



Erratum slip

Outcomes-Focused Regulation

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Please note that due to a database extraction error the footnotes in Chapter 2 were reproduced incorrectly. They should read as follows:

1. Report of the Robens Committee on Safety and Health at Work, Cmnd 5034 (HMSO, 1972).
2. Ofcom, *Identifying Appropriate Regulatory Solutions: Principles for Analysing Self- and Co-regulation - Statement* (December 2010).
3. For a contemporaneous assessment see A. Large, *Financial Services Regulation: Making the Two Tier System Work* (Securities and Investments Board, 1993).
4. D. Clementi, *Review of the Regulatory Framework for Legal Services in England and Wales* (December 2004).
5. OECD, *Recommendation on Improving the Quality of Government Regulation* (Paris, 1995); and OECD, *Guiding Principles for Regulatory Quality and Performance* (Paris, 2005). At the EU level, the Mandelkern report articulated its own set of principles: necessity, proportionality, subsidiarity, transparency, accountability, accessibility and simplicity: Mandelkern Group, *Better Regulation Final Report* (Brussels, 2001).
6. Better Regulation Task Force, *Principles of Better Regulation* (London, 1998).
7. Legal Services Act 2007, s.28.
8. For discussion see C. Radaelli, 'Diffusion without convergence: how political context shapes the adoption of regulatory impact assessment' (2005) 12(5) *Journal of European Public Policy* 924-43.
9. In the EU context see Mandelkern Group, *Better Regulation Final Report* (Brussels, 2001); EU Commission, *European Governance - White Paper COM/2001/0428 final* (Brussels, 2001).
10. P. Hampton, *Reducing Administrative Burdens* (London, 2005).
11. For review see J. Black, 'Risk-based regulation: choices, practices and lessons being learned' in OECD, *Risk and Regulatory Policy* (Paris, 2010); J. Black, 'The emergence of risk-based regulation and the new public risk management in the United Kingdom' [2005] *Public Law* 512.
12. Office of Legal Services Commissioner of New South Wales, *Annual Report 2009-10* (New South Wales, 2010); Legal Services Board of Victoria, *Annual Report 2009-10* (Victoria, 2010).
13. Financial Reporting Council, *Strategic Framework* (London, 2007); Tenant Services Authority, *The Regulatory Framework for Social Housing from April 2010* (London, 2010); Local Better Regulation Office, *Priority Regulatory Outcomes: A New Approach to Refreshing the National Enforcement Priorities for Local Authority Regulatory Services* (Birmingham, 2011); Care Quality Commission, *CQC Strategy 2010-2015* (London, 2010).
14. There is a considerable academic literature on the different types of rules and their implications. See F. Schauer, 'The tyranny of choice and the rulification of standards' (2005) 14 *Journal of Contemporary Legal Issues* 803; R. Korobkin,

'Behavioural analysis and legal form: rules vs. principles revisited' (2000) 79 *Oregon Law Review* 23; F. Schauer, 'The convergence of rules and standards' [2003] *New Zealand Law Review* 303; R. Baldwin, 'Why rules don't work' (1990) 53 *Modern Law Review* 321; J. Black, *Rules and Regulators* (OUP, 1997); J. Braithwaite, 'A theory of legal certainty' (2002) 27 *Australian Journal of Legal Philosophy* 38; J. Black, M. Hopper, and C. Band, 'Making a success of principles based regulation' (2007) 1(3) *Law and Financial Markets Review* 191; J. Black, 'Forms and paradoxes of principles based regulation' (2008) 3(4) *Capital Markets Law Journal* 425; R. Baldwin, *Rules and Government* (Clarendon Press, 1995); C.S. Diver, 'Regulatory precision', in K. Hawkins and J.M. Thomas (eds), *Making Regulatory Policy* (Pittsburgh, 1989); C.S. Diver, 'The optimal precision of administrative rules' (1983) 93 *Yale Law Journal* 65; C. Ford, 'New governance, compliance and principles-based securities regulation' (2008) 45(1) *American Business Law Journal* 1. Regulators also stress these points. See for example FSA, *Principles-based Regulation: Focusing on the Outcomes that Matter* (April 2007), p.6; Council for Licensed Conveyancers, *Draft CLC Code of Conduct Consultation Paper* (July 2010), p.4.

15. J. Black, 'Talking about regulation' [1998] *Public Law* 77.
16. J. Black, 'Using rules effectively' in C. McCrudden (ed), *Regulation and De-regulation* (Oxford University Press, 1999), p.95; J. Braithwaite, 'A theory of legal certainty' (2002) 27 *Australian Journal of Legal Philosophy* 47.
17. FSA Handbook (FSA, 2011); HFEA, *Code of Practice*, 8th edition (London, 2010).
18. FSA, *Principles-based Regulation: Focusing on the Outcomes that Matter* (April, 2007).
19. Council for Licensed Conveyancers, *Draft CLC Code of Conduct Consultation Paper* (July 2010), p.4.
20. Financial Reporting Council, *Strategic Framework* (London, 2007).
21. C. Hood, 'Gaming in targetworld: the targets approach to managing British public services' (2006) 66(4) *Public Administration Review* 515.
22. Outcomes are usually distinguished from outputs in performance evaluations: outputs are easier to game than outcomes.
23. National Audit Office, *Regulatory Quality: How Regulators are Implementing the Hampton Vision* (London, 2008), para 4.5, notes that 'Regulators with direct inspection responsibilities face [the] challenge of determining where to draw the line between their preferred stance of neutral guidance provider and educator of business and the more hands on consultant-cum-management role many businesses seem to want.'
24. This also applies to other regulatory partners: for example the Tenants Services Authority's first of the ten principles setting out their regulatory approach is an emphasis on co-regulation in partnership with the housing boards and local councils who govern the delivery of housing services: TSA, *The Regulatory Framework for Social Housing from April 2010* (March 2010).
25. M. Power, *Organized Uncertainty: Designing a World of Risk Management* (OUP, 2007), p.42.
26. Again, this is not to say that the normatively 'right' answer is simply one which the parties agree amongst themselves irrespective of the rule or principle; the point being made is a practical and operational one, not one which expresses a particular interpretive philosophy.
27. J. Black, 'Risk-based regulation: choices, practices and lessons being learned' in OECD, *Risk and Regulatory Policy* (Paris, 2010); J. Black and R. Baldwin, 'Really responsive risk-based regulation' (2010) 32(2) *Law and Policy* 181.
28. Care Quality Commission, *CQC Strategy 2010-2015*, (London, 2010) pp.11 and 14-18; Financial Reporting Council, *Strategic Framework* (London, 2007); Local Better Regulation Office, *Promoting Regulatory Outcomes: Consultation Paper* (Birmingham, 2011).

Our apologies for any inconvenience this may have caused.