminate legal concepts, general clauses, scope for discretion)?

6.3 Can details, including foreseeable amendments, be left to ordinances (i.e. issued by the Laender or Federal Government) or incorporated in administrative regulations?

6.4 Are the same matters already the subject of other provisions, especially superordinate legislation (avoidable duplication): e.g. in
- transformed, directly applicable international treaty law?
- a European Community regulation?
- a federal law (as opposed to ordinances (Verordnungen) contemplated by the Federal Government)
- ordinances (as opposed to contemplated general administrative regulations)

6.5 Have technical rules and standards already been introduced (such as DIN-- Deutsche Industrie-Normen) which cover the matter to be regulated?

6.6 What provisions will be affected by the provision planned? Can they be dropped?

6.7 Has a forthcoming amendment prompted an examination of the scope of regulation going beyond the actual need for amendment?

7. Can the length of the period for which it is to remain in force be limited?

7.1 Is the provision only required for a foreseeable period of time?

7.2 Is it possible to justify a time-limited "experimental provision"?

8. Is the provision unbureaucratic and understandable?

8.1 Will the new provision be readily understood and accepted by the average citizen?

8.2 Why are proposed measures to reduce present unregulated areas or obligations to co-operate indispensable? e.g.
- prohibitions, the obligation to obtain approval for or report something,
- personal appearance at government offices,
- formal applications, the obligation to furnish information or proof,
- criminal sanctions or regulatory fines,
- other restrictions.

Can they be replaced by milder restrictions? e.g. an obligation to report something instead of a prohibition with possible authorisation at a later date.

8.3 To what extent can claim requirements or official authorizing procedures be brought into line with those in other areas of the law and reduced to a minimum in terms of time and effort?

8.4 Can the persons concerned understand the proposed mode of regulation as regards vocabulary, sentence construction, length of sentence, length of individual provisions, systematic treatment, logic and abstraction?

9. Is the provision practicable?

9.1 Will a provision based on the law of contract or of liability or some other form of civil law provision be sufficient, thus obviating the need for administrative action?

9.2 Why is it not possible to forego new official controls and individual administrative acts (or the involvement of a court)?

9.3 Can the chosen provisions be followed directly? Do they hold out the prospect that the number of individual acts necessary for the implementation of the law will be as small as possible?

9.4 Can directions and prohibitions under administrative law be enforced using the means already available?

9.5 Is it possible to forego special provisions on procedure and the availability of legal redress? Why do the general provisions not go far enough?

9.6 Why is it not possible to do without
a) provisions covering areas of responsibility and organisation
b) new authorities, advisory bodies
c) reservations securing the right of possible official involvement at a later date
d) obligations to submit reports, official statistics
e) standardized administrative procedures (e.g. forms)?

9.7 What authorities or other bodies should execute the provision?

9.8 What conflicts of interest are to be expected among the executing authorities?

9.9 Will those authorities be given the necessary room for manoeuvre?

9.10 What is their opinion on the clarity of the purpose to be achieved by the provision and on the task of execution?

9.11 Has the proposed provision been tested in advance with the participation of the executing authorities (simulation technique)?
- Why not?
- With what result?

10. Is there an acceptable cost-benefit relationship?

10.1 How high are the costs likely to be for those for whom the provision is intended, or for other persons affected? (where applicable, estimate or at least roughly indicate their nature and extent)

10.2 Can those for whom the provision is intended -- especially small and medium-sized enterprises -- be reasonably expected to bear the additional costs?

10.3 How high are the extra costs and expenditure likely to be for the Federation, the Laender and local authorities?

- What possibilities are there of covering the extra costs?

10.4 Have cost-benefit analyses been carried out?

- Why not?
- What result have they produced?

10.5 How is it proposed to evaluate the provision after its entry into force with regard to effectiveness, demands on time and labour, and possible side-effects?

JAPAN (1987)

Agreement On the Examination and Periodic Review of New and Existing Permissions, Authorisations, Etc.

November 24, 1987
Agreement at the Meeting of Ministeries and Agencies on Permissions, Authorisations, Etc.

The government as a whole has made efforts to streamline and rationalise permissions, authorisations, and related requirements in response to the recommendations of the Provisional Commission for Administrative Reform and the Provisional Council for the Promotion of Administrative Reform. Further efforts shall be made to promote these efforts.

In introducing new permissions, authorisations, and related requirements, the government shall examine such requirements to ensure that they are consistent with the overall policy of which reducing burdens on people and simplifying and rationalising administrative affairs. When a ministry or agency intends to introduce a new permission, authorisation, or related requirement, of genuine necessity, it shall be well coordinated with existing requirements established in related fields by the ministry or agency in question.

In addition, the government shall periodically review existing permissions, authorisations, and related requirements to adapt them to changes in social and economic conditions.

On this basis, the government shall examine newly proposed permissions, authorisations, and related requirements and periodically review existing ones in the following way to ensure the appropriateness and rationality of the system of such requirements.

1. Examination of Newly Proposed Permissions, Authorisations, Etc.

(1) Each ministry or agency, with a co-ordinating unit such as the Minister's Secretariat playing a central role, shall examine the necessity and rationality of the introduction of new permissions, authorisations, and related requirements.

When they relate to the affairs of other ministries or agencies, the ministry shall fully consult with them in advance and attempt to reduce burdens on the people and to streamline and rationalise administrative affairs through integrated operations, etc.

(2) In examining the introduction of a new regulation, the following points shall be fully considered:

a. A new regulation should have a positive effect on social and economic life in the sense that it is really necessary to secure and promote public welfare.

b. It must be clear that the positive effects of the introduction of a new regulation shall be ensured. At the same time, burdens on applicants and government agencies in charge should be smaller than such positive effects.

The following points shall especially be taken into account:

(i) For documents to be submitted, applicants should not be faced with complicated or excessive burdens in respect of the coverage, form, the number of copies to be submitted, etc.;

(ii) When it is necessary to set an expiration date, the period of validity of new permission, authorisation, and related requirements should be set for as long a period as possible;

c. The scope of regulation should be kept to a minimum. The coverage of a regulation should be limited to the minimum necessary to achieve its objectives.

d. A new regulation should not overlap with regulations from other laws and should be consistent with existing regulations and other systems.

e. Application procedures, examination criteria, etc., should be stated explicitly in legislation to ensure applicants' convenience and to ensure an objective and fair judgement.

f. To ensure that administration works closely with residents and that matters are dealt with by administrative agencies or other bodies close to the residents, administrative works related to permissions, authorisations, and related requirements should be done as much as possible by local public entities or local branch offices of the national government.

(3) For the following types of permissions, authorisations, and related requirements, these points shall be especially taken into account:

a. Qualification System

The necessity of new qualification systems should be examined strictly under the basic policy to restrict the increase of such regulations.

(i) Qualifications which allow their possessors to monopolise certain businesses should be limited to those which play an important role in protecting people's lives and properties.

(ii) Qualifications that oblige their possessors to employ certain industries or businesses should be limited to those necessary to prevent likely ill effects resulting from business activities and requirements for such qualifications should be limited to the necessary minimum.

(iii) Qualifications which allow their possessors the exclusive use of certain titles and other qualifications should be limited to those of special social importance.

b. Inspection and Testing System

Inspection and testing work should be entrusted to designated private agencies or to self-inspection by businesses as much as possible and to the extent that necessary levels of safety and quality can be secured. Efforts should be made to

establish international standards which are adapted to the progress of internationalisation and are mutually recognizable among countries.

c. Business Regulation

In order not to obstruct unnecessarily the private sector's vitality through business regulations, the objectives of regulations and their likely effects and impacts on business should be fully examined and they should be reviewed from the following basic standpoints.

(i) Regulations whose objectives are to foster or to protect industries should be limited to the necessary minimum from the viewpoint of enhancing the initiatives and independence of industries.

(ii) Regulations whose objectives are to supplement the market mechanism such as those to stabilize supplies and prices, etc. should not obstruct unnecessarily the working of markets.

(4) The Cabinet Legislation Bureau, the Administrative Management Bureau of the Management and Coordination Agency and the Budget Bureau of the Ministry of Finance shall make examinations on the basis of their respective functions taking into account the necessity of ensuring the appropriateness and rationality of the systems of permissions, authorisations, and related requirements.

2. Periodic Review of Existing Permissions, Authorisations, Etc.

Each ministry or agency shall conduct a periodic review of the necessity and rationality of all permissions, authorisations, and related requirements within its jurisdiction at regular intervals (for example, every five years) according to their reasons, objectives, and contents, and shall take necessary measures based on the results.

In the review, 1-(2) and (3) above shall be referred to. Also, the following points shall be especially taken into account.

(i) Is it appropriate to continue existing permissions, authorisations, and related requirements in the future as they are? Is it necessary to amend them in view of changes in the environment surrounding public administration or changes in the businesses to be regulated?

(ii) When, after the introduction of new permissions, authorisations, and related requirements, related systems have been newly established, is it necessary to rationalise conflictions and overlappings among them?

(iii) Are regulations actually implemented efficiently and rationally?

NOTE: This Agreement was later authorised by a Cabinet Decision on Administrative Reform

JAPAN (1988)

1988 Principles of Deregulation

The 1988 "Report on Deregulation" of the Second Provisional Commission for the Promotion of Administrative Reform set down a number of principles of deregulation, including what became the central principle for economic regulation: "freedom in principle and regulation only as an exception". These principles, intended for the use of ministries and agencies making regulatory decisions, were subsequently adopted by the Cabinet in its 1988 "Guideline on Deregulation" and in early 1993 continue to be Cabinet policy.

Following are the 1988 principles.

Economic regulation.

1. Regulations whose policy need has been lost because of economic and social changes, progress in technological innovation, etc. shall be abolished. In particular, regulations intended to be temporary or in effect for a short period shall not be allowed to remain in effect when conditions change.

2. Under the principle, "freedom in principle and regulation only as an exception", regulations shall be minimised and shall respect the initiative and self-responsibility of enterprises and individuals, who must be allowed to fully exert their originality and ingenuity through the vitality of the private sector. In competitive industries, regulation of entry to adjust demand and supply shall not be implemented in principle.

3. Even when a regulation is needed to stabilise supply, price, etc. by restricting market mechanisms, the market principle shall be applied as much as possible, and changes in supply structure shall be preferred.

4. When regulations are necessary:

   (i) they shall be restricted so that they apply only to the unusual situations or acts to be prevented, and

   (ii) the content and extent of regulation shall be limited strictly according to its objectives and effects, and the method of regulation shall be shifted from a quantitative one (control and adjustment of demand and supply) to a qualitative one (regulation controlling characteristics of economic activity, such as safety, funds, ability and so on).

5. With respect to inspections of similar or the same kinds and those under the jurisdiction of several agencies, overlapping shall eliminated and they shall be streamlined and rationalised.

6. Application of existing regulations to new goods and services shall be limited as much as possible. Deregulation shall be promoted to support the growth and flexibility of business, the creation of new industry, and industrial development in response to technological innovation. The introduction of new regulations on business shall be avoided except when there is a special reason, such as a high possibility of seriously harmful effects on society.

7. Administration of regulation that diverges from its original objectives shall be corrected and the transparency and fairness of administration shall be improved by clarifying the criteria, etc. of permissions, authorisations and so on. Regulatory procedures shall be considerably simplified and rationalised and processing shall be expedited.

8. With respect to regulations originally intended to provide social protection such as improved safety, but whose nature has been changed to, in effect, protect vested interests, restrict entry, or create other economic barriers under the guise of social regulation, the appropriateness of objectives and the effectiveness of regulations shall be reviewed. Content of regulation shall be rationalised in response to social and economic changes, technological innovation, and so on.

9. With respect to regulations by local entities, guidance shall be given to correct imbalanced or excessive regulation so as to bring it into line with existing conditions.

The Second PCPAR also recommended that, in reviewing economic regulations, ministries and agencies consider the international harmonization and consistency of Japanese systems and operations of regulation.

Social regulation. It is inappropriate to deal with social regulation, the Second PCPAR writes, on the same basis as economic regulation. The principle of "freedom in principle and regulation only as an exception" for economic regulation is not, for example, to be applied to social regulation. But the PCPAR recommends that social regulations shall also be reviewed constantly with respect to relations between objectives and means, rationality and effectiveness of means, and regulatory costs and benefits.

Social regulations are to be reviewed under the following principles:

1. In response to progress in internationalisation, harmonization and integration of systems and standards with international norms shall be promoted and the transparency and objectivity of standards, etc. shall be enhanced.

2. To accommodate progress in technological innovation, etc. the standards and contents of regulations shall be rationalised. In accordance with recent improvements in production technology and the capacity for quality control, the responsibility of enterprises shall be strengthened.

3. With respect to regulation that may have, beyond its original objectives, interfered with free and fair economic activities such as by restricting entry or protecting vested interests, it shall be revised to be the necessary minimum to meet the original objectives and the operational criteria shall be clarified.

4. With respect to regulations directed to the same end with similar contents and/or means, the unification of standards and the integration of administrative bodies, etc. shall be promoted.

5. Simplification of administrative procedures and utilization of the abilities of private institutions and enterprises shall be promoted.

Furthermore, reviews should be conducted of inspection and testing systems whose objectives are to secure the quality and safety of goods, facilities and so on, and of qualification systems by which the national and local governments certify and regulate

the expertise, experience, skills, etc. of those working in the private sector. For inspection and testing systems, regulation should be abolished or its scope reduced, the private sector should be used, self-inspection should be promoted, regulations with overlapping objectives should be eliminated, the merit system for excellent workshops should be introduced and expanded, periods of validity should be extended, burdens on applicants should be reduced, and so on. For qualification systems, similar qualifications should be integrated, private institutions should be used, burdens on examinees should be reduced, criteria should be clarified, and so on.

NETHERLANDS (1992)

Directives on Legislation
(Excerpts)

CHAPTER 11 General Topics Relating to Regulations

2.1 Use of Regulations

Instruction 6

1. A decision to introduce new regulations shall not be taken until the need for a regulation has been established.

2. Great caution shall be employed in making pronouncements or promises concerning new regulations.

Note: Caution with regard to pronouncements and promises concerning new regulations is advisable in all circumstances. Such caution is absolutely necessary, however, if it is not yet certain whether any such pronouncements or promises can be upheld, or what costs the new regulation will entail.

Instruction 7

Before deciding to introduce a regulation, the following steps shall be taken:

a. knowledge of the relevant facts and circumstances shall be acquired;

b. the objectives being aimed at shall be defined in the most specific, accurate terms possible;

c. it shall be investigated whether the objectives selected can be achieved using the capacity for self-regulation in the sector or sectors concerned or whether government intervention is required;

d. if government intervention is necessary, it shall be investigated whether the objectives in view could be achieved by amending or making better use of existing instruments, or, if this proves impossible, what other options are available;

e. the various options shall be compared and considered with care.

Notes:

Part a: knowledge of facts and circumstances. A knowledge of the relevant facts and circumstances is required for a responsible decision-making process.
Firstly, the knowledge in question must be used in formulating the objectives; secondly in determining the extent to which government intervention is necessary and in weighing up the various options for government intervention. As a rule information is collected in stages, as new - or more detailed information is required at each step in the decision-making process.

Part b: Well-defined objectives. The specific, accurate definition of objectives means that different objectives should be clearly distinguished. The time limit within which efforts will be made to achieve an objective should also be laid down, where possible and relevant. If an objective can be quantified, in financial terms or otherwise, this should also be done.

Part c: Need for government intervention. Government measures should only be considered if a matter cannot be dealt with by society's own capacity for self-regulation. An example of self-regulation subject to statutory conditions may be found in Section 26, subsection 5 of the Consumer Credit Act. See also Instruction 8.

Part d: Alternatives to government intervention. In an examination of the possible ways in which the government may achieve an objective, all conceivable options should be considered. These may include instruments created by legislation, such as those prescribing or prohibiting particular courses of action, introducing licensing or levy systems, or providing for actual government action or subsidy schemes. The principle of the rule of law also makes it necessary for statutory provisions to be introduced in respect of many such instruments, in order to provide legal safeguards.

An examination of the options may also lead to the conclusion that the government cannot achieve the objective in question. In that case, the government should take no action.

As regards statutory regulations, the options to be examined include the format of a statutory regulation as such and elements of such a regulation (for example the system of legal protection opted for).

lt should also be noted that it will depend on the nature of the case in question whether the examination referred to in this Instruction should be comprehensive or may remain limited. However, it is necessary for all the steps referred to in this Instruction to be taken in every case where a statutory regulation is among the options available.

Instruction 8

In determining what form government intervention to achieve an objective should take, account shall be taken where possible of the capacity of the sector or sectors concerned for self-regulation.

Notes: If society has not sufficient self-regulating capacity to achieve an objective, the possibility of increasing such capacity by government measures should be considered. Direct government intervention is called for only if society's capacity for self-regulation, even with the addition of government measures, cannot be expected to produce adequate results.

Instruction 9

In comparing various possible forms of government intervention aimed at achieving an objective, account shall be taken in any event of the following:

a. the extent to which a regulation can be expected to help achieve the objective in question;

b. the side effects of a regulation;

c. the costs of a regulation to the government on the one hand and to individuals, companies and institutions on the other.

Notes:

Part a: Effectiveness. Consideration should be given in this connection to the extent to which the regulation can be implemented and the extent to which it will probably be complied with. The scope for enforcement should also be taken into account. It should be remembered in this connection that compliance -- and hence enforcement -- depend on the extent to which the public regard the norms and administrative instruments contained in the regulation as self-evident. On enforcement, see Instruction 11.

Part b: Side effects. If a particular side effect is intended, this constitutes a secondary objective, and should be designated as such. In the event of unintended side effects, their adverse effects on the acceptability of the regulation should be examined, as this may constitute grounds for not introducing the regulation. On the other hand, the decision to introduce a regulation should only be taken if it appears capable of achieving the objective or objectives desired. If positive -- albeit unintended -- side effects tip the balance in favour of introducing a regulation which appears incapable of achieving the objective or objectives in view, the cost-benefit analysis has not been conducted correctly.

The potential negative effects of a measure should always be examined in a broad framework. Consideration should be given here, for example, to the extent to which a measure might disturb the effect of existing regulations, for instance by making it less attractive for the public to comply with a previously existing regulation, or by adding to the total accumulation of obligations, reduce the public's willingness to comply.

Consequences for socioeconomic development. Careful consideration should always be given, moreover, to the potential direct or indirect effects of a measure on socioeconomic development. This could include its impact on the following: the national and international competitive status of the private sector, market flexibility, the development of foreign and domestic markets, employment, company profitability, the investment climate and salary structures.

It should also be borne in mind that government intervention in territory previously free from government action represents the beginning of a long process of increasing government intervention, which could lead to social inertia, something which requires a great deal of effort to overcome.

Part c: Costs of implementation. See Instructions 13, 14 and 15.

In conclusion it should be noted that the issues raised in a, b and c above should be reviewed in conjunction when assessing each of the forms of government intervention under consideration.

Instruction 10

1. Every effort shall be made to ensure that regulations are clear, straightforward and durable.

2. If a regulation is to be introduced on an experimental basis, its temporary nature shall be made clear in the text.

Notes:

Paragraph 1: Durability. A regulation may be described as durable if it does not need to be amended frequently. It is advisable to make every effort to ensure that this is the case. This means that the policy in question should be clear before a regulation is introduced.

Paragraph 2: Experimental regulations. Despite the foregoing, regulations of an experimental nature are sometimes required, although such a step should not be taken lightly. In certain cases parliament may have to take measures even though it is not yet possible to discern their overall impact. While the majority of the provisions of an Act of Parliament continue in force, it may also be advisable to pursue a different policy in relation to certain regions or certain persons or institutions, with a view to amending the Act at some point. An experimental regulation of this kind should be temporary. See Instructions 181 to 183 inclusive.

Instruction 11

1. The decision to introduce a regulation shall not be taken before establishing whether it can be adequately enforced.

2. Enforcement by means of administrative, civil or criminal law or by other means shall be looked into, and the most appropriate method selected.

Notes:

Paragraph 1: Enforceability. Enforcement is essential if a regulation is to achieve the objective it is intended to achieve. The decision to introduce a regulation should therefore be preceded by an investigation to determine whether it is sufficiently enforceable. This applies in particular if the regulation prescribes or prohibits certain courses of action, although enforceability is also relevant, for example, in the case of regulations associated with a licence. The investigation should show what steps are necessary for proactive and retroactive enforcement. If it is discovered that proposed legislation will bring about drastic changes in relation to implementation and enforcement, these findings should be presented in reports. The drafters of the proposed regulation and the bodies which will be responsible for its implementation and enforcement should discuss enforceability before the decision to introduce the measure is taken.

In assessing enforceability, the following are in any event of significance:

-- a rule should leave as little scope as possible for disputes over interpretation;
-- exceptional provisions should be kept to a minimum;
-- where possible, rules must be directed at situations which are visible or which can be objectively established;
-- rules should be practicable in the view of both those at whom they are aimed and those who are responsible for their enforcement.

Paragraph 2: Methods of enforcement. The various methods of enforcement of administrative, civil or criminal law should be compared. However, consideration should also be given to the law on professional misconduct and to preventive methods such as information campaigns. Possible sanctions should be considered for each of the retroactive enforcement methods, taking into account the points referred to in Instruction 9. In certain cases it is advisable to opt for a combination of a number of methods of enforcement. However, care

should be taken to ensure that an unnecessary number of sanctions are not imposed to enforce a single obligation.

As a rule, the use of the criminal law can only be justified if it can be argued convincingly that administrative law, private law and the law on professional misconduct will be inadequate to the task of enforcement. Enforcement by means of administrative law may offer an effective alternative, providing the requirements arising from article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms are met. See also Instruction 139. If it is decided nonetheless to back the regulation with criminal law penalties, extreme care should be taken in defining the offences (see Instruction 144), and the Ministry of Justice or the Public Prosecutions Department should be consulted.

In conducting the investigations referred to in this Instruction, it must be remembered that judicial and administrative capacity for enforcement is limited.

Instruction 12

A regulation shall be worded in such a way as to prompt the minimum of conflicts. To this end, the following requirements shall be met:

a. the number of decisions required if the regulation is applied shall be kept to a minimum;
b. if provision is made for administrative fines, binding rates shall be laid down;
c. the nature and level of benefit payments, social security schemes and any other advantages shall be defined as clearly as possible in generally binding regulations or policy rules which are widely publicised.

Notes:

Need to restrict conflicts. It is inevitable, to a certain extent, that conflicts will be prompted by regulations which impose costs on members of the public or entitle them to certain advantages. It is desirable, however, for such conflicts to be minimised, principally from a social point of view. Another reason for restricting the number is to keep the costs of legal protection associated with applying the regulation to a minimum. In view of this, the extent to which different versions of a regulation are likely to give rise to disputes should also be taken into account.

Factors causing conflicts. Disputes are particularly likely to arise if:

-- entitlement to benefit, provision, repayment or any other advantage is rendered dependent on particular individual circumstances, such as illness or injury or being in business;
-- interested parties are confronted by a series of decisions by the authorities;
-- administrative authorities are accorded considerable discretionary powers;
-- entitlement to benefit or any other advantage or the obligation to pay tax or a levy is determined by numerous personal particulars which must be verified by the administrative authority on the basis of information supplied by the person concerned;
-- the decision on whether to grant benefit or any other advantage is made after the person concerned has been notified of recommendations made by a body other than the authority responsible for the decision-making process, although the latter need not adhere to the recommendation;

-- the provisional decisions taken are favourable, but they are followed by [definitive] decisions that are less favourable;
-- a body which has been declared competent to impose administrative sanctions is allowed considerable discretion to determine the nature and scope of the sanctions.

As far as fiscal legislation is concerned, conflicts arise in particular if:

-- a financial interest is attached to particular circumstances which are not clearly defined;
-- an attempt is made to use fiscal instruments to exercise excessive control over developments in a wide range of fairly narrow areas of social life;
-- target groups are not clearly defined.

On part c, see also Instruction 24, paragraph 2.

Instruction 13

In selecting a particular type of regulation, every effort shall be made to minimise the costs to individuals, companies and institutions, if the imposition of costs is not the express objective of the regulation.

Notes:

Costs to individuals. These may include administrative obligations, the need to employ experts, the delays caused by time limits and new direct financial obligations arising from a regulation.

Costs to companies and institutions. In respect of companies and non-profit institutions, the following should be considered:

a. the impact of, for example, provisions on participation and consultation on decision-making within a company or institution;

b. the impact on companies or institutions of government decision-making, for example uncertainty concerning the outcome of and delays in decision-making, or the procedures for participation or appeal;

c. organisational consequences, for example the need to conform to administrative obligations or to call in experts;

d. the impact on the running of a company or institution of, for example, safety requirements, requirements imposed on the product being manufactured or marketed or on the service being provided, or requirements affecting the willingness to innovate;

e. new direct financial costs;

f. as regards industry, the effect on the market position of a company, for example arising from measures affecting prices, restrictions on exports and imports, restrictions on consumers or users, or rules affecting competition.

When assessing the impact on the private sector, account should be taken of both the companies which will be directly affected by a regulation and other sectors which will be [indirectly] affected.

Instruction 14

In deciding in favour of a particular type of regulation, every effort shall be made to minimise the cost to government.

Notes:

This may include:

a. costs directly arising from implementing the regulation (provision of information, dealing with applications for licences and exemptions, collecting taxes and levies, and performing the acts provided for in the regulation);

b. costs stemming from procedures prescribed in the regulation, for example an obligation to seek external advice, compulsory participation, preventive supervision, planning procedures, and obligations to render account or conduct evaluations;

c. the cost of monitoring compliance with and enforcing the regulation (enforcement refers to the cost of, for example, government-funded legal assistance, the Public Prosecutions Department, the police, the prisons systems, other judicial services and the courts;

d. the costs of legal protection (government-funded legal assistance, dealing with notices of objection, and the administration of justice, and the costs to implementing agencies arising from proceedings).

The costs listed under b may be limited by efforts to minimise procedural regulations, and by clearly allocating and demarcating administrative powers at central and local level. If powers are decentralised, intervention from a higher level (e.g. preventive monitoring) and obligations imposed on local authorities vis-a-vis the centre (e.g. compulsory rendering of account) should be avoided wherever possible.

In selecting one of a number of versions of a regulation it may be necessary to weigh the costs to the government against the costs to the public. The inclusion of several objectives in one regulation tends to complicate its implementation and thus increase its cost to the government. However, members of the public may find it easier to cope with a single integrated regulation than with a number of parallel regulations.

Instruction 15

The disadvantages of a regulation for one or more interested parties shall not be disproportionate to the objectives to be served by the regulation.

Notes: This Instruction corresponds to Section 3:4, subsection 2, of the General Administrative Law Act.

Instruction 16

Responsibilities and powers shall be decentralised unless the matter in question cannot be dealt with efficiently and effectively at local level.

Notes:

Territorial decentralisation. The basic principle is that if tasks can be carried out efficiently and effectively by provincial or municipal authorities or water boards they should not be performed by central government. Tasks which can be carried out efficiently and effectively by municipal authorities or water boards should not be the responsibility of provincial authorities.

General or functional administration. It must also be decided on a case-by-case basis whether territorial or functional decentralisation is more appropriate in view of the nature of the task to be carried out or the scale on which this is to be done. The basic principle is that a general administrative authority (central government or a provincial or municipal authority) should be responsible for the greater part of the political and administrative activity generated by the regulation. In some cases functional administration may complement general administration.

Instruction 17

1. When administrative powers are conferred, norms shall be set where possible for their exercise.
2. In view of this, discretionary powers and powers whose criteria for application have not been clearly defined shall not be conferred, unless there is good reason to do so.

Notes:

In order to afford individuals the maximum legal protection, administrative powers must be fixed as carefully as possible in a statutory framework. This applies equally to administrative instruments which the government may use with or without a statutory foundation (e.g. subsidies). See also Instruction 12.

In the interests of affording legal safeguards, each power conferred should be examined to determine the degree of legal protection required. See also Instructions 148 to 161 inclusive.

Instruction 18

When drafting regulations it shall be determined whether and if so how freedom to regulate the matter in question has been restricted by superior rules.

Notes: These may include international or European Community legislation, constitutional regulations, legal principles and in the case of regulations laid down by order in council or ministerial order rules embodied in an Act of Parliament (in the formal sense). International legislation refers in particular to, for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. Legal principles refers in particular to the principles of legal certainty, equality before the law and proportionality. When it comes to rules laid down by Act of Parliament, account should be taken not only of the Act on which the order in council or ministerial order in question is based but of other Acts of Parliament.

SPAIN (1992)

Questionnaire for the Evaluation of Legislative Proposals Laid Before the Council of Ministers of Spain

1. Necessity

1.1 Do the proposals respond to a legal necessity such as:

a) A constitutional and/or legislative mandate?
b) The need to develop Community law?
Is their approval subject to any prescribed period of time?
c) The lack of relevant regulations?
d) Appropriate amendment of earlier provisions?

1.2 Is the matter referred to in the Government Programme?

1.3 What basic objectives do the proposals aim to achieve?

2. Legal and institutional impact

2.1 In relation to the European Communities

a) Do the proposals affect any EC provisions?
b) Has the Commission of the European Communities received prior notification of the proposals when Community law so requires?
c) What has been the outcome of such notification?

2.2 In relation to the Autonomous Communities

a) On what constitutional grounds is State jurisdiction founded?
b) Is any conflict of jurisdiction foreseeable?

2.3 In relation to the organs of State administration

a) Do the proposals grant new powers to the Council of Ministers?
b) Do they change the present allocation of powers among ministerial departments?

2.4 In relation to the current legal framework:

a) What provisions would the proposals repeal, wholly or partly?
b) What mandatory reports are required? Have they all been produced?
c) Do the proposals require implementing orders in order to make them fully effective?

3. Social and economic effects

3.1 What are the main economic and budgetary implications of the proposals (Economic report)

3.2 Can the proposals be implemented with the human resources currently available? If not, how are any anticipated discrepancies to be remedied?

3.3 If the proposals are adopted, how acceptable are they likely to be to members of the community and their representative organisations?

UNITED KINGDOM (1992)

Revised Guidance on Preparing Compliance Cost Assessments

SECTION 1: GUIDANCE NOTES ON CCAs

What is a CCA?

1. A CCA is a structured appraisal that all Government Departments must prepare when evaluating policy proposals likely to affect business. Its purpose is to inform Ministers and officials of the likely costs to business of complying with new or amended regulations so that compliance costs can be assessed, and unnecessary burdens to business identified well before a decision is taken on whether or not to go ahead with the proposals. A policy submission to Ministers should highlight the important features of the CCA, if one has been prepared, and the full CCA should be an annex.

The requirement to complete a CCA

2. The Prime Minister has requested that all papers for Cabinet and Cabinet Committees, and minutes to No 10 for collective discussion that deal with proposals which may have an impact on business must clearly spell out likely compliance costs. The President of the Board of Trade is currently charged with drawing attention to cases where this has not been done properly. Whilst it is the prerogative of Ministers to waive the requirement in other circumstances, departments are required to compile CCAs for every proposed regulation that could affect business.[5]

What it should contain

3. A CCA should be completed in accordance with the guidance notes in Section 2. These provide helpful sources of information and statistics. In building up the totals, the principal components you will need to identify are ***recurring*** and ***non recurring*** costs. Recurring costs are additional and indirect costs arising from the regulation, such as extra administrators, "opportunity costs" (i.e. the cost of existing staff who might otherwise be used more profitably), consumable materials, periodic inspection and licence fees. Non recurring costs are one-off costs such as additional expenditure on plant and machinery, buildings, infrastructure and computer systems. If consultation with industry does not provide adequate data, an estimate of the costs should still be made using available sources of information.

EC Legislation

4. CCAs are especially important in the negotiation and implementation of EC legislation. A CCA completed on a Commission proposal can be a very useful negotiating aid in Brussels. The most burdensome proposals should be the subject of a "fiche d'impact" prepared by the European Commission [a fiche d'impact is similar to a CCA].

5. CCAs should be completed on all proposals for Council Regulations when they are proposed by the Commission as, when agreed, they will be directly applied in UK law.

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5. See "Releasing Enterprise" (CM 512, 1988)

Of course, CCAs are also obligatory on all UK implementing legislation of EC directives. Further detailed guidance on the impact on business of EC legislation is contained in Annex 1.

Statistical Surveys

6. Statistical surveys are also covered by the need for a CCA. Guidance on the control of statistical surveys is included in a Personal Minute from the Prime Minister to Ministers in charge of departments issued on 4 March 1992 (Personal Minute no. M2). The CCAs required for statistical surveys are based on the same principles as are set out in this guide.

Private Members' Bills

7. A CCA should also be prepared as part of the advice to Ministers on the line to be taken in respect of Private Members' Bills which affect business. Ministers have noted that a CCA can be important where the Government may wish to support a Bill, or at least offer no obstacles to its progress. There will be circumstances where it will not be worthwhile to prepare a CCA, for instance, when a Bill has no chance of passing into law.

Timing

8. Compliance costs should be considered as early as possible when forming proposals for new or amended measures, and responsibility for initiating the CCA should rest with the official(s) responsible for the proposal. Departmental economists and accountants should be involved in the preparation of a CCA at the earliest opportunity.

9. Initially, a preliminary CCA should accompany draft proposals circulated for discussion at official level. This may be incomplete and speculative to begin with, and should be refined as proposals are developed and the views of business incorporated. Adequate time should be allowed to ensure that all parties consulted have had an opportunity to comment.

Consultation

10. When consultation on regulatory proposals takes place, a preliminary assessment by officials of the likely compliance costs to business should be included. This and any subsequent drafts should be cleared with the Departmental Deregulation Unit and their comments taken into account. Business should be encouraged to comment critically on the assessment so the final assessment is as accurate as possible. The following standard paragraph should be included in all consultation papers on proposed regulations:

"In considering proposals for new regulations, the Government places great importance on giving due weight to business' perception of the proposal's likely impact on business. To measure this impact, a Compliance Cost Assessment (CCA) is produced for all such proposals, and made available to business on request. Therefore, in giving your views on the proposals described in this document, it would be particularly helpful if you could identify and quantify any additional direct or indirect costs (recurring and non-recurring) that would be likely to arise of your, [sector of] business as a result.

Recurring costs - *e.g. extra administrators, consumable materials*

Non-recurring costs - *e.g. additional expenditure on computer systems and other capital expenditure".*

The role of Departmental Deregulation Units (DDUs)

11. While responsibility for preparing CCAs lies with the originators of the proposals, the role of the DDU is to ensure that CCAs are completed. In most cases, DDUs monitor compliance through the Forward Look -- a six monthly report which summarises a department's forthcoming regulatory activity. The Forward Look helps a DDU to identify whether the need for a CCA has been overlooked.

12. All submissions on proposals to introduce or amend regulations should be cleared with the relevant DDU and their views taken into account.

13. The central Deregulation Unit operates at arm's length from DDUs, but should see final drafts of CCAs so it can monitor their quality and ensure a consistent approach across Government. The Unit is happy to provide guidance and act as a source of advice to anybody requiring help in the preparation of a CCA.

Publication and Publicity

14. Unless there are exceptional reasons for not doing so, CCAs should be available publicly and this fact should be made known, preferably in press releases on the regulation concerned. CCAs should be available on request to interested parties, and should be automatically sent to those who helped develop them in order to encourage future participation.

15. The central Deregulation Unit will boost awareness of the CCA process by preparing articles for publication, encouraging reference to CCAs in departmental press notices on regulations, and using training courses as a vehicle for promotion. We will continue to sustain publicity by including a list of recently issued CCAs twice yearly in "Business Briefing" - the weekly magazine for British Chambers of Commerce - together with an up to date list of Departmental Deregulation Unit contacts.

Example of a CCA

16. An example of a CCA is included at Annex 2 in order to illustrate what a completed version looks like. Although the basic principles for compiling one are the same in each case, the contents will of course differ according to the nature of the proposal.

SECTION 2: PREPARING A CCA

1. Quantification will largely involve making ***assumptions*** about the consequences of regulation and producing ***estimates*** as to the extent of the impact on business. You should be realistic about the figures, and not attempt to introduce a spurious accuracy.

TITLE

2. **If the proposed measure has a formal title, give this. Otherwise, give a working title. Indicate whether it is a preliminary CCA or likely to be the final version.**

PURPOSE OF THE MEASURE

3. **Outline the purpose of the proposed measure and describe briefly how it would remedy a specific problem** (eg "To require dogs to be muzzled in public places to prevent them from biting people"). It will not be enough to simply say, for example, "The measure is needed to implement a European Directive".

4. **Describe *briefly* any wider benefits expected from the proposed measure and quantify them where possible.**

BUSINESS SECTORS AFFECTED

5. **State the business sectors or types of business likely to be affected and estimate the number of businesses involved.** To achieve consistency in presenting information, use the headings in Tables 4 (non-production industries) and 5 (production industries) of "Business Monitor PA1003 -- Analyses of United Kingdom Business".[6]

6. If the proposal would affect all business sectors, you do not need to list each one separately. Use the broadest heading appropriate to the range of activities affected. For example, with a measure affecting all producers of food, drink and tobacco, it will be appropriate to refer to SIC Class 41/42: food, drink and tobacco manufacturing industries. For a measure affecting only fish processors, use Activity Heading 4150: fish processing.

7. Some types of business cannot be defined in terms of conventional industry headings, eg employers of low paid labour. They should be defined in whatever terms are appropriate. Give the source of any information used.

8. If the proposed measure would affect businesses below the VAT threshold (for instance, "start-ups"), it will be necessary to seek alternative sources of data. The Central Statistical Office may be able to offer an informed estimate of the number of businesses likely to be affected. As regulatory measures often bear disproportionately on small businesses, you should comment on the numbers of small firms or self employed active in the sector.[7]

9. **Describe any significant features of the business sectors.** This is intended to highlight any notable characteristics of the sector which raw numbers of businesses may conceal, but which have a bearing on the choice of policy option. For example, "Four large companies account for X% of employment and Y% of output in this sector", "This sector accounts for X% of UK exports in this field", "X% of businesses in this sector are located in East Anglia".

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6. Departmental libraries and DDUs should hold copies.

7. Details of the approximate size of firms in business sectors (by employees) are obtainable from Business Monitor PA1003 (Size Analyses of UK Businesses).7.fe1

COMPLIANCE COSTS

10. **Summarise the total estimated compliance costs regarding a measure for a "typical" business In each of the specific sectors, or, the types of business most likely to be affected:**

    a. Additional recurring costs arising from the measure,, per annum **£.....**
    (at 19 prices)**
    (representing .... % change on present recurring costs)

    b. Non-recurring costs **£.....**
    (at 19 prices)**

11. Show what percentage of the turnover of the illustrative "typical" business is represented by these costs, and indicate if other, eg small, businesses in the affected sectors might incur significantly different costs. Indicate whether the costs given are net of any compliance cost savings arising from the measure.

12. Selecting a "typical" business will involve subjective judgement based on flexible Criteria including, for example, employment numbers, turnover, cost base and added value. Table 13 of "Business Monitor PA 1002 -- Report on Census of Production" brings together information on these factors in a form which assists selection. Table 13 may also help in estimating some of the additional costs attributable to the measure.

13. **If depicting a single "typical business" gives a misleading impression, show the Impact on different notional businesses likely to be affected.** This is particularly important where the impact is disproportionately greater on part of the sector (eg small firms). Careful thought should be given to the timing of proposals as costs may be influenced by when legislation is introduced or the length of the transitional period.

14. Give a brief "pen picture" of each of the types of "typical" business likely to be affected and for which an estimate of costs have been made. Give an indication of the numbers of companies or establishments each represents.

15. **Summarise the total estimated compliance costs for <u>all</u> specific sectors or types of business likely to be affected:** Where appropriate, allow for the fact that a number of businesses may already comply with the proposed regulation before it comes into force. Also allow for the fact that a measure may reduce or eliminate compliance costs in other areas.

    a. Additional recurring costs arising from the measure, per annum **£.....**
    (at 19 prices)**

    (representing .... % change on present recurring costs)

    b. Non-recurring costs **£.....**
    (at 19 prices)**

16. **Where the costs of the measure would be phased over more than a year, state the number of years and the year in which they would start.** Give the costs of the measure over the relevant period if they are materially different from the above total. Indicate if the costs given are net of any compliance cost savings arising from the measure. It will usually be sufficient to give costs at today's prices, but you should in any case show what year you are using as your base.

17. The CCA deliberately does not use terms such as "capital costs" and "revenue costs", which have a more precise meaning than is necessary here. In estimating the "% change on present recurring costs" you should compare the additional compliance costs arising from the proposal with the present recurring costs, not just those arising from compliance with existing regulatory measures.

EFFECTS ON INTERNATIONAL COMPETITIVENESS

18. **Describe how any additional costs arising from the measure may affect the competitive position of UK based businesses in UK or overseas markets.** The need for UK-based businesses to absorb the extra cost of compliance with the proposed measure may place them at a competitive disadvantage, if only in the short term. You may need to distinguish the first round effects on trade with EC countries from those on trade with the rest of the world; implementation of EC regulations may imply no relative disadvantage within the Community but may have an effect vis-a-vis, for example, Far Eastern countries.

EXTENT OF CONSULTATION

19. **Show what sources were used and describe any consultations with business (including the time allowed).** You should describe in detail the conduct and outcome of consultation with business, if any at this stage. For formal consultations, this should include the length of time allowed for submission of comments. Whilst business should be consulted and business figures used wherever possible, you should not try to rely wholly on this source. Generally, a CCA prepared after consultation with affected businesses (not always possible eg in the case of Budget measures) may be expected to give a more authoritative picture of the measure's impact. State which you used; they might include:

- representative organisations (show the number of bodies and the number of members they represent)
- individual businesses (show how many)
- official statistics (published or unpublished)
- other (please specify).

ARRANGEMENTS FOR MONITORING AND REVIEW

20. **State how compliance costs will be monitored or, if they will not be monitored explain why.** Actual compliance costs should normally be measured against estimated costs in the CCA. A significant difference between actual and estimated compliance costs may imply the need to review the way in which the proposal has been implemented.

ALTERNATIVE APPROACHES

21. **If a different approach would have achieved the objectives of the proposed measure at a lower cost to business, explain why this was rejected.** It may be that the measure is contingent on other matters, eg EC legislation, but you should show the extent to which alternatives were considered. These might have been, for example, codes of conduct or voluntary agreements which allow businesses greater flexibility (and also potentially lower cost) than regulations in achieving desired results.

22. Finally, all preliminary and published CCAs should give a contact point for enquiries and comments. This should consist of a name, address and telephone number together with details of the originating policy division.

Deregulation Unit
June 1992

UNITED STATES (1981)

Executive Order No. 12291 of February 17, 1981
"Federal Regulation"

Sec. 2. General requirements. In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, all agencies, to the extent permitted by law, shall adhere to the following requirements:

(a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

(b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

(c) Regulatory objectives shall be chosen to maximise the net benefits to society;

(d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

UNITED STATES (1983)

Regulatory Policy Guidelines

The Office of Management and Budget (OMB) developed in 1983 a set of ten Regulatory Policy Guidelines to assist agency decision-making in the rulemaking process. According to OMB, the guidelines attempt to address the most frequently encountered issues in federal regulation and "represent the infusion" of economics and better management practices into rulemaking decisions.

Guidelines for economic and analytical justification

- Regulations should be issued only on evidence that their potential benefits exceed their potential costs. Regulatory objectives and the methods for achieving these objectives should be chosen to maximise the net benefits to society.

- Regulations that seek to reduce health or safety risks should be based upon scientific risk-assessment procedures, and should address risks that are real or significant rather than hypothetical or remote.

Guidelines for fair and responsive government

Harnessing market incentives

- Regulation of prices and production in competitive markets should be avoided. Entry into private markets should be regulated only where necessary to protect health or safety or to manage public resources efficiently.

- Federal regulations should not prescribe uniform quality standards for private goods or services, except where these products are needlessly unsafe or product variations are wasteful, and voluntary private standards have failed to correct the problem.

- Health, safety, and environmental regulations should address ends rather than means.

- Where regulations create private rights or obligations, unrestricted exchanges of these rights or obligations should be encouraged.

Streamlining licensing procedures

- Licensing and permitting decisions and review of new products should be made swiftly, and should be based on standards that are clearly defined in advance.

- Qualifications for receiving government licenses should be the minimum necessary. Where there are more qualified applicants than available licenses, the licenses should be allocated by auction or random lottery rather than by administrative procedures.

Reducing burdens on state and local governments

- Federal regulations should not preempt state laws or regulations, except to guarantee rights of national citizenship or to avoid significant burdens on interstate commerce.

- Regulations establishing terms or conditions of federal grants, contracts, or financial assistance should be limited to the minimum necessary to achieving the purposes for which the funds were authorised and appropriated.