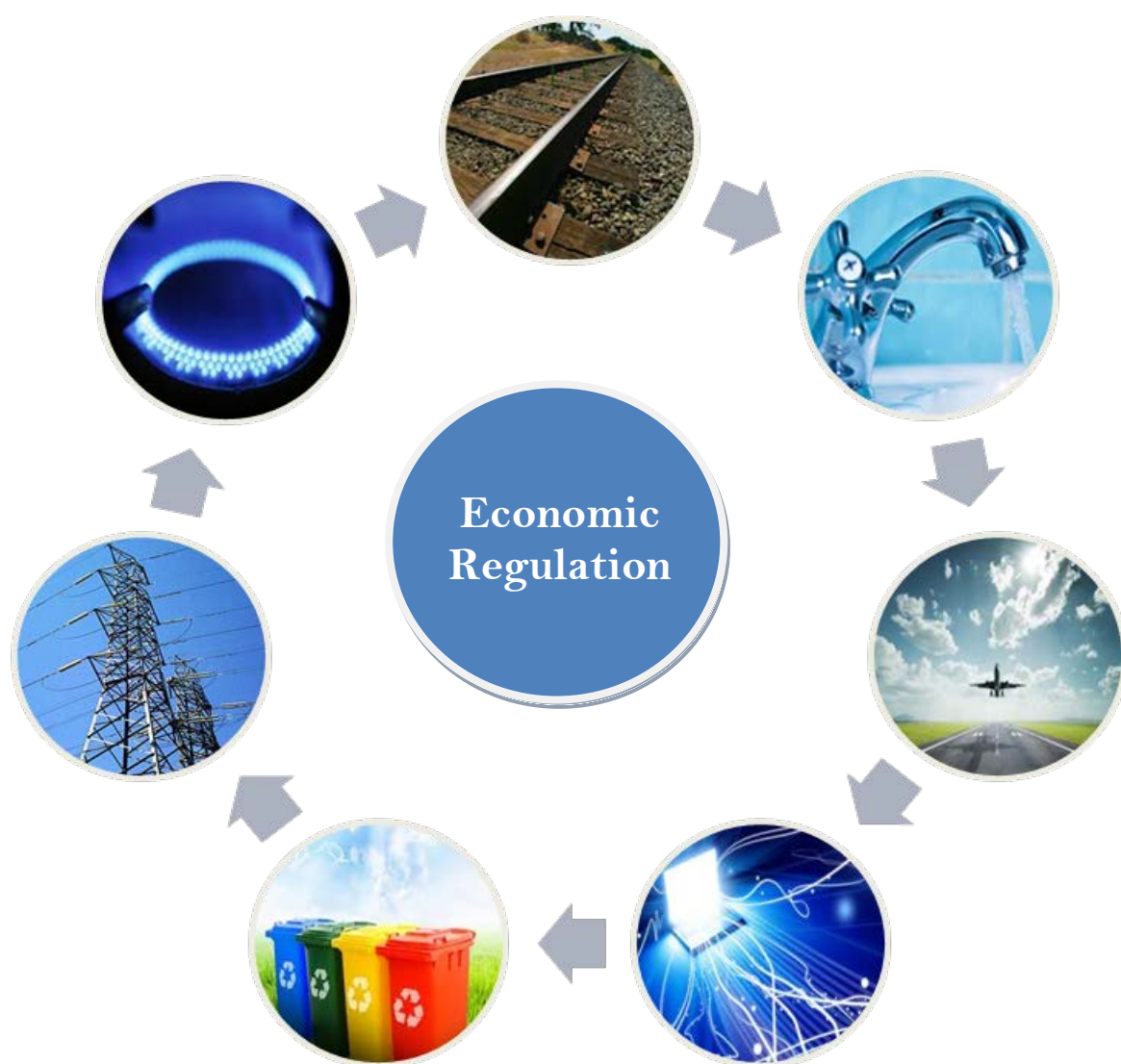


Regulating for a Better Future

A Government Policy Statement on Sectoral Economic Regulation



July 2013

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Taoiseach's Foreword

Since taking office it has been the priority of my Government to do everything it can to help get Ireland working again and to support jobs and growth. Good quality regulation is central to economic recovery and job creation.

Improving the effectiveness of economic regulation is a priority for the Government and is essential for Ireland to be internationally competitive and an attractive place to do business.

That is why we set out in our Programme for Government a number of key reforms in the regulatory arena. Our first job was to assign lead responsibilities in respect of various regulatory functions to ensure delivery.



Forfás undertook an extensive review to identify changes in the operation of sectoral regulators that would enhance cost competitiveness and provide an evidence base and input into the effectiveness of economic regulation more generally, as envisaged in the Programme for Government. The review was complemented by a wider public consultation exercise recently carried out by my Department. The central theme to emerge from this process is the need for the design of a strategic regulatory framework within which Government can set its national policy objectives; relevant sectoral Departments can prioritise and balance both national and sectoral level priorities that the sectoral regulators can then implement

That is exactly what we have done in the form of this new Policy Statement on Sectoral Economic Regulation '**Regulating for a Better Future**' which aims to provide a clearer policy and strategic context in which sectoral Departments can establish and articulate, in legislation, policy direction.

In summary, the Statement requires that apart from any other legislative changes arising from policy or mandate reviews, Sectoral Ministers will introduce legislative changes to:

- *Provide for the setting of a hierarchy of policy objectives with national level objectives prioritised;*
- *Provide for policy/mandate reviews on a statutory basis at least every seven years;*
- *Provide for a performance and accountability framework for regulators and regulated sectors;*

The potential for driving efficiencies and reducing costs through a shared services approach is also addressed in the Statement. Modifying existing regulatory functions to take on new regulatory roles will also be the model used by Government when required.

A key factor in determining the pace of implementation will be the legislative programme and the completion of national policy and regulatory mandate reviews. Sectoral Ministers and their Departments will have lead responsibility for the implementation of the strategic framework in their sector.

I am determined that all elements of the framework for economic regulation across each of the sectors will be implemented at the earliest opportunity. Sectoral Ministers will be asked set out by the end of October 2013 their schedule for the detailed implementation of the framework. These outputs will be reflected and monitored, as appropriate in the new Action Plan on Jobs for 2014, Department's annual output statements and annual reports for 2014 and beyond.

A handwritten signature in black ink that reads 'Enda Kenny'.

Enda Kenny, T.D.
Taoiseach

Part 1 – Government Policy Statement

1. Importance of Economic Regulation

A regulatory environment which fosters growth and investment is essential to economic recovery and job creation in Ireland. Regulation is the mechanism by which the consumer and their interests can be safeguarded to ensure fair, reliable and sustainable services are delivered. Economic regulation is also an important enabler of necessary infrastructure investment.

Regulated sectors face the challenge of efficient delivery of infrastructure investment which is vital to the long term interests of the consumers who ultimately pay the costs, and balancing this requirement against other important and competing national policy objectives.

2. Programme for Government Commitments

The Programme for Government (PfG)¹ contains a number of commitments in relation to the regulatory arena and in particular economic regulation viz:

- *Reducing the cost of Government imposed red-tape on business;*
- *Requiring Departments to publish Regulatory Impact Assessments before Government decisions are taken;*
- *Establishing independent regulation of the legal professions to improve access and competition; and*

¹

http://www.taoiseach.ie/eng/Publications/Publications_Archive/Publications_2011/Programme_for_Government_2011.pdf

- *Rationalising regulators to strengthen consumer regulation and promote the consumer interest.*

2.1 Delivering on our Commitments

In early 2012, Government initiated the first steps in developing a strategic approach to regulation by confirming the assignment of lead responsibilities² in respect of various functions in the wider regulatory arena, including economic regulation. Our approach is designed to provide a sharper sectoral focus and greater capacity to deliver on the commitments contained in the Programme for Government.

The overall strategic coordination and work on regulation in general continues to be overseen and progressed at Cabinet Committee level.

Other key economic regulation related commitments either completed or currently underway include:

- *The merging of the Commission for Taxi Regulation into the National Transport Authority;*
- *Restructuring of the Irish Aviation Authority and the Commission for Aviation Regulation;*
- *The drafting of legislation for the merger of the Competition Authority and the National Consumer Agency;*
- *Broadcasting Authority of Ireland and the Commission for Communications Regulation merger review;*

² Assignment of responsibilities is set out at Appendix 2

- *Assignment of an independent economic regulatory function for water services to the Commission for Energy Regulation with the drafting of the necessary legislation underway;*
 - *The completion of the Forfás review on sectoral regulation;*
 - *Work underway on the development of an integrated licensing application system to be piloted for the retail sector in Q4 2013;*
 - *The development of a National Aviation Policy and conduct of a regulatory mandate review; and*
 - *The development of a new Energy Policy framework.*
- *Government Statement on Economic Regulation (2009)⁴; and*
 - *The Economist Intelligence Unit's Review of the Regulatory Environment in Ireland (2009)⁵.*

The stakeholder consultations conducted under the Forfás review were complemented by a wider public consultation exercise carried out by the Department of the Taoiseach in April and May 2013. A combination of the evidence base from Forfás review, wider literature reviews, and the public consultation processes have informed the drafting of the Government Policy Statement on Economic Regulation.

2.2 Analysis and Consultations

In June 2012 Forfás undertook a review to identify changes in the operation of sectoral regulators that would enhance cost competitiveness and provide an evidence base and input into work on the effectiveness of economic regulation more generally, as envisaged in the Programme for Government. As well as engaging in two in-depth rounds of consultation with regulators, relevant Government departments, regulated firms (both incumbents and other market players), representative organisations, academics, and the European Commission, Forfás also undertook an extensive analysis and literature review of sectoral and economic regulation in Ireland and internationally, including:

- *The OECD's review of Better Regulation in Europe (2010)³;*

The Forfás review and wider consultations on the proposed Government Policy Statement highlight a number of issues directly related to overall effectiveness of economic regulation that can have a direct bearing on costs and service delivery. These include:

- *The effectiveness of Government in articulating broader priorities under which economic regulators carry out their statutory functions;*
- *The need for a sharper focus on the consumer interest and competition;*
- *The need for periodic reviews of sectoral regulators;*
- *The need to be able to assess whether sectoral regulators are delivering on their mandates and objectives;*
- *The adequacy of enforcement powers; and*

³http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2011/OECD_ReportRegulatory_Reform_in_Ireland_.pdf

⁴http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2011/Government_Statement_on_Economic_Regulation.pdf

⁵http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2011/EIU_Review_of_Regulatory_Environment_in_Ireland.pdf

- *Multiplicity of different appeals processes.*

The central theme to emerge from the review and wider consultations is the need for the design of a strategic regulatory framework within which Government can set its national policy objective(s), relevant sectoral Departments can prioritise and balance both national and sectoral level priorities in a hierarchy of policy objectives that the sectoral regulator would then implement. In balancing objectives sectoral Departments must take full account of the EU based legislative framework within which Regulators must operate and of wider policy priorities in the regulated sectors.

3. Strategic Framework for Economic Regulation

Improving the effectiveness of economic regulation is a priority for this Government. The Government recognises that effective regulation is essential for Ireland to be internationally competitive and an attractive place to do business.

The Strategic Framework for Economic Regulation set out in this statement aims to address the challenge faced by regulated sectors in balancing their diverse and often conflicting objectives to ensure quality services for end users and the efficient delivery of infrastructure investment.

The Framework aims to provide a clearer policy and strategic context in which sectoral Departments can establish and articulate, in legislation, policy direction while leaving economic regulators to carry out their duties independently.

3.1 Financial Regulation

Financial Services are not included under the framework outlined in this statement. Financial regulation has been positively strengthened through a range of reforms introduced to underpin a more effective and efficient financial regulatory regime.

The Central Bank Reform Act was a crucial first step in the introduction of a new fully-integrated single structure within the Central Bank. It provided a statutory basis for a comprehensive domestic regulatory framework for financial services. It set out new powers for the Central Bank to ensure the fitness and probity of nominees to key positions within financial service providers.

The Central Bank (Supervision and Enforcement) Act 2013 strengthens the ability of the Central Bank to impose and supervise compliance with regulatory requirements. It provides the Central Bank with greater access to information and analysis which will underpin the credible enforcement of Irish financial services legislation in line with international best practice.

In addition to the legislative changes under the Act, the Central Bank has introduced a range of reforms to the way it operates. These include: a significant increase in staffing and training levels, enhanced internal systems and the adoption of an assertive risk-based regulatory approach.

These reforms in banking regulation and supervision are in line with the major programme of international change and reform since the financial crisis.

3.2 Principles Underpinning Economic Regulation

The principles underpinning economic regulation complement the six principles⁶ already defined by the 2004 White Paper “Regulating Better”. These core principles continue to be relevant to how wider regulatory obligations are designed and delivered.

The purpose of the principles for economic regulation is to clearly set out the factors that are key to the design of a strategic framework for economic regulation.

The immediate scope of these principles is the economic regulation of infrastructure and provision of services overseen by sectors already subject to economic regulation (energy, telecommunications, waste and transport) or due to be regulated in the near future (water and rail).

In applying the principles of Economic Regulation the extent to which continued economic regulation is justified is also a fundamental question which should be considered.

In the current fast paced economy, notwithstanding binding European requirements, the need for continued regulation in certain sectors may need to be monitored or the structures which govern the sector may need to be adapted.

Within the overall regulatory framework, the role of Policy Departments is to set policy goals, decide on regulatory structures and provide general guidance on the required policy outcomes, while the role of Economic Regulators is to independently decide how to implement the decisions to effectively achieve these outcomes. The independence of regulators provides regulatory certainty, facilitates stability and helps promote investor confidence. These outcomes in turn should contribute to a better overall outcome for consumers.

The principles set out below aim to provide a sharper focus for economic regulation.

⁶ The six principles of Better Regulation as defined by the White Paper in 2004 are set out in Appendix 1.

The Principles for Economic Regulation

Effectiveness

- The economic regulatory framework should form a key part of the Government's broader policy approach.
- The economic regulatory framework should be flexible to be able to anticipate and respond to market conditions as they evolve.
- Effective mechanisms should be in place to rigorously assess whether objectives are being achieved and if these mechanisms are sufficient to protect consumer interests and promote healthy competition and investment.

Predictability

- The economic regulatory framework should provide a stable environment that facilitates long term investment decisions along with efficient delivery of services.

Accountability

- Ensure that economic regulation takes place within a statutory and accountable framework set by Government and the Oireachtas.
- Who is responsible for what must clearly be articulated.

Transparency

- Ensure regulatory decisions are made on an impartial basis and are open to scrutiny through effective consultation mechanisms.

3.3 Prioritising and balancing national and sectoral level objectives

The strategic framework for economic regulation centres on creating a hierarchy of objectives for sectoral regulators to implement. This framework allows Government to set its national policy objectives and allows relevant sectoral Departments to prioritise and balance both national and sectoral level priorities in a hierarchy of objectives that the sectoral regulator must then implement.

This hierarchy of policy/regulatory objectives will be explicitly set out in sectoral legislation to provide greater

clarity on how to weight the different policy priorities.

In certain cases the flexibility for Sectoral Departments to strike this balance is restricted by European Union regulation which imposes mandatory requirements on the design of regulatory frameworks. These mandatory regulations should be reflected in the hierarchy of policy objectives.

Government views the promotion of the consumer interest and national competitiveness as key national objectives which should be prioritised by sectoral Departments when setting out

their sectoral objectives in primary legislation. By consumer interest we mean providing end users (business and residential) with sustainable competitively priced access to quality services while also providing a sustainable level of long term investment. Sectoral Ministers will be responsible for further defining the consumer interest as appropriate to their regulated sector.

A hierarchy of objectives will allow Ministers to articulate national and sectoral outcomes while allowing regulators to achieve these outcomes in an independent manner. Should a situation arise where further clarity is required on the rationale behind the hierarchy of objectives, a provision will be made in sectoral legislation for Ministers to issue policy direction and guidance as appropriate to the economic regulators within the context of overriding national objectives.

3.4 Mandate Reviews

To ensure effective and appropriate regulatory mandates, Sectoral Departments will be responsible for initiating policy/mandate reviews at least every seven years. This will be a statutory requirement and will be incorporated into sectoral legislation. Where practical mandate reviews will be coordinated within the cycle of major reviews of national policy or in line with EU level policy reviews.

These reviews will be informed by the underlying principles of economic regulation and will be designed to identify real and anticipated changes in market conditions which may have implications for regulatory mandates. Reviews will be

designed to consider the continued existence of particular regulators, or changes required to regulatory objectives, priorities or structures.

The timeline for sectoral policy reviews is set out in the table at appendix 3.

3.5 Driving Efficiencies and Reducing Costs

Rationalisation of a number of regulatory bodies has already taken place or is well underway. The Forfás review confirms that further rationalisation of existing regulators would have a limited impact on reducing costs and increasing efficiencies. However, modifying existing regulatory roles to take on new regulatory functions has recently occurred – the Government decision to establish an independent economic regulatory function for water services within the Commission for Energy Regulation. This is the model which will be used by Government when establishing new independent regulatory functions in the various sectors.

The Forfás review also highlights the potential that exists for an efficiency dividend from a shared services approach among sectoral regulators in relation to front (legal/economic) and back office (IT/Personnel/administration) functions. Given this and the emphasis that the Programme for Government places on shared services as a method to achieve long term savings Sectoral Departments will be required to develop a shared services approach to regulation. This will involve:

- *The identification of those regulators that will share front and back office administrative functions.*

- *Sectoral Departments facilitating the development of memoranda of understanding between the regulatory organisations to move to fully share their front and back office administrative functions and putting in place transition teams to manage the process.*
- *As part of the shared services approach incorporating combined Employment Control Framework (ECF) reductions in staff and target reductions in administrative costs where feasible.*

3.6 Effectiveness

Effective economic regulation requires the appropriate technical and economic expertise in the sectoral regulators and their parent policy Departments to produce the best outcomes for end users. This starts at regulatory policy formation stage at EU level in the different sectors through to execution at economic regulator level. Departments must have the capacity to effectively determine that the necessary outcomes are being achieved by the regulator in the most cost effective way. This will involve building up the necessary expertise through formal training and support for the attainment of relevant qualifications as well as the identification of opportunities for officials to gain experience through lateral transfer arrangements between regulators and Sectoral Departments.

The development of a shared services framework within each sector, as outlined at section 3.5, should help ensure that regulators continue to have the necessary pool of expertise available to them allowing for the sharing of technical and

economic expertise required to produce the best outcomes for end users.

3.7 Performance and Accountability

One of the five central themes of the Government's Public Service Reform Plan is a strong focus on implementation and delivery. Regulators need to be held accountable in fulfilling their objectives. Economic regulators will be required to produce strategy statements at least once every three years, together with annual output statements and annual reports. These documents will be laid before Houses of the Oireachtas.

Relevant sectoral Departments will agree appropriate performance indicators benchmarked against key competitor countries in consultation with the regulators on an annual basis and these will be reported on in the annual report.

The performance indicators will relate to the fulfilment of sectoral legislative mandates and not to individual regulatory decisions or determinations.

Sectoral Departments will ensure that the above requirements are clearly set out in the relevant sectoral legislation.

3.8 Appeals Mechanisms

The issue of appeals has been examined in detail in a number of reports, including in the Forfás review. Each sector differs according to the types of appeals permitted and the manner in which these appeals are heard. There are regulatory areas where there is no scope for appeal apart from judicial review. The development of different appeals

mechanisms has also been informed by the existence of a substantial body of EU law. Little consensus has emerged from the Forfás review and the wider consultations on the type of reform required in this area.

However, feedback from the Forfás review and the wider consultations suggests that the Commercial /High Court process works very well and that appellants against a number of regulator decisions in reality undergo a single stage appeals process by taking appeals directly to the High Court or Commercial Court. A number of sectoral Departments already use this procedure as the formal appeals mechanism. Others are encouraged to use this approach where appropriate and provided it does not contravene existing EU law.

3.9 Compliance and Enforcement

The Forfás review and the wider consultations suggest that civil fines and other enforcement tools would be beneficial for economic regulators. Most other European countries have a system of administrative sanctions for enforcement of economic regulation, but efforts to have similar regimes in Ireland are severely restricted by the Constitutional provisions around the administration of justice. The issue is becoming increasingly problematic when it comes to transposing EU law in Ireland. Invariably directives and regulations on economic regulation require effective, proportionate and dissuasive sanctions to enforce the law.

A joint submission on the above issue has already been made to the Law Reform

Commission by the Commission for Communications Regulation, The Competition Authority, The Commission for Energy Regulation and the Irish Medicines Board.

The Government will request that the Law Reform Commission examine and report on this important area of work and possible options going forward, as part of its Fourth Programme of Law Reform.

3.10 Regulatory Forum

The strategic framework for economic regulation makes it clear that sectoral Ministers have the primary role in relation to the oversight of the economic regulators under their remit and the development of the hierarchy of policy objectives that regulators must implement independently.

However, as expressed during the consultation process prior to this Statement, the current Regulatory Forum is a useful resource and can continue to provide a mechanism for high level engagement between the Government and regulators to enhance the regulatory environment. The Forum will involve meetings as and when appropriate between the regulators and the Taoiseach, Tánaiste and Ministers for Jobs, Enterprise and Innovation, Finance, Public Expenditure and Reform, and other relevant sectoral Ministers.

3.11 Monitoring and Review

Sectoral Ministers and their Departments will have lead responsibility for the implementation of the components of the strategic framework for economic regulation relating to their sector.

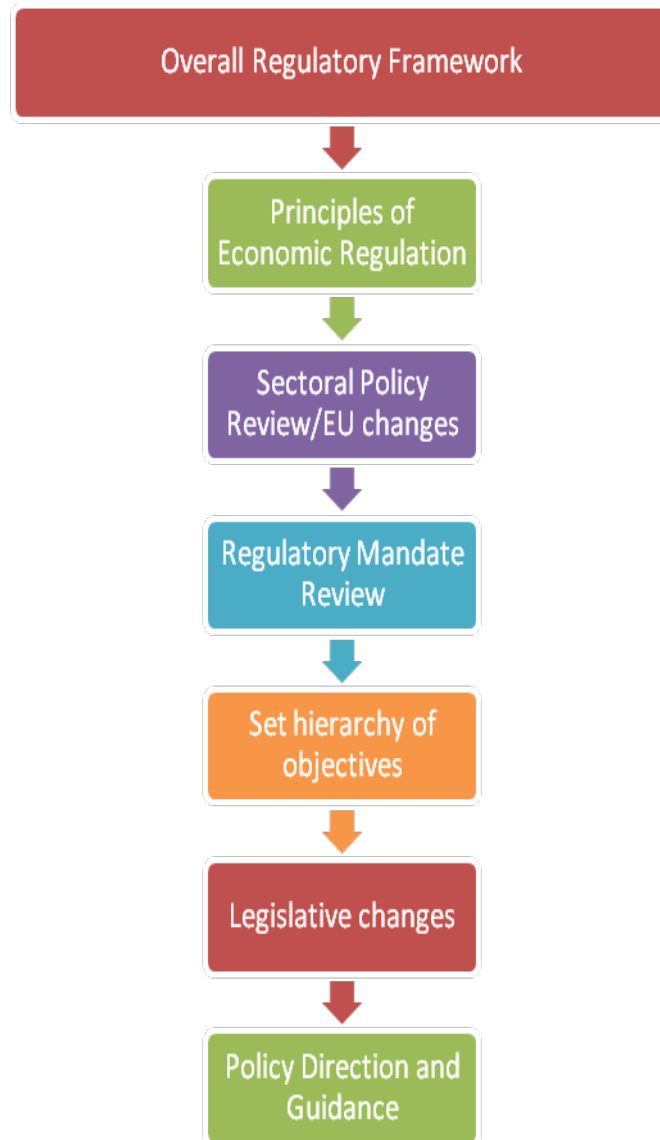
The Action Plan for Jobs for 2013 already contains a number of commitments in relation to the development and implementation of the framework across a number of sectors, including energy and civil aviation.

The Action Plan for Jobs for 2014 will contain more explicit commitments to implement the necessary actions at

sectoral level in order to implement the strategic framework for economic regulation.

The overall strategic coordination and reporting of progress on the implementation of the strategic framework for economic regulation will be overseen by Cabinet Committee on Economic Infrastructure.

Part 2 – Implementation Framework at sectoral level



1. Implementation Framework at Sectoral Level

A key factor in determining the pace of the transition process from the existing regulatory arrangements will be the legislative programme and the completion of national policy and regulatory mandate reviews. This is not a “one size fits all” approach and effective implementation will result from sector by sector application. National policy and regulatory mandate review processes are likely to develop at different rates in different sectors. A number of Government Departments are already developing key elements of a strategic approach to regulation and delivering on regulatory commitments. The implementation framework allows reviews currently underway or due to be completed shortly to conclude, before introducing legislative changes required for the hierarchy of objectives.

2. Amendments to Sectoral Primary Legislation

Apart from any other legislative changes arising from the policy or mandates reviews, Sectoral Departments will also be required to introduce the following legislative changes to:

- (i) Provide for the setting of a hierarchy of policy objectives by the relevant Sectoral Minister with national level objectives prioritised in addition to any sectoral level policy objectives, as appropriate and in the context of the wider EU framework.
- (ii) Provide for regulatory mandate reviews by the relevant sectoral Minister on a statutory basis at least every seven years.

(iii) Provide for a performance and accountability framework for regulators that has the following key elements:

- Production of strategy statements at least once every three years;
- Production of annual output statements and annual reports;
- Provision for statutory policy direction and guidance where appropriate; and
- Laying of these documents before the Houses of the Oireachtas.

3. Driving Efficiencies and Reducing Costs

New Regulatory Functions

Sectoral Departments will modify or combine existing regulatory roles to take on board new economic regulatory functions where required and will present proposals to Government for approval on this basis.

Shared Services

Sectoral Departments will move immediately to develop a shared services approach between economic regulators within their sectors:

- *The first step will involve the identification by end-2013 of those regulators that will share front and back office administrative functions.*
- *The second step will involve sectoral Departments facilitating the development and final agreement by mid-2014 of Memoranda of Understanding between the regulatory organisations to fully share their front and back office administrative functions and putting*

in place transition teams to manage the process.

4. Effectiveness

Sectoral Departments will identify opportunities and put in place arrangements for officials to gain experience on an ongoing basis through lateral transfer arrangements between regulators and the parent Department.

Sectoral Departments will include regulatory training in their annual training and development plans, including attainment of relevant qualifications such as a Professional Diploma in Regulatory Governance.

5. Implementation

Sectoral Ministers will be formally invited by the Taoiseach to set out by the autumn their schedule for the detailed implementation of the strategic framework for economic regulation. These outputs will be reflected as appropriate in the new Action Plan for Jobs in 2014 and Sectoral Department annual output statements for 2014 and beyond.

Principles of Better Regulation (White Paper 2004)

Necessity

Is the regulation necessary? Can we reduce red tape in this area? Are the rules and structures that govern this area still valid?

Effectiveness

Is the regulation properly targeted? Is it going to be properly complied with and enforced?

Proportionality

Are we satisfied that the advantages outweigh the disadvantages of the regulation? Is there a smarter way of achieving the same goal?

Transparency

Have we consulted with stakeholders prior to regulating? Is the regulation in this area clear and accessible to all? Is there good back-up explanatory material?

Accountability

Is it clear under the regulation precisely who is responsible to whom and for what? Is there an effective appeals process?

Consistency

Will the regulation give rise to anomalies and inconsistencies given the other regulations that are already in place in this area? Are we applying best practice developed in one area when regulating other areas?

Assignment of lead responsibilities for regulatory agenda

In April 2012 Government confirmed the assignment of lead responsibility in respect of various functions in the wider regulatory arena, including economic regulation across a number of relevant departments. The Government's approach is designed to provide for a sharper sectoral focus and greater capacity to deliver on the commitments contained in the Programme for Government. The assignment is as follows:

1. Reducing red tape/ administrative burden	Dept. of Jobs, Enterprise & Innovation
2. Competition issues	Dept. of Jobs, Enterprise & Innovation
3. Regulatory Impact Assessment	Dept. of Public Expenditure & Reform
4. Effectiveness of regulators	Dept. of the Taoiseach
5. Representing Ireland at EU/OECD/International fora	Dept. of Jobs, Enterprise & Innovation
6. Transparency/quality of legislation	Dept. of the Taoiseach (Cabinet Secretariat), Attorney General's Office

Timeline for Implementation of Key Regulatory Actions at Sectoral Level

	2013	2014	2015
Energy	White Paper on Energy to include a regulatory mandate review	White Paper on Energy to include a regulatory mandate review	Introduce legislation for mandate reviews and hierarchy of objectives
Communications			Communications Policy/Regulatory Mandate Review Introduce legislation for mandate reviews and hierarchy of objectives
Aviation		Aviation Policy Development/Regulatory Mandate Review Introduce legislation for mandate reviews and hierarchy of objectives	
Public Transport - Rail		Establish an Independent Economic Regulator for Rail Introduce legislation for mandate reviews and hierarchy of objectives	
Public Transport - Bus			Introduce legislation for mandate reviews and hierarchy of objectives
SPSVs			Introduce legislation for mandate reviews and hierarchy of objectives
Water	Establishment of Irish Water Introduce legislation for mandate reviews and hierarchy of objectives		
Waste		Introduce legislation for mandate reviews and hierarchy of objectives	
All Departments and Regulators			
Shared Services		Develop Memoranda of Understanding for sharing of services	Implementation of Memoranda for sharing of services
Regulatory Expertise		Develop a structured and carefully managed programme for secondments and lateral mobility	Implementation of programme for secondments and lateral mobility Inclusion of regulatory training in training and development plans