Good Practice Regulatory Change: Defining the purpose of a change programme

The wider literature on designing regulatory change

Planning

The literature highlights the importance of having a clear design structure for a change programme. Ostroff (2006) describes the value of creating an effective road map and plan at the outset of the programme. He suggests a “change effort road map” which has three key phases: identify performance objectives, set priorities for the programme, and roll-out of the programme. He emphasises how it is important to identify performance objectives as it helps to create a consensus and define the mission of the programme. The second stage involves identifying possible ideas for the change programme and then deciding which to adopt and in what sequence to approach them. This process should also include thoughts on what is trying to be achieved through the change. For example, is it to focus on areas where potential improvement might be most marked, or on areas that can get the fastest results? Ostroff (2006) argues that if these ideas are followed, it should help the programme to be rolled-out smoothly.

Similarly, the NAO (2021) suggests that having “a clear articulation of the primary purpose of regulation” is important so that it can be understood by staff, and stakeholders. Senior management should ensure that ideas have broad support among staff. The NAO also discusses the importance of identifying if any of the suggested objectives may have tensions or conflicts with each other and taking necessary action at the start of the programme to avoid issues later on. The OECD (2021) recommends widely consulting on regulations during the early stages to identify alternative policy options and ensure rules are likely to work in practice.

Defining accountability

Beyond planning, the literature emphasises the need to define accountability during regulatory change, particularly when moving towards a more risk-based system which recognises there may be acceptable risks (May 2007, Rothstein et al., 2016, Almond and Ebester, 2018). Defining what is acceptable, and therefore does not need to be regulated as heavily, can be challenging and attitudes to this can vary across different industries (Beaussier et al., 2016). Beaussier et al. (2016) have argued that it is harder to implement risk-based regulation in industries such as food and healthcare, where the consequences of failing to maintain compliance could result in severe or wide-reaching outcomes for a population. This compares to other sectors where the impacts of regulation change are mostly confined to the employer-employee relationship and may not be as high interest to the public (Beaussier et al., 2016).

Accountability for incidents among risk-based regulators is challenging to identify when multiple regulators operate in similar fields. Changes to regulation in these sectors can make it harder to define the boundaries between organisations’ responsibilities (Baldwin and Black, 2016). Similarly, this can be further complicated where organisations operate internationally such as in the financial sector. This requires engagement with different bodies to agree the scope and responsibilities involved in any new regulation. The OECD (2021) has described increasing international regulatory co-operation in response to technological innovations. This includes the creation of the Agile Nations, an intergovernmental alliance aiming to foster co-operation across borders towards governance and regulatory practices that can unlock the potential of innovation (BEIS, 2021).

Learning from others

The literature highlights the potential value of policy transfer to regulatory change as a way of applying principles that have worked elsewhere to the design of a new programme (Benson and Jordan, 2011). Dolowitz and Marsh (1996) define policy transfer as the:

"Process by which knowledge of policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the development of similar features in another."

However, there is some scepticism about whether lessons learnt approaches and observing other regulatory decisions help with implementing a change programme. This is in part due to the different stakeholders and contexts regulators operate in, as well as assessments of risk and public attitudes towards this (Lodge and James, 2003; Demeritt et al., 2015).

Findings from the interviews

Identifying why a change programme is needed

Regulators described both incremental change programmes and those developed in response to a specific change in the environment or strategic direction of an organisation. Some of the reasons for introducing a change programme included:

- New senior leadership changing the strategic direction of their organisation.
- Political announcements or priorities, as well as changes in the underlying legal architecture resulting from legislative change.
- Responding to technological change, for example where regulators and regulated organisations have adopted new software systems or require new specialist skills such as data analytics to modernise their approach.
- Responding to Covid-19. Several regulators were not able to conduct inspections face-to-face during the pandemic requiring a change to virtual processes.
- In response to an independent review. One regulatory change programme was introduced following a formal independent review which gave insights into the key issues facing the organisation, and potential solutions.

Given the diversity in the drivers of change programmes, regulators often described an initial stage of identifying the key problem they were trying to solve. This was seen as important for ensuring the team has a clear understanding of the wider context across a sector and could develop a programme that matches what they are trying to achieve. Frequently this process involved both internal and external engagement, including large-scale consultations to gather views, and to understand what risks might emerge as a result of any proposed changes.

"You can call it horizon scanning: what are the biggest risks that we're here to manage? This was informed by what we found out through a large consultation exercise. That's really helping us understand two things: what are the sorts of things we ought to worry about and whether stakeholders think we're any good at it or not."

A number of organisations conducted more formal reviews during the early stages of design to get a wide understanding of the challenges or used insights from external reviews conducted by organisations such as the CMA to inform their approach. Using an evidence base in this way was important for giving greater clarity to internal stakeholders on the purpose of the programme, and highlighting possible areas of risk – both in terms of the programme design and the risks related to not delivering changes. This could include staffing issues, unfeasible time frames for project delivery, and the negative impacts of changes (or inaction) on external stakeholders.

Similarly, regulators described the process of developing new organisational strategies to inform the future direction of regulation or their organisation. This process often involved:

- Commissioning research including research with consumers to understand people's experiences of current regulation and where areas of detriment occur.
- Establishing working groups with stakeholders including industry bodies to help define a problem, map out key risks and inform programme design. This can also help to understand the readiness for change both within an organisation or across a regulated sector.
- The use of independent reviews to understand possible areas of change within the regulatory organisation.
- Using horizon scanning or planning frameworks such as RAID analysis (Haughey, 2021) which can be used to identify key risks, assumptions, issues, and dependencies.
- Developing a blueprint of a service (GDS, 2021) to build a complete picture of how a service is currently delivered, the teams and organisations involved and how changes could affect different parts of the system.
- Preparing a programme business case using the Five Case Model set out by HM Treasury (2018).

One regulator described how they developed a capability map and assessment to understand where they have powers they can use as a regulator and how often they have used these in the past. This included formal regulatory powers like enforcement action or changing legislation, as well as less formal engagement mechanisms including communication activities or playing a facilitator or convenor role. This helped to inform their design and identify which levers they could use as part of the programme.

Setting aims and articulating what success looks like

Once regulators had a clear problem definition, they emphasised the importance of articulating the purpose and objectives of a change programme. Having a clear definition of what a programme is looking to achieve was seen as essential for providing a roadmap for the change and helping to build buy-in to a process.

Being able to articulate this in an easy-to-understand way and repeating the objectives throughout the life of a programme was seen as key to reassuring stakeholders and supporting project teams to understand their role. Objectives needed to be focused on an overall vision, rather than being too specific, meaning that a programme is unable to flex and respond to wider changes.

“We spent a lot of time and effort making sure the 'why' part is clear. In other words, why are you doing this? Why is it important to do it now? And what are you hoping to achieve from it? So, I think that's as important for your own staff as it is for the industry.”

Setting objectives was seen as informed by, but distinct from, identifying the problem. For example, one regulator explained that while their early conversations gave them a good sense of what the main issues that the programme was looking to resolve were, they explained how in the future they would look to be clearer on what success looked like.

“It took us a while to pin down what good looked like. We had a good sense of what the problem was, but not necessarily what we wanted to achieve in these markets, as it was quite complex. Having that from the outset is really important.”

CQC case study: Understanding the aims of the change programme

The Care Quality Commission (CQC) introduced a five-year transformational change programme as part of their aim to modernise their processes and regulatory activity. This included a desire to be more insight-driven and efficient as a regulator that is largely funded through fees from providers.

The transformation programme is a portfolio of work, with four interrelated programmes each with a Senior Responsible Owner (SRO). CQC brought in new senior level appointments who had the remit of creating the change programme and delivering this at a strategic level. The team partnered with Deloitte, a consulting firm, to help identify the vision and opportunities for change, working together to build a target operating model for the regulator. They took time to iterate the design, engaging the Executive team throughout this process.

"It took a very long time to land the target operating model, but I was really clear that unless we had the senior leadership on the same page, we would really struggle to do this because it was fundamental change. So, a lot of time was spent initially just getting people in the right space, getting them onboard."

The operating model was aligned to CQC's strategic ambitions and helped to map the capabilities required at various levels. Given the timings of the programme, the team ran the first phase of designing the operating model at the same time as finalising the strategy. This created a few challenges as the team had to realign the portfolio of change projects to ensure they aligned fully with the new strategic intent.

"In an ideal world, you'd have your strategy then you'd build your portfolio and then you would do your delivery so you could really clearly align them."

By taking a whole system look at the sector, the team redesigned both the policy and the implementation of regulation, with the new operating model underpinning their overall approach. Reflecting the importance of this, the team invested heavily in a centralised Project Management Office (PMO). This ensured that through effective reporting there was good visibility of the emerging risks and issues, such as those related to resourcing. It also gave sight of the critical paths and interdependencies of each project, and the portfolio overall, ensuring they were well understood. This has provided a system for monitoring the changes and receiving early warning if something were to go wrong, as well as allowing the team to report monthly on progress to the Board.

By defining the scope clearly from the beginning, and structuring the programme of work under specific areas, they have been able to iterate their approach within a framework agreed by the key stakeholders. This has helped them to set a direction and provide a pathway they can return to at key points throughout the programme.

"I think you need to be really clear about why you are doing this and how the changes are going to help deliver on the organisation's purpose or strategic ambition. In doing so you need to be very clear about what is in scope, your timelines and your priorities for implementation. You also need to be realistic about what you can deliver, and take an iterative approach, starting small to test and learn, then once you are clear it works you can scale delivery quickly. But to do this well you need to be very clear about where you are going, so you can flex your plans and approaches as you learn, whilst ensuring that the outcomes are constantly pegged back to your ambition. Taking time to get the ambition or scope clear and all key stakeholders on board with it is critical. If you don't have this, then you will struggle to have a coherent approach that people can believe in."