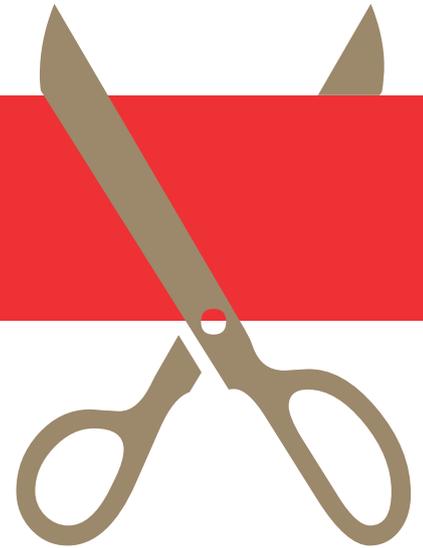




Office of Deregulation – Guidance Note



REGULATION AUDIT – CROSS PORTFOLIO REGULATION

As at July 2014

For the purposes of the portfolio regulation audit, there are many instances where the legislative head of power is held by one department (referred to as the ‘policy portfolio’) and implementation and administration of regulation largely occurs in another department (referred to as the ‘administrative portfolio or agency’). This is not an issue where regulation and the requirements imposed can be easily and directly delineated between the policy portfolio and administrative portfolio or agency respectively. Instead, this guidance applies to instances where it is difficult to split regulation between portfolios.

If both the policy portfolio and administrative portfolio (or agency) include the regulation as part of their respective portfolio audit, the two portfolio results taken together could overestimate the count and cost of regulation. Alternatively, if each portfolio relies on the other portfolio to list the regulation and capture the regulatory burden, aggregate results will underestimate the count and cost of regulation felt by regulated entities.

Suggested Approach

In Stage One of the regulation audit, policy portfolios will capture the primary legislation and subordinate instruments that they are responsible for in the Administrative Arrangements Orders.

When regulations are predominantly administered by an administrative portfolio or agency these will be considered by the policy portfolio to be **zero-cost frameworks**. This means that the relevant primary legislation and subordinate instruments will be included in the count of regulation (as per Stage One), but will not be assessed against the six criteria and placed into a low, medium or high burden category. Instead, they will be placed into a ‘nil cost’ burden category by the policy portfolio. Regulations in this category will not be sampled from or costed by the policy portfolio as part of Stage Two of the audit.

The administrative portfolio (or agency) will assess its stock of quasi-regulation (or frameworks in instances where quasi-regulations are grouped) against the six criteria so as to apportion quasi-regulations (or frameworks) to either the low, medium or high burden categories. This assessment will represent the full impact of the regulation as felt by the regulated entities, in accordance with the Regulatory Burden Measurement framework. The administrative portfolio (or agency) will sample from the burden categories and cost frameworks in accordance with the Stage Two guidance note.

This means that the administrative portfolio (or agency) will capture the full impact of cross-portfolio regulation, even where it only administers part of the regulatory impact. This may overstate the role of the administrative portfolio (or agency) in the creation of regulatory burden (by overstating its share of regulation and may in turn understate the policy portfolio role in the imposition of regulatory burden). It is important to note that the manner in which regulations are apportioned in the audit does not necessarily represent the recommended approach for how the cost or savings of future regulatory measures should be apportioned. As previously, future measures will need to be negotiated between portfolios on a case-by-case basis.

We expect that this approach will produce the most accurate and defensible estimate of regulatory impact possible without creating an unnecessarily difficult process for portfolios to implement. It is important this approach is consistently applied across government.

Example in practice

The Administrative Arrangements Order lists the *Social Security Act 1991* (the Act) as a matter dealt with by the Department of Social Services (DSS). In this case DSS is considered the *policy portfolio*.

The regulatory requirements arising from the Act are imposed primarily through quasi-regulation, which are administered by the Department of Human Services (DHS). In this case DHS is considered the *administrative agency*. This provides a useful example of how cross-portfolio regulation would be addressed according to the suggested approach.

Department of Social Services – Stage One and Two

DSS will include the Act and all subordinate instruments that fall beneath the Act as zero-cost frameworks, placing them in the ‘nil cost’ burden category. The Acts and relevant subordinate instruments will be reported in the Stage One count of regulation through DSS, but will not be sampled from or costed in Stage Two.

Department of Human Services – Stage One and Two

DHS will not record or report the Act or the relevant subordinate instruments in the regulation audit. Instead DHS is required to assess all the quasi-regulation it administers. As the regulatory burden created by the Act is imposed through DHS-administered quasi-regulation the regulatory impost of the Act will still be captured. Though the Act and subordinate instruments are not directly captured by DHS, the regulatory burden is captured through its assessment of quasi-regulations.

DHS will assess its stock of quasi-regulations against the six criteria in Stage One and apportion these to the high, medium and low burden categories. The number of quasi-regulations below the Act is reported by DHS at part of Stage One. The quasi-regulations (or frameworks composed of quasi-regulations) are sampled from and costed by DHS in Stage Two, as per the Regulation Audit Stage Two Guidance Note.

This guidance note was developed by the Office of Deregulation in consultation with the Department of Social Services and the Department of Human Services.