

Business Compliance Cost Statements

Guidelines for Departments

**Wellington
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Table of Contents

1. Introduction 3

2. Outline 3

3. What are Compliance Costs and Why are they Important? 3

4. Preparing a BCCS: Process and Content 8

5. Best Practice in Reducing Compliance Costs..... 12

6. Further Information..... 15

Annex 1a: Identifying Compliance Costs: Key Steps - Example 1 16

Annex 1b: Identifying Compliance Costs: Key Steps - Example 2 17

Annex 1c: Identifying Compliance Costs: Key Steps - Example 3 18

Annex 2: Estimating Business Compliance Costs - Hypothetical Example 19

Annex 3: BCCS Template..... 21

Annex 4: Cabinet Office Circular CO (01) 2.....25

1. Introduction

The government has signalled that it will take action on the compliance costs imposed on business. From 1 April 2001 all policy proposals submitted to Cabinet which require a Regulatory Impact Statement (RIS) and which have compliance cost implications for business should include a *Business Compliance Costs Statement* (BCCS). The aim of the BCCS is to help ensure that the compliance costs of future policy measures are fully considered in the policy process and kept as low as possible.

Cabinet Office Circular CO (01) 2 (see Annex 4) sets out the obligations on departments with regard to the BCCS requirement. These guidelines will help departments in meeting this requirement. They also provide best-practice guidance on ways to keep compliance costs to the minimum necessary when developing and implementing policy. Departments may wish to further develop these guidelines in the context of their own work, using their own examples. The guidelines are available in electronic form on the Ministry of Economic Development website.

2. Outline

These guidelines are structured in three parts:

- The following section addresses key questions concerning the definition of compliance costs and why they are important, and discusses how the BCCS requirement fits in with the existing RIS requirement.
- The section "Preparing a BCCS" provides guidance on the process for developing a BCCS, and the information that should be included.
- The section on "Best Practice in Reducing Compliance Costs" gives some pointers on best practice in developing interventions that minimise the costs of compliance.

3. What are Compliance Costs and Why are they Important?

Regulation is a key factor in helping government achieve its economic, social, and environmental goals. It has been seen as necessary to deal with market failures in areas such as environmental quality, working conditions, workplace health and safety, equal opportunity, consumer protection, product standards and safeguarding competition. However, concerns are frequently voiced about the level of compliance costs imposed on business by government regulation, legislation, and form filling.

Compliance cost reduction is not a new issue. Most government departments have been seeking to reduce them, sometimes as part of major reviews of policy. There is, nonetheless, scope for a more comprehensive and co-ordinated approach across the public sector as a whole. In addition, it is important that compliance costs are kept down as new policies are brought in. The requirement for a BCCS will help ensure that the compliance cost implications of policy proposals are made explicit and properly considered in developing policy in a consistent and comprehensive way.

Objectives Of Business Compliance Cost Statement

Compliance costs arise from most government interventions. However, businesses, other organisations and private individuals should not incur more compliance costs than necessary. This requires an increased awareness of the balance between the costs of compliance and the objectives of government policy. In practical terms, this means compliance costs will be given due weight with other costs and benefits when new laws, regulation, and administrative processes are being designed. The new requirement for a BCCS will help ensure that business compliance costs are given adequate upfront consideration in developing policy.

Why Compliance Cost Reduction is Important

Growth, Competitiveness, Innovation

The compliance costs of most individual regulatory measures may be quite small, but their cumulative effect can be a real problem.

Compliance costs can:

- discourage growth and employment by diverting the energies and resources of firms from more productive uses, and deflecting their focus from their core business;
- be passed on to consumers through higher prices, with possible distributional and equity consequences;
- erode international competitiveness where overseas firms face lower compliance costs; and
- discourage compliance. This harms the working relationship between business and government, and gives those who don't comply a competitive advantage over those who do. It can also undermine the achievement of the policy objective.

Because compliance costs can act as a brake on business achievement, they can have a real impact on the government's key social and economic objectives. The benefits of reducing costs include stronger enterprises, higher growth and higher employment levels.

Compliance costs divert private resources to public purposes, where the costs of such government requirements amount in effect to a regulatory tax; with similar economic effects as explicit (fiscal) taxation. Recent overseas studies have estimated direct compliance costs at between 4%-12% of GDP (OECD, 1997). These costs tend to fall disproportionately on Small Medium Enterprises ("SMEs").

Disproportionate Burden

The amount of resource needed to meet a regulatory obligation may bear little relation to the size of the organisation. For example, the cost to small firms of determining their health and safety obligations is likely to differ little from that faced by large factories.

In this way, compliance costs place a particularly heavy burden on small to medium-sized enterprises (SMEs). They are less able to employ specialist staff to meet regulatory obligations and this can affect their ability to comply cost-effectively. Moreover, the cumulative compliance burden falling on SMEs distracts owner/managers from running and growing their businesses.

Small and medium-sized businesses are also less likely than large businesses and government agencies to be represented during the policy-making process. They lack the time and resources to understand and make submissions on proposed legislation.

More than 95% of New Zealand businesses employ fewer than 20 people, and 84% employ fewer than five. Collectively, small and medium enterprises account for 42% of all employees, and contribute 35% of all output (sales and other income) to the economy. Reducing compliance costs - both material and less tangible - will increase the productivity and effectiveness of these enterprises.

Causes of Excessive Compliance Costs

Excessive or unnecessary compliance costs can be caused by a number of different factors:

- not enough consideration being given to compliance cost issues in policy development
- an inherent bias to regulate - especially where compliance costs are difficult to identify and/or quantify
- the tendency for those designing and monitoring regulations fail to take into account the perspective of business, particularly small business
- duplication or conflicts between obligations imposed by different Acts that have not been identified during the policy making process.

Problems may arise because of the act or regulation itself. Problems could include:

- overly complex regulations, processes and forms
- failure to tailor compliance requirements to different types of enterprise, and failure to acknowledge the different impact of costs on small to medium-sized enterprises compared to large ones
- lack of regular monitoring and review of whether government agencies continue to need specific information obtained from business
- not enough explanation of the rationale or justification behind a particular obligation
- inappropriate, insufficient, or inaccessible information about the key features of new measures and what they mean for individual companies (particularly with new and/or complex legislation)
- insufficient use of technology for transferring information from businesses to government and within government.

What Are Compliance Costs?

Meeting Obligations Imposed by Regulation

There are three broad categories of regulation:

- regulations that facilitate the collection of taxation or other monies by the government (such as PAYE, ACC levies, student loan repayments);
- regulations that require businesses to record information or submit information to the government (such as statistics, company returns), or disclose information to third parties (such as company financial reporting requirements);
- regulations that impose obligations on business for the benefit of third parties (that is, regulation regarding matters such as consumer rights, environmental sustainability, health and safety, anti-discrimination, border control).

The first two bullet points are requirements that create administrative responsibilities, while the third bullet arises from requirements that place protective obligations on business, and generally requires the business to change the way it operates in some way. In many cases, a single regulation will contain elements of both administrative responsibilities and protective obligations.

A Working Definition

Compliance costs are the administrative and paperwork costs on business in meeting these government requirements. They include both the administrative burdens and all other

compliance costs, such as equipment purchases, retooling, and recurrent production cost. Compliance costs are distinct from the direct costs of any government requirement, such as the amount of tax payable.

Compliance costs of a regulatory proposal are only those incremental costs that arise from that proposal. They do not include costs from activities that would have been carried out anyway.

Some Costs Are Less Tangible

Compliance costs include the costs associated with identifying and understanding the regulatory requirement and may include costs of buying in specialist services (such as accounting, legal, computer systems, research), employing new staff to satisfy regulatory obligations, training staff and monitoring compliance.

At a less tangible level, costs can arise from increased liability because of new legal obligations, such as health and safety requirements.

Some Are Non-Quantifiable

The need to comply with government requirements can also have non-quantifiable effects such as stress and anxiety, often referred to as "psychic costs". These effects arise from uncertainty about obligations.

Businesses can also incur higher compliance costs than necessary because of poor management systems and skills, due to lack of experience, capabilities or equipment.

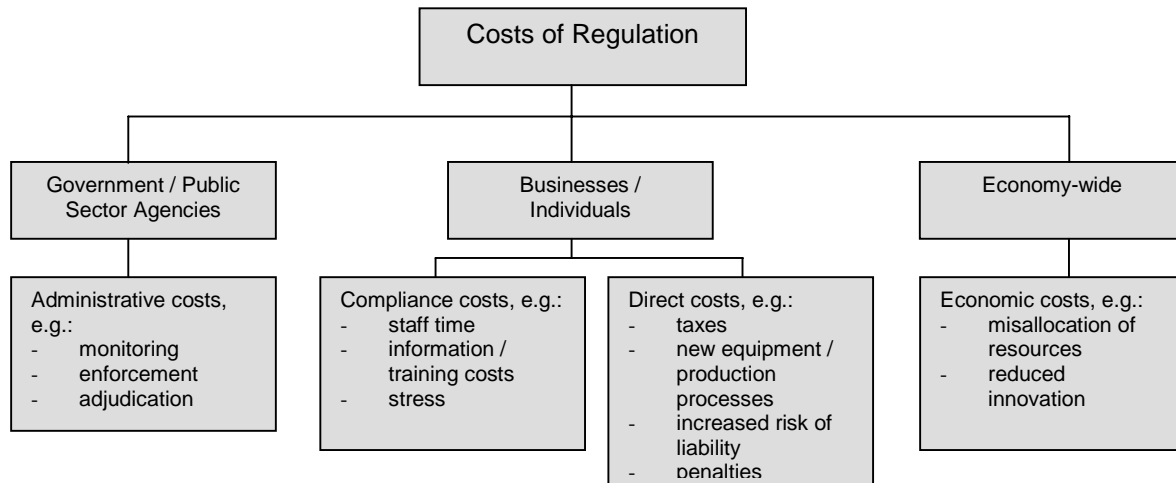
Compliance Cost versus Administrative and Economic Costs

Compliance costs can be distinguished from the administrative and the wider economic costs of regulation:

Administration costs. These are borne by public agencies (and ultimately, the taxpayer) in administering the regulation or law. They include the costs of formulating standards, monitoring and enforcing compliance, and adjudication.

Economic costs. The wider economic costs of regulation are less tangible and relate to the dynamic, rather than the static, effects on resource allocation. That is, how does regulation distort the behaviour of individuals, firms, and industry generally and goes to the notion of economic efficiency. Welfare losses arise from regulation which impairs competition, stifles innovation, artificially constrains pricing behaviour and generally restrains the economic activity of individuals and firms.

There are likely to be instances where the definition of compliance cost fails to provide a clear indication whether a particular impact is a compliance cost or not. Making a clear distinction is not critical as long as the particular impact is included as a cost element somewhere in the total analysis of the proposed policy. In general, if you are unsure whether a cost to business should be categorised as a compliance cost or a direct cost, include it in the BCCS. If an identified cost is not included in the BCCS, it should still be discussed in the RIS.



Relationship with the Regulatory Impact Statement

Not Compliance Cost Reduction at Any Cost

The overall costs of government action have to be set against the expected benefits. A fundamental requirement of sound policy analysis is that the expected benefits to society as a whole from government action will exceed the overall costs. Regulatory Impact Analysis (RIA) is used to demonstrate that there is a net-benefit associated with any proposed regulatory intervention.

$$\text{Net Benefit} = \text{Benefits less Costs (administration/compliance/direct/economic)}$$

It is important to note that compliance costs are but one, albeit important, element of the overall costs which arise from any regulatory intervention. Therefore, policy-makers must give consideration to all the effects that the policy may create, including any compliance cost. The various effects of a policy (its cost and benefits) are also closely related, with changes in one often affecting another. As a result, changes designed to address compliance costs need to be considered in the light of:

- the effect on the benefit of the policy - for example, abolishing a tax removes the compliance cost but also the revenue from tax. Similarly, abolishing health and safety requirements in the work place risks accident or death;
- the effect on overall administration costs – for example, allowing businesses to provide information in flexible formats. This may reduce compliance costs at the expense of greater administration cost; and
- different types of compliance cost - for example, new initiatives may increase the initial start-up compliance costs but can lower on-going costs. For example, using electronic means for sending information to the regulator.

In designing policy, policy-makers need to ensure that the overall mix of costs and benefits provides the greatest net benefit to society. Compliance cost reduction is unlikely to benefit society if it is made the sole objective of major changes or pursued in isolation. In order to assess which trade-offs are worthwhile, information on the extent and nature of compliance costs is required. Poorly considered changes could increase other costs unnecessarily and reduce the potential benefits from any measure.

Free Post Envelopes – the administrative/compliance cost trade-off

Often compliance costs can be transferred from the private sector to the government as administration costs. For example, the provision by government of freepost envelopes transfers the cost of sending information or payments from the business to government. A number of factors may affect this decision: for example, the risk of non compliance may be high and costly to government; compliance rates will higher with freepost envelopes; bulk freepost discount rates available to departments may be lower than those available to business.

The BCCS and the RIS

For these reasons, the BCCS is a sub-set, albeit an important one, of the cost benefit analysis required in the Regulatory Impact Statement (RIS) to accompany all regulatory proposals, and as such is included in the RIS.

4. Preparing a BCCS: Process and Content

Principles Underpinning the Business Compliance Cost Statement

The following principles underpin the requirement for a Business Compliance Cost Statement and the achievement of a compliance cost reduction objective:

- Compliance cost assessment and reduction should be an integral part of the policy development process.
- The reduction of compliance costs is a dynamic process which includes ongoing monitoring of existing legislation, regulation, and rules, as well as assessment of the impact of any substantive change to them.
- Recognition that compliance costs are a charge against the scarce resources of the private sector.
- Compliance requirements need to be critically assessed to ensure only requirements that are absolutely necessary to achieve the objectives of the policy are imposed.
- Compliance cost assessment is recognised as a clear departmental responsibility and as such should be an integral part of departmental management accountability.

When is a BCCS Required?

Any Cabinet paper requiring an RIS will also require a BCCS. This means any paper seeking Cabinet's agreement to legislative or regulatory change should be accompanied by a RIS and BCCS.

BCCS Process

The compliance cost process has three important elements:

- Consultation.
- Early consideration of compliance costs and ways to reduce them.
- Quality assurance of Business Compliance Cost Statement.

Consultation

A well designed and implemented consultation programme can contribute to higher quality regulations, identification of more effective compliance alternatives, lower administration costs, better compliance rates, and faster regulatory responses to changing conditions. Just as important, consultation can improve the credibility and legitimacy of government action, with the support of groups involved in the decision process, and increased acceptance by those affected.

Consultation is a process that permits and promotes the two-way flow of ideas and information among all sectors of society and between them and the government. Effective consultation is based on principles of openness, transparency, integrity, and mutual respect. It requires that:

- a. key information be provided to those being consulted;
- b. those being consulted are in a position to influence policy formulation;
- c. sufficient time is allowed for a considered response to be compiled by those being consulted;
- d. the agency undertaking the consultation has the capability to use the information derived correctly; and
- e. The information gained is considered in good faith. That is, the advice obtained can not be discounted without good reason, and must be sought prior to final decisions being taken.

The value of consultation in formulating the least cost compliance process should not be underestimated. Even small design features such as due dates can have a significant effect on business formalities and processes.

Costs and Risks of Consultation

At the same time, effective consultation can be difficult to carry out and can be costly in terms of time and resources for the Government as well as those consulted. Less well organised, diffuse, or smaller interests can easily be left out. Furthermore, information received from stakeholders on compliance costs may be one-sided, of poor quality, or irrelevant to the issues at stake. Consultation can also occur too late to allow affected groups develop a view on the nature and level compliance impacts arising from a particular policy measure.

It is therefore important to design consultation programmes to avoid unnecessary costs, and at a stage in the policy development process that best allows the results of consultation to inform policy development.

Forms of Consultation

There is currently a wide range of different consultative approaches used in policy development. These include departmental advisory bodies, secondment of personnel from the private sector, public discussion papers, multi-stakeholder negotiations, focus (consultative) groups, targeted briefings, workshops, questionnaires, public notice and comment, hearings and Select Committees. The appropriateness of each approach will depend on the issues under consideration, the nature of the group being consulted, and the resources (including time) available for undertaking the consultation.

Consider Compliance Costs Early in Policy Process

Compliance costs are often difficult to determine when high level policy papers are being developed, especially those seeking agreement to a broad direction for government policy

(the “strategic phase” of the policy development process). Nevertheless, some attention should be given to the likely sources of compliance costs associated with those high level options, in consultation with affected parties. This may just be the identification of those stakeholders affected (e.g., a specific industry sector, all employers, all exporters/importers) or the nature of the compliance cost (e.g., form filling, additional equipment purchases, buying legal advice)

At each stage of the policy development the question “can compliance costs be reduced without compromising the policy objective?” needs to be asked and answered.

Quality Assurance of BCCS

Departments should ensure the internal departmental peer review processes adequately focus on the quality of the BCCS. This could involve separate consideration in departmental quality assurance processes – such as report sign-off procedures or internal management QA groups. This will help ensure lessons are learned for improving BCCS and best-practices are developed. Quality assurance should also be provided by the external consultation process as where the BCCS is subject to wider scrutiny from key stakeholders.

Content Of Business Compliance Cost Statement

The business compliance cost statement should identify:

The source of any compliance cost

This will usually involve a description of the nature of the compliance process and can usually be divided into two broad categories:

One-off costs, such as acquiring sufficient knowledge to meet the regulatory obligations, retooling production processes, purchasing or leasing additional equipment and buildings, legal/consultancy fees and training expenses; and

Recurring and ongoing costs, such as staff costs or time, consumable materials, inspection fees/licences, costs imposed by enforcement processes, form filing (that is, costs arising from the need to devote additional time and resources to satisfying regulatory requirements)

See [Annex 1](#) for an example of practical steps necessary in identifying compliance costs.

The parties likely to be affected, by sector and size of firm

The parties affected should be easily identified from the compliance process described above. The size of each affected group should be indicated, if possible. Although it is often not possible when policy is being developed to accurately identify the number of parties affected. In some situations business statistics from Statistics New Zealand may help here. Identifying the size of affected parties is also important as compliance impacts can be quite different. Larger firms have specialists in the finance, human resources, purchasing, facilities management, etc. In contrast, the entrepreneur in SMEs is often a “jack of all trades”.

Quantitative (if possible) or qualitative estimates of compliance costs (both in aggregate and upon individual firms, persons);

The level of quantification required will vary according to the importance of the proposal being analysed, the availability of the necessary data, and the resource constraints. Compliance cost impacts should be expressed in constant dollars as a common unit of measure. It is also appropriate to set out any underlying assumptions underpinning estimates.¹ There will often

¹ See standard Cost Benefit Analysis methodology set out in the Ministry of Economic Development’s *Guide to Preparing Regulatory Impact Statements*
http://www.med.govt.nz/buslit/reg_man/regimpact/index.html.

be difficulties in converting some compliance impacts into dollar terms and in many circumstances quantification will not be feasible. In other situations, it may be more feasible (and meaningful) to express compliance impacts in qualitative terms. See [Annex 2](#) for a worked example estimating compliance costs.

The longer term implications of the compliance costs for business - are they one-off costs? Will they be reducing over time?

Normally a new regulatory obligation will impose transitional costs as businesses gain familiarity with an obligation (i.e. a one-off cost). However, these may reduce over time as familiarity increases. The speed at which this happens depends largely on the uniqueness of the new regulation (is it similar to obligations already in place?) and the amount of guidance or promotion during its introduction. Often the cost involved in adjustment to new obligations is difficult to quantify, although estimates from previously introduced policy may help here.

An assessment of the risks associated with any estimates and the level of confidence that can be placed on the compliance cost assessment

It is important to be explicit about any uncertainty regarding the estimates used and the assumptions made, if not previously discussed in the relevant section.

The key issues relating to compliance costs identified in consultation

This provides a check to ensure that compliance cost issues raised in consultation are addressed. Where suggestions are not able to be implemented or are disputed by officials, departments should be able to indicate reasons.

Any overlapping compliance requirements with other agencies

The purpose of this requirement is to identify other obligations and associated compliance processes. It may be possible to design compliance processes so that information is shared between two related compliance processes.

The steps that were taken to ensure that compliance costs were minimised

This could identify, for example, what implementation strategies are proposed: such as an education campaign, the use of electronic technology, form design, advisory services, test panels (see below), etc.

Format and Length of the BCCS

The BCCS should be included in the RIS accompanying any Cabinet paper proposing legislative or regulatory change. The Cabinet Office circular CO (01) 2 states that the BCCS should be no more than a page long. It is recognised that a full compliance cost assessment can be detailed and lengthy. The BCCS to accompany Cabinet papers should be a concise summary of the compliance cost assessment, rather than providing detailed information. The aim is to highlight the key compliance cost impacts, and provide only sufficient information for Ministers to make an informed decision. A more detailed assessment should lie behind the BCCS, and further information should be available from the relevant Department if required.

5. Best Practice in Reducing Compliance Costs

Reducing Information Burdens

In some cases, information collection represents a legal obligation to report information to government to verify compliance with government requirements (for example, tax returns) or receive approval to carry on some activity (for example, Resource Management Act consent). Other reporting requirements are for statistical purposes (for example, the monthly Enterprise Survey). Yet other information reporting requirements involve reporting information not to the government, but to third parties.

Third party requirements take many forms and include, for example, nutritional labelling on food, as well as drug labelling; the requirement to disclose certain financial information; and requirements to inform employees about the nature of hazardous substances with which workers come in contact with (which may involve training sessions).

While information plays a critical role in good government, as we have noted, it also imposes a cost on business. Even when filling out a simple form, the effort required (or time spent) to collect or otherwise generate the information needed to fill out the form often greatly exceeds the time spent answering the questions or checking the boxes. For example, taxpayers usually spend much more time calculating and documenting their deductions than actually entering them on tax forms. Similarly, a firm reporting its inventory of hazardous chemicals will inevitably spend more time monitoring those levels.

It is important that departments strike the right balance between collecting the necessary information to meet their responsibilities to the public, while not requiring information that is unnecessary or unavailable. Departments should collect only information essential to their mission and ensure that they are collecting information only once, not redundantly. This involves periodically reviewing information burdens on business and reassessing why information is necessary, simplifying the content, and streamlining collection processes. Wherever possible, information from different government departments should be co-ordinated.

Inland Revenue has worked with the Department of Statistics and the ACC to rationalise the information requested from businesses. Inland Revenue regularly provides Statistics New Zealand with financial accounting and GST information from tax returns. This has enabled Statistics New Zealand to reduce the number of surveys that businesses have to complete. Information is also provided by Inland Revenue to the Department of Work and Income and the Department of Courts.

Electronic Technology

Agencies are encouraged to explore innovative ways to use electronic technology in their information collection activities – “taking the paper out of paper work”. This not only reduces the paperwork burden, it also improves the quality, timeliness, and utility of the data received. With search costs constituting an important component of compliance costs, the more information is put online, the more these costs can be reduced for many businesses. An important consideration here is ensuring web sites are easy to use and information on them is easy to locate.

At the same time, some businesses and individuals may not yet be online. Alternative mechanisms for informing businesses and collecting information should still be retained.

There are many initiatives that illustrate the use of electronic technology to make the regulatory process more effective and efficient by improving the data quality, increasing public access to information, and reducing the compliance burden on business.

Companies Office Example:

In 1996 the turnaround time for processing paper name reservations and company registrations by the Companies Office was 2 weeks. In 2000 this reduced to 10 minutes and 40 minutes respectively for clients filing via the Companies Office online service. The benefits of increased accessibility, timeliness and 24 hour access to the register have been quickly realised by clients. At the same time, the costs to business were lowered from \$225 to \$85 in July 1999 for those starting a business via the Web.

Test Panels

A useful approach to minimising the compliance costs of proposed regulatory interventions is the use of a “Test Panel”. This tool is successfully used in other countries such as Denmark. This involves bringing together a panel of business people, which could include advisors to business, to audit the likely workability and compliance costs of regulatory proposals - assessing how the proposed regulation will work in practice and practical ways in which compliance costs might be reduced. Test Panels could be formed at the time a new regulatory proposal has been designed, but before enactment.

The outcome of this exercise may be suggested improvements to the regulation itself that will reduce compliance costs and/or ways in which the regulation can be introduced that will reduce costs - this may include the sort of explanatory information or training that should be provided to the business sector in reducing the ‘information costs’ of compliance.

Helping Business Comply

Inadequate information available to business about regulatory measures is a frequent source of compliance cost. If entrepreneurs are to focus on driving forward their businesses, the time and therefore the opportunity cost of regulatory compliance must be minimised. The information that businesses need to respond to government requirements includes:

- i why the regulation applies to the business;
- ii what it requires the business to do;
- iii how the firm should go about fulfilling the requirements;
- iv where to obtain further information regarding a regulation; and
- v where to obtain help when difficulties of interpretation arise.

Departments and government agencies are therefore encouraged to give particular attention to the preparation and provision of information on regulations and on communication with business and new entrants. There is often scope for improvement in the following areas:

- ensuring that information is available in a form that is suited to the needs of the businesses involved, and is readily accessible. Business needs to be given easily digestible and tailored (sector and size specific) regulatory information in a variety of media;
- providing adequate explanation of the rationale for regulations, information gathering, and other obligations;
- fostering a client culture in the provision of information and in contact with businesses concerning regulatory matters;
- ensuring that businesses are consulted when guidance material on regulations is being developed. This can be tested with small firms to ensure that it is in Plain English and is free of jargon.

- ensuring that front line staff are knowledgeable about the matters on which they are communicating with businesses and that they have the necessary skills to deal effectively with the business;
- ensuring consistency - avoiding differences in the interpretation of rules by staff in different regions;
- encouraging clients to provide feedback on compliance issues and the service they receive;
- ensuring that information retention requirements imposed on business are not excessive;
- encouraging the adoption of “user friendly” practices such as pre-printing as much information as possible on forms or including on forms the information provided by the business in the previous period; and
- maximum practicable use of after hours, direct dial, and toll free numbers.

Regulatory Standards and Compliance Costs

Different regulatory standards generate different compliance costs for business. It is worthwhile to identify these and point to their compliance implications.

Types of Regulatory Standards

Regulatory quality standards can be divided into three categories, each representing different degrees of intervention and cost:

Principle-based standards describe the objective sought in general terms and require interpretation according to the circumstances. For example, an environmental goal may be that all factory emissions be at a safe level. Here, the firm is left free to decide when the regulatory goal has been achieved.

Performance-based standards specify that certain conditions or parameters of quality be met at the point of supply but allow the regulated parties to determine their own technique for achieving the outcome. This could involve, for example, restricting emissions from a factory to a level of not more than n per hour, but again leaving the firm free to achieve the required level by whatever (least-cost) technique it prefers.

Prescriptive-based standards specify the technical means for attaining the specified outcome. They can exist in either a positive or negative form. It compels the firm to employ certain production methods or materials, or prohibits the use of certain production methods or materials. These may be appropriate where there are stable problems requiring a high level of certainty. Using the above emissions example, a specification standard may look to mandate the factory use only ore with a specified low sulphur content, or that certain pollution reducing technologies be used in the production process.

Compliance Costs Implications

Performance and principle-based standards promote flexibility and responsiveness as they allow regulated parties to work out the most cost-effective way of achieving the desired objective. This promotes innovation in a world characterised by rapid technological change and vigorous competition.

On the other hand, prescriptive standards do not account for the variability of compliance costs across regulated parties. They also focus on one means of solving a problem while

other factors which may have a significant impact in achieving the objective are overlooked. Prescriptive standards can become obsolete if the problem or technology changes, which can impose substantial costs on businesses by restricting their ability to adapt.

That said, however, prescriptive standards may be appropriate where there are limited ways of achieving a desired objective and when the problem that the standard addresses is a static one. It may also be more cost-effective (from an economy wide perspective) for the prescribed standard to be determined by the regulator, thereby trading off compliance costs for administration costs. Prescriptive standards may also be appropriate where the level of harm from non-compliance is unacceptable and a level of certainty is desirable.

Principle and performance based standards impose a cost to firms of acquiring and processing information in developing least-cost techniques in achieving the regulatory goal. The formulation cost for business are likely to be higher for these compared with prescriptive standards as the firm has the task of relating different levels in the quality of performance to the regulatory goal. This may be particularly onerous for SMEs who have relatively limited resources and capability.

Principle based standards, while highly flexible, involve a high degree of uncertainty for businesses as to what comprises adequate compliance, particularly if the consequences of non-compliance are serious. This can result in additional costs, such as buying-in expert advice on this issue. While this cost may be outweighed by the advantages of flexibility for many, particularly large firms, smaller firms may not be able to bear this cost.

Combined Approach

Regulators can usefully combine principle-based and performance-based standards and prescriptive “deemed to comply” standards to capture the best features of all. Smaller companies could be expected to adhere to prescriptive standards (where the compliance costs involved with performance standards would make up a large portion of their revenue), while larger companies could be expected to comply with performance standards (where it is anticipated efficiency gains would outweigh the costs of compliance). An effective way of implementing this approach would be to provide different compliance options, and allow businesses to select which is best suited to their situation.

6. Further Information

Further information to assist the preparation of BCCSs can be found on the Ministry of Economic Development’s web site.

Enquiries about the new requirements can be directed to:

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Annex 1a: Identifying Compliance Costs: Key Steps - Example 1

Note: The level of detail provided in these examples is not required in the BCCS, rather this is a useful analytical tool.

A useful example to demonstrate steps in identifying the compliance cost component of a regulatory obligation is the (now obsolete) broadcasting fee. Previously, under the Broadcasting (Public Broadcasting Fees) Regulations 1989 any person owning, hiring, possessing, or using a television set was liable for payment of the Public Service Broadcasting Fee. In addition, the regulations required television dealers and hire firms to pass the date of sale or hire, full name and address of the television purchaser or hirer to NZ on Air. The practical steps involved in collecting and paying the Fee, and the type and incidence of cost are as follows.

Activity	Type of Cost	Incurred by:
1 The dealer/hire firm determines its obligations under the Broadcasting (Public Broadcasting Fees) Regulations, and set up compliance procedures.	Compliance (one-off)	Purchaser/hirer firms
2 A television is hired or purchased.	Not a regulatory cost ²	Purchasers/hirers
3 The name of the hirer or purchaser is collected along with their address by the television hirer or dealer (which is also obtained for warranty, delivery, or hire purchase reasons).	Compliance (ongoing)	Dealers/hire firms
4 Date of purchase and name and address details are forwarded to NZ on Air either electronically or manually. The electronic option normally involves the television supplier mailing a disk of the information to NZ on Air (usually once a month). The manual option involves completing freepost dealer postcards which are provided by NZ on Air. Hire firms provide a monthly return of customers who have hired for more than a month.	Compliance (ongoing)	Dealer/hire firms
5 NZ on Air check the television viewer details against their database of Broadcasting Fee payers. This is cross checked for alternative addresses and names to ensure that an address or person has not already paid the fee.	Administrative	NZ on Air
6 NZ on Air send out fee advice notices to those who have not already paid a Broadcasting Fee. Viewers hiring televisions are billed on a monthly basis by NZ on Air.	Administrative	NZ on Air
7 Viewers make payment of the fees by cheque, credit card, or direct credit. They may also make inquiries or dispute payments via the use of a toll-free number. Television dealers and hirers may also use this line for enquiries.	Direct Administrative Compliance	Purchaser/hirers NZ on Air Dealers/hire firms

² Note that the Broadcasting Fee itself is not a compliance cost. The fee represents the direct component of the regulatory obligation.

Annex 1b: Identifying Compliance Costs: Key Steps - Example 2

Under the Building Act 1991 an owner is required to obtain a Building Consent from a Territorial Authority prior to commencing construction on a building. The Territorial Authority involved is required to keep records that include all plans and specifications submitted with the application. When the building is completed, and the Authority is satisfied that it complies with the approved documents and other statutory requirements, the owner is issued with a Code Compliance Certificate.

The building will also be issued with a Compliance Schedule by the Territorial Authority if it has systems such as automatic sprinklers, automatic doors, lifts or air-conditioning systems. The owner is required to employ an Independent Qualified Persons to inspect, maintain and report on these Compliance Schedule items.

Activity	Type of cost	Incurred by:
1. Owner determines what their obligations under the Building Act 1991 – if necessary obtains advice from lawyer.	Compliance	Owner
2. The owner picks up plans and specifications from the Architect, collects other information required, and provides them to the Territorial Authority to obtain a Building Consent.	Compliance	Owner
3. The Territorial Authority keeps records of the building including the approved plans and specifications.	Administrative	Territorial Authority
4. The Territorial Authority checks that the completed building complies with approved documents and other statutory documents prior to issuing a Code Compliance Certificate	Administrative	Territorial Authority
5. Owner pays for the Code Compliance Certificate.	Direct	Owner
6. The Territorial Authority prepares and issues the owner with a Compliance Schedule.	Administrative	Territorial Authority
7. The owner investigates suitable Independent Qualified Persons and arranges for them to inspect, maintain and report on compliance schedule systems.	Compliance	Owner
8. Owner pays independent inspector.	Direct	Owner

Annex 1c: Identifying Compliance Costs: Key Steps - Example 3

Prior to any offer of securities to the public, the Securities Act 1978 requires the registration of a prospectus if those securities are to be allotted. The Securities Act and the Securities Regulations 1983 require certain information be disclosed in the prospectus, that, where required, documentation be in a prescribed format, and that all information be registered with the Registrar of Companies. The practical steps involved in making an offer of securities to the public and the type and incidence of cost are as follows:

Activity	Type of Cost	Incurred by
1 An issuer undertakes an assessment of its ability to raise capital and decides to make an offer of securities to the public.	Direct	Issuer
2 The issuer fulfils content and format requirements of Securities Act and Securities Regulations.	Compliance	Issuer
3 The issuer submits prospectus for registration with the Registrar of Companies and pays fee.	Compliance	Issuer
4 The Registrar checks the details of the Prospectus against the requirements of the Securities Regulations and issues certificate of registration.	Administrative	Registrar
5 The issuer makes the offer of securities to the public by prospectus, investment statement or authorised advertisement ³ .	Direct	Issuer
6 Investors accept issuer's offer of securities.	Direct	Investors
7 Investors issued with share certificate.	Compliance	Issuer
8 Issuer keeps register of details of holders of securities, as required to by regulation.	Compliance	Issuer

³ However, the Issuer must have a prospectus and investment statement to comply with the Securities Act and must provide a copy of the prospectus to an investor, if requested.

Annex 2: Estimating Business Compliance Costs - Hypothetical Example

To estimate compliance cost arising from any additional regulatory measure it is necessary to first estimate the incremental change in compliance costs for a typical business; then multiply this estimate by the number of businesses the regulatory measure applies too. This will provide an estimate of total additional compliance costs incurred by business in complying with the new or amended regulation. This approach can be applied to impacts on more than one particular types/classes of business (for example, small, medium, and large, rural or urban business etc).

For example, a (hypothetical) regulatory measure could require all engineering firms to report, in a prescribed format, the quantity of a particular hazardous chemical kept on their premises as at 1 October each year. Most firms would already have such information as part of their normal record keeping requirements. Therefore the compliance cost requirement for each firm would include the additional staff time needed to collect this information from existing systems and complete the form on 1 October each year.

Consultation with business might indicate the additional compliance cost for business (or each type of business). Alternatively, an estimate could be made of these costs. For example, this industry might have 15,000 small businesses, 1500 medium sized businesses, and 50 large businesses. One-off costs could include training of staff to complete the form. If an average of 15 minutes training was required to competently complete the form for all types of businesses, and average clerical wages in this sector was \$12 per hour, the cost would be \$3 per business. This figure should be multiplied by the number of businesses to derive total one-off compliance costs (See Box below).

In addition, ongoing costs could include the time taken to acquire the relevant information, complete the prescribed form and transmit it to the regulator. We could assume that it would take an average of 10 minutes for a small business to acquire the relevant information and complete the form, an average of 15 minutes for a medium sized business, and 20 minutes for a large business. These cost estimates could be multiplied by the number of business in each class to estimate total ongoing compliance cost.

The results of this hypothetical example are provided in the following table, showing that this proposal is estimated to increase total compliance costs of the engineering manufacturing sector by \$84,500. This comprises \$49,650 one-off compliance costs and \$34,700 ongoing annual compliance cost.

Example: Estimating the Compliance Cost of Regulation (\$)

Type of Compliance Cost	Small Business	Medium Business	Large Business	Total
One-off Costs	45,000	4,500	150	49,650
Annualised one-off costs	7324	732	24	8,080
Ongoing Costs (annual)	30,000	4,500	200	34,700
Total Industry wide annual costs	37,324	5,232	224	42,780

This example shows that even small increases in compliance cost for individual businesses can result in significant economy-wide increases in business costs.

Annex 3: BCCS Template

- 1. Sources of compliance costs**

- 2. Parties likely to be affected**

- 3. Estimated compliance costs of the proposal**

- 4. Longer term implications of the compliance costs**

- 5. Level of confidence of compliance cost estimates**

- 6. Key compliance cost issues identified in consultation**

- 7. Overlapping compliance requirements**

- 8. Steps taken to minimise compliance costs**

Annex 4: Cabinet Office Circular

CABINET OFFICE CIRCULAR

CO (01) 2

12 March 2001

Business Compliance Cost Statement

Summary of Key Points

- From 1 April 2001 all policy proposals submitted to Cabinet which require a Regulatory Impact Statement (RIS) and which have compliance cost implications for business should include a *Business Compliance Cost Statement* (BCCS) in the Regulatory Impact Statement.
- For proposals considered after 1 April 2001 the RIS/BCCS will also be published and will also be included in the Explanatory Note to Bills introduced into the House.
- A Regulatory and Compliance Cost Unit will be established in the Ministry of Economic Development to review RIS/BCCSs and provide information and advice to departments. Departments should consult the Unit in preparing RIS/BCCSs.
- An Officials Committee will be formed to coordinate and monitor the effectiveness of the government's Business Compliance Cost Programme, including the RIS/BCCS regime, and report to Cabinet on ways to enhance its effectiveness.

Introduction

- 1 The government has agreed to a Business Compliance Cost Programme, comprising a number of initiatives to minimise compliance costs for business. In particular, it has agreed to some procedures to ensure that policies which have compliance cost implications for business are subject to scrutiny at an early stage. The Business Compliance Cost Statement (BCCS) is a key element in that scrutiny. This circular outlines the objectives of the BCCS and how departments should go about meeting them.
- 2 Ministers' offices and Chief Executives should ensure that:
 - all staff involved in the preparation of submissions for Cabinet and Cabinet committees are familiar with the advice in this circular;
 - the material in this circular is conveyed to all Crown entities or other State agencies for which their Minister is responsible, which have an involvement in the preparation of regulatory proposals.

What are Compliance Costs

- 3 Compliance costs are the administrative and paper work costs to business in meeting government requirements. They include both the administrative burdens and all other compliance costs, such as equipment purchases, retooling, and recurrent production cost. Compliance costs are distinct from the direct costs of any government requirement, such as the amount of tax payable.
- 4 Compliance costs include the costs associated with identifying and understanding the regulatory requirement and may include costs associated with buying in specialist services (such as legal training, computer systems, research) to satisfy regulatory obligations (or employing new staff generally). At a less tangible level, compliance costs can arise from increased liability through the establishment of new legal obligations (such as health and safety requirements).
- 5 The need to comply with government requirements can also have non-monetary effects such as stress and anxiety. These effects often arise from uncertainty about obligations and disproportionately affect smaller businesses with limited management resources who are most susceptible to such costs.

Principles of Business Compliance Cost Statement

- 6 Compliance costs arise from most government interventions. However, businesses and the economy should not incur more compliance costs than are necessary. At the stage that new administrative processes and measures are being designed, compliance costs should be given due weight with other costs and benefits.
- 7 The following principles underpin the objective of reducing compliance costs:
 - Compliance cost assessment should be an integral part of the policy development process;
 - The reduction of compliance costs is a dynamic process which includes ongoing monitoring of existing legislation, regulation, and rules, as well as assessment of the impact of any substantive change to them;
 - Recognition that compliance costs are a charge against the scarce resources of the private sector;
 - Compliance requirements need to be critically assessed in terms of their absolute necessity to achieve the objectives of the policy;
 - Compliance cost assessment is recognised as a clear departmental responsibility and as such should be an integral part of departmental management accountability.

Inclusion of the BCCS in RISs

- 8 At present, all papers on policy issues submitted to Cabinet committees that result in government bills or statutory regulations, must be accompanied by a Regulatory Impact Statement (see [paragraphs 3.23-3.38](#) of the Step by Step Guide). Where new policy proposals for bills or statutory regulations have compliance costs for business, these costs must be assessed as part of the policy development.
- 9 At the point that the policy is submitted to Cabinet for consideration, a new section headed "**Business Compliance Cost Statement**" is to be included in the Regulatory Impact Statement. The statement should contain a description of the business compliance costs (see paragraph 10 below). This should be a brief statement of no more than a page. If the proposal does not involve compliance costs for business, a statement should be made in the RIS to this effect.

Content of Business Compliance Cost Statement

- 10 The business compliance cost statement should identify:
 - the source of any compliance costs;
 - the parties likely to be affected, by sector and size of firm;
 - quantitative (if possible) or qualitative estimates of compliance costs (both in aggregate and upon individual firms, persons);
 - the longer term implications of the compliance cost for business - are they one-off costs? Will they be reducing over time?
 - an assessment of the risks associated with any estimates and the level of confidence that can be placed on the compliance cost assessment;
 - the key issues relating to compliance costs identified in consultation;
 - any overlapping compliance requirements with other agencies; and
 - the steps that were taken to ensure that compliance costs were minimised.

Requirement for Cabinet Submissions

- 11 The existing section in the Cabinet submission format headed "Regulatory Impact Statement" should be amended to read "**Regulatory Impact and Compliance Cost Statement.**" This section should include a one paragraph summary of the BCCS contained in the RIS, in addition to the requirements under the Regulatory Impact Statement heading.
- 12 Consultation with the Regulatory and Compliance Cost Unit of the Ministry of Economic Development (see para 20) should be noted on the CAB 100

consultation form, in addition to any other consultation that has taken place on the submission with the Ministry of Economic Development.

Publication of RIS/BCCS

- 13 The transparency and openness of the regulation-making process to the political, parliamentary, and public arenas is intended to improve the quality of regulatory interventions and ensure compliance costs are fully considered when regulatory proposals are developed.
- 14 Cabinet has agreed that for proposals considered after 1 April 2001, the RIS/BCCS will be published. The RIS/BCCS will be:
 - attached to the press statement announcing any new policy;
 - lodged on the responsible department's website, and a dedicated Ministry of Economic Development website. When the responsible Minister and/or Cabinet determines the RIS/BCCS is ready for publication, departments must send an electronic version of the RIS/BCCS, along with the departmental website reference, to the Ministry of Economic Development at ris-bccs@med.govt.nz;
 - included in the Explanatory Note to Bills that are introduced into the House.
- 15 Departments should ensure that a suitable electronic version of the RIS/BCCS (in ASCII or Microsoft Word 97 format) is supplied to the Parliamentary Counsel Office (PCO) in sufficient time to enable it to be included in the copies of the draft Bill that are printed for submission to the Cabinet Legislation Committee (LEG).
- 16 RIS/BCCSs for incorporation in explanatory notes must, so far as possible, follow the standard format specified by the PCO, as the typesetting process for the printing of Bills imposes limitations on the format for explanatory notes to Bills. The PCO will issue those specifications shortly. Departures from this format, or requests for the inclusion of non-text material such as tables or graphs, may not be able to be accommodated, or may result in delays in the production of LEG copies of the Bill.
- 17 Enquiries about the PCO's requirements for RIS/BCCSs should be directed to the PCO team leader responsible for the department's legislation.
- 18 The decision on the precise timing of publication is left to the responsible Minister and/or Cabinet. Ministers may wish to review and amend the RIS/BCCS to ensure that it fully reflects the government's position and is of a high standard. Some changes may therefore take place after Cabinet consideration of the Cabinet submission to which the RIS/BCCS is attached.
- 19 There may be instances where it is undesirable to publish the RIS/BCCS; for example, if the RIS deals with matters which, if disclosed publicly, would prejudice the security, defence, international relations, or economy of New

Zealand. The criteria set out in the Official Information Act 1982 will guide decisions to withhold public disclosure of a RIS.

Assistance from the Ministry of Economic Development

- 20 A Regulatory and Compliance Cost Unit is being established in the Ministry of Economic Development to review RIS/BCCSs and provide advice to departments on RIS/BCCS principles and processes. Departments should consult with the Unit on RIS/BCCSs as part of the interdepartmental consultation process. This is in addition to consultation with the Ministry of Economic Development on relevant policy issues.
- 21 Although the Unit will primarily have an education role, on an exceptions basis, the Unit can bring to the Chair of the Officials Committee (see below) concerns that it has with specific RIS/BCCSs.

Officials Committee

- 22 Cabinet has agreed that an Officials Committee, chaired by the Department of the Prime Minister and Cabinet, and comprising Treasury, State Services Commission, Ministry of Economic Development, Ministry for the Environment, Department of Internal Affairs and other coopted departments, be formed to:
- coordinate and monitor the effectiveness of the Business Compliance Cost Programme, including the RIS/BCCS regime;
 - ensure that departments are equipped to undertake effective compliance cost reduction; and
 - identify and report to Cabinet on changes to the Programme that would enhance its effectiveness.

Further Information

- 23 The Regulatory and Compliance Cost Unit is preparing more detailed guidelines on the preparation of BCCSs. These guidelines will be issued to departments shortly.
- 24 Enquiries about the requirements in this circular should be directed to:

Regulatory and Compliance Cost Unit
Ministry of Economic Development
PO Box 1473
WELLINGTON

Marie Shroff
Secretary of the Cabinet