

## 19. Ways to achieve compliance and enforce legislation

Compliance with legislation is often achieved by imposing criminal liability for breaches. However, a range of options exist that help regulate behaviour and encourage compliance in different ways. These options include education initiatives, warnings, self-regulation, relying on or modifying existing civil remedies, pecuniary penalties, infringement offences, and criminal offences.

There is also a set of civil actions and remedies that the Government can bring against private individuals in respect of a breach of a particular Act. These include compensation orders, management bans, enforceable undertakings, injunctions and orders to repair harm done (such as to the environment), as a result of a breach of a statute.

Where possible, the least coercive option, or combination of options, that achieves the policy objective should be adopted.

This chapter, when read with Chapters 20, 21, 22, and 23, will help identify which of the most common regulatory options are available and in which circumstances they may be appropriately used.

Legal advisers and the Ministry of Justice should be consulted early in the development process if there is an intention to amend or create a new civil remedy or order, criminal offence, infringement offence or pecuniary penalty.

### Guidelines

#### 19.1. How will the legislation be enforced?

*The Government should not generally become involved in enforcing rules or otherwise regulating in an area where the rules can be reliably enforced by those who are subject to them.*

Every Act has an administering department or ministry; however, consideration must be given to what role the Government will have in enforcing the legislation and whether regulation of the issues and conduct can be left to the individuals or groups concerned.

The Government's role will vary depending on what the statute sets out to do. A statute may grant legal rights or make use of existing rights that are left to the parties to a dispute to resolve (by the courts or otherwise) (see Chapter 20). At the other end of the spectrum is the criminal law, where the full weight of the Government's powers are brought to bear on an individual through the investigation and prosecution of crime and the administration of sentences (see Chapter 21).

Often legislation will provide for registration and discipline of professions, but the Government has little or no ongoing involvement in administering the Act; that is left to registration bodies and the profession concerned.

In general, the Government should have little involvement in areas where the enforcement of legal rights and obligations can reliably be left to those who are subject to them and where the civil law already provides adequate rules and procedures.

## 19.2. What regulatory tools are the most appropriate?

*Regulatory options should be effective and efficient, workable in the circumstances that they are required to operate in, and be appropriate in light of the nature of the conduct and potential harm they are intended to address.*

All regulatory options included in legislation must be consistent with the purpose of that legislation. Some statutes are intended to prevent, deter or punish certain behaviour. Other statutes are intended to protect the public or compensate those who have suffered loss. In some cases, legislation may intend to provide a mechanism by which individuals can resolve their own disputes by granting civil rights of action or by providing for a scheme of self-regulation. In other cases the legislation will be empowering (such as authorising local government to operate, and utilities to enter and acquire rights over private land).

Any decision to include a particular regulatory option in legislation, particularly those involving the intervention of the Government (for example criminal law, infringements, pecuniary penalties, injunctions, or management bans) must be based on a robust and transparent assessment of how appropriate the option is in relation to the purpose of the legislation and the particular circumstances in which it will operate.

- **The harm caused and the nature of the conduct involved:** The option must be appropriate in light of the conduct it relates to. For example, it will generally be inappropriate to use the criminal law to address matters relating to a simple breach of a commercial contract or a failure to pay a private debt. By contrast, conduct that involves deliberate and significant physical harm to a person should generally be subject to the criminal law.
- **Effectiveness and efficiency:** Will the option have the desired effect? For example, where deterrence is the primary objective, issuing a \$1,000 infringement notice to a large corporation may have little deterrent effect. Where the objective is to compensate someone for loss or damage, the ability to seek damages for torts or breaches of contract might be more effective than processes such as obtaining compensation through the criminal process.
- **Practical considerations:** Is the option workable having regard to the circumstances in which it is intended to operate? For example, it would be impractical to require local authorities to pursue every instance of illegal parking through civil debt recovery processes.