

Regulatory Policy Institute Research Group

Re-thinking regulation

Purpose of the document

To seek support for, and encourage participation in, the future research programme of the Regulatory Policy Institute in the UK, in co-operation with its sister network, the Regulatory Policy Institute of Australia and New Zealand (RPI ANZ).

Background

During the period of disruption to the events side of the RPI's activities caused by the SARS-CoV-2 epidemic and the public policy responses to it, attention at the Institute has been directed toward upgrading our capacities in research, project work and commissioned assessments, papers and opinions. This is in anticipation of post-Covid governmental requirements to reform and upgrade the functionality of the institutional processes by which regulation is developed, implemented and enforced in what can be expected to be a new policy era.

The policy problems raised are particularly acute in the UK, which in the past dozen years has faced not only the globally-shared challenges of the 2008 financial crunch and its fallout (now further exacerbated by the financial impacts of SARS-CoV-2 and the policy responses it triggered) and of responding to risks posed by climate change, but is also having to address the very considerable regulatory implications of Brexit.

Changes in the business environment that create challenges of this scale and scope call for fundamental re-assessments of regulatory philosophies and strategies, not a business as usual approach, and that call is amplified by a prevailing trend in public policy making over the last decade or so. This has been toward an increasingly intrusive transfer of regulatory decision making to the central institutions of what might be called the 'executive state'. The intensity of detailed, executive-state control over economic activity has peaked during the SARS-CoV-2 epidemic, but, even if it recedes in the near future, the underlying trend may very well continue at a lesser pace in the absence of new policy strategies that would seek its abatement and reversal.

The issues are important because the integrity and effectiveness of a nation's commercial rule-books, its economic institutions, are major determinants of its economic performance. So at least said Adam Smith, and to his theoretical account of why central planning of complex economic systems is doomed to fail we can now add multiple examples (drawn from 250 years of subsequent economic history) of poor commercial/market governance leading to weak economic performance and sometimes catastrophic failures.

Past experiences

From its foundation in 1991 as an offshoot of a programme of research at Hertford College, Oxford University, the RPI has engaged in a range of studies and examinations of regulatory issues. The outputs from this work have appeared in reports on commissioned or supported projects, papers and articles, submissions to consultation processes, opinions, assessments of major decisions, taken or soon to be taken, and reports published by government departments and agencies.

The work has covered a broad range of issues and policy areas across many countries, consistent with the notion that ‘regulatory policy’ is engaged across a whole swathe of economic activity and is entailed whenever systems of rules/regulations governing commercial conduct are being designed, developed, implemented, adjusted/reformed, or enforced.

The policy areas covered have included privatization, market liberalization and development, deregulation, regulation of monopolies and networks, competition law and policy, environmental regulation and climate change, technology/innovation policies, governance and regulation in healthcare, welfare and social insurance reform, supervision of banking and financial services, regulation (including self-regulation) in legal services, and appellate arrangements in relation to administrative decisions of all types.

In different time periods major elements of the research activities have tended to come together, in unplanned ways, in thematic ‘workstreams’. Early on there was a cluster of privatization/liberalisation/regulation issues, building on the work of scholars at Oxford University in the 1980s (a workstream that has existed ever since) and including the multiple challenges of transforming the post-Soviet systems of Central and Eastern Europe into market economies. Later came early-stage liberalization in Japan, early-stage developments in environmental regulation and climate change policy, welfare and social security reform in Britain, modernisation of competition policy and law in the UK and EU, the establishment of wholly new regulatory arrangements in areas like legal services and bank payment systems, the entanglement of climate change and energy policies, and Brexit.

Such consolidations are a natural consequence of the focus of the RPI on the significance for economic performance of ‘systems of rules’ (technically ‘institutions’) governing commercial conduct. The emphasis on ‘institutional economics’ is a distinctive one and, because the institutional structures and processes developed in and for different policy contexts tend to share a number of common characteristics, there is considerable scope for transfer of know-how from one regulatory context to another.

Re-thinking regulation

In developing the ‘re-thinking regulation’ programme of work we have sought to anticipate some of the potential consolidations/workstreams that might, in the natural course of events, evolve anyway. We strongly believe that this is important because, while centralization of decision-making powers is relatively easy – the executive state can just gobble up area upon area of responsibilities – movement in the opposite direction can be much more difficult, requiring careful and sustained programmes of work.

Decentralization of duties/responsibilities and powers in an uncoordinated, piece-by-piece manner can not be expected to be effective, at least within the timescales that now appear appropriate for the major issues. Decentralized systems of rule-making need to be coherent in the sense that different sub-sets of rules/regulations should, for system wide policy effectiveness, be mutually supportive of (i.e. complementary to) one another. If not – and this is something that is frequently observed in practice – one aspect of regulatory reform that appears to be an appropriately adjusted response to problems in its own, specific context can nevertheless impede the effectiveness of other sub-sets of commercial/market rules, even to the point of degrading the performance of the rule-system (the institutional system) as a whole.

Critically, there is no ‘invisible hand’ that will come to the rescue in addressing this policy co-ordination problem by organising and sustaining an effective division of responsibilities and powers within a regulatory system. Indeed, to use a Covid-19 analogy, regulatory policy responses to new problems sometimes bear a passing resemblance to a cytokine storm in the human immune system.

We have, however, seen this type of challenge before: it exists in every large organization where the visible hand of an executive determines the division of labour. What can be learned from organizational experiences is that the best-performing organizations tend to secure competitive advantage from the co-ordination of their own systems of rules by means of good strategies. Good strategies co-ordinate the various activities of the organization, and the Re-thinking regulation initiative is aimed at developing this insight in relation to the conduct of regulatory policy.

In seeking to establish the programme there is no intention to abandon or foreclose the Institute’s more responsive, bespoke work on specific and more immediate issues as and when they arise in the conduct of regulation. The RPI therefore remains open to commissions for this traditional work: bespoke reports, short papers, longer papers, opinion pieces, think-pieces, submissions to consultation processes, assessments of governmental documents, etc. Each context potentially adds to understandings that are of more general value.

Further information

The RPI is a registered charity whose object is “*The promotion of the study for the public benefit of all aspects of regulatory policy*”.

The Institute itself takes no views on relevant issues. Reports, papers, opinions are attributed to the relevant authors. Written documents are copy edited in the cause of clarity of expression, not to change substantive content in any way.

All funding sources are acknowledged on published documents.

Project teams are assembled by the Chair of the Research Group from the members of the RPI’s networks, who come together for specific pieces of work. The Research Group itself comprises people who are registered as Research Associates (RAs) or Senior Research Associates (SRAs) and either one of the SRAs, the Chair of the Research Group or some other member of the RPI Council/Board leads each project.

Participation in workstreams is welcomed from anyone who has expertise and/or imagination to add, subject only to their commitment to the project's own aims and purposes.

To kick start the programme, a number of potential workstreams have been identified and preliminary outlines of their scope and content have, to date, been produced in four of the cases. These are listed below, together with names and contact details of the lead member responsible, from whom further details can be obtained and to whom expressions of interest can be addressed.

For general enquiries about the RPI, including its research activities, please contact our Administrative Director: catherine.yarrow@rpieurope.org.

The workstreams

Re-thinking climate change strategy: developing a comprehensive, alternative (counterfactual) policy strategy to better meet the climate change challenge. (Gerard Fox and Prof George Yarrow, joint with RPI ANZ: contact george.yarrow@rpieurope.org)

What are the optimal characteristics of publicly sponsored institutions for promoting the Energy Transition through innovation? (Gerard Fox and Prof George Yarrow, joint with RPI ANZ: contact gerard@foxesfizz.com)

Decision-making for major infrastructure projects in the UK: re-examining the roles of independent economic regulators and of central government (Dr Chris Decker: contact decker.christopher@gmail.com)

The operational use in regulation of concepts of fairness (Prof George Yarrow, joint with RPI ANZ: contact george.yarrow@rpieurope.org).