SCOTTISH REGULATORS'

STRATEGIC CODE OF PRACTICE

SCOTTISH REGULATORS' STRATEGIC CODE OF PRACTICE

Contents

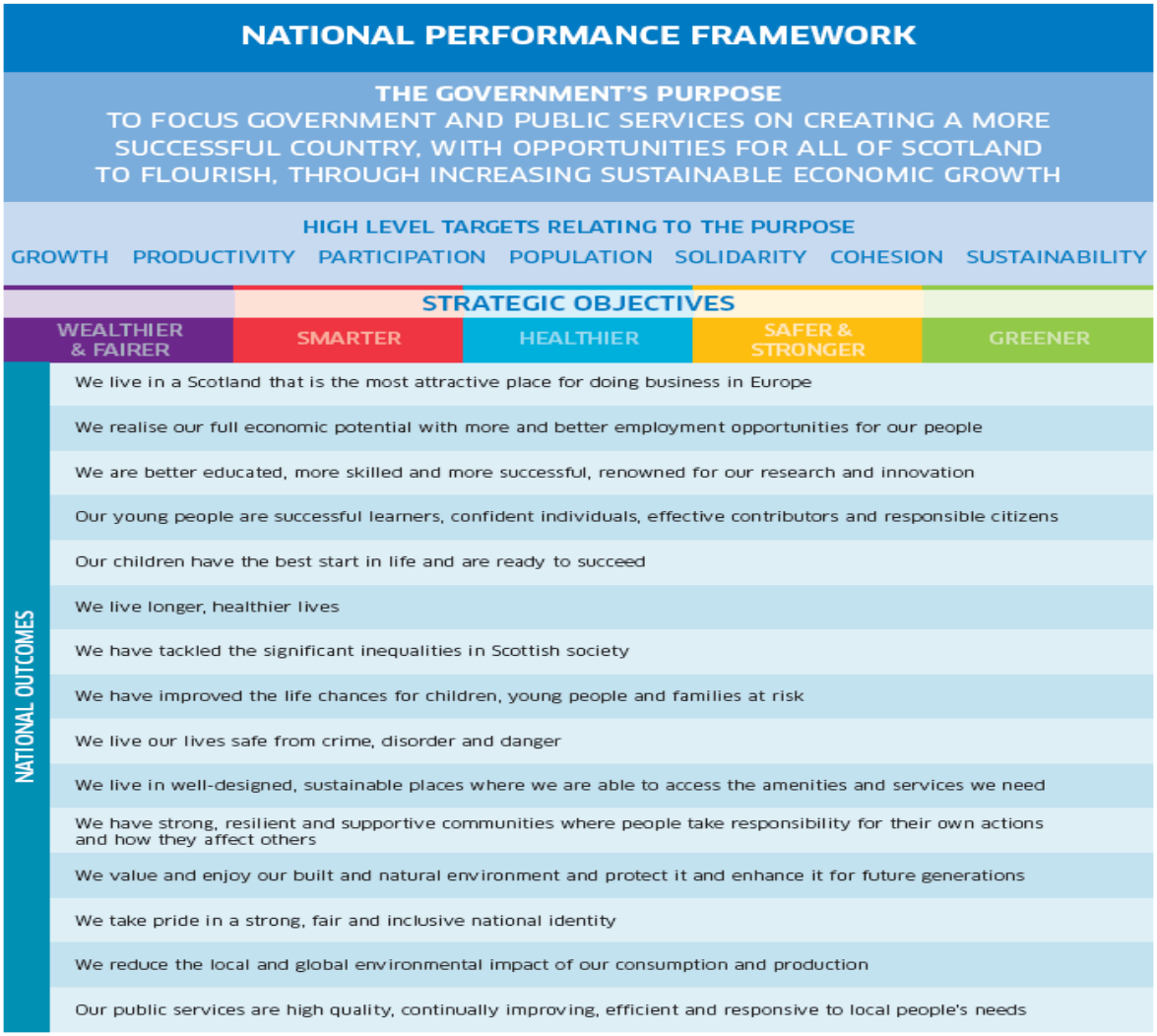
Introduction and Overview

Strategic Code of Practice

Implementation and Review

Introduction and overview

1. The 2011 Government Economic Strategy confirmed that the Purpose of the Scottish Government would continue to be to make Scotland a more successful country, with opportunities for all to flourish, through increasing sustainable economic growth. The Scottish Government is determined to promote in all Scottish regulators a broad and deep alignment with the Government's purpose. Sustainable economic growth means building a dynamic and growing economy that will provide prosperity and opportunities for all, while ensuring that future generations can enjoy a better quality of life too. The health of Scotland's communities and environment contribute to and are interlinked with the achievement of sustainable economic growth. Economic growth that exceeds the limits of our environment or damages social and community cohesion is not sustainable. Regulatory outcomes, whether on e.g. the environment or food and fire safety, directly contribute to the achievement of sustainable economic growth and regulations underpin the national, local and sectoral outcomes set out in the National Performance Framework.



2. Laws and regulations also play an essential role in fostering a prosperous, fair and safe society. They provide essential rights and protections for citizens, consumers, workers, businesses, communities and the environment, can stimulate innovation and modernisation and support economic development. Often,

achievement of regulatory outcomes delivers multiple benefits – for communities, the environment and the economy.

3. The Economic Strategy includes a commitment to better regulation. This recognises the fact that whilst regulatory outcomes in themselves contribute to sustainable economic growth, the way that regulators carry out their work in practice and interact with those they regulate can also make a significant contribution to supporting business and hence contributing further to sustainable economic growth. Good regulators seek to understand those they regulate, including taking economic and business factors appropriately into account in carrying out their regulatory activities. Such an approach brings benefits to local communities in terms of employment, investment and expenditure. The better regulation principles are that regulatory functions should be exercised in a way that is transparent, accountable, proportionate, consistent and targeted only where necessary. The way that regulators carry out their work in this context is the focus of this strategic Code.

4. In Scotland we have well-established better regulation programmes, including measures to improve the way legislation is developed and applied in practice. In that context, the Regulatory Reform (Scotland) Act 2014 includes provisions on promoting regulatory consistency, improving environmental regulation and a duty on regulators to contribute to achieving sustainable economic growth.

5. The Government recognises that many Scottish local authorities and regulators are already implementing improvements to pursue better regulation and also to understand better those they regulate, including taking economic and business factors appropriately into account in regulatory activity. The Government is determined to build on that existing good practice to drive further performance improvements and promote greater consistency, primarily within individual regulators but also when working together. As such, section 5 of the Regulatory Reform (Scotland) Act gives Scottish Ministers the power to issue a Code of Practice in support of the duty on regulators to contribute to sustainable economic growth.

6. This Strategic Code of Practice has been developed with and by both regulators and stakeholders. The Code requires regulatory functions to be exercised in accordance with the principles of better regulation (see paragraph 2 of the Code). Regulatory functions include advice, guidance, licensing, permissions and consent, inspections, monitoring and enforcement. It is predicated on existing good practice and supports the outcome-based approach which is integral to the Government's National Performance Framework. The Code also promotes an approach whereby regulators seek to understand those they regulate, including taking into account economic and business factors appropriately (for example, in terms of costs, processes and timescales).

Legal Context

7. This Code is made under section 5 of the Regulatory Reform (Scotland) Act 2014 (the Act) which contains provisions for Scottish Ministers to issue a Code of Practice in relation to the exercise of regulatory functions by a regulator. Section 6 of the Act requires the draft Code to be laid before and approved by the Parliament before it is issued and published.

8. This Code will apply to the (devolved) regulatory functions of regulators listed within Schedule 1 of the Act. At the time of publication, this includes:

Accountant in Bankruptcy
Food Standards Agency
Healthcare Improvement Scotland
Local authorities (excluding planning authority functions)
Scottish Charity Regulator
Scottish Environment Protection Agency
Scottish Fire and Rescue Service
Scottish Housing Regulator
Scottish Natural Heritage
Social Care and Social Work Improvement Scotland
VisitScotland

9. Section 5 (5) of the Act requires regulators to whom the code applies to have regard to the code (a) in determining any general policy or principles by reference to which the regulator exercises any regulatory functions to which the code applies, and (b) in exercising any such regulatory functions. This duty to "have regard to" the Code means that the regulator **must** take into account the Code's provisions and give them due weight in developing their policies or principles or in setting standards or giving guidance. Regulator-specific standards, guidance or codes of practice should provide more detailed operational policy to reflect regulator's own circumstances and specific regulatory functions.

A framework for regulation in Scotland

10. This Strategic Code of Practice should be regarded as a key element of an outcome-focused framework for regulation in Scotland. It is very deliberately set at a strategic level given the range and diversity of regulatory functions covered by relevant regulators. It will necessarily be underpinned by regulator-specific guidance through which each regulator will provide the greater detail required by their staff and their stakeholders.

11. Many regulators in Scotland work with both reserved and devolved regulations and in partnership with UK Regulators. It is intended that this Code will work alongside the UK Regulators' Code[1] without placing additional or contradictory burdens on either regulators or business.

[1] Regulators' Code

SCOTTISH REGULATORS' STRATEGIC CODE OF PRACTICE

1. This Code is focused on the roles and responsibilities of Scottish regulators. There is merit however, in briefly stressing that businesses, in particular, also have a key role to play in the achievement of regulatory outcomes: businesses must behave ethically, engage early and openly with regulators and strive to comply. Most do – or wish to do better – and many are increasingly going voluntarily beyond compliance in pursuit of higher levels of corporate and social responsibility. The Scottish Government and Scottish regulators recognise that the minority of businesses which deliberately or persistently avoid their regulatory responsibilities do so largely to secure an unfair competitive advantage over legitimate businesses and with insufficient regard to the adverse impact on consumers, communities and the environment. This Code should not be interpreted as a justification for non-compliance or a signal that regulators will tolerate that.

2. Regulators should adopt the following high level operational approaches:

- Adopt a positive enabling approach in pursuing outcomes that contribute to sustainable economic growth.
- In pursuing their core regulatory remit be alive to other interests, including relevant community and business interests; taking business factors appropriately and proportionately into account in their decision making processes; and protecting public health and safety.
- Adopt risk and evidence based protocols which help target action where it's needed and help to ensure the achievement of measurable outcomes.
- Develop effective relationships with those they regulate and have clear two-way communication in place.
- Tailor their approach depending on the nature of the sector they are regulating and the desired outcomes. This includes a commitment to advice and support for those who seek to comply, allied with robust and effective enforcement when justified.
- Recognise, in their policies and practice, a commitment to the five principles of better regulation: regulation should be transparent, accountable, consistent, proportionate and targeted only where needed.
- Pursue continuous improvement in regulatory practice based on the principles of better regulation.

Regulators are enablers

3. Regulators should be enablers and carry out their activities in a way that helps businesses and regulated bodies to comply and also grow sustainably. Regulators should:

- Deliver an efficient, effective and timely service and minimise business compliance costs, where possible, by reducing unnecessary bureaucracy and delays.
- Help those they regulate to design simple and cost-effective compliance solutions to improve confidence and day to day management control.
- Work collaboratively with other regulators and those they regulate to anticipate, generally, and to understand and address compliance challenges associated with strategic innovations or growth plans.

Working together does secure benefits for the natural heritage

Helping to get the right developments in the right place is key to delivering sustainable economic growth. To achieve this, SNH engages openly with prospective developers to help identify, from the outset, natural heritage issues that need to be considered. Time invested at that stage, building trust and understanding, is the key to achieving successful collaboration and positive outcomes for the project.

SNH's engagement with Scottish renewable energy company GreenPower over its proposal for a wind farm at Carraig Gheal in Argyll is a good example of such open and constructive dialogue. The collaborative solutions-based approach has helped the development to go forward whilst minimising impacts on the local environment.

After discussing their proposals with SNH and others (including Forestry Commission and Argyll & Bute Council) long before the project was formally submitted as a planning application, GreenPower was able to design the size and layout of the wind farm to take account of a wide range of factors. These included consideration of visual appearance and potential impacts on wildlife and vegetation. One key concern raised by SNH was the presence of a pair of golden eagles near the site. Extensive vantage point surveys and bird monitoring gave both GreenPower and SNH the confidence that the final design layout of the turbines would not adversely affect or displace the eagles from their key hunting grounds and would minimise the likelihood of eagles colliding with turbines. During construction, the developer's Environmental Clerk of Works liaised closely with SNH to manage the timing of vehicle movements along a section of the access track in order to further minimise the possibility of disturbance.

Another key social and economic benefit delivered through the positive dialogue was the construction of a new strategic timber haul route. Although not considered at the outset, the engagement led to this track being used to bring the turbines on to the site and in the long term, will ensure that timber lorries are taken off the single track roads in the area. The result is a wind farm where impacts have been considered/mitigated and balanced against the broad benefits of renewable energy generation.

4. Regulators should consider the impact of their regulatory approach on those they regulate and any other relevant stakeholders. This should include stakeholder consultation on major changes to operational policy to ensure that the impact of the changes is properly explored with those affected. Equally, regulatory staff, in pursuing their core regulatory remit should take an enabling approach, be alive to other interests, including e.g. relevant community and business interests, and new opportunities presented by innovative products and services. Generally this not a new concept. Regulators routinely use their professional knowledge and expertise to make difficult and complex decisions. Regulators should also have appropriate governance and/or procedures in place to consider the relative merits of situations which are less clear cut e.g. where a regulatory decision has the potential to impact significantly on the viability or sustainable growth of a business. Formal impact

assessments for new or changing processes and policies are not mandatory across all regulators, but should be recognised as good practice, particularly when they feature dialogue with all relevant stakeholders and businesses. That is the approach taken within the Scottish Government in terms of the completion of Business and Regulatory Impact Assessments[2].

Risk and evidence

5. Regulators should consider risk at every stage of their policy planning and decision making processes to help ensure that action is targeted where it is most needed. In support of this, regulators should also take an evidence-based approach, taking informed decisions on where and how to focus effort. This should include measuring the effectiveness of interventions in achieving measurable outcomes. The emphasis where possible should be on preventing problems from occurring in the first place or from escalating significantly.

6. Regulators should:

- Publish clear risk assessment methodologies and risk ratings and review these regularly.
- Evaluate the effectiveness of their chosen approaches.

Sewage Treatment Works

SEPA rationalised its requirements for flow monitoring of Scotland's 600 sewage treatment works to take a more risk-based and streamlined approach. Benefits to the customer, who in most circumstances is Scottish Water, included:

- Simpler, clearer requirements;
- Licence conditions that are proportionate and consistent;
- Removal of the requirement for overly onerous flow monitoring equipment saving c.£2.5m planned investment;
- Removal of the requirement for data returns and form filling for approximately 500 lower risk sewage treatment works.

Also, customers who operate more than one sewage works only have to submit one annual report centrally to SEPA covering all works. For Scottish Water, this reduced the number of annual reports from 101 to one.

7. Enforcement Policies, Frameworks and Protocols can support transparency, accountability, proportionality and consistent enforcement, explaining to regulators and business the rationale and approach to be taken.

Examples include:
West Lothian Council Environmental Health and Trading Standards Enforcement Policy; West Dunbartonshire Council's Single Enforcement Policy for Trading

[2] http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/partial-assessments

Standards, Environmental Health and Licensing; and Scottish Fire and Rescue Service Fire Safety Enforcement Framework

Understanding those they regulate and tailoring approaches accordingly.

8. Regulators should demonstrate that they understand the sectors they regulate, including any compliance issues particular to that sector and tailor their approach and choice of interventions accordingly. This includes recognising that, for example, small businesses can face different challenges from larger businesses in accessing expertise and understanding and hence complying with regulations. Regulators should also differentiate between sectors which are generally compliant or actively working to improve performance and those who are deliberately choosing not to comply. This can help to inform the choice of interventions e.g. whether or not take early formal enforcement action. An overview of SEPA's approach to this is set out below as a good example:



Working with business

In response to a request from the local taxi trade, in 2013 West Dunbartonshire Council changed its procedures for testing taxi vehicles. Previously, taxi vehicles were inspected and tested to a set frequency based entirely on the age of the vehicle. However taxi operators now benefit from a reduced test frequency in the future if no major failures are found when the vehicle is presented for its next inspection. This rewards operators who maintain their vehicles properly, gives operators an incentive to improve the condition of vehicles, and reduces the number of re-tests required thereby reducing the Council's administrative burden.

9. Regulators should also share information about compliance and risk, following the principle of collect once, use often when requesting information from businesses and others.

10. Data Protection legislation rightly constrains the way organisations use information, but in the limited circumstance where the law allows, regulators with common interests or activities should agree secure mechanisms for sharing

information. This benefits both the regulated and the regulators, helping target resources and activities and minimise duplication. The UK Information Commissioner, the regulator of the Data Protection Act 1998, has issued his "*Data sharing code of practice"*[3]. This is a statutory code which provides a framework for organisations to make good decisions about data sharing.

Pseudo "Home Authority Agreement" with Visit Scotland

The "Home Authority" principle helps effective communication between local authorities and businesses through a single point of contact providing a consistent and coordinated approach.

Highland Council's Trading Standards entered into agreement with Visit Scotland to act as a central source of advice for their members and provide a conduit for complaints and enquiries to be routed to the relevant authority.

Clear and effective communication

11. Regulators should communicate effectively with those they regulate, to build relationships and mutual understanding which helps avoid or mitigate disputes. In particular, regulators should:

- Have a range of appropriate mechanisms in place to communicate with businesses, regulated bodies and citizens, and for businesses and citizens to contact the regulator.
- Clearly explain the purpose of any interactions they have with those they regulate and what business and regulated bodies can expect from the regulator.
- Have mechanisms in place to allow businesses, regulated bodies, representative bodies and citizens to offer views and contribute to the development of policies and service standards.
- Commit to early dialogue with those they regulate to resolve issues or address non-compliance of a more strategic nature; have effective feedback mechanisms to support continuous improvement and better regulation[4].
- Offer an independent, impartial and transparent appeals procedure (statutory or other). It is recognised that some decisions or regulators may have their own statutory appeals procedures. Regulators should clearly advertise ways to challenge or appeal against a regulatory decision. This should include the option to discuss and receive advice about decisions taken.
- Offer a complaints process and publish information in accordance with their statutory requirements under the *model Complaints Handing Procedure for Scottish Government, Scottish Parliament and Associated Public Authorities in Scotland* and associated documents[5].
- Regularly gather feedback from those they regulate and publish the results.

[3] www.ico.org.uk

[4] This should not apply to non-compliance where the regulator can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.

[5] www.valuingcomplaints.org.uk

Satisfaction surveys

West Dunbartonshire Council surveys a random selection of business that have been subject to a consumer complaint to find out if the Council's investigation treated the business fairly and whether the officer genuinely listened to what the business had to say. In 2013/14, over 80% of businesses that responded said they were very satisfied with the way the Council handled the complaint. None expressed any dissatisfaction with the way they were treated.

Stakeholder engagement

During 2013, the Scottish Charity Regulator held eight Meet the Charity Regulator events providing an opportunity for face to face engagement with the regulator, and partner regulators the Equality and Human Right Commission and the Institute of Fundraising.

The Scottish Housing Regulator has set up a National Panel of Tenants and Service Users to get feedback directly from people who use the housing services of councils, housing associations, co-operatives and other social landlords. With almost 400 members, it enables the Scottish Housing Regulator to hear views on service quality and priorities, gauge awareness of policy developments and give feedback on how the Regulator communicates.

12. In addition regulators should publish clear and transparent information on their fees and charges, explaining clearly the basis on which fees are calculated, both in principle and where relevant, to individual regulated bodies. Regulators should ensure that this information is easily accessible.

13. Regulators should also publish details of their approach to checks on compliance, including inspections. The aim should be to clearly set out what businesses and regulated bodies should be able to expect as well as what businesses should do to optimise the process and indeed the outcomes. These details should, as appropriate, cover any circumstances in which inspections or visits will or will not be announced in advance, and an assurance that feedback, ideally written, will be provided together with an explanation of appeal procedures. They should also set out what can be expected during an inspection or visit, including showing identification, explaining the purpose of the visit and how it will be carried out. They should also provide the business with information about their role in terms of, for example, any necessary access to information, individuals or premises, as appropriate.

A preventative approach – tackling problems early

An operation was carried out in 2009/10 to tackle illegal waste tyre disposal in Lanarkshire and Glasgow. This saw SEPA engaging with over 400 tyre disposal businesses to reinforce key messages around the proper management of waste tyres. Keep Scotland Beautiful recorded a significant reduction in the illegal dumping of waste tyres after the operation – a 71% decrease in tyre dumping between 2009 and 2010. There was a marked increase in the number of new customers coming through the gates of legitimate disposal businesses. One of the legitimate businesses said "*since October 09 to date there has been noticeable increased activity in enquiries and quotes. We find most of the new enquiries have been directly motivated by a SEPA enquiry or visit so from our perspective please keep up the good work*."

14. Regulators should have mechanisms to work collaboratively to assist businesses and other bodies regulated by more than one regulator. In the context of local government, which has a range of regulatory responsibilities that are both devolved and reserved, we recommend a more consistent, structured and integrated approach be adopted in relation to all the requirements set out above.

Implementation and Review

15. On publication of this Strategic Code, regulators should:

- Review existing core operational policies e.g. enforcement policy, service charters etc. and ensure alignment with the Code.
- Take account of the Code in developing new operational policies and build the Code into relevant staff training/awareness-raising.
- Ensure that the Code and core operational policies are available to regulated operators/persons so they know what to expect.
- Pursue continuous improvement under the Code and share and seek to understand good practice with other regulators.
- Use existing Governance arrangements to publish an annual statement on compliance with the Code.

16. It is expected that regulators will have in place mechanisms for gaining stakeholder feedback on service delivery. Feedback on alignment with the Code should be integrated into this.

17. The Scottish Government is committed to making sure this Strategic Code is implemented fully and is effective. A broad review of the effectiveness and progress with embedding the Code will be commissioned 18 months after it comes into effect. The Review Group will be drawn from regulators, business and other bodies that helped develop the Code. The review process will be inclusive and where possible involve a series of multi-lateral consultation events.