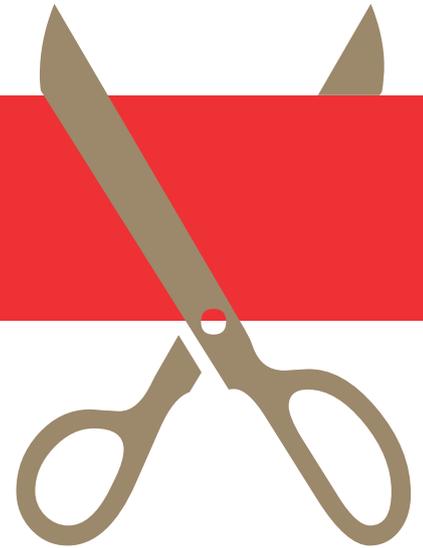




Office of Deregulation – Guidance Note



REGULATION AUDIT – STOCKTAKE, SELF ASSESSMENT AND COSTING

As at 14 February 2014

The Government has agreed that each portfolio will conduct an audit of the portfolio's existing legislation and regulation and the regulatory cost imposed on business, individuals and the community.

Portfolios must undertake a stocktake to catalogue the number and type of regulations and then measure the regulatory burden in dollar terms.

The audit will serve several purposes. It will provide Ministers with a baseline against which to communicate progress in reducing red tape. Longer term, it will assist portfolios to identify which regulation imposes the highest burden, or has the highest potential for reform. Finally, it will provide an evidence base for apportioning future portfolio red tape reduction targets.

The Government has agreed that the audit will be undertaken in two stages:

Stage One: Develop a catalogue of existing regulation ranked by burden.

1. Catalogue all regulation to determine their number and type.
2. Categorise these regulations by compliance burden, into high, medium and low categories and test results with Ministerial Advisory Councils (MACs).

You will need to provide PM&C with advice on the number and types of regulations within your portfolio. We will need advice from you on how many Acts, regulations and quasi-regulations your portfolio administers. This should be provided using the summary template attached. We will also need your advice on which regulatory frameworks are in the high, medium and low categories – based on the criteria agreed by the Government. This stage of the audit must be completed and advice provided to PM&C by no later than 30 June 2014.

Stage Two: Determine the total cost of regulation administered.

3. Select and cost a sample of the identified regulations from each of the high, medium and low burden categories.
4. Test results with Ministerial Advisory Councils (MACs) or other equivalent consultative bodies.

Some portfolios may prefer to pursue some or all of the steps in Stage Two in parallel with Stage One for some or all of their regulatory activities. This may be more convenient in some cases, but in any case a full report on Stage One must be produced by 30 June 2014.

These costings and the consultations with your portfolio's MAC must be completed and the results provided to PM&C by December 2014. A template and further guidance will also be provided.

1. Catalogue all regulation to determine their number.

Portfolios must undertake a stocktake to catalogue the number and type of regulations administered by the portfolio.

Regulation is any rule endorsed by Government where there is an expectation of compliance, including legislation, regulations and quasi-regulations (such as standards and codes of practice, and any other aspect of regulator behaviour which can influence or compel specific behaviour by business and the community). Administrative processes that impose a compliance burden should also be identified in the audit. The burden imposed by procurements and grants processes should also be identified.

Deregulation units are encouraged to catalogue items that impose regulation at the framework level, with the relevant legislation, regulations and quasi-regulations considered as a package. This method will provide both an exhaustive list and a practical basis for assessing the compliance burden. Legislative registers can assist in identifying relevant legislation and are available from the Office of Parliamentary Counsel.

The stocktake should be as at 3 October 2013, to reflect the final amended Administrative Arrangements Order as this reflects the final allocation of portfolio responsibilities.

2. Rank and categorise the stock of regulations by compliance burden and test cataloguing and categorisation results with MACs.

The Government has agreed that once this initial work has been completed, portfolios should group their regulation into high/medium and low categories. The Government has agreed a set of high-level criteria to be applied for this purpose:

- › the type of requirements the regulation imposes;
- › the complexity of the regulation;
- › the reach of the regulation;
- › the frequency of interactions with the regulation;
- › currency of review; and
- › scope for reform.

The criteria set out a baseline level of analysis that should be undertaken by deregulation units.

An optional tool to assist deregulation units to catalogue and then group regulation, using the above criteria, is attached. The tool uses weighted questions that assess items against the criteria. Deregulation units can use alternative assessment methods if they wish, provided they use the criteria identified above, and the ranking of regulation into high, medium or low burden categories is defensible and broadly supported by MACs or other equivalent consultative bodies.

Portfolios will need to determine and be able to explain to stakeholders the thresholds that will separate the three burden categories. The Office of Deregulation can provide guidance and assistance on the appropriate use of thresholds to portfolios that have chosen to use the optional tool.

The Government has agreed that the audit results will be tested with MACs to ensure that they align with business and other stakeholders' perceptions. The mechanism that portfolios use to bring the audit results forward to their MACs and the appropriate timeframes should be decided at the portfolio level.

At the conclusion of this stage, each portfolio will have an exhaustive list of all regulation which they administer, categorised into high, medium and low burden categories. This will allow the Office of Deregulation to determine the whole-of-government count by June 2014, and to start developing a whole of government picture of priority areas for reform. A reporting template has been included for use by agencies to report back to the Office of Deregulation.

3. Select and cost a sample of items that impose regulation from each burden category.

Portfolios are required to quantify the cost of existing regulation within their portfolio on businesses, community organisations and individuals. Fully costing all of the existing stock of regulation would be resource intensive. Instead, Government has agreed that portfolios only cost a sample of regulation across the portfolio representing each of the three burden categories. An estimate of the overall cost of regulation within the portfolio should then be generalised from these costings.

Further guidance on sampling methods will be provided by the Office of Deregulation later in 2014. The costing process must be compliant with the Commonwealth Regulatory Burden Measurement framework and portfolios need to be consistent in terms of assumptions and methodology across their costing work for the audit, for Regulation Impact Statements and for regulatory offsets.

4. Test costing results with MACs and determine the total portfolio regulatory costs.

Portfolios should test the overall results of the audit, including the costings, with MACs or other equivalent consultative bodies to ensure that the results are credible to external stakeholders. The mechanism that portfolios use to bring this forward to their MACs and the appropriate timeframes should be decided at the portfolio level. This should be completed by the end of 2014.

Reporting: Publically reporting the results of the audit.

Portfolio annual regulatory reports need to be prepared by each portfolio and released publically. High level results from the audits should be included in these reports. Specific timing and requirements will be detailed in future Office of Deregulation guidance material.

Portfolios will also be required to submit their final results to the Office of Deregulation for inclusion in the Annual Deregulation Report which is due to be tabled in the Parliament in the Autumn sitting in 2015.