Good Practice Regulatory Change: Implementing in a flexible way

The wider literature on timeframes

Literature is limited on the importance of flexibility and timeframes in regulatory change programmes. Gerbec (2016) identifies the value of incorporating a testing, or piloting, scheme for parts of a programme. He says this is important as it helps to identify which parts of the specific changes work, and what impacts this will have. Similarly, Carroll (2008) argues that it is important to be able to say no to ideas during the design stage of a change programme, before an approach is fully implemented. This recognises how changes will not always work.

HM Treasury's (2018) guide to developing a programme business case distinguishes between three different programmes:

1. Making and delivering programmes: where the change being delivered is based on making and delivering new facilities, the programme will tend to be led by the specification of the outputs required. There are likely to be low levels of ambiguity about what the programme is to deliver. The scope will be reasonably well defined and adjusted according to circumstances.
2. Organisational change programmes: where the change is more focused on changing the way an organisation works, the programme will tend to be led by a vision of the desired outcomes and the benefits it will deliver. There will typically be some level of ambiguity about what the precise changes are and how they will be delivered; but there are fairly clear levers that can be employed to achieve the vision.
3. External or societal change programmes: where the change is focused on interventions and improvements in society, the programme will be driven by the desired outcome, but will typically be highly ambiguous and complex to define in terms of what it will involve. The scope may need to be adjusted as elements are clarified over time.

The guide emphasises the importance of a continual process of alignment to ensure a programme remains linked to its strategic objectives, recognising a need to respond to changes in strategies or accommodate new initiatives and policies.

Findings from the interviews

Taking a flexible approach

Interviewees emphasised the time it takes for changes to be achieved and how many factors, which influence change programmes, are outside of a regulator's control. This brings challenges for maintaining momentum as well as the risk of implementing a programme that may have been designed for a different context. Reflecting this, regulators emphasised the importance of taking a flexible approach to implementation including using agile project management approaches, building in milestones to review progress and not being afraid to change direction.

One regulator described how they build a number of options into their change programme to allow for different legislative settlements. While another described how their strategy is based around several high-level principles that are defined through an annual business plan process.

"We were mindful of that when we were doing the analysis and content development that [our strategy] needs to be specific enough to garner action without being so specific that it dates quickly. We've managed to strike the balance relatively well. Here's the three broader objectives, nine challenges that sit within that and our priorities that we set as a business year on year."

Allowing for contingency

There was a recognition that there is often an optimism bias in the design of programmes which means timeframes are not realistic. This was particularly emphasised in relation to building in sufficient time to change mindsets or influence the culture of an organisation or sector, which was seen as always taking longer than anticipated. This means there is often a risk that programmes may not deliver to the anticipated timescales, which can cause problems for all parties involved.

"If I were to do it again, I think the bit that should and would take longer is a fourth phase around embedding change. You've got a lot of people in regulators who have been working in a certain way for an awfully long time. So, probably there's a slightly longer tail to these programmes than is formally recognised."

As such, interviewees emphasised the importance of building in contingency time or agreeing to windows for changes rather than hard deadlines. This can help to provide flexibility and keep teams engaged, as missing deadlines can affect team morale.

"It was a massive change piece, but the big lesson was it took much longer to get set up than anticipated. It was supposed to be a two year project, but it took five years. It always takes much longer than planned so now I always build in that contingency time. There is always something that comes along, that rediverts resources, reprioritises things, situations change."

One interviewee recommended having an agreed period of contingency that is held for the end of a programme, and not communicating this with wider groups until the end stages of a project. They described how this meant they could continue to progress, while assessing developments and then finalising a key delivery date shortly before the planned changes were implemented.

"If you don't need to impose a hard deadline, then give yourself a window where it doesn't look like you're failing if you're not meeting the band exactly."

Creating space to pilot and test different approaches

In some cases, regulators piloted or tested approaches before rolling out a programme. This was important as it enabled regulators to see what parts of the programme worked, allowing them to change approach if something did not go as planned. This reduced the risk of a programme not being fully operational when implemented. For example, one regulator tested system changes with regulated parties in advance of implementing the full-scale programme. They set up a working group to achieve this with industry, collaborating to design the best approach.

"You want to prove that regulation is really necessary. I think the test-and-learn stuff is vital. If anybody's going to do a shift it's too easy to make assumptions around what doesn't work now versus what's needed."

Another regulator described how they had decided to run pilots for a longer period of time, but over smaller geographic areas to provide a more comprehensive picture of whether their new approach worked. They felt this helped enable them to scale up pilots more quickly as they had a

chance to fully test the approach at a smaller scale.

A recent trend involves regulators setting up 'sandboxes' to create controlled environments for businesses to test innovations (OECD, 2021). In the UK, examples include:

- The FCA's sandbox, which allows financial services to test products with consumers for a limited duration
- The Information Commissioner's Office's (ICO) sandbox which supports services using personal data in innovative and safe ways
- Ofgem's sandbox which supports the gas and electricity markets to test new approaches in a live energy environment, involving consumers, interacting with market rules or the physical system
- The Department of Transport (2021) has also consulted on the potential of launching a regulatory sandbox to support innovation in surface transport

These approaches allow regulators to collect data on new services on a smaller scale, encouraging innovation while managing the risks to consumers or interactions within the market associated with implementing a new approach. This can also support collaborative relationships with industry, providing guidance to businesses about how a new service could interact with existing regulations.

Interviewees also emphasised the value of embedding formal learning and processes for continuous improvements into project implementation. They described using logs to capture information that are reviewed with ideas for making future improvements and avoid making the same mistakes. One organisation includes a lessons learned process at the end of each programme.