



THINKING ABOUT

REGULATING?

A GUIDE TO
GOOD REGULATION

REGULATORY BEST PRACTICE PROGRAMME
Ministry of Finance, Planning and Economic Development,
Kampala, Uganda
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FOREWORD

I am very pleased to introduce this Guide to Regulatory Best Practice. This publication reflects Government's commitment to reducing the procedural and regulatory obstacles to getting into and doing business in Uganda, as well as its commitment to minimizing the burden of regulation on the Uganda economy.

Our aim is that Uganda stands out from its regional and international competitors as an attractive business environment. Alongside this, we went to ensure that minimum standards exist to protect fair and open competition, workers, consumers and the environment.

Being competitive does not only involve keeping the quality of goods and services high – it also means keeping costs low. Time spent on regulatory activity translates into a significant cost to businesses. This cost can be passed on to workers in the form of lower wages or job losses, potential workers in the form of lost job opportunities, customers in the form of higher prices or lower quality, and ultimately society in the form of lower prosperity for our people.

Government is striving to ensure that we raise the quality of our laws by incorporating international best practice standards into our policy and law-making processes. The 2001 Budget Act requires that every Bill introduced to Parliament be accompanied by its financial implications on both revenue and expenditure. The Budget Speech of 12th June 2003 confirms our commitment to the principles of Regulatory Best Practice. These requirements infer that any new laws are preceded by proper consultation, consideration of alternatives to regulation, the conduct of regulatory impact assessments, and identification of manpower and resources for proper enforcement.

I want to stress the importance of Regulatory Impact Assessment. This is not an add on the policy process. It is an integral part of the advice that goes to Ministers, helping to inform options as the policy develops, to Cabinet and to Parliament. The effects of Policy options on small firms- the engine of our economy- must be a key of the assessment process.

But this is only the beginning. All our efforts are needed to change the way we think about, use and enforce regulation. Applying Regulatory Best Practice consistently will help us to transform Uganda into a thriving, competitive and prosperous nation.

This Guide reflects Government's commitment to excellence in policy and law-making. Government officials, Parliamentarians, private sector representatives – it is imperative that you implement this guide.

Please help us make the right choices for our people to achieve Government's vision of prosperity through private sector growth.

President of the Republic of Uganda

CONTENTS

FORWARD	...	...	...	...	...	...	...	i
INTRODUCTION	...	...	...	...	...	...	...	1
1. DO YOU NEED TO REGULATE?	...	...	...	...	...	...	...	3
THE KEY QUESTIONS	...	...	...	...	...	...	...	3
UNDERSTANDING THE ISSUE AND DEFINING THE PROBLEM	...	...	...	...	...	...	...	4
RISK ASSESSMENT	...	...	...	...	...	...	...	5
IS GOVERNMENT ACTION JUSTIFIED?	...	...	...	...	...	...	...	5
CONSIDER THE ALTERNATIVES	...	...	...	...	...	...	...	6
2. DESIGNING EFFECTIVE LAWS	...	...	...	...	...	...	...	9
THE DECISION TO REGULATE	...	...	...	...	...	...	...	9
DESIGNING THE REGULATION-FIVE CORE THEMES	...	...	...	...	...	...	...	9
SIMPLICITY AND TRANSPARENCY	...	...	...	...	...	...	...	10
PLACING UNNECESSARY BURDENS ON BUSINESS	...	...	...	...	...	...	...	10
GOAL OR OUTCOME-BASED REGULATION	...	...	...	...	...	...	...	11
ACCOUNTABILITY	...	...	...	...	...	...	...	11
BALANCING RISK, COST AND PRACTICAL BENEFIT	...	...	...	...	...	...	...	12
WHAT IS A REGULATORY IMPACT ASSESSMENT (RIA)?	...	...	...	...	...	...	...	12
WHEN TO DO AN RIA	...	...	...	...	...	...	...	12
REGULATORY IMPACT ASSESSMENT – A CLOSER LOOK	...	...	...	...	...	...	...	13
3. IMPLEMENTING AND REVIEWING LEGISLATION	...	...	...	...	...	...	...	15
IMPLEMENTATION	...	...	...	...	...	...	...	15
ACHIEVING COMPLIANCE	...	...	...	...	...	...	...	15
ENFORCEMENT	...	...	...	...	...	...	...	16
ACCOUNTABILITY FOR ENFORCEMENT – CUSTOMER CHARTERS	...	...	...	...	...	...	...	16
4. MONITORING AND REVIEWING LEGISLATION	...	...	...	...	...	...	...	17
THE APPROACH TO MONITORING AND REVIEWING	...	...	...	...	...	...	...	17
SUN – SETTING	...	...	...	...	...	...	...	18
5. KEY PRINCIPLES OF GOOD REGULATION	...	...	...	...	...	...	...	19
6. APPENDIX	...	...	...	...	...	...	...	22
TIPS FOR EFFECTIVE CONSULTATION	...	...	...	...	...	...	...	22

INTRODUCTION

The Law of Unintended Consequences!

“The pathway to demise is paved with good intentions”. The same can sometimes be said of regulations:

- Some regulations work well at first, but as times change, those some regulations may not work as well as they once did;
- Some regulations go too far- and deprive businesses of the freedom to be innovative, take risks, and make their own judgments;
- Some regulations don't go far enough – this can result in poor health and safety standards and environmental problems;
- Some regulations are ill-conceived, usually because the costs of complying with regulations have not been properly weighed against the benefits they generate;
- Some regulations seek to protect certain businesses from **“unfair competition”** with the result that those businesses ultimately become uncompetitive;
- Some regulations are well designed, but lose their impact because they are not enforced properly;
- Some regulations can be helpful and facilitative, but their produce five potential is lost because no one knows about them.

Broadly speaking, regulation is any government measure or intervention that seeks to change the behavior of individuals or groups. It can both give people rights, and restrict their behaviour.

Good regulations is essential to the welfare of Uganda and its people. It is a key factor in helping Government achieve its economic, social and environmental goals. But sometimes, with the best of intentions, governments can regulate in ways that end up harming those they intend to help, that reduce competition and thereby make the economy less productive, and that confer benefits on particular groups in the community unfairly at the expense of others.

Problems created by bad regulation can take the form of higher costs, wasted time and energy, corruption, unhealthy living and working environments, a stifling of initiative and missed opportunities. In short – lower economic growth and poorer living standards.

Good regulation is about providing proper protection without imposing harmful unintended side effects. Good regulation is also about motivating innovation, growth, formalization and improvement in business performance, by reducing the cost of doing business and creating an environment attractive to private investment.

Uganda is striving towards sustainable development and poverty reduction. It is committed to supporting business growth and competitiveness as a key driver for increasing incomes and improving living standards, but if Uganda is to stand out as country with an attractive business environment, it needs to have high quality laws.

The purpose of this Guide is to provide a framework for improving the quality of laws in Uganda. It describes how to decide whether to regulate at all, and if so, how to design, implement, enforce and monitor good quality regulation.

The Guide is intended as a reference for policy makers and regulators alike – for those who make recommendations or decisions as to whether new regulations is necessary and if so, what form it should take.

DO YOU NEED TO REGULATE?

The Key Questions

The following is a list of questions to ask when you are considering whether regulation might be a good way of dealing with an issue or solving a problem your ministry is faced with.

- What is the problem or the risk that you are trying to address?
- What is the problem or issue affect?
- Do you have good reliable data to show you how serious and wide spread the problem is / how serious the risk is that you are dealing with?
- Can the government realistically solve the problem?
- What would happen if no action were taken? What would the risk be?
- What outcome do you want-are you sure you will achieve this by regulating?
- What actions other than regulation might be effective?
- How will firms – especially small firms, government departments, poorer people and the environment – be affected by the reposed regulation?
- How would the regulation be managed and enforced in this case? If enforcement looks overly difficult or costly, are other options preferable?
- How would other potential options be managed and resourced?
- Is the kind of law you have in mind consistent with the Constitution and with Uganda's international commitments?

If the answers to these questions are 'don't know' or 'no' then the facts must be obtained and regulations, as a potential solution, should be re-examined. A new may not the best way to address the problem or achieve the outcome you desire.

UNDERSTANDING THE ISSUE, DEFINING THE PROBLEM

You cannot decide how to tackle an issue or problem until you understand it properly. It is easy to make the mistake of confusing symptoms with problems e.g by imposing harsh penalties to force people to comply with a law when the problem is not that they cannot want to comply, but that they do not have enough information about how to. In this case, poor compliance is a symptom – the problem is inadequate information. You won't solve the problem by imposing harsh penalties!

When defining the problem be sure you are addressing the actual core problem, instead of just a symptom!.

Make sure the problem is correctly defined otherwise all subsequent action taken to resolve it is likely to be misguided.

Questions to ask including:-

- Why is the current situation unsatisfactory and what are the obstacles to improvement?
- Is the case for change convincing is it supported by evidence?
- Who is asking for change?
- Have they got a clear vested interest?

Failure to correctly define the problem is often that first and most far-reaching mistake made by governments in establishing policy!

Your problem definition must contain:-

- An explanation supported by evidence of how serious and wide spread the problem is;
- An explanation of why the problem has arisen now;
- An explanation of how the proposed regulation will solve it.

Risk Assessment

If there is a case for safeguarding the public, people at work or the environment, you will need to identify how serious the danger is that you are dealing with. This is a Risk Assessment - it looks at what the chances are of the hazard (the situation leading to the harm) occurring, i.e the probability it will occur in a given period, and how serious the effect will be (the harm) if it does in fact occur.

Risk Assessment – how many deaths/serious injuries (the harm) are likely to result if boda boda drivers are allowed to drive without a helmet? (the hazard) if in the last 5 years, there have been 600 accidents resulting in serious injuries or death, then the risk you are dealing with is about 120 serious injuries or deaths per year.

A risk assessment will help you to understand what the various risks associated with a particular situation are, what controls may be necessary, and what form they would take.

Is Government Action Justified?

If a problem is shown to exist, the issue is whether government action is justified. Ask yourself – looking realistically at existing resource, manpower and other constraints – is government action really going to solve the problem? Is there a better solution?

Consider the Alternatives

How the Government intervenes to solve a problem is as important as **whether** it intervenes at all. For any issue or problem, there will be a range of possible solutions. They may have very different effects and implications. Making a new law may be one of the solutions, but it may not necessarily be the best.

Consider the following:-

i) Retain the Status Quo

Intervention may not make things better – sometimes it can create more problems than it solves. The problem may sometimes solve itself, or it may be better solved by other. Or, regulation may simply shift the problem elsewhere.

Market forces such as consumer choice, customer loyalty, competition and innovation may be a faster or more reliable method of solving the problem you are dealing with.

Travelling in safety?

After a rail crash in UK that killed 4 people, the rail authorities imposed speed restrictions and track inspections. This caused delays and higher charges for train travelers, which encouraged passengers to choose road travel over train travel. Given that road travel is much more dangerous, this probably led to more fatalities than did the original crash, it also nearly bankrupted the railway!

ii) Review Existing Laws

The problem may have arisen out of existing regulations. Consider whether the problem you are dealing with could be reduced or remedied by improving existing laws, rather than by introducing new measures. Would existing regulations work better if they were simplified or targeted more directly at the problem? Would the problem be solved if existing laws were enforced better? Will informing people about the law and their rights and obligations under it, solve the problem?

iii) Improve Information and Education

Sometimes Government may see the need to intervene to prevent people from being exposed to a particular risk. But the Government may neither be the best judge of what this risk is, nor of what the best solution is. Often it is better to let the people decide for themselves, with the Government limiting its intervention to ensuring people have access to all the information they need to make an informed decision.

Cigarettes – a health risk: It may be more effective for Government to require that cigarettes are properly labeled so that the public is fully informed of the health risks associated with tobacco, rather than impose a ban on smoking.

iv) **Introduce a Voluntary Scheme, Guidelines or code of Practice**

Voluntary schemes may work in situation where public and private interests coincide, and incentives for change result from mutual interest rather than sanctions and punishment. Examples include non-mandatory codes or practice, industry ratings and industry standards.

The Uganda Code of Judicial Conduct has recently been adopted as a voluntary code designed to provide guidance for regulating the conduct or members of the judiciary.

Legal binding codes can set out circumstances where a regulatory authority may take action. The codes need to be made easily accessible so that they do not cause uncertainty, which can be expensive for small organizations.

v) **Self-Regulation**

Sometimes it is more useful for a profession or industry to be self-regulating through its own industry or professional body, and according to an agreed set of criteria that applies to the whole industry, than to have government do this. For example, engineers, lawyers and auditors usually agree to abide by a code of professional conduct, which is enforced by their associations. Builders who abide by international standards of service delivery might choose to join a Master Builders Association that requires ISO accreditation as a condition of membership. Self-regulation used in this way, this way, is a sound marketing strategy that enables customers to tell who the best builders in the industry are.

Fish exports: It is to the advantage of the fish export industry as a whole that the market perceives the standard of Uganda fish exports to be high. The representative industry association therefore, has an incentive to maintain this regulation, and to introduce to its members codes of practice and accreditation standards that reflect the demands of the international market place.

vi) **Economic Incentives**

Economic incentives, such as tax incentives or disincentives and price mechanisms, can influence a change in behaviour. Such incentives have also been shown to stimulate innovation, as industries strive to do things differently in order to respond to the incentive. This form of intervention can remove the cost of enforcement from the regulators, allowing businesses to determine their own trade-offs.

Taxing buveera and cigarettes: Recycling or rubbish and waste reduction can be encouraged by economic incentives i.e taxing buveera is intended to ensure that people reuse their plastic bags instead of throwing them away. Taxing cigarettes heavily has been shown to discourage some people from smoking-when prices go up, people often choose to smoke less.

vii) Risk-Based Insurance or Risk-Pricing

To encourage a change in behaviour, insurance markets can be used as an alternative to direct regulation by requiring or businesses to insure themselves against the risk of injury or manage. This allows the market to price risk.

Worker's Compensation: To encourage businesses to make their work place safe and healthy, they can be required to buy insurance which will compensate any workers who may be injured at work. The safer the working environment, the lower the insurance premium will be – thus the incentive for firms to do their best to ensure their workplaces are safe and healthy.

Ministers, when considering an application to the Cabinet for approval of Principles, should consider both regulatory and non-regulatory alternatives, selecting those alternatives that provide the greater benefits, given the costs imposed on both the Government and the society.

The Minister submitting the request for approval of Principles for legislation should provide Cabinet with an analysis of the alternative choices available, and an explanation as to why a particular option has been chosen.

Before deciding to pass a new law, you must be very sure that Government can solve the problem by regulating, and that the cost of doing so will not outweigh the benefits you are expecting.

Consult widely before deciding!

Consult widely before deciding!

DESIGNING EFFECTIVE LAWS

The Decision to Regulate

Before making any firm recommendations about what type of law is needed you must make a careful study of the options that are most likely to give you the outcome you want. This will help you make sure that your assumptions about the need to regulate are justified, and that your proposed solution is appropriate. Consultation with stakeholders both within and outside Government is necessary (except perhaps in rare cases where you are dealing with an exceptionally urgent or sensitive situation.)

Consider carefully which groups and sectors will be affected by the proposed law before deciding with whom to consult.

Careful consideration of 5 basic themes underpins the design of good quality laws.

Designing the Regulation – Five Core Themes

Simplicity and transparency: Laws should be made in an open, consultative manner, be consistent with existing laws, and be drafted in a simple user friendly way so that everyone knows where they stand.

Don't place unnecessary burdens on business: Time and money spent by firms on regulatory activity is better spent doing business. The more productive our businesses are, the faster they will grow and the more jobs they will create. Therefore, do not place unnecessary burdens on business, especially small firms, which are usually hurt more than larger firms by poor regulation.

Use goal-based regulations wherever possible: Concentrate on setting the objective that must be achieved by those who are being regulated instead of detailing how they are to achieve this objective.

Accountability: regulators must be able to justify decisions and be subject to public scrutiny. Proposals and the analysis behind them should be widely published before decisions are taken and laws should always incorporate fair and effective complaints and appeals procedures.

Balance risk, cost and practical benefit: The benefits of any proposed law should outweigh the costs of complying with and enforcing that law. All laws should be in proportion to the problem or risk being dealt with, and it should be practical – don't use a sledgehammer to crack a nut!

SIMPLICITY AND TRANSPARENCY

Consultation is vital to designing an effective law. Hurried and patchy consultation is only likely to result in poor law-making and the need for repeal or amendment down the line. This takes up valuable parliamentary time and leads to uncertainty all round.

Consultation and public participation also brings valuable expertise and perspective from those who will be directly affected, into the discussion. This additional input will help to frame better legislation. In particular, the views of the enforcement bodies that will be involved in ensuring compliance with the legislation should be sought.

Always consult enforcement bodies. Quite often we pass laws that we expect to be enforced at local level, without calculating what manpower and resources are available in each of the relevant local authorities to enforce and monitor this new law. This is poor law-making that results in significant problem.

Procedures should be instituted at an early stage so that relevant interested parties can provide effective and timely input on the content of a regulation. It is crucial to allow a realistic period of time for consultation. Try to prepare a clear and concise consultation document, with questions for consultees, including on the reasonableness of costs and benefits and enforcement issues.

See Tips for Effective Consultation in the Appendix

Laws must be drafted in simple straight-forward language so that everyone knows where they stand. The language should be plain enough that people do not need to hire lawyers to understand their rights and obligations.

Laws that are overly complicated cause people on both sides of the regulatory fence to look for shortcuts!

Placing Unnecessary Burdens on Business

There is no such thing as a regulatory cost that only affects businesses! Every time a business has to spend time or money dealing with regulation, that cost is passed on. Businesses can't just absorb new costs and maintain the same level of profitability – costs must be passed on in one form or another. They can be passed on to:-

- Workers in the lower wages or job losses;
- Consumers in the form of higher prices or lower quality, or;
- Potential employees – those without jobs, in the form of a decision to postpone expanding and hiring new workers because of newly increased operating costs.

When costs are passed on to consumers, the product or service in question becomes less competitive as it is less appealing to potential customers. The risk now is that the firm may be forced to reduce benefits to, or lay off workers to offset these new costs or it may go out of business altogether. Either way, everybody loses.

Small firms are hurt more because they have less management time available to spend on paperwork and regulations than larger businesses, and because they tend to have less output than larger firms over which to spread their costs. Higher relative costs put small firms at a disadvantage when competing against larger firms, which can make them less viable and more likely to fail. Small business failure puts people out of work, and decrease competition in some markets which leads to higher priced or lower quality goods and services being available to consumers.

Think **“small”** first! If a regulation is made with small firms in mind, you will probably also have solved the problems of large firms. The reverse is not always true.

Small firms are vital for generating jobs, wealth and competition – they are the essential mechanism by which thousands of Ugandans enter the workforce. And, give the right environment, small firms grow into large firms! That’s why it is especially important not to burden them with unnecessary costs, and to take account of their views when thinking about a new law.

GOAL OR OUTCOME – BASED REGULATION

Whenever possible, laws should specify the goal to be achieved, but should not prescribe the means of achieving that goal – business and individuals should be left to decide how best they shows that leaving people free to decide for themselves how best to meet the objective of a law, reduces the compliance costs associated with regulating.

Outcome – based regulation gives businesses flexibility in complying:

In many countries, early environmental regulation specified that firms and factories had to use the “best technology available” to reduce air pollution. The best technology is almost always very expensive. Shifting to a performance standard, which allowed polluters to choose any technology as long as they achieved the desired reduction in pollution, has made it much easier (and cheaper) for firms to comply.

Accountability

Regulators must be able to justify decisions on the basis on having carried out full and fair consultation, proper research and quantitative analysis. Proposals and the analysis behind them should be widely published before decisions are taken; and should be made available to Cabinet and Parliament. Laws should always incorporate fair and effective complaints and appeals procedures. Accountability extends not only to regulatory actions, but also to outcomes.

Balancing Risk, Cost and Practice Benefit

“The most frequently passed law is the law of unintended consequences!”

All over the world, governments pass laws that do more harm than good. Faced with pressure from influential interest **groups, governments often fail to look carefully enough at what the consequences of proposed new laws will be across society as a whole.** In other words, they fail to consider the costs they are imposing on those firms or individuals who have to comply with the new laws and what decisions those people are likely to make as a result of being burdened with these additional costs. These decisions may have serious long term effects on the lives of ordinary people.

What is a Regulatory Impact Assessment (RIA)?

A Regulatory Impact Assessment is an analysis of the likely benefits and costs associated with the introduction of a new policy or regulatory proposal.

A Regulatory Impact Assessment (RIA) will help you to understand the full consequences across society of each of the proposals you are making. By identifying who wins and by how much, and who loses and by how much, you will be able to predict the sorts of decisions that people will be likely to make when faced with the new law, and the roll-on effects of those decisions through society. You will also know whether particular groups are likely to be disproportionately or unfairly affected.

The principle of RIA is evidence – based policy making – improving the quality of policy and regulatory decision-making by uncovering evidence of what the effects of potential decisions will be. An RIA must set out the risk or problem to be addressed and the options available – including the option of not taking any action at all, and any non-regulatory options, such as codes of practice, industry standards or information campaigns. It must also set out the likely costs and benefits of each option. A good RIA will answer the question, “Is this the best way of achieving our objective?”

RIA is not a substitute for decision-making; it is an integral part of the process which aims to raise the quality of the debate. By encouraging public consultation and demonstrating potential impacts across society of a proposed new law, RIA improves transparency and accountability in governmental decision-making.

In all cases, a judgment must be made: Do the costs of government action justify the expected benefits?

When to do a Regulatory Impact Assessment

An RIA should always be performed when a proposed new policy or law would appear to have significant consequences on businesses, the economy, society or the environment. Why these four areas? The reason is that sustainable development and poverty reduction are Uganda's priority development goals – which means that when we regulate, we want to change the behaviour of people or groups in such a way as to be consistent with economic growth, environmental protection, poverty reduction and social justice.

Because RIAs are an essential policy development tool, it is never too soon to start thinking about them. Initial RIAs can sit alongside early policy option submissions to Ministers and can provide a helpful framework for early informal discussions with parties who may be affected by, or have an interest in the policy issue being considered.

It is important to be pragmatic: the larger the potential impact of a proposed regulation, the greater the effort that should go into correctly estimating benefits and costs.

An RIA must accompany formal public consultations and submissions to cabinet or principles for a proposed new policy, law or substantive amendment to a law. They must accompany draft policies and laws that are submitted to Cabinet for approval, and must be laid in Parliament alongside Bills. An RIA becomes final when it is signed by the Minister. If possible it should also be placed on the ministry's website.

Undertake RIAs early in the Policymaking process.

REGULATORY IMPACT

ASSESSMENT – A CLOSER LOOK

Assessing benefits and costs through a Regulatory Impact Assessment will help you to:-

- Think through the full impact of your proposal – both the positive and negative consequences;
- Identify and weigh up alternative options for achieving the policy goal;
- Ensure your consultation exercise is meaningful and reaches the widest possible range of stakeholders;
- Identify whether likely benefits justify costs;
- Determine whether particular sectors or parts of society are disproportionately affected in a positive or negative ways;
- Identify likely compliance costs, who will bear these costs, and the roll-on effects of this burden.

In other words an RIA helps decide whether the regulation is necessary, aimed at the right target, in proportion to the problem being addressed, and whether it will achieve its intended objective in a cost – effective way.

- An RIA should be a short document (the length should be proportional to the likely impact of the regulation) and should contain sections on;
- The issue / problem that has given rise to consideration of the proposed policy change or regulation – why and how it has arisen;
- The intended purpose and effect of the regulation;
- The key plausible options for dealing with the problem – a number of policy options should be considered in the RIA. The merits of a regulatory solutions should be weighed up against other possible alternatives, such as economic instruments, information provision, voluntary codes etc.

- The cost and benefits of each option, (including economic, social and environmental costs and benefits). The RIA should systematically define, and then attempt to measure, the benefits and costs of a proposed regulation. To do this, it will be necessary to define data requirements, be creative in getting data and be transparent about the way the data has been derived/ Used. If data is not simply available or the cost of obtaining it is too high, then a qualitative assessment should be made the key is being creative about assessing the regulatory impact. The main direct effects (e.g. the benefit to workers' health of enhanced leave entitlements) should be examined only if they are likely to be both large and quantifiable.
- How the regulation will be enforced and monitored, by whom and at what cost;
- The results of consultation; and
- A clear and reasoned recommendation for a proposed course of action including reasons for rejecting all other plausible options.

The complexity of the RIA should be proportional to the likely impact of the regulation - the broader the impact, the more comprehensive the analysis should be.

There is no single correct way of doing an RIA – the purpose is to provide relevant information of whether to regulate in a clear, accessible way.

IMPLEMENT AND ENFORCE THE LAW

Implementation

The implementation of the law must be considered early in the process and clearly communicated to all stakeholders. Too often the best of government intentions have been derailed by poorly considered (and often extremely costly) implementation.

Once it has been decided that regulation is the best option and specific and formal agreement to proceed has been obtained, then formal consultation with interested and affected parties should take place.

Combating Injuries in the Workplace The Ugandan Workers' Compensation Act (2000) was designed to compensate workers for their injuries and create a powerful mechanism to eliminate unsafe working practices. Several years later, due to lack of enforcement, compliance levels are low and many workplaces are not obviously any safer for workers.

Achieving Compliance

The ultimate test of whether a rule is effective is the degree to which the public complies with it. Widespread and enduring non-compliance devalues the law and erodes the credibility of Government. You therefore need to consider from the outset whether the proposed regulation is enforceable, obtained clear view of how those affected will comply with the proposal, decide what an appropriate level of compliance will be, and figure out how you are going to achieve that.

It can be tempting to try to resolve the problem of people not following the law, by proposing even more regulation. Before you do this, look carefully at the reasons for non-compliance, and try to think of what it will take to improve this – for example, by providing more information about what the law says, what problem it is designed to address, the benefits of complying, and the penalties of not complying with it.

Why don't people follow the law?

In many cases, people don't know what their obligations are or how to meet them, or they believe that the law is not being enforced evenly and that others are getting away with not following it.

The question of how to achieve compliance must be considered at every stage in the development of a regulatory proposal. Laws that are poorly achieved poor levels of compliance, and will ultimately be ineffective. Policy makers should try to understand the characteristics of their target group-what will motivate them to follow the law and what will hinder compliance. They should use that understanding to inform regulatory design.

Experience shows that helping people to comply, rather than punishment for non-compliance should be the key aim. Full compliance cannot be achieved solely, through detection and punishment of breaches. Voluntary compliance will be greater if government applies the law fairly and even – handedly.

It is not desirable for enforcement and sanctions to be so harsh that you discourage those who are affected from carrying out legitimate activities. It is also wrong to force compliance through fear or uncertainty so that individuals go to unnecessary length to make sure they are in compliance.

Compliance can be accomplished through a number of strategies, including education, persuasion, economic incentive, enforcement and sanctions:

The effect of punishment small first time

taxpayers: Tax laws that impose heavily penalties for past non-compliance by small first-time tax payers will discourage inform firms from formalizing, and from paying future taxes voluntarily.

The most effective way of achieving compliance with regulations is to make sure that people affected know about them.

ENFORCEMENT

Always think a head about enforcement, in particular:-

- Who will enforce the regulation?
- What level of compliance will be acceptable?
- How can this be achieved, and at what cost?

Enforcement mechanism, manpower and resources must be detained as part of your Regulatory Impact Assessment. Enforcement costs may be a major component of the total costs imposed by the regulation. Achieving 100% compliance at a reasonable cost is not always possible – policy makers will usually have to be satisfied with a degree of non-compliance.

Well-enforced regulations achieved positive results including:

- High levels of compliance which make the law effective in delivering intended benefits;
- Certainty for businesses. This means investment decisions are less risky. Removing unnecessary uncertainty is a major positive factor in encouraging serious investment, especially foreign investment.

Businesses and the public should be able to get guidance from enforcement authorities about regulations, and should be able to complain without fear about the way a regulation has been enforced.

In deciding on the sanctions to be applied for non-compliance with the law, aim for a regime that is fair, proportionate and effective. The full range of options should always be considered, and criminal sanctions should only be used for very serious breaches, for example where there is criminal intent, recklessness, or when you are dealing with persistent offenders or those who may cause serious harm.

ACCOUNTABILITY FOR ENFORCEMENT – CUSTOMER CHARTERS

Enforcement authorities should be encouraged to raise the standards of their performance to the highest possible level. One way of doing this is to prepare and publish customer charters, which establish clear standards for service delivery that the public can expect to receive. This helps to raise performance standards by making enforcement authorities more accountable to their customers – the public.

Remember: The emphasis should be on encouraging compliance rather than on punishing non-compliance. If you can't enforce, do not regulate!

MONITORING AND REVIEWING LEGISLATION

The approach to Monitoring and Reviewing

Once a new law has been introduced, it should be monitored to ensure it is working and evaluated to test if it is serving its original purpose in an efficient and cost-effective way. This means that when designing the regulation, you must consider how you are going to review it.

Arrangements will need to be made for monitoring and evaluation, including collecting reliable data on compliance levels, and surveying the targeted population to get information on whether the law needs changing.

Review questions to ask:

- What are the objectives of the regulation?
- Has the issue changed?
- Does the regulation achieve its objectives
- To what degree are any changes to the regulations needed?
- Is the regulation fair?
- Does the scope of the regulation need to be so wide?
- Is the regulation being enforced consistently?
- What does it cost to administer and enforce?
- What does it cost to comply with the law?
- Do the benefits of the regulation still outweigh the costs?

SUN – SETTING

A useful way of keeping the regulatory burden low is to include an expiry date in the regulation – a **“sunset clause”**. This allows a law to be removed automatically after a fixed period unless something specific is done to keep it in place.

Sun-setting is a way of making sure that laws are reviewed and kept up-to date. A sunset clause can be particularly useful in cases where you are producing a law to deal with a short-term emergency. On the other hand, reinstating a regulation can take up valuable parliamentary time so this option needs to be considered carefully.

Examples where sun-setting might be appropriate include:

- Rules where there are considerable scientific uncertainties;
- Regulation responding to a particular crisis;
- Measures taken where events or technologies are changing fast;
- Requirements that are likely to become out-dated

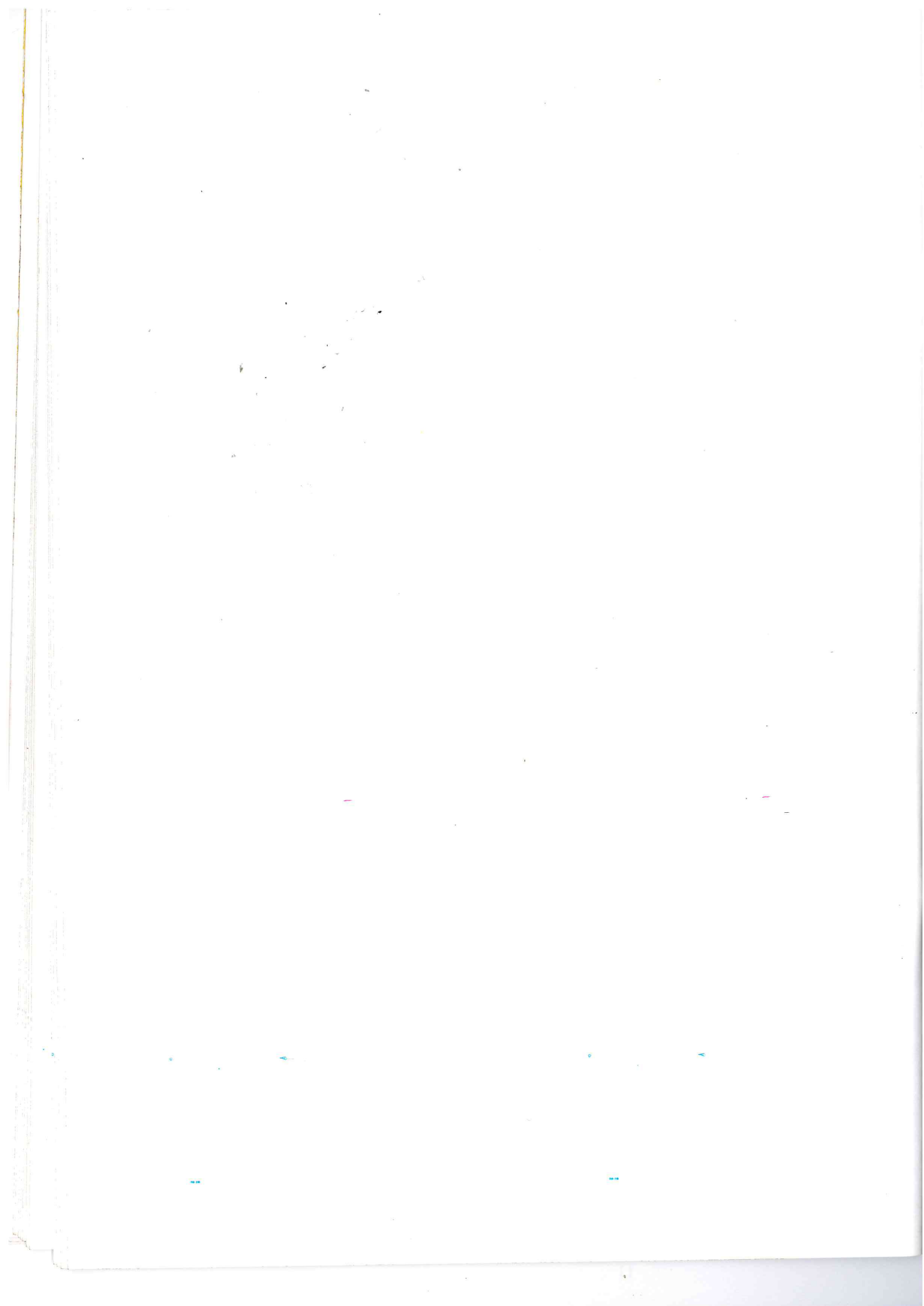
Where sun-setting does not seem appropriate, consider putting in place a review mechanism instead.

KEY PRINCIPLES OF GOOD REGULATION

Principles of Good Regulation

Eleven internationally recognized principles of good regulation are as follows:-

- Do not regulate unless it is absolutely necessary.
- Identify the specific issue being addressed. The regulation should be as closely matched to the problem as possible to avoid unwanted effects
- Keep the regulation short and simple – everyone should understand it.
- Consider the impact on competition and trade. Try not to interfere with trade and market forces.
- Do not place unnecessary burdens on businesses, especially small businesses – think “small” first.
- Provide flexibility for the future – focus on setting the outcome(s) or objective(s) to be achieved, not the process.
- Balance risk, cost and practical benefit, the benefit must outweigh the costs, and be in proportion to the risk.
- Be consistent – integrated with existing regulations.
- Make sure you can manage and enforce the regulation at reasonable costs.
- Allow enough time for full consultation, notification and phasing in.
- Regulatory monitor whether the regulation is working.



Tips for Good Consultation

There is more to consultation than issuing a formal consultation document. Consultation gives you the opportunity to develop your assumptions and expose them to consideration, comment and challenge so that you end up with the best possible solution.

Persuading businesses and other to comment on the likely impact of something that is yet to happen can be a challenge.

The following may help.

1. Make sure that consultation starts at a sufficiently early stage to influence decisions
2. Allow enough time by building consultation into the planning process, and give sufficient time for industry or trade bodies to consult their members
3. Be transparent. Consultation should be clear, concise and focused.
4. Make it easy for your consultees by trying to choose a consultative approach that is best and most convenient for them.
5. Have a partial RIA available to show consultees, and draw their attentions to:-
 - Key assumptions
 - Option (regulatory and alternative to new law)
 - Implementation and enforcement issues
 - Your analysis of costs and benefits
6. It is particularly important to contact and consult small business, as they are likely to be among the most affected by the proposals.
7. Include those who may be affected indirectly by our proposals, as well as appropriate professionals.
8. Analyse responses carefully and make results available, giving reasons for final decisions.
9. Make sure that you review your proposals in light of the input you receive.



REGULATORY BEST PRACTICE PROGRAMME
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