

A 'Sustainable Regulatory Policy': what determines success?

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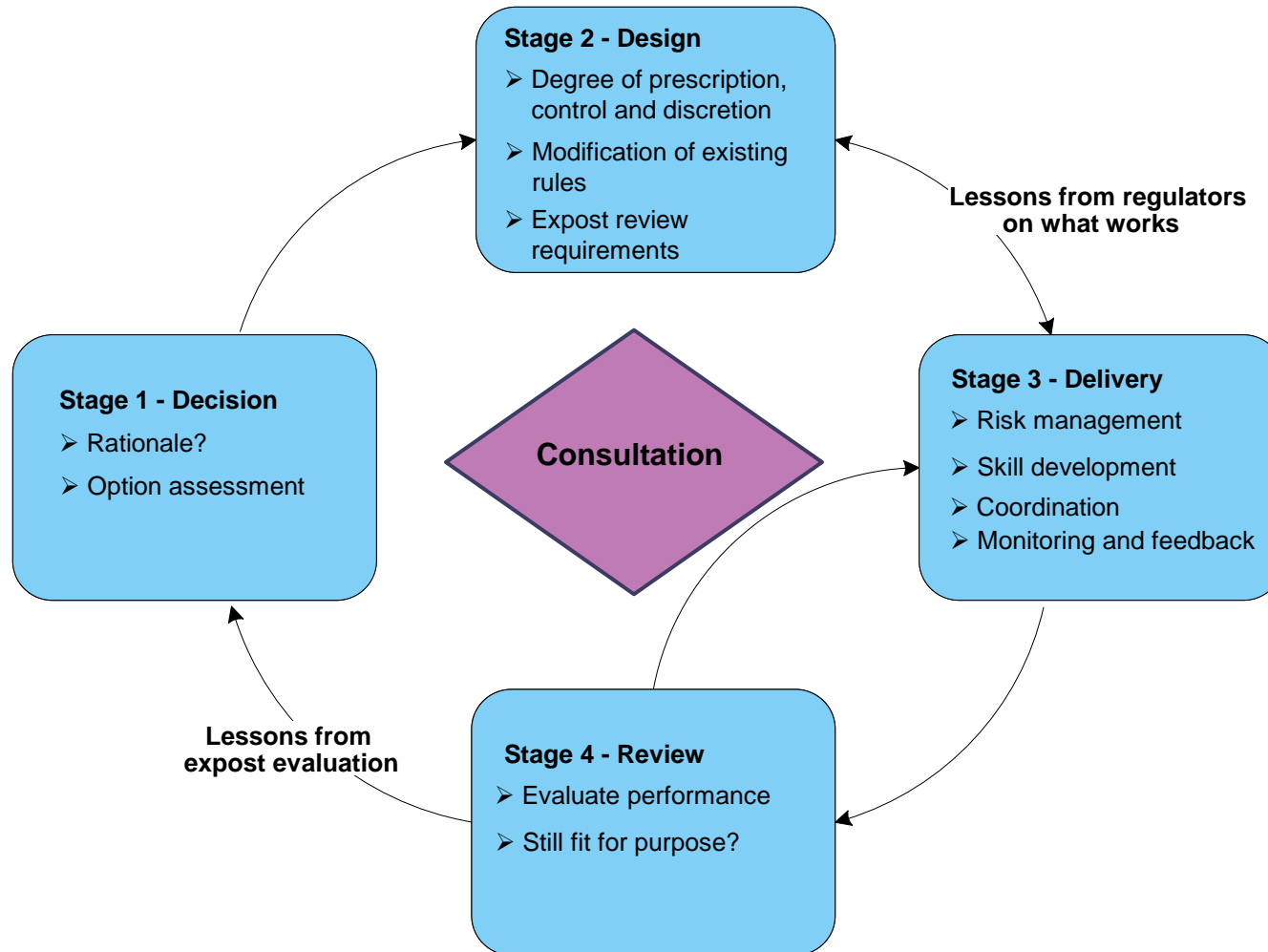
Why have a 'regulatory policy'?

- Good vs Bad regulation *matters*: to the living standards and wellbeing of citizens
- Good regulation requires good evidence-based *processes*, with the support of effective *institutions*
 - Complexity can be great
 - Political pressures are often unhelpful
- A systematic approach is needed to achieve 'balance' and consistency

OECD Council Recommendations

- *Members commit at the highest political level to an explicit whole-of-government policy for regulatory quality.*
- *Establish mechanisms to actively provide oversight of regulatory policy.*

The Regulatory Cycle



How should we judge 'success'?

- The regulatory policy is well *designed*
 - Key elements of process and governance across the 'cycle' are covered
 - The policy is clear and administrable
- It is actually *followed in practice!*
- And it can be expected to lead to better outcomes (the 'endgame')

Why is 'sustainability' an issue?

- Cycles of enthusiasm and indifference are common
- The 'natural forces' of government militate against sustained good practice
 - Pressure to 'act first, ask questions later'
 - Power of the status quo
 - 'Where there's a will, there's a way' (around)

Preconditions for *sustainable regulatory policy*

- Recognition by government that good process *matters* is essential,
 - at the political level
 - and at the bureaucratic level
- But ‘failsafe’ systems are needed too
 - to entrench good intentions in regulatory *practice*

Can we emulate Ulysses in regulatory policy?



Mechanisms to constrain the 'regulatory reflex'

- The pragmatic goal: to make it *harder* to 'act first...'
- Complementary mechanisms
 - Rules – of varying formality and prescriptiveness
 - Incentives and sanctions
 - Transparency (oversight and reporting)

Rules for rule-making: a hierarchy

- A public 'compact' (election mandate)
- Administrative codes on 'best/better practice'
- Legislation that specifies
 - procedures
 - institutions
- A constitutional provision?

Supporting institutions

- Ministerial responsibility (ideally at Cabinet level)
- Default systems
 - Post-implementation reviews
 - ‘Sunsetting’
- Oversight bodies to vet new regulation (flow) and report on existing regulation (stock)
 - focusing on both process *and* impacts

“So is there a silver bullet?” (Alas, no)

- Good regulation needs prescribed processes and institutional support.
- But it also depends on the *spirit* in which requirements are implemented.
- ‘Culture’ can be as important to behaviour as the rules themselves.
- Leadership is needed to drive improvements, and remains the key to the ‘sustainability’ of regulatory policy.

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