

# The challenges of effective regulation

## Is right-touch regulation the answer?

Regulation upholds and promotes the rules and standards that must be met for organisations, products, people and markets.

## What is right-touch regulation?

Regulators are often blamed when services fail and people are harmed. But they are also criticised for being a barrier to growth and innovation when their requirements are seen as too onerous or bureaucratic. Right-touch regulation addresses these concerns by providing a way for regulators to work with transparency and clarity when deciding how to strike the right balance.

Right-touch regulation means controlling risk of harm to an acceptable level of assurance but no further. This guards against either too little control of risks, resulting in exposure of the public to unreasonable risk of harm; or excessive attempts to control, resulting in wasted resources, false assurance, restriction of innovation and growth, and difficulty in realising benefits and value.

### Striking a balance

An example of striking this balance is the setting of road speed limits. Having no speed limits would be manifestly dangerous and would not be accepted as safe. However, having really low speed limits on all roads would also be problematic as it would restrict people's ability to go about their daily lives. Setting a moderate speed limit for built-up areas and a higher speed limit for motorways is accepted by most people, even though there are still some risks.

Right-touch regulation provides transparency about the point to which risks are being managed and mitigated, having been evaluated in the round with competing interests, differing perspectives, and relevant evidence. It can apply to the regulation of professions, products, places and markets, or any other situation where regulation is being considered as the solution for managing risk, or where existing controls are being reviewed.

Right-touch regulation is not about promoting the use of more regulation, but instead, the use of regulation only when it is justified, with regular re-evaluation as circumstances develop and risks change.



It recognises that there is no such thing as zero risk.

The approach is guided by six underlying principles. These are that regulation should be:



**Proportionate**



**Transparent**



**Consistent**



**Accountable**



**Targeted**



**Agile**

# Addressing the challenges of effective regulation

**Challenge: Regulation is frequently disproportionate, burdensome and costly.**

**Right-touch response:** The right-touch regulation approach involves regulators showing their working and being able to demonstrate why their approach is regulating risk to an appropriate level. This allows the costs and burden to be seen, balanced with the benefits and added value. It means that a regulator will need to change its approach where it is not acting proportionately.

**Challenge: Regulation is complex and there is too much duplication.**

**Right-touch response:** Right-touch regulation provides a simple underlying philosophy of how to regulate well, and a basis for straightforward explanation of decisions and outcomes. It is central to right-touch regulation that risks need to be being managed in the right place, at the right time. This works most effectively where regulators and other stakeholders are clear in their purpose and remit. This clarity enables them to collaborate successfully and share information efficiently, reducing duplication and bridging gaps while also minimising burdens on those regulated. Compliance is most likely where regulation is as simple as it can be.

**Challenge: Regulation is risk-averse and stifles innovation.**

**Right-touch response:** Right-touch regulation is about managing risks to an acceptable point but no further. Regulators need to engage with

stakeholders to agree on the acceptable level of risk. Where innovative solutions are being explored and implemented, this approach means that the risks involved are identified and mitigated only to the extent that they need to be while realising value and benefit. Right-touch regulation provides clarity, not obstruction, and encourages innovation.

**Challenge: Regulation is frequently out of date and is not adaptable.**

**Right-touch response:** A decision on how to regulate is not set in stone – right-touch regulation recognises that risks and how they are best managed change over time. Regulators need to be agile and flex their approaches according to the level of risk and the agreed risk appetite.

**Challenge: Regulation is a form of political interference and undermines civil liberties.**

**Right-touch response:** Right-touch regulation requires regulators to weigh both public safety and the wider public interest in their decision-making, balancing different views on the tolerability of risks and impacts on different groups. This involves regulating only to the point that achieves the best balance between legitimate competing interests and minimises the risk of the unwelcome consequences of over-regulation. Regulators are accountable for their decisions, with right-touch regulation providing a framework within which decisions can be explained and if necessary, challenged and reviewed.



**Right-touch regulation is an opportunity to address these challenges whilst still reaping the benefits of good regulation – public safety, consumer protection, fair competition, innovation, trust in the markets and economic growth.**

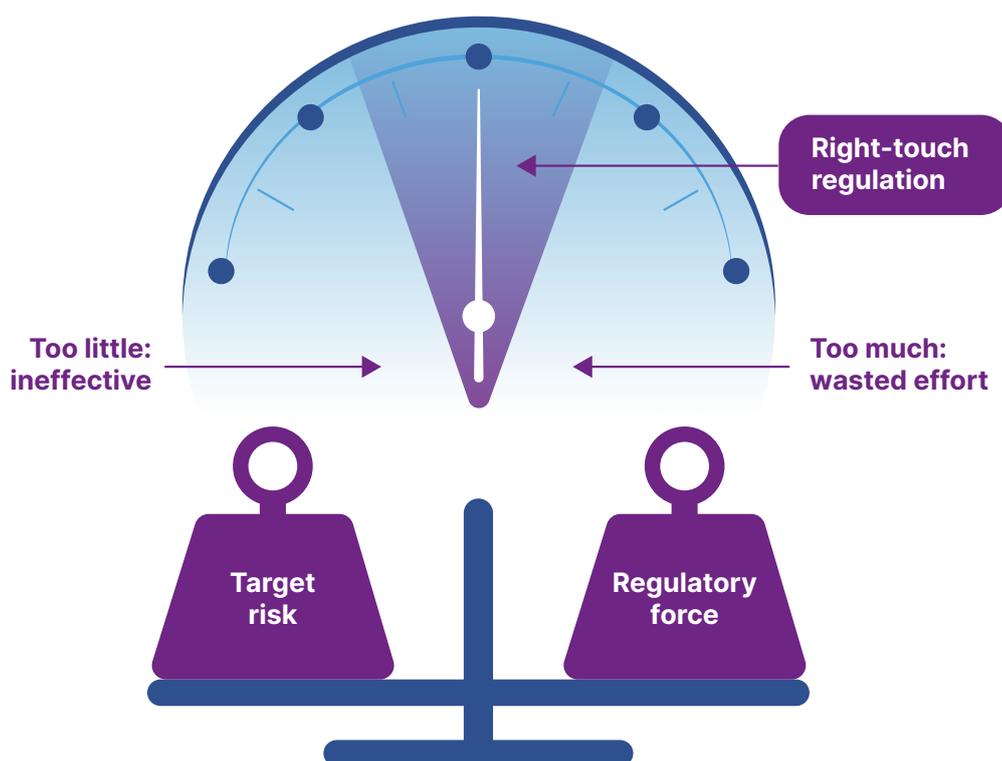
# What is meant by managing risk to an 'acceptable level'?

Applying right-touch regulation means applying the regulatory force needed to achieve an acceptable level of assurance that risks are being managed appropriately.

We use the idea of a set of scales to explain this. The right amount of regulation balances a risk with the appropriate level of regulatory force – it achieves the desired result and no further. Too little force is ineffective, leaving intolerable risks unmanaged – under-regulation; too much is a waste and may impose unnecessary burdens or costs – over-regulation. While over-regulation may in some ways offer greater public protection, at the same time it may compromise other aspects of the wider public interest.

Returning to the example of road speed limits, a very low speed limit would reduce harm from accidents, but would also slow down other aspects of life including economic activity, with obvious unwelcome consequences which would probably be intolerable. The public accepts a level of risk because to do so is in their interests.

## Regulatory force



## What else should be considered before regulation?

Right-touch regulation is consistent with the 'lines of defence' model, where:

- The **first line** is the professionalism of front-line individuals and teams delivering a service
- The **second line** refers to internal control mechanisms including governance, quality assurance, internal audit, reporting mechanisms for concerns, safeguarding arrangements, local and team cultures
- The **third line** includes external and independent protection, quality and safety systems, including regulation.

Local solutions close to a risk should always be considered first and will usually be the most effective as they will be informed by knowledge of the circumstances in which a risk arises. Only when necessary should the third line take responsibility for managing a risk; it should also support improvements in the first and second lines. Even when all three lines of defence are in effective operation some risk will remain.

## How can a decision be made in practice about whether regulation is the right solution?

Right-touch regulation is supported by a practical decision-making tree, shown on page 7. This can be applied to a new or future issue.

It can also be used to assess whether a lighter regulatory touch might be used in an existing situation. For example, where risks have become better understood and

well-managed over time, or where risk management measures have become outdated because of greater technological capacity to manage a risk more effectively and efficiently. For example, the regulations around medical imaging and radiography have become significantly less onerous as technological advances have reduced risks in this area.

## How else can regulators exercise a positive influence and add value?

- ✓ Issuing standards, guidance and supporting explanatory materials
- ✓ Analysing data on trends and themes, including promoting learning from where things have gone wrong and harm has been caused
- ✓ Engagement with the public, to understand their perspectives on the balance between different risks, opportunities, and benefits; and differential impacts and harm on different groups
- ✓ Engagement with stakeholder organisations, to understand their different contributions to safety, share learning and exchange data
- ✓ Learning from successful approaches in other sectors and jurisdictions
- ✓ Input controls such as quality assurance of higher education courses in professional regulation.

## How does right-touch regulation fit with other principles of good regulation?

Right-touch regulation principles are consistent with the way other people have described the qualities and principles of good regulation, such as the Department of Business and Trade's *Smarter Regulation*, the Institute of Regulation's *Good Regulation* and the Better Regulation Delivery Office's *Regulators' Code*.

For example, the Smarter Regulation principle to 'avoid unnecessary risk aversion' aligns with the right-touch principles of being proportionate and targeted, and the recognition in right-touch regulation that risk cannot be eliminated. The focus instead is on achieving a balance which delivers optimum benefit with a tolerable level of risk.

# The right-touch regulation decision-making tree

