Department for Business Innovation & Skills

PRINCIPLES FOR ECONOMIC REGULATION

A call for evidence

JANUARY 2011

Call for Evidence

Who should read this document?	Anyone with an interest in economic regulation, either through professional involvement or experience of being regulated or otherwise affected by regulation. This includes large and small businesses, consumers and representative groups, regulators and enforcers, academics and commentators.
Making your views heard	We are keen to gather all views on the subject of improving the framework for economic regulation, and any supporting evidence. You should not feel constrained by the specific questions or feel obliged to offer responses to all of them. We suggest that you concentrate on those in which you have most interest. It would be helpful if you could describe your views, suggestions and experiences when responding, rather than giving yes/no answers. **Views are requested by 18 February 2011**
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In writing	Principles for economic regulation – Call for Evidence Better Regulation Executive Department of Business, Innovation and Skills 1 Victoria Street London SW1H 0ET
Your details	Representative groups may wish to give a summary of the people and organisations they represent and, where relevant, how they consulted in reaching their conclusions. You may wish to include contact details for follow-up (e.g. name, phone number, email address).
Confidentiality	Information provided in response to this Call for Evidence, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2004 (FOIA) and the Data Protection Act 1998 (DPA)). If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

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Introduction

Context

1. In November last year the Government announced the Growth Review, enshrining a relentless focus on economic growth to create the best environment for the private sector to succeed[1]. High quality and efficient economic infrastructure plays a vital role in supporting a competitive and growing economy by providing services on which all businesses and citizens depend.

2. The Government's National Infrastructure Plan[2], published in October last year, set out a number of significant challenges for the UK's infrastructure including the transition to a low-carbon economy and the need to secure delivery of services in the face of growing demand and the impact of climate change and other threats. Over the next five years, £200bn of investment in infrastructure is planned and, beyond that, continued investment in infrastructure is critical not only for growth but also for the UK's international competitiveness. The Plan set out the Government's strategy to facilitate significant investment in the national infrastructure to help meet those challenges.

3. Significant parts of the UK's infrastructure operate in sectors where there is an element of market power, either natural or granted monopolies, with the result that competition has been limited. These companies, which typically were privatised in the 1980s and 1990s, have been subject to independent economic regulation aimed at protecting consumers by constraining the behaviour of the monopolies or companies with substantial market power and ensuring the operation of well-functioning markets.

4. Competitive markets should be the best way in the long run to deliver services to consumers and provide incentives to invest and improve efficiency and service quality. In certain sectors, competition has reduced the need for this form of economic regulation over time. In others, however, independent economic regulation is likely to be needed over the long term. This is particularly the case in those areas where network effects and/or economies of scale create natural monopolies which, under current technological patterns, render the introduction of competition economically unviable. In the UK, so-called economic regulators have typically regulated the prices which dominant companies can charge by providing them a return on their assets and investments, as well as incentives for efficient delivery of investments and services. In doing so, these regulators have delivered significant benefits to consumers.

5. Investment in infrastructure is often capital-intensive, long-term and with significant sunk costs. In order to provide a more stable environment for

[1] 'The path to strong, sustainable and balanced growth', published by HM Treasury and the Department for Business, Innovation and Skills, November 2010, available from www.hm-treasury.gov.uk
[2] Also available from www.hm-treasury.gov.uk

investment and reduce the risks associated with political uncertainty, economic regulation has been carried out independently of Government by regulators within a framework of duties enshrined in statute.

Meeting future challenges

6. Sectors subject to economic regulation have an aggregated regulatory asset base (the sum of assets used in the provision of regulated services) in excess of £140bn. They therefore play a vital part in driving economic growth and recovery.

7. Economic regulation is a critical enabler of infrastructure investment. The existing regulatory regime has facilitated significantly higher levels of investment than that delivered in the period prior to privatisation – for example over £85bn invested in the water sector over the last 20 years – and has, at the same time, improved efficiency and competitiveness, promoted competition wherever appropriate and improved service quality for business and individual consumers.

8. The Government is committed to maintaining the strengths of the design of the UK's system for regulation which remains fundamentally sound. However, given the scale of the challenges for the UK's infrastructure, it is important to revisit the regime, reinforce its key foundations and ensure it provides the right degree of clarity, certainty and consistency.

9. The Government's National Infrastructure Plan has identified a number of issues relating to the current system for economic regulation, including:

   - a lack of clarity in the duties of economic regulators – in particular how regulators should strike a balance between economic, social and environmental duties;

   - a lack of clarity around the long-term strategy for regulation – including regulators being given insufficient clarity by Government about its policy objectives, regulated companies being given insufficient clarity by regulators about the outputs they are required to deliver, and lack of clarity around how long-term business planning is being taken into account in regulatory decisions including on price setting; and

   - weak dialogue between regulators on common issues including aspects of price control, competition and consumer affordability.

10. At the same time, commentators have argued in recent years that regular change to the statutes of the regulators have blurred the roles and responsibilities between the regulators and Government[3]. This reduces certainty for investors and may in turn increase the costs of investment.

[3] See, for example, the House of Lords Select Committee on Regulators' report of November 2007.

11. Providing a stable regulatory environment which addresses these issues will be crucial. At the same time there needs to be sufficient flexibility in the system of economic regulation for it to adapt to changing priorities and policy objectives, and to different circumstances within sectors.

12. As announced in the National Infrastructure Plan and the Growth Review, the Government therefore wishes to initiate a debate about how the high-level design and operation of regulatory frameworks can best achieve the desired outcomes, while minimising uncertainty for investors. To aid this, the Government proposes to establish a set of cross-sector Principles for Economic Regulation, which seek to:

    - reaffirm the importance of, and the Government's commitment to, stable and predictable regulatory frameworks to facilitate efficient investment and sustainable growth;

    - set the framework for delivering greater clarity about the respective roles of Government, regulators and producers, and greater coherence in an increasingly complex and interlinked policy context; and

    - set out the characteristics of a successful framework for economic regulation to guide policy makers in assessing future developments.

13. The focus for these principles is the infrastructure sectors overseen by Ofcom, Ofgem, Ofwat, the Civil Aviation Authority and the Office for Rail Regulation, though they may have broader relevance to the regulation of the communications, energy, water and transport sectors. They are intended to guide the high-level institutional design of the regulatory frameworks rather than the detailed application of regulators' judgement in carrying out their functions.

14. The Government is publishing a set of principles below and would welcome views on how best to apply these across the regulated sectors.

15. There are a number of initiatives underway across Government to consider the future direction of economic regulation in specific sectors. For example, DECC announced a review of Ofgem in July 2010 and Defra a review of Ofwat in August 2010. At the same time, the Government is taking forward work to amend the frameworks for postal services and airports regulation, the consumer and competition institutions and has set out its long term vision for the future of the NHS in England[4] including plans to put in place a transparent system of economic regulation for public healthcare in England and to establish a new independent economic regulator for the sector.

16. It is timely to give consideration now to the Government's overarching and cross-sector principles to help inform implementation of those specific initiatives and bring greater coherence to its overall approach. The principles for economic regulation, set out in this document, are intended to define a common framework

[4] Equity and Excellence: Liberating the NHS of 2010, available from www.dh.gov.uk

to achieve this. The Government does not anticipate the application of the principles in the airports sector will affect the fundamental structure of the reforms to the statutory framework announced by the Department for Transport in July 2010[5] which are informed by close engagement with the industry and the lessons learnt from other regulatory frameworks.

17. The calls for evidence published last Summer by DECC and Defra[6] to guide their reviews sought comments on the role of the regulators and the interface between regulators and the Government. These are important considerations which are not limited to these particular sectors but are crucial to the Government's approach across the economically regulated sectors. Work on defining these principles will draw on responses to those DECC and Defra documents but will seek to consider the issues from a broader, cross-sector point of view. Respondents to those documents need not re-submit those responses, though additional information in answer to the questions below would be welcome.

Structure of this document

18. Chapter 1 sets out high level principles to govern the UK's system for economic regulation. Chapter 2 then discusses in more detail how these principles might best be implemented in practice. Finally, a number of questions are set out on which we would welcome your views.

Economic regulation: next steps

19. Following consideration of responses to this document, the Government will publish the final version of the principles and a statement governing how they will be applied in practice in Spring 2011. This will be closely linked with:

- the Ofgem Review which will report in Spring 2011, alongside a White Paper on Electricity Market Reform;
- the Ofwat Review which is running in parallel with the development of a Water White Paper and is expected to be published in June 2011; and
- the Government's internal review to consider extending the use of the regulatory asset base model. This will report in Spring 2011.

20. As announced in the National Infrastructure Plan, the Government will report by Summer 2011 on whether it needs to take further cross-sectoral action, drawing on the conclusions of these reviews and on the views of key stakeholders and recognising the need to maintain investor certainty.

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[5] http://www.dft.gov.uk/press/speechesstatements/statements/hammond20100721

[6] See http://www.decc.gov.uk/en/content/cms/consultations/ofgem_review/ofgem_review.aspx and http://ww2.defra.gov.uk/news/2010/08/26/ofwat-review/

Chapter 1: Principles for economic regulation

Proposed principles

Accountability

- *independent regulation needs to take place within a framework of duties and policies set by a democratically accountable Parliament and Government*
- *roles and responsibilities between Government and economic regulators should be allocated in such a way as to ensure that regulatory decisions are taken by the body that has the legitimacy, expertise and capability to arbitrate between the required trade-offs*
- *decision-making powers of regulators should be, within the constraints imposed by the need to preserve commercial confidentiality, exercised transparently and subject to appropriate scrutiny and challenge*

Predictability

- *the framework of economic regulation should provide a stable and objective environment enabling all those affected to anticipate the context for future decisions and to make long term investment decisions with confidence*
- *the framework of economic regulation should not unreasonably unravel past decisions, and should allow efficient and necessary investments to receive a reasonable return, subject to the normal risks inherent in markets*

Coherence

- *regulatory frameworks should form a logical part of the Government's broader policy context, consistent with established priorities (vertical coherence)*
- *regulatory frameworks should enable cross-sector delivery of policy goals (horizontal coherence)*

Adaptability

- *the framework of economic regulation needs capacity to evolve to respond to changing circumstances and continue to be relevant and effective over time*

Efficiency

- *policy interventions must be proportionate and cost-effective while decision making should be timely, and robust*

Focus

- *economic regulators should have clearly defined, articulated and prioritised responsibilities focussed on outcomes rather than specified inputs or tools*

- *economic regulators' duties should be concentrated on economic considerations (including protecting the interests of current and future consumers, ensuring the operation of well-functioning and contestable markets and constraining the exercise of market power of dominant companies)*

- *economic regulators should have adequate discretion to choose the tools that best achieve these outcomes*

21. To some degree, many of these principles are already features of the regulatory frameworks. The Government wishes to build on existing good practice and find ways to systematise it by establishing a common set of principles.

22. Inevitably, these principles will sometimes come into conflict. For example, ensuring a system that is adaptable and fully coherent with Government policy may present a challenge to maintaining its stability and predictability. A successful regulatory framework requires an appropriate balance to be struck between the principles. The room for manoeuvre to strike this balance is, in certain cases, restricted by European Union policy which imposes requirements on the design of the frameworks of economic regulation.

Chapter 2: Applying the principles

23. This chapter considers how the proposed principles should be applied in practice. As noted above, the design of the regulatory frameworks requires a balance between the principles, some of which are in tension with one another.

Accountability

- *independent regulation needs to take place within a framework of duties and policies set by a democratically accountable Parliament and Government*
- *roles and responsibilities between Government and economic regulators should be allocated in such a way as to ensure that regulatory decisions are taken by the body that has the legitimacy, expertise and capability to arbitrate between the required trade-offs*
- *decision-making powers of regulators should be, within the constraints imposed by the need to preserve commercial confidentiality, exercised transparently and subject to appropriate scrutiny and challenge*

Roles and responsibilities

24. The credibility of decision making depends on responsibilities being discharged by bodies that have the necessary authority. The Government should be clear about who, within the regulatory framework, is responsible for what, and on what basis those responsibilities are allocated. Government and the regulator should respect these boundaries, making changes only where there is a clear case to do so. When any change is made, the Government should set out clearly how respective bodies' responsibilities have changed. Without this, the framework is unlikely to be sufficiently predictable for market participants.

25. In recent years the regulated sectors have played a growing role in meeting the Government's social and environmental objectives, as well as economic objectives. This can create a challenge for the regulators to decide between objectives which include a set of judgements that can be political in nature alongside more technical decisions. There is a strong argument that the former decisions are most legitimately taken by Ministers. In the case of the latter more technical or specialist set of decisions, greatest authority may come when a regulator exercises its expertise independently.

Ensuring accountability

26. Effective accountability of a regulatory framework depends on four elements:

- transparency: regulators should provide information on their activities, explain how they go about making their decisions, and, unless barred by a need for confidentiality, how they arrived at their decisions;

- exposure to scrutiny: regulators should be required to answer questions and provide the means through which scrutiny can be made meaningful;

- requirement to explain: regulators should explain to those affected by a decision the reasons behind that decision; and

- the right to challenge decisions: affected parties should have the right to challenge regulatory decisions and have their case settled by an independent third party.

27. While there are real benefits to regulators exercising their functions independently of Government departments, they must, of course, exercise their discretion within the limits of the law and under the supervision of the relevant bodies such as Parliament and the National Audit Office (NAO). That means they should be subject to scrutiny, made possible by transparency of decision making, and ultimately subject to challenge by relevant parties. This is a vital part of ensuring regulatory decisions are appropriate and effective. In addition, accountability plays an extremely important role in establishing the legitimacy of decision makers.

28. Transparent decision making is key to ensuring accountability. Open and committed consultation about proposals in advance plays an important role in ensuring the full range of issues is considered. Similarly, it ensures that all parties can see and understand the logic and direction of travel of a regulator’s deliberations, including market players who will make investment decisions based on the regulatory environment in any one jurisdiction. For those with potential interests in more than one sector, this will allow them to understand the reasons for differences of approach as well as to help identify where greater consistency could be valuable.

29. The Government’s Code of Practice on Consultation[7] emphasises the role consultation plays in informing and supporting effective policy development and delivery. At the same time, publication of the reasons for regulatory decisions after the event provide clarity about their basis and rationale to help guide assessments of whether they were appropriate and proportionate judgements.

30. The other important element to deliver transparency is a pre-commitment to regular reporting on the approaches and performance of regulators in delivering their statutory obligations and in using the resources granted to them. Such reporting allows Parliament and others to assess a regulator’s performance and helps inform whether they and the regulatory framework are fit for purpose.

31. The actions of regulators need to be scrutinised appropriately, both at the level of specific decisions and in aggregate. In principle, scrutiny should be carried out by the body that has granted the regulator its mandate and obligations. For the most part therefore, economic regulators, whose primary remits derive from

[7] Code of Practice on Consultation, HM Government, 2008, available at http://www.bis.gov.uk/files/file47158.pdf

statute, should be scrutinised by Parliament. In order to fulfil its scrutiny tasks Parliament might, however, need technical advice from independent experts.

32. In addition, the department that both sponsors and has responsibility for the legislation underpinning the regulator also needs to ensure that the regulator is carrying out its functions effectively and efficiently and remains fit for purpose.

33. Finally, relevant parties should be able to challenge decisions taken by regulators, and take their grievances to an independent third party with the power to overturn decisions.

Predictability

- *the framework of economic regulation should provide a stable and objective environment enabling all those affected to anticipate the context for future decisions and to make long term investment decisions with confidence*

- *the framework of economic regulation should not unreasonably unravel past decisions, and should allow efficient and necessary investments to receive a reasonable return, subject to the normal risks inherent in markets*

34. Investment decisions involve, by their very nature, a degree of uncertainty. The characteristics of many of the regulated businesses mean that investments involve large sunk costs, long useful lives and, often, few alternative uses. Although the essential nature of many of these services counterbalances some of these risks, investors in these sectors are particularly sensitive to any factor that can increase their risk of holding stranded assets.

35. Economic regulation of companies with a very high degree of market power plays a significant role in establishing the terms under which investment is made. It is important that the regulatory frameworks avoid adding undue uncertainty to the business environment. To a large extent this is achieved by building a stable and transparent regulatory environment with a long track record of consistent regulatory decision making. A history of rational regulatory decisions, which can be objectively justified, creates an expectation that a narrow set of outcomes will follow a given set of circumstances. This in turn will help both investors and consumers to predict regulatory decisions. Additional mechanisms can be used to shore up investors' confidence. For example, many regulators have a duty to ensure regulated companies can finance their activities.

36. However, the utilities, transport and healthcare sectors provide services on which every business and every citizen relies. This confers on them a high political profile. Governments can be judged by the electorate on their ability to secure the provision of high quality services at the lowest possible cost. This will in part depend on the framework of economic regulation.

37. Given these features, investors might fear that, once the investment is made, Governments might be tempted to intervene for short term gain by, for example,

lowering the prices consumers pay. Investors will price this political risk and demand higher returns for their investment or, in the most extreme cases, might even decline to invest. Given the scale of the regulatory asset base and of the investments needed, small changes to the cost of capital have a significant impact on the bills consumers pay.

38. A solution to this time inconsistency problem is to design regulatory frameworks that prevent unexpected changes to the rules of the game, thus offering a credible commitment to investors. In the UK this is addressed by the statutory framework of independent economic regulation which encapsulates a commitment by the UK Government not to intervene other than in clearly specified ways.

39. In order to ensure their independence, regulators should have access to sufficient and appropriate resources and capability. The selection of board members should also not make them vulnerable to capture by elected officials or other third parties.

40. By insulating regulators from short-term political factors, independence ensures that the rules are applied in a transparent and consistent manner and that commitments in terms of risk allocations are met. This in turn helps to anchor market participants' expectations and increase the predictability of regulatory outcomes. The independence of regulators also protects consumers' interests by ensuring that consumers only pay for efficient investment that is required to deliver services.

41. As discussed above, Government still has a legitimate role to play, defining a strategic vision of the likely needs and priorities over the long term and providing a policy context for regulatory decisions in the medium and short term. In order to maximise the benefits from a stable regulatory system Government should offer a credible commitment to restrain itself, as strategic visions should not be changed too frequently and should be updated according to a pre-announced calendar.

Coherence

- *regulatory frameworks should form a logical part of the Government's broader policy context, consistent with established priorities (vertical coherence)*
- *regulatory frameworks should enable cross-sector delivery of policy goals (horizontal coherence)*

42. Regulation, even though it may be carried out independently, does not take place in a policy vacuum. The regulator has statutory responsibilities for which it is accountable to Parliament, rather than Government. In addition, the regulators are also asked to contribute to the delivery of a wider range of Government policy objectives. While some tensions between delivering these objectives and Government policy may be a necessary, and in some cases perhaps desirable, feature of independence, the application of regulation needs to form part of a

coherent overall framework in which businesses operate. A lack of coherence is likely to result in uncertainty for regulated businesses and ultimately compromise the extent to which the desired outcomes are achieved.

43. Managing trade-offs, including the shifting priorities and objectives set by Government, is an inevitable part of the regulation of infrastructure sectors as not all objectives can be met at once. Government has a legitimate role to be clear about the desired outcomes and priorities for the regulated sectors. As discussed under accountability, the Government also has a clear role in making judgements which may require democratic accountability.

44. On the other hand, overly frequent changes to regulators' objectives and the policy context in which the regulators operate, or ad hoc interventions in regulatory decisions may diminish the predictability of the overall framework, and hence add to the risk premium and cost of investing in the sectors. What is therefore needed is a mechanism to enhance the coherence of the overall frameworks in a way that maintains their predictability. In the past the Government has produced statutory guidance for certain regulators. It may be possible to enhance this approach.

45. A different aspect of coherence relates to the interdependence between the different regulated sectors, which can be heightened by technological or market convergence or market developments. It is important that institutional arrangements recognise these interdependencies and that the effectiveness of policies is not hindered by consideration of regulation in silos. One of the possible ways to achieve this is to encourage engagement between regulators on how they achieve common objectives such as how they approach similar aspects of the price control, promoting competition and addressing consumer impacts, including affordability. Institutional changes to regulators' governance, such as the appointment of shared non-executive directors by several regulators, could also increase coherence across the different sectors.

Adaptability

- *the framework of economic regulation needs capacity to evolve to respond to changing circumstances and continue to be relevant and effective over time*

46. Infrastructure sectors have evolved over time as technologies, markets and policy challenges have changed. It is important that regulation is flexible enough to be applicable under new circumstances. Given the longer term challenges a number of sectors face, e.g. in energy generation, there needs to be a process for review and evolution of approach, interventions and tools by regulators and Government.

47. However, the need to ensure regulatory frameworks adapt over time may be in tension with the need to ensure a predictable system for long-term investment decisions. A way to limit this could be to ensure that there is sufficient flexibility *within* the framework (e.g. licences, codes and guidance) so that regulatory decisions can adapt to changing circumstances without the need to change the

frameworks themselves. This could have the advantage of avoiding surprises for investors and making uncertainty more predictable.

Efficiency

- *policy interventions must be proportionate and cost-effective while decision making should be timely, and robust*

48. Economic regulation, as with most forms of regulation, imposes costs on regulated companies. These costs may fall in two areas: first the regulatory cost the regulators impose on their sectors and second the administrative cost of running the regulatory institutions. Costs in these sectors tend to be passed through to end consumers, so it is important that they are proportionate and outweighed by the benefits achieved. Cost minimisation might, however, not always be efficient, as lowering costs can sometimes lead to foregoing bigger benefits to consumers.

49. As organisations, regulators should be efficient and well run, maximising the benefit they can deliver with their available budgets. As regulators, their interventions and tools should deliver desired outcomes in the least burdensome way, based on the established best practice for designing regulation. This means imposing requirements only where necessary, considering alternatives to regulation and minimising the risk of unintended consequences.

50. Competition in the market, or for the market, and consumer empowerment are likely to be the most efficient and effective ways of delivering benefits for consumers and should be the primary tools of the economic regulators and Government. Regulators have delivered significant benefits to consumers by introducing competition in a number of areas. However, where this is not possible, regulation needs to be a cost-effective alternative. Only after consideration of the use or introduction of markets and improved consumer empowerment should other forms of intervention be considered.

51. As well as being cost-effective, regulatory decisions need to be made in a timely manner. Infrastructure investments have long lead times. Delays to key decisions can cause uncertainty and raise the costs to industry and leave consumers unprotected. Similarly, decisions must be based on robust evidence and judgement. The framework must therefore enable regulators to make timely, authoritative decisions.

Focus

- *economic regulators should have clearly defined, articulated and prioritised responsibilities focussed on outcomes rather than specified inputs or tools*
- *economic regulators' duties should be concentrated on economic considerations (including protecting the interests of current and future consumers, ensuring the operation of well functioning and contestable markets and constraining the market power of dominant companies)*
- *economic regulators should have adequate discretion to choose the tools that best achieve these outcomes*

52. Economic regulators are established by statue and legally bound to execute their duties. To understand the behaviour of the economic regulators, regulated firms and other interested parties must refer to the duties and to the purposes for which they are to be carried out. Hence the design of their duties, and the considerations to which regulators are directed to have regard in carrying out these duties, are crucial to the conduct of both regulators and the regulated.

53. It is therefore essential that the economic regulator and interested parties know what the regulator's priorities are. To provide clarity of objectives for the regulator and to help monitor the regulator's performance, regulators in many sectors have been given a single overarching primary duty.

54. In a complex sector with varying objectives that can conflict, it is important that the regulator's duties strike the right balance between setting out all relevant issues and considerations and imposing statutory responsibilities of excessive complexity and scope. In many sectors, a hierarchy of duties has been introduced with statutory guidance from Government about broader policy issues.

55. Specifying in high degree of detail the manner in which a regulator is to achieve its objectives limits the scope of the regulator to identify or achieve the optimal outcome because those tools and inputs form, in effect, objectives in their own right. Specifying tools and inputs may also undermine the benefits associated with independent economic regulation. For these reasons, regulators' duties should, where appropriate, be outcome-focused and avoid specifying means, tools or inputs. In certain cases the specification of regulatory approaches, such as the introduction of competition, is mandated by European legislation for the purpose of opening national markets and creating a single market.

Questions

The principles themselves

Questions
1. Do these principles sufficiently encapsulate the characteristics of a successful framework for economic regulation? If not, how could they be improved?
2. Would their application deliver greater clarity about the respective roles of Government, regulators and producers, and greater policy coherence, and hence reduce uncertainty generated by the lack of clarity?

Applying the principles in practice

Questions
3. Is the division of responsibilities, currently divided between regulator and Government, sufficiently clear? · Does the regulatory framework allocate responsibilities to regulators that are inherently political in nature and which should be taken by Government? · Are there areas where the Government should step back, having set out its objectives, and leave the regulator to take decisions?
4. How clearly is the division of responsibilities articulated, for example through statutory duties, in a way that provides the necessary focus? · Are regulators' duties easy to understand and clearly prioritised? · Is the range of issues regulators are required to consider too broad? · To what extent should regulators' duties be more outcomes-focused and avoid specifying means, tools or inputs to achieve policy goals?
5. To what extent is the decision making of the regulators sufficiently transparent (for example in consultation practice, publication of the reasons for decisions and accessibility of tools and models) to enable sectors to predict likely outcomes and scrutinise decisions?

Questions

6. Are the existing appeal mechanisms appropriate, in terms of the:
   - bodies with the right to appeal/object
   - appeal-hearing body
   - basis of appeal
   - role of government?

7. How effective are mechanisms to review the operation and delivery of economic regulation?
   - Should periodic reviews of sector regulation and the role of the regulators be undertaken, to identify possible areas for improvement and provide greater confidence in the framework?
   - Who should undertake such reviews? Should they be by an independent third party, for example, to provide an external challenge and how frequently should they be undertaken?

8. What is the optimum way of balancing the need to make the frameworks stable and predictable, coherent with broader public policy and able to adapt to changes in sectors and technologies?
   - What effect has the evolution of regulators' responsibilities had on the predictability of the framework and the attractiveness of the sectors to investors?
   - How effectively does Government articulate the broader policy priorities under which regulators carry out their statutory functions? What is the impact on regulatory decision making and does this deliver a coherent overall regime?
   - How effective have changes to statutory duties been in adapting the focus of regulators to emerging priorities?
   - What restraint should Government impose on itself in the frequency of changes to the framework and policy priorities?
   - Would a more formalised, pre-announced process (such as a Government strategy statement) for articulating policy priorities, reviewing the effectiveness of regulation and implementing changes on a cyclical but infrequent basis be beneficial in balancing these three principles in particular?

Questions
9. Are there sufficient and efficient mechanisms in place to facilitate cross-sector work by regulators? · Should regulators' approach to similar issues (e.g. aspects of the price control, promoting competition and addressing consumer impacts including affordability) be more coordinated? · Would shared non-executive board members across regulators helpfully reinforce collaboration, learning and coherence in approach?
10. How cost-effective are the regulatory frameworks overall in terms of regulatory burdens, benefits delivered and efficiency of regulatory institutions?

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