
Date: 15 January 2025

Title: Right-touch regulation consultation proposal

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Paper for Approval

Open paper

How does this work contribute to the Strategic Plan?

A revised and improved version of Right-touch regulation would support the achievement of Strategic Aim 2 'To make regulation and registration better and fairer' and Strategic Aim 3, 'To promote and support safer care for all'.

1. Issue

1.1 We have commenced work on our project to update Right-touch regulation, and seek approval from the Board to proceed to consult on proposals for a new version of the document in February 2025 as described below.

2. Recommendations

2.1 We recommend that we develop a discussion document on the proposed content of a new edition of Right-touch regulation, building on the discussions with some key stakeholders that we have held in December 2024, and are continuing to hold into January 2025 (as summarised below). These conversations are informing the potential content, scope, focus and emphasis of a new version.

2.2 We recommend that the paper is drafted in January 2025, and issued for an eight-week period commencing early February 2025, as per project plan.

2.3 The responses will then be analysed in April 2025, to inform the drafting of the new version by end June 2025. After quality assurance and further redrafting over July and August, publication and dissemination would take place in September 2025 as per project plan.

3. Background

- 3.1 Right-touch regulation is a principles-based, pragmatic and flexible approach that supports good regulation, regardless of the sector or jurisdiction. It asks fundamental questions about the need for regulation as a solution to problems, the proportionality of different regulatory approaches and the accountability of regulators.
- 3.2 The last version of Right-touch regulation was published in 2015 and we recognise that changes in our operating contexts, together with external challenges in the burdens and benefits of regulation, require us to adapt our approaches to ensure they remain effective.

4. Analysis

- 4.1 We propose that a the new version of Right-touch regulation will retain the core principles of good regulation but will also emphasise the need for even greater agility, enhanced stakeholder engagement, and a stronger focus on regulatory impact. It should also take account of the Government's recently developed Smarter Regulation Principles, as well as insights from our work on refocussing regulation. The revised version of Right-touch regulation should also make the case for a greater emphasis on the prevention of harm and will highlight opportunities to make more of a contribution to societal problems, including those involved with inequity and discrimination.
- 4.2 Our further initial ideas for a new version of Right-touch regulation for 2025 are that it should:
- Focus on clearer explanations of the central ideas of Right-touch regulation and how they can be applied (with less emphasis on how those central ideas were arrived at)
 - Expand the range of what is meant by regulation to encompass all of the 'continuum of assurance', including fully recognising accredited registration
 - More fully recognise deregulation an option for consideration
 - Include examples of how right-touch thinking can be applied to come contemporary challenges for regulators
 - More clearly link to other key reference points and publications on good regulation
- 4.3 The points arising in our conversations with some key stakeholders so far have included:
- That a new edition of Right-touch regulation will be timely and welcome, with key audiences being regulators, others with an interest in public protection, policy makers and Governments
 - That there is a continuing need for an evidence-based approach to support regulatory decision making, particularly around the application of regulation to new groups
 - That there is support for refocused regulation as per our parallel project work

- That a balance should be promoted between regulatory activity that is focussed on maintaining a minimum standard, and that which makes a positive contribution to driving improvement
- That we acknowledge the risks of risk-based regulation
- That we recognise that regulation does not eliminate risk, but that good regulation reduces it
- That we distinguish between situations of accepted risk (complex surgery) vs situations of unaccepted risk (a reckless surgeon)
- That we avoid cases studies situated in specific health and care problems, instead considering using more generic scenarios or problems, such as how regulators should determine their contribution to issues around workforce supply
- That we balance advocating the need for engagement with regulated entities, with the risk of regulatory capture
- That we cross reference to the Smarter Regulation Principles
- That we strongly promote the need for equality, diversity and inclusion as central to decision making, but that we are duly cautious in arguing for the contribution of regulation to solving specific wider societal problems
- That we recognise that legislation can be a barrier to adopting Right-touch regulation
- That we consider the role and application of regulation in different cultural settings
- That we consider how Right-touch regulation can promote evidence and data based decision making more generally
- That we reflect on regulatory culture, and the contribution of Right-touch regulation to regulatory leadership
- That we reflect on the meaning of agility, and whether for example it captures the need to be responsive, thoughtful and curious
- That we consider AI in relation to Right-touch regulation
- That we consider how Right-touch regulation contributes to synergistic working of all actors in the public protection landscape
- That we consider how risks and their management mature, and the appropriate regulatory response
- That we also consider how regulated entities mature and develop, and how regulators should respond accordingly
- That we consider the phenomenon of 'regulatory creep' and how regulators can avoid this using Right-touch regulation
- That we promote learning from what works, and what goes well, as well as learning from situations which have gone wrong and/or caused harm
- That we consider the 'trade offs' between regulation and other factors that might be in the public interest, such as economic growth, can best be managed.

- That we consider how regulation can be used to identify innovation and good practice, as well as risks.
- That in issuing our proposals in February 2025 we are clear on what we propose and why now (as outlined above), being clear on which elements of our proposals are new.

5. Finance and Resource

- 5.1 At present it is anticipated that the only costs of this project are in staff time.

6. Impact Assessment

- 6.1 The role of Right-touch regulation is upstream and seeks to influence decisions about how and why to regulate. We do not know at this stage how a new version will be used, in what contexts, in relation to candidate areas for regulation; and therefore we do not know how any resultant decisions would impact on different groups or different areas where inequalities exist. We will, however, aim to rework Right-touch regulation in such a way as to support decisions being reached that are informed by EDI considerations, that address known problems, and that are underpinned with relevant data. This will be reviewed at a later stage in the project, when the scope of a new version has been determined, following stakeholder consultation when a new draft is in development.

7. EDI implications, including Welsh language

- 7.1 As above.

8. Timescale

- 8.1 The timescale is described in paragraph 2.1 to 2.3.

9. Communications

- 9.1 As discussed, in February we propose to issue a discussion document to stakeholders, optimising the use of our SRM. This will be supported by appropriate and proportionate communication activity to raise awareness of the exercise, including for example through social media.

10. Internal Stakeholders

- 10.1 PSA staff were invited to participate in a workshop session at an early stage of this project. Any staff contributions will continue to be welcomed. The policy team will participate in a drop in session for policy colleagues from the regulators in early January to discuss this work.

11. External Stakeholders

- 11.1 The core project team will continue to meet key stakeholders through January 2025 to discuss their initial ideas for this project (Chief Executive; Director of

Policy and Communication; AD Intelligence and Insight; Head of Policy). As described above, the document for consultation will go to a much wider range of stakeholders in February utilising the contacts now stored and organised on our SRM.