Quality and Standards
in Human Services in Ireland:
Overview of Concepts and Practice

National Economic and Social Council

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1. The main tasks of the National Economic and Social Council shall be to analyse and report on strategic issues relating to the efficient development of the economy and the achievement of social justice.

2. The Council may consider such matters either on its own initiative or at the request of the Government.

3. Any reports which the Council may produce shall be submitted to the Government, and shall be laid before each House of the Oireachtas and published.

4. The membership of the Council shall comprise a Chairperson appointed by the Government in consultation with the interests represented on the Council, and

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   - Four persons nominated by business and employers organisations;

   - Four persons nominated by the Irish Congress of Trade Unions;

   - Four persons nominated by community and voluntary organisations;

   - Four persons nominated by environment organisations;

   - Twelve other persons nominated by the Government, including the Secretaries General of the Department of Finance, the Department of Jobs, Enterprise and Innovation, the Department of Environment, Community and Local Government, the Department of Education and Skills.

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National Economic & Social Council

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Abbreviations

BRG
Better Regulation Group

BRU
Better Regulation Unit

CQL
Council for Quality and Leadership for People with Disabilities

DBG
Delivering Better Government

EIQA
Excellence Ireland Quality Association

EPSEN
Education for Persons with Special Educational Needs

HCA
Home Care Association

HIQA
Health Information and Quality Authority

HSE
Health Service Executive

IEP
Individual Educational Plans

IHF
Irish Hospice Foundation

INHO
Irish Nursing Homes Organisation

INPO
Institute of Nuclear Power Operators

ISO
International Organisation for Standards

ISQSH
Irish Society for Quality and Safety in Healthcare

NCPDNM
National Council for Professional Development of Nursing and Midwifery

NDA
National Disability Authority

NESF
National Economic and Social Forum

NGOs
Non Governmental Organisations

NHI
Nursing Homes Ireland

NRC
Nuclear Regulatory Commission

NSAI
National Standards Authority of Ireland

OECD
Organisation for Economic Co-Operation and Development

OMC
Open Method of Co-ordination

ONI
Outcomes Network of Ireland

PIA
Poverty Impact Assessment

QSR
Quality Service Review

RIA
Regulatory Impact Analysis

RJ
Restorative Justice

SMI
Strategic Management Initiative

SSI
Social Services Inspectorate

TFT
Tit for Tat

TPS
Transforming Public Services

TQM
Total Quality Management

UK
United Kingdom

USA
United States of America

WSE
Whole School Evaluation

Glossary of Terms

Accountability is being answerable to another person or organisation for decisions, behaviours and their consequences.[1]

A **Checklist** is a list of things to be done, used as a reminder. American surgeon, professor and writer Atul Gawande has written about 'The Checklist' as a tool to ensure consistency and completeness, while preventing mistakes and failure in accomplishing complex tasks involving a number of people.[2]

Continuous improvement is an ongoing process of review against accepted standards undertaken to (a) eliminate waste and inefficiencies and (b) raise performance to produce quality outcomes.[3]

Co-ordination is the synchronisation of people, activities and services to ensure that resources are used most efficiently and effectively in the pursuit of quality outcomes. In the human services arena the focus of co-ordination is on meeting the needs of service users in the most efficient and effective way possible.[4]

Human services are services that are publicly provided, funded or regulated with the purpose of promoting the well-being of citizens. In this report the human services considered in detail are eldercare, end-of-life care, disability, schools and policing.

Performance is the accomplishments of an organisation, service provider, programme or individual relative to stated goals and objectives, and/or pre-set standards.[5]

Quality is the extent to which service delivery and/or service outcomes are free from deficiencies or significant variations, adhere to agreed standards, and meet with the defined needs and informed expectations of the service user.[6]

Quality Service Review is a broad term for a set of processes and tools designed to review human services systems. It is based on an in-depth case review method involving multiple stakeholders, and uses a performance-appraisal process to assess how service recipients benefit from services and how well service systems address their needs.[7]

Regulation is a principle, rule or law designed to control or govern conduct.[8] It is often defined as rule-making and rule enforcement. It occurs when an external

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1   This definition is derived from definitions of standards used by Health Information and Quality Authority (HIQA).

2   Based on dictionary definition and Gawande (2010).

3   Based on dictionary definitions.

4   Based on dictionary definitions.

5   Based on dictionary definitions

6   This definition is derived from definitions used by the NESF (2007) and standard dictionary definitions.

7   Based on work by Kershaw *et. al.*, (2002)

8   Based on dictionary definitions.

agency imposes standards or rules on the behaviour and actions of others, which are accompanied by enforcement provisions.[9]

Responsive Regulation is a theoretical model which asserts that regulatory interventions are more likely to succeed if they are responsive to the context, culture and conduct of the regulated organisations. The model is encapsulated by a regulatory pyramid which demonstrates an attempt to solve the puzzle of when to punish and when to persuade.[10]

Root-Cause Analysis is a type of problem-solving aimed at identifying the root causes of problems or incidents. The practice of root-cause analysis is predicated on the belief that problems are best solved by attempting to address, correct or eliminate root causes, as opposed to merely addressing the immediately obvious symptoms. Root-cause analysis is often viewed as an iterative process, and as a tool of continuous improvement.[11]

Social regulation is a principle, rule or law designed to protect public interests and encourage behaviour deemed socially desirable in areas such as health, safety, welfare, working conditions, social cohesion, fairness and the environment.[12]

A **Standard** is an explicit agreed measure by which quality is judged. It sets out an expected or desired level of performance.[13]

Standardisation is the process of establishing or complying with a standard. It implies a degree of order, consistency and uniformity.[14] In the context of this report it is associated with standardising upwards in a process of continuous improvement, rather than confining innovation.

Total Quality Management (TQM) is a comprehensive and structured approach to organisational management that seeks to improve the quality of products and services through ongoing refinements in response to continuous feedback.[15]

Triple-Loop Learning is an advanced system of structured reporting and shared learning. The first loop of learning occurs when practitioners monitor their achievement and make adjustments to gain improved outcomes. The second loop occurs when this kind of practical learning is noted by managers who subsequently adjust their systems and routines to take note of this. And the third loop occurs when regulators and oversight authorities learn from monitoring the organisation's improved goals and revise their strategy for the entire field.[16]

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9   Based on a definition by the Health and Social Care Regulatory Forum (2009:4).

10   The model has been developed by Ayers and Braithwaite (1992). The definition also draws on an interpretation by Koornneef (2010:6).

11   Based on dictionary definitions.

12   This definition is derived from a number of sources, including the OECD (1997:11), Sparrow (2000:7), and dictionary definitions.

13   This definition is derived from definitions of standards used by the National Standards Authority and the Health Information and Quality Authority (HIQA).

14   Based on dictionary definitions.

15   Based on dictionary definitions.

16   This definition is derived from Parker (2002).

Acknowledgements

The Council and Secretariat wish to acknowledge the assistance and contribution of a number of individuals and organisations in the preparation of this report.

In particular, the Secretariat acknowledges the contributions of Council members who made suggestions on the general nature and direction of the work, as well as providing detailed and specific comments.

The Secretariat is grateful to a number of individuals who gave direction on sources of information and who read earlier drafts and provided detailed comments and suggestions. The Secretariat, however, retains full responsibility for how the material has been interpreted and used.

The report was prepared by a project team comprising Helen Johnston (project leader), Edna Jordan, Anne-Marie McGauran, Jeanne Moore and Barry Vaughan. The work was guided by the insightful direction of Director, Rory O'Donnell.

The project team is indebted to Gaye Malone who supported the project and produced the report, ably assisted by Paula Hennelly and Ruth McCarthy.

Executive Summary

The Council has had a concern with quality, standards and accountability in human services for some time. NESC has referenced citizens' rights, standards and benchmarks, and the importance of human services which are tailored to meet individuals' requirements in various reports. Allied to NESC's concerns is the existence of public anxiety about the failure of regulation and standards in both financial and human service systems, along with a demand for higher standards and better service provision. The economic crisis places the challenges of public sector reform and provision of quality human services in even sharper focus.

This overall project is concerned with how regulation and standards can best contribute to good quality, continuously improving human services. The report provides a review of approaches to regulation, standards-setting and continuous improvement: from a conceptual viewpoint, from international experience and from recent experience in Ireland. This report is the first in a series of reports. Subsequent reports review the role of standards and quality improvement initiatives in a number of human service areas, specifically: eldercare, end-of-life care, disability, schools, and policing. A synthesis report will draw together the conclusions from all of the reports.

A number of key issues and ideas have emerged from this initial overview of concepts and practice. They are briefly outlined below.

A key insight is that effective regulation is much more than rules and compliance. Both effective regulation and standards focus on performance and outcomes, and adopting a collaborative problem-solving approach. The evidence suggests the need to build on strengths as well as focusing on problems, while reserving sanctions for non-compliance. Thinking on regulation has moved beyond traditional 'command and control' and self-regulatory approaches towards 'responsive regulation'. Responsive regulation has been conceptualised as a pyramid, with self-regulation and voluntary approaches at the bottom, and sanctions at the apex. The middle of the pyramid includes meta-regulation which is the 'regulation of self regulation'. Even though this responsive regulation approach has been very influential world-wide we have found it limiting in its application to the human services we have reviewed. Rather than a relatively straightforward relationship between the regulator and the regulated, we are finding multiple routes to standards-setting and quality, involving a wide range of bodies concerned with quality, who are both formally and informally connected in a number of different ways.

We have also found that both in the provision of services and in their regulation there is an increasing drive to focus on the needs of service users, reflected in references to a move towards person-centred and tailored services. There is a

greater emphasis on taking into account the needs and voice of service users, with greater levels of consultation and user involvement. This is based on a rationale of the importance of getting a range of perspectives, especially from the actual users of services on their experience of accessing and receiving the service. This trend towards more tailored services has implications for the way services are to be delivered. Budgets have to be allocated and monitored differently, the practice of service delivery is different, and thus the context for regulation, accountability and quality improvement is also different.

The evidence reviewed in the report suggests that a fruitful approach to quality improvement is to set a small number of guiding principles 'at the centre' and devolve their application to the local context. This approach requires the centre to have a support role as well as continuing to have an oversight role to ensure compliance, while local providers have the opportunity and flexibility to improve quality and performance. The overriding priority is to achieve and improve outcomes for service users, and to document and shape these experiences. In the current economic context this is proving challenging where there can be a conflict between delegating authority and the desire to control resources more directly from the centre. Yet, the evidence would suggest that supporting the people who deliver the service directly to the public results in more creativity and innovation, and ultimately a better quality service, with some sort of oversight body to deal with those who might be recalcitrant.

A recurring theme in the current economic climate is how to improve quality in service provision while at the same time cutting costs. The limited evidence which exists suggests that approaches which have been found to be effective include the benefits of focusing on the service user, the importance of work processes and systems, the centrality of measurement, recognising and rewarding those who work in the frontline, working across organisational boundaries to minimise both gaps and duplication, the identification and reduction of waste, and holding managers to account. In the context of limited resources meta-regulation offers a viable approach.

A key message from all the evidence reviewed is the need for a system in which standards and the means of achieving them are continuously monitored and revised through comparison of the work of similarly situated organisations. While there is a greater focus on outcomes, further consideration remains to be given to what outcomes are being sought and how they will be measured. A particular challenge is to interrogate the reasons why a service is provided in a specific way, especially if that service deviates from agreed standards or norms. By making these reasons explicit, weaknesses or gaps in service provision can be identified and addressed, especially where service provision cuts across organisational boundaries. Ideally, learning should take place at a number of levels: the level at which the service is delivered; at regional or sectoral level; and at the level of the regulator or at national level. Data are required to inform the learning, but these data have to be useful for both the service provider at the frontline as well as to the centre and oversight body.

The report concludes with three emerging ideas. First, that there are multiple routes to quality. These multiple routes can accommodate diversity by adapting general goals to local contexts, but with the requirement for co-ordinated learning

and improvement from local experimentation. Second, there is a need to connect the wide range of bodies concerned with standards. One way of doing this would be through the development of a quality improvement framework. Third, that quality can be raised through ongoing incremental improvements. The development of a quality improvement framework could facilitate this approach with fora of relevant stakeholders sharing problems and solutions across different policy fields. These ideas will be examined in relation to specific sectors of human services in subsequent reports.

Chapter 1
Introduction

1.1   Background

The Council has had a concern with quality, standards and accountability in human services for some time.   Reference has been made to citizens' rights and the question of standards in a number of Council Strategy Reports (NESC, 1999, 2003, 2006). In its 1999 Strategy Report the Council noted that 'the identification of rights without benchmarks may be an empty exercise' (NESC, 1999:76) and that 'rights are not just a question of access to services but have implications for the quality and effectiveness of services as reflected in outcomes' (NESC, 1999:78).

In 2003 the Council argued that if social and economic rights are to be delivered in practice then it is necessary to:

- Develop specific, detailed norms in relation to these rights;

- Establish how these norms or standards are to be monitored;

- Clarify obligations of the state in relation to each of the norms, for example, by reference to indicators and benchmarks;

- Establish accessible, transparent and effective mechanisms of accountability in relation to each of the norms and standards; and

- Ensure that all members of society are fully aware of the rights and standards that they are entitled to expect (NESC, 2003:369-70).

NESC contended that securing social rights through this approach required finding more effective approaches to public administration, citizens' participation and accountability.   The Council pointed out that standards and benchmarks tell not only how things are, but also how things can be improved, in a specific and detailed way.

These ideas were further developed in NESC's *Developmental Welfare State* report in 2005, where NESC argued that high-quality services were those to which there is universal access but where the means of access are tailored to an individual's specific circumstances. Here, standards are understood as statements to service users and by service deliverers. They express what service users have a right to expect and what they are committed to support being provided for Irish society in

general. At the same time the standards express what service deliverers understand is within their competence to provide and what constitutes the assurance of doing so professionally.

Subsequently, the NESC's 2006 Strategy Report noted:

- That insufficient attention has been paid to standard-setting, monitoring and accountability;

- The need for a system of rights and standards that supports continuous improvement; and

- The promotion of a Developmental Welfare State, with the need for an individualised, tailored approach.

Concurrent with NESC's deliberations on standards and quality service provision, a number of other pertinent developments have taken place to raise our awareness of standards and accountability in human services. These issues include:

- A better-educated public that demands higher standards;

- A growing awareness of the interdependence of economic and social development, which has been driving a demand for more effective services;

- Gross system failure in some services and settings;

- Widespread acceptance that current standards and accountability regimes have been inadequate;

- A sense that insufficient attention has been paid to standard-setting, monitoring and accountability;

- A perception that service-delivery systems are too rigid to provide 'tailored' solutions;

- Significant allocations of resources made to a range of services during the period 2000–2008, requiring increased scrutiny and the building of a new standards and accountability architecture; and

- Public sector reform in the context of an economic crisis.

These issues have prompted NESC to undertake a study of the emerging standards and quality improvement regimes in human services in Ireland. The public service reform programme, and the challenge of providing quality services with reduced resources in the current economic climate, have brought concern with standards, quality and accountability into even sharper focus. Public services can also have an important role in supporting the economy through the provision of jobs, development of skills, increasing participation as well as by providing a good public

service infrastructure to attract economic development and support a good quality of life.

More recently, public awareness of standards and accountability was dramatically increased by the revelation of the failure of banking regulation. Hence, the importance of standards and accountability in human services has been overshadowed by a concern about economic regulation. Much has been written about the failure of economic standards and regulation to prevent, or at least to lessen, the impact of the economic recession, particularly with regard to the collapse of the banking system. For example, (Laffan, 2010:3) observed that 'notwithstanding a significant development of regulatory institutions and frameworks in Ireland over the last fifteen years, there was an abject failure of the regulatory system'. The Honohan Report, which reviewed the banking crisis, drew attention to a number of factors, including that when problems were identified no escalated sanctions were put in place; the regulator had what turned out to be conflicting goals (to both promote the financial sector and to provide financial stability); and a tick-box approach was used, which emphasised process over outcomes (Governor of the Central Bank, 2010:8).

While one obvious reaction might be to strengthen regulation, a more considered and nuanced approach may be required. Brennan (1998:710) has captured this sentiment by asking, 'Is there a way to combine continuous quality improvement and modern methods of quality measurement into a new regulatory format?', following her observation that there is 'little intertwining of quality improvement, quality measurement and regulation'. In relation to human services, Eileen Munro, carrying out a review of child protection systems in the UK, warned of a need to guard against instances where 'problems have too often led to more central prescription, culminating in the current over-proceduralised system' and, as a consequence, 'when the bureaucratic aspects of work become too dominant, the heart of the work is lost' (Department of Education, 2011:9-10). As against this, as illustrated so starkly recently in relation to the failure of economic regulation, there is a danger in becoming too reliant on self-regulation and of regulators becoming too deferential to 'insiders' (regulatory capture).

So, it is not only the adoption and announcement of regulation and standards that is important but how they are implemented, and how they inform attitudes and behaviours, in conjunction with associated systems of accountability and lessons learned and shared. This report reviews current approaches to standards and accountability in the human services, searching for complementary strategies that have been shown to be effective.

1.2   The Focus of the Project

This project is concerned with how regulation and standards can best contribute to good quality, continuously improving human services. This report reviews approaches to standards-setting and continuous-improvement regimes: from a conceptual viewpoint, from international experience and from recent experience in Ireland. Further reports will review the role of standards and quality improvement

initiatives in a number of human services areas: eldercare, end-of-life care, disability, schools, and policing. A synthesis report will draw together the conclusions of the overview and specific human services reports, including suggestions for the way forward.

The primary focus of the work is on what shapes quality and ongoing improvement in human services provision, with an emphasis on the role of standards and systems of accountability. Quality services have been defined as the extent to which service delivery and/or service outcomes meet with the informed expectations and defined needs of the service user (NESF, 2007:3). Human services provided in this way are often referred to as 'person-centred' services and services 'tailored' to meet service users' needs. Associated issues that occur in a review of quality-service provision and standards relate to regulation, especially responsive regulation; the role of the service user; how services are organised; costs; and systematic learning from experiment and experience. Each of these associated issues is briefly described below.

Traditional approaches to regulation and standards-setting have mainly focused on either a 'command and control' approach (top down) or a reliance on self-regulation (bottom up). Over recent decades, it has been recognised that each of these approaches is limited, and in some cases, has failed disastrously. So, to avoid the problems of these regulatory models based on punishment or persuasion, some modern systems are adopting a responsive regulation approach. Responsive regulation, and its variants, seek to persuade whilst letting the regulated know that more onerous action will be undertaken if matters do not improve.

An increasing trend in the provision of human services is a focus on how the service user receives the service. Thus, there is a growing reference to 'person-centred' services, 'tailored services',[17] 'money following the patient/client', and so on. In this regard, there is a greater emphasis on taking into account the views of service users through consultation, ongoing engagement and, in some cases, the co-production of services and associated standards, for example, through student councils, patients' committees, residents' committees and joint policing committees. Associated with a greater emphasis on service users is an increasing focus on outcomes—for the service user, but also for the service providers, and the service system more widely, see Michelle's story in Box 1.1

While most human services in Ireland are organised centrally, they are ultimately delivered to a person at a personal or local level. This reality requires that service-provision systems are organised in such a way that there is a connection, or a 'line of accountability', between the service users and the central organising authority through the service-delivery agent(s). If services are to be truly person-centred in their organisational structure, then there is a logic for a devolution of authority to those who manage and deliver services 'at the frontline', as they are usually best placed to be able to relate directly to service users' requirements. Networks are increasingly being used to support these devolved approaches. There is, however,

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17   See for example, NESC's report on the Developmental Welfare State (NESC, 2005).

the need to ensure accountability and transparency in adopting such approaches, as a balance is required between central prescription and oversight, and local freedoms (Department of Education, 2011).

Box 1.1   Michelle's Story

Michelle is a 25-year-old woman with a great sense of humour who enjoys interacting with people with whom she has a relationship. She has a great love of music and dances with rhythm at every opportunity. Michelle communicates without words. She has been diagnosed on the Autistic spectrum.

Michelle lived for a number of years with four young men in a residential unit that catered for the needs of people who present with challenging behaviour. During this time Michelle attended a local day centre. However, her behaviour prevented her from fitting into the routine and there were many times when Michelle missed the opportunity to attend. She was clearly unhappy to be part of this group, and given the varied needs of the group, staff had little time or opportunity to individualise her programme.

In October 2005 an opportunity arose for Michelle to move with three other women to a new house in the community. The transition was particularly challenging for Michelle as she did not know the staff or the individuals with whom she would be living. After about six months, Michelle began to build her trust and relationship with the team. As staff began to get to know Michelle and her family, they used their deepened knowledge to work out what Michelle's personal outcomes were in life, what her priorities were, how she wanted to spend her days, who and what was important to her. They learned what upset Michelle and responded in ways that helped her manage her anxieties better. Her key worker has helped her to strengthen her relationships with her family and has reintroduced her to the community where she grew up. Her home environment provides her with the privacy, safety, security and consistency essential to her quality of life.

The commitment of the leadership and team to the provision of a person-led approach, and a consistent and flexible staff team and relief panel were key to Michelle's success.

Edited from Report of the Working Group on Congregated Settings (HSE, 2011:97).

Source   HSE (2011)

In the current economic climate cost is to the forefront of any debate in providing public services. While the evidence is limited, it is plausible, though not proven, that as quality improves, the costs of provision can be reduced—for instance, by cutting out waste, and changing the way we do things to make services more efficient and effective. Take, for example, the notion of supporting an older person to live in the community rather than placing that person in an institution.   When the overall costs are calculated it is generally more expensive to provide care in an institutional environment—but supports in the community may be more difficult to organise because they are provided by a number of different institutions, and budgets, and require different working patterns and organisation. They also require

different regulatory arrangements. But survey evidence suggests they result in a better quality of life for the person involved (person-centred approach), and in instances where this approach has been adopted it can work very well. A corresponding perspective is that, in a context of budget reductions, similar strategies would need to be employed if quality is not to be jeopardised, i.e. if services are not to deteriorate when there are budget reductions.

The literature and international experience on improving quality in the provision of human services point to the importance of a system of structured reporting from which systematic learning can be derived and shared. There are a number of elements to this. The first is that good quality data are required, that are useful both to the centre (for overview and comparative/benchmarking purposes) and for local learning. Thus, there needs to be a clear rationale for the data required and the use to which it is being put. Secondly, quantitative and qualitative data provide information that helps to answer 'why' questions—why certain events occurred as they did, sometimes referred to as diagnostic monitoring and root-cause analysis. The most advanced illustration of this approach is 'triple-loop learning'. The first loop of learning occurs when practitioners monitor their actions and make adjustments to gain improved outcomes. The second loop occurs when this kind of practical learning is noted by managers, who subsequently adjust their systems and routines. And the third loop occurs when policy makers and oversight authorities learn from monitoring the organisation's improved goals and revise their strategy for the entire field. In adopting this approach, 'the local' and 'the centre' are connected in a virtuous loop of continuous quality improvement. Eileen Munro refers to this as 'moving from a compliance to a learning culture' (Department of Education, 2011:5).

As stated earlier, the findings from this review of how standards and systems of accountability can best contribute to good-quality, continuously improving human services are reported in a number of discrete reports. This report provides an overview of approaches to standards-setting and continuous-improvement regimes from a conceptual viewpoint, from international experience and from recent experience in Ireland. Further reports provide an overview of standards-setting and continuous improvement regimes in a number of human services such as eldercare; end-of-life care; disability; schools; and policing. Finally, a synthesis report will draw together the conclusions of the overview and specific human services reports, including suggestions for the way forward. The work was undertaken over a two-year period, 2010–2011.

1.3   Structure of this Overview Report

Chapter 2 sets out a conceptual overview of regulation, standards, and quality improvement. The third chapter presents the development of standards systems in Ireland, with a focus on human services. Chapter 4 presents an overview of the key findings and emerging ideas.

Chapter 2
Conceptual Overview of Regulation, Standards and Quality Improvement

> We regulate in an empirical void, often addressing anecdotes and hysteria with far-reaching initiatives (Brennan, 1998:725).

From the food we eat, to the buildings we live in, to the transport we use, to the institutions we work in and derive services from, to the wider environment—all these are subject to meeting certain standards, often controlled through regulation, for our health, safety and well-being.

In this chapter, we set out the context for standards-setting through regulation, before considering conceptual approaches to standards-setting and quality improvement.

2.1   The Regulatory Environment

'Regulation occurs when an external agency imposes standards or rules on the behaviour and actions of others which are accompanied by enforcement provisions' (Health and Social Care Regulatory Forum, 2009:4). Regulation is often defined as rule-making and rule enforcement. It is generally undertaken through three types of activities:

- **Direction**—through the communication of expectations and requirements (norms, standards or rules);

- **Surveillance**—by assessing compliance and/or performance in relation to standards, targets and rules (monitoring); and

- **Enforcement**—through using positive or negative powers to bring about change (correcting behaviours that deviate from the norm).

Regulation is one of a number of 'quality enhancing interventions' which can improve the quality of services. Other interventions can include things like incentives, organisational interventions, delivery models, service user contributions, and data-related and IT solutions (Sutherland & Leatherman, 2006:i). Drawing on evidence from a five-year project of the Health Foundation in the UK (Quest for Quality and Improved Performance), Sutherland & Leatherman (2006:7), identify three purposes for regulation:

- To improve performance and quality;

- To provide assurance that minimally acceptable standards are achieved; and

- To provide accountability both for levels of performance and value for money.

While NESC is concerned with all three purposes, Sutherland and Leatherman argue that it is not possible to achieve optimal performance across these three purposes simultaneously, so that 'trade-offs' are required.[18] They specifically undertook a literature review to identify 'what works' in trying to improve quality through regulation. They found that the available evidence, which largely originated in the USA, was 'sparse', and mainly drawn from observational studies. They observed that the links made between regulation and improvements are mainly by association, rather than by regulation being the cause of quality improvements. Sutherland and Leatherman identified three types of regulation: institutional, professional and market (bearing in mind that their focus was on health care). The key elements of each of these are summarised in Box 2.1 below.

Box 2.1   Types of Regulation

Institutional Regulation

    – **Target-setting**

    – **Standards-setting**

    – **Accreditation**

    – **Inspection**

Professional Regulation

    – **Licensing/registration**

Market Regulation

    – **Managing competition**

    – **Accountability**

    – **Managing supply**

Source   Sutherland & Leatherman (2006)

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18 For example, if improvement is the main objective, ambitious standards and targets are used to challenge the *status quo* and help organisations identify areas for development. If, however, the main priority is to provide assurance, standards are set at a minimum acceptable level and there will be little distinction between organisations as most should be able to comply easily. The third purpose, accountability, requires methods that allow regulators to differentiate and compare performance in an objective and meaningful way (Sutherland & Leatherman, 2006:13-14).

The OECD distinguishes between three types of regulation—economic, social and administrative. In OECD documents, regulation refers to the diverse array of instruments by which governments set requirements on enterprises and citizens (OECD, 2001:17). Thus, regulations include laws, formal and informal orders and subordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers.

Economic regulations relate directly to market decisions such as pricing, competition, market entry and exit. **Administrative regulations** relate to paperwork and administrative formalities, and are the instruments through which governments collect information and intervene in individual decisions. **Social regulations** seek to protect public interests in areas such as health, safety, the environment and social cohesion. Even though here we are interested in human services and social regulation in particular, we recognise the interdependence of the economic and social spheres. This inter-connectedness is a key component of the Council's philosophy and shared understanding, supporting Sparrow's view that the distinction between economic and social regulation is 'somewhat fuzzy' (Sparrow, 2000:7).

Social regulations are said to be almost as old as government itself in that 'a rule specifying the consequences of faulty construction of buildings can be found in the Code of Hammurabi of ancient Babylon' (May, 2002:162). Historically, however, much social regulation was developed in the USA during the 1960s and 1970s. During this period social regulatory legislation was passed in relation to consumer protection, health and safety, environmental protection, and social inclusion. This growth in social regulation was related to a number of factors, including an increasing concern for the welfare of society and the well-being of individuals, and the role of social movements in seeking improvement in conditions for their members, or society in general.

The expansion of social regulation in the USA was soon replicated in other industrialised countries. So much so that today social regulations govern what we eat, where we live, the care of children, how we are educated, the conditions under which we work, the clothes we wear, how safe we are, the safety of travel, the quality of air we breathe and the water we drink, the facilities in which we may spend our later years and eventually how we are buried (May, 2002). To set the standards, and to monitor and enforce the regulations, has traditionally required a large number of regulatory bodies.

The 'classic' model of an agency with a specific regulatory mandate, separate from the institutions of government, originated in the USA in the late 19th century (Eisner, 2000). The rationale was that, to 'achieve optimal policy outcomes, politics and administration needed to be separated', with the result that regulatory agencies were created apart from the executive and legislature arms of government (Shipan, 2006; Westrup, 2007). This distinction has led Gorecki to comment that 'there is always likely to be a tension between the independence of regulators from government and accountability of regulators to government' (Gorecki, 2011:180).

Since then, there have been many developments and variants to this classic model of regulation. These developments have resulted in the establishment of regulatory

institutions with different mandates, as well as different levels of responsibility, different legal bases and different structures (Brown & Scott, 2010:12). In the 1990s a number of fundamental changes took place in social regulation, particularly in relation to social security and the labour market. These areas are likely to continue to change as a result of social trends such as population ageing, individualisation and internationalisation. The current economic crisis is also likely to fundamentally change elements of social regulation.

Thus, notable features of social regulation are (i) the variability of different forms of social regulation with respect to the extent to which they compel or cajole compliance; and (ii) the way in which regulatory agencies and inspectors shape the day-to-day realities of regulation. As a result, the application of social regulation can lead to widely different experiences and outcomes.

Writing on social regulation, professor of political science at University of Washington, USA, Peter May (May, 2002) notes a number of developments taking place in social regulation internationally:

- First, a change from direct regulation by the state and the use of inspectors, to the engagement of a range of entities, including nongovernmental organisations in bringing about compliance (see the discussion on 'smart regulation' at 2.3);

- Second, current thinking promotes the role of government as a facilitator in bringing about compliance—rather than using the heavy hand of enforcement, which has proven to be inadequate because of lack of resources and because of an antipathy towards this approach. The government is better placed to facilitate compliance where the rules are widely accepted as essential for society at large;

- Third, the development of regulations is now more inclusive, resulting in regulations that are seen as more reasonable with a wider sense of ownership;

- Fourth, in relation to the rules there has been a move from 'specification of desired actions' to an emphasis on outcomes and desired performance levels. This approach can provide opportunities for innovation and creativity, showing elements of continuous improvement.

May's overall inference is that in social regulation there is now a wide mix of regulatory tools, from the traditional, coercive approaches, to the newer facilitative approaches. In this context it is difficult to generalise about social regulation. Nevertheless, the central message is that with proper design, social regulation can be an effective tool in preventing harms and securing benefits. Key to this is effective implementation. Therefore, 'the success of social regulation rests on finding the appropriate fit between the motivations of affected entities and the design and implementation of the tool' (May, 2002:181).

The thread of NESC's argument on the role of social regulation has long followed this line of thinking. For instance, NESC has had a concern in relation to labour standards and the integration of immigrants, and specifically how standards could be protected in the context of a voluntarist regime of industrial relations (NESC,

2010:190). In its 2006 report on migration, NESC argued that the challenge of protecting labour standards should be placed in the wider context of achieving the integration of migrants and avoiding labour market, social and linguistic segmentation. This broader perspective highlighted the need for strengthened institutions to protect labour laws along with the involvement of a wider constituency such as the social partners and NGOs.

Sabel (2006) has also explored the regulation of labour standards, arguing for the need to 'go lean on regulation' (Sabel, 2006:2). Sabel's core idea is that regulation, to be effective, 'must correspond with the forms of co-operation whose effects it corrects in the public interest' (Sabel, 2006:2). By extrapolation, as the forms of co-operation change so too do the forms of effective regulation. Sabel argues for the need to 'rethink the core concepts—such as compliance'. He suggests a new 'experimentalist' regime where 'learning from (by solving problems with) partners is inextricably linked with monitoring their performance and the requirements of compliance are defined by the participants in the process'. By implication then the focus is much less on compliance ('going lean on regulation') and much more about problem-solving, co-operation and performance.

Two of these issues are worthy of further exploration here: modes of co-operation and moving beyond compliance. Some modes of co-operation have led to the emergence of regulatory networks, as regulatory organisations realise the limitations of their own capacity (Scott & Brown, 2010:33). As delivery and regulatory organisations seek greater capacity and strive towards improved co-ordination, participation in networks can facilitate a 'significant bolstering of capacity', along with the exchange of both information and strategies, as well as the benefit of mutual learning (Scott & Brown, 2010:33), see Box 2.2.

Box 2.2   The Use of Networks by the Irish Environmental Protection Agency

In its report, *Re-finding Success in Europe: The Challenge for Irish Institutions and Policy* (NESC, 2010), NESC commended the Irish Environmental Protection Agency for its high international standing in the most up-to-date systems of standard-setting, monitoring and learning. In particular, NESC drew attention to the EPA's methods of in-depth review, network formation and system revision. An associated observation is that networks should not necessarily be regarded as fixed entities, as their configuration may change as new problems emerge.

Source   NESC (2010)

This approach lends itself to the concept of the 'sociological citizen' (Silbey *et al.*, 2008). A sociological citizen is one who sees their work and themselves as a link in a complex web of interactions and processes rather than as a 'cabin of demarcated responsibilities and limited interests'. This linkage is referred to as 'relational interdependence' where people can see, and act, beyond their institutional boundaries or policy silos, as 'networking individuals'. Thus, a sociological citizen

(networking individual) works by trial and error, experiments, tries to connect organisations and arrangements, and adopts a problem-solving approach.

In an assessment of the evidence, Silbey (2011:2) has found that sociological citizens work beyond compliance and the formal responsibilities of their role, having a strong commitment to practical rather than perfect outcomes, to experimenting with what might work now, and dealing with different situations as they arise. This 'relational regulation acknowledges the impossibility of perfect conformity between abstract rules and situated action while nonetheless managing to keep practices within a band of variation surrounding, but not perfectly coincident with, regulatory specifications' (Huising & Silbey, 2011:17).

Thus, these networking individuals are pragmatic, experimental and adaptive, going beyond and outside the prescribed rules and processes with the goal of achieving the 'ostensible public or organizational purpose' (Coslovsky *et al.*, 2010). In other words, they act in the 'spirit of the law' rather than to the 'letter of the law'. As a consequence, networking individuals experience a sense of freedom to try things, experiment and intervene in arrangements and organisations where others would hesitate. 'They do not ask for permission for the things they do ... they are enabled by the web of constraining associations ... they have an extended rather than a constricted set of opportunities' (Silbey, 2011:7). However, these networking individuals and 'relational regulation' do not replace existing models of regulation: rather, they work alongside, and in collaboration with conventional processes and institutions. This poses the question as to what configuration of institutional settings is conducive for sociological citizenry and relational regulation to function optimally.

This approach is very much in line with current thinking—of moving from traditional, prescriptive, coercive forms of regulation towards more modern, flexible and persuasive forms of compliance and improvement. These developments confront a tension between the enforcement of minimum standards to protect the public and the encouragement of the quality improvement elements of regulation. This approach sees a regulatory focus on outcome-based standards, including a continuous improvement requirement as an integral component of each standard, which is intended to enable regulatory systems to fulfil both compliance and continuous improvement objectives.

The remainder of this chapter discusses conceptual approaches to standards-setting and quality improvement initiatives.

2.2   An Overview of Standards Setting

Traditionally, there have been two dominant approaches to standards-setting: command and control; and voluntarism and self regulation. **Command and control** is driven by rules and regulation and is seen as a 'top-down' approach directed by the centre. This centre-oriented approach involves inspection systems set up to provide service users, funders and the wider public with assurances that bodies subject to inspection are compliant with acceptable standards of practice in their

field of operations. Such inspection systems purport to act as a deterrent to non-compliance as organisations know they have to comply with the standards or they will be subject to sanctions, and also that they know others will have to comply as well. Examples of command and control approaches can be found in residential care inspections, environmental regulations, and food safety.

Most inspection systems, however, can only go so far as to say that on a particular occasion, in as far as it was possible to establish, a service was, or was not, in compliance with a particular set of rules or standards. In addition, it has been found that deterrence is more effective against small organisations than large ones, and that unless it is carefully targeted it can prove counterproductive by developing a 'culture of regulatory resistance' (Gunningham, 2010:139). Limiting the scope for professional discretion via externally mandated standards may demotivate staff, potentially driving down standards. Therefore, it has become increasingly recognised that inspection systems, based on a top-down approach, have limitations and weaknesses and may not deliver the improvements in service standards that are being sought. Nevertheless, historically one common response to this failure of inspection has been to increase the rules and regulations. This over-specification in inspection regimes can result in services that comply with the minimum standards while failing to achieve the maximum quality in terms of outcomes. In other words, there is compliance with the rules, but failure to internalise the 'spirit' behind the rules.

In contrast, **voluntarism and self-regulation** is a 'bottom-up' approach where frontline staff, local service providers and professionals are engaged in a process of self regulation. Traditionally, professions such as the medical profession and the teaching profession have engaged in self-regulation. In this approach, service providers and their staff are considered the most appropriate arbiters of service quality. This understanding maximises the freedom and responsibility of staff to determine their own methods of working and to decide for themselves what represents high standards and best practice for their organisation or service. Voluntarism and self-regulation are based on the premise that staff in an organisation know more about their organisation and its service users than anyone else. The regulation element takes place through the acceptance of 'social norms' or 'professional values' rather than through explicit regulatory institutions. It is argued by some professionals that their professional training and accreditation provides them with all the requisite judgements to deliver a quality service.

There are, however, a number of weaknesses in this approach. A key weakness, increasingly recognised internationally, is that self-regulation relies on the motivation of the individual and thus it presumes that well-trained staff alone are enough to achieve good standards in services, and that the capabilities to undertake such work are in place. It also lends itself to protection of vested interests. A further weakness is that self-regulation assumes that the boundaries of problems coincide with professional areas, e.g. that a particular illness has only a medical solution, whereas social and environmental factors may be relevant. On a related point, where co-operation within and across professions is encouraged, Gunningham contends that there is now considerable evidence that co-operative approaches may actually discourage improved regulatory performance amongst better actors, if those who fail to meet the required standards are not punished

(Gunningham, 2010:125). Thus, experience has shown that exclusive reliance on a professional ethos has proved insufficient, and that people must be supported by good systems that validate their good intentions, and by punishing poor performance. In the absence of such systems, even well-motivated and committed staff will be frustrated in their efforts to achieve high standards.

Table 2.1   Some Key Concepts

Terms	Variants	Meaning
Command and Control		**Top-down, rules and sanctions— punishment**
Self-Regulation		**Bottom-up, 'social norms' and 'professional values'—persuasion**
Responsive Regulation		**Seeking to persuade but threat of punishment if standards not met (pushing standards above a floor)**
	Tit for Tat	**Same organisation responsible for persuasion and punishment**
	Restorative Justice	**Separate organisations responsible for persuasion and punishment**
	Strengths-based	**Supporting opportunities and providing praise (pulling standards through a ceiling)**
	Smart Regulation	**Broader range of organisations involved, including third parties**
	Meta-regulation	**Regulation of self-regulation**

2.3   Responsive Regulation

A model of regulation that is premised on avoiding the problems of both the command and control approach and the reliance on self-regulation is 'responsive regulation', put forward by leading Australian scholars of standards in human services, John and Valerie Braithwaite, along with American academic Ian Ayers. The Braithwaites' pioneering work on eldercare institutions has led them to rethink these two approaches (command and control, and self-regulation) and to suggest alternatives. Their work has been very influential in developing modern regulatory approaches.
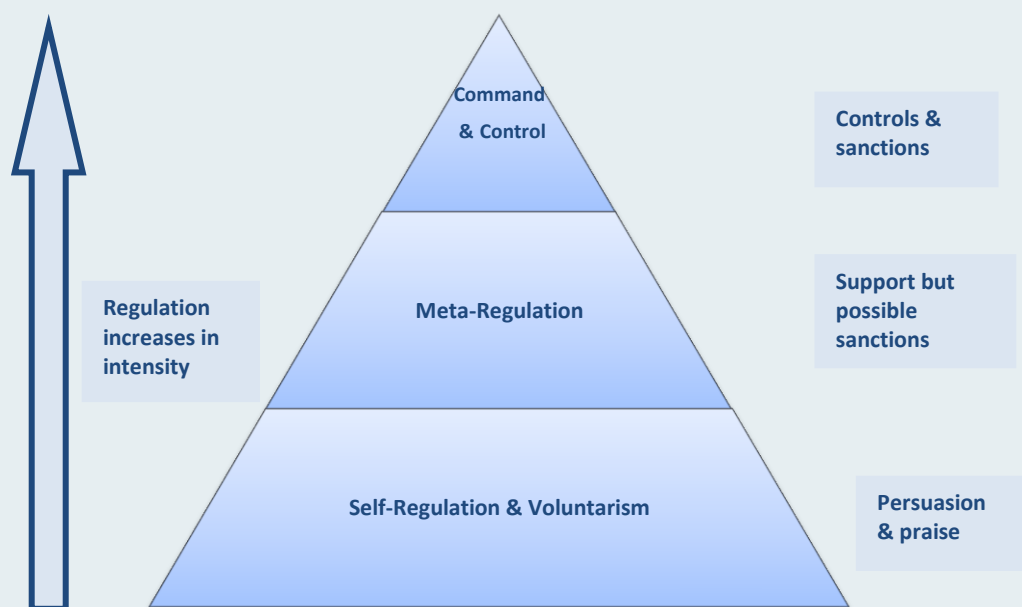
As discussed above, a key weakness of the command and control approach is that a regulatory model based around sanctions does not induce improvement, and can simply instil a ritualistic compliance. Self-regulation, in contrast, relies on the good faith of those delivering a service and tends to neglect those potentially hazardous incidents from which learning and improvement could be derived. To transcend the problems of regulatory models based upon punishment or persuasion, John Braithwaite proposed a regulatory pyramid that aims to solve the puzzle of when to persuade and when to punish. It is based on the maxim of 'speaking softly while carrying a big stick', i.e. to seek to persuade whilst letting the regulated know that more onerous action will be undertaken if matters do not improve; see Figure 2.1. In the central segment of the pyramid is meta-regulation, sometimes referred to as the 'regulation of self-regulation'. Meta-regulation is premised on the idea that many organisations already operate a system of self-regulation, but that this should be reinforced by the regulator's own strategies.[19]

Key elements of the theory of responsive regulation include the following:

- Regulation is viewed along a continuum that encompasses distinct approaches;

- The regulator/overseer begins at the base of the pyramid with persuasion;

- A single regulatory mechanism is seldom sufficient as the weaknesses of one mechanism must be complemented by the strengths of another; and

- There must be a capacity for escalation if persuasion fails.

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19   Meta-regulation is discussed in further detail later in this section.

Figure 2.1 Pyramid of Responsive Regulation

Command & Control — Controls & sanctions

Meta-Regulation — Support but possible sanctions

Self-Regulation & Voluntarism — Persuasion & praise

Regulation increases in intensity

Source Braithwaite (2002)

The Braithwaites advise that regulators begin at the bottom of the pyramid with a presumption that many people will act in a virtuous manner and will be stimulated through a combination of persuasion and praise.

Empirical research carried out by (Neilsen & Parker, 2009), albeit in the context of business-regulation enforcement, sought to test how the theory might work in practice. They looked at two types of responsive regulation—'tit for tat' and 'restorative justice'.[20] In 'tit for tat' responsive regulation, a single individual/institution coaxes and coerces compliance with the standards. In 'restorative justice' responsive regulation, a regulator or overseer coaxes compliance but, where necessary, sanctions are enforced through the legal system or independent arbiter, i.e. through a different institution. Although Nielsen and Parker's empirical study was far from definitive, it did find some difference in

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20 Tit for tat' (TFT) responsive regulation is where enforcement agents start at the bottom of the enforcement pyramid and then respond, tit for tat, to the regulatee's response to the regulator throughout the enforcement interaction. TFT responsive regulation suggests that frontline regulatory staff communicate with the regulatee in a more or less explicitly threatening and formal way throughout the investigation and enforcement process, depending on the regulatee's response. In 'restorative justice' (RJ), responsive regulation individual regulatory staff are light on both formalism and coercion and focus on the bottom of the regulatory pyramid. But this positive approach by individual regulatory staff occurs in the context of an investigation and enforcement system that will escalate up the pyramid to coercion and punitive enforcement, if and when required. However, the regulator does not make threats of coercion no matter how high up the pyramid events progress. It is the law, the legal system and the enforcement process itself that threaten the regulatee.

reaction to the two approaches, suggesting that context and approaches do matter in encouraging compliance and improved performance through regulation.

Box 2.3   An Example of Restorative Justice Responsive Regulation

The Application of Accreditation Standards for Aged Care in Australia

If the Aged Care Standards and Accreditation Agency (the Agency) has reasonable grounds to believe that an accredited residential care service may not be complying with the Accreditation Standards or other responsibilities under the Aged Care Act 1997, the Agency may arrange for a review audit.

Following a review audit, the Agency may decide to revoke the accreditation of the service, to vary the period of accreditation or to make no change. If the Agency finds non-compliance with one or more of the agreed expected outcomes and decides that non-compliance has placed or may place the safety, health or well-being of persons receiving care through the service at serious risk, the Agency must immediately report to the Department of Health and Ageing, Australian Government and make a recommendation on whether sanctions under the Act should be imposed. An appeals process is available to the care provider.

It is notable that it is the Department, not the Agency, that applies the sanction.

Source   Commonwealth of Australia (2005:6)

In describing the role of regulation in quality improvement, Brennan and Berwick (1996) have argued that responsive regulation entails at least five different approaches to improving quality:

i.   Repair—by identifying quality deficiencies and repairing them;

ii.   Culling—by removing defects from the system;

iii.   Copying— by copying what others are doing;

iv.   Learning through cycles—for example, through learning formats such as Plan-Do-Check-Act; and

v.   Creativity—by cultivating an atmosphere where creativity can thrive.

They note, however, that regulation often relies solely on culling, which is frequently converted to policing, so that quality improvement is treated as a matter of removing defects rather than as a continuous process of improving standards. This leads Brennan and Berwick to state that they 'cannot cite any evidence that general quality ... is improved by the method of removing a few bad apples' (Brennan, 1998:173). They do contend, nevertheless, that the overall responsive regulation philosophy encourages self-regulation and innovation, provided that the

regulatory agency is able to punish those who do not participate in reasonable programmes.

Gunningham (2010:127-29) has drawn attention to some of the limitations of responsive regulation in general, summarised as:

- That it can breed mistrust, particularly when there is escalation up the pyramid. The motivation for compliance then changes from co-operation and trust to deterrence and mistrust;

- There is a limit to the extent to which regulated organisations have the capacity and/or inclination to communicate with regulators;

- In some cases, where there is a whiff of non-compliance it may be better to move straight to sanction, rather than engage in escalating responsive regulation e.g. in the case of non-compliance of the banks with financial regulation;

- It may be better to identify organisations at highest risk of non-compliance ('risk-based' regulation) and focus resources on them (rather than gradual escalation up an enforcement pyramid);

- Responsive regulation is difficult when it is dispersed across several different institutions, sometimes referred to as 'fragmentation' (Brown & Scott, 2010);

- It may not work where there are infrequent interactions between the regulator and the regulatee, i.e. there is not the opportunity to be 'responsive'.

In the context of these potential limitations, a number of variants of the responsive regulation approach have been put forward, for example, a strengths-based pyramid, smart regulation, and meta-regulation. Each of these approaches is briefly described.

Braithwaite has developed a **'strengths-based' pyramid** to complement the 'regulatory' pyramid, where the strengths-based pyramid promotes 'virtue' and the regulatory pyramid restrains 'vice' (Braithwaite, 2008:115), see Table 2.2 and Figure 2.2.

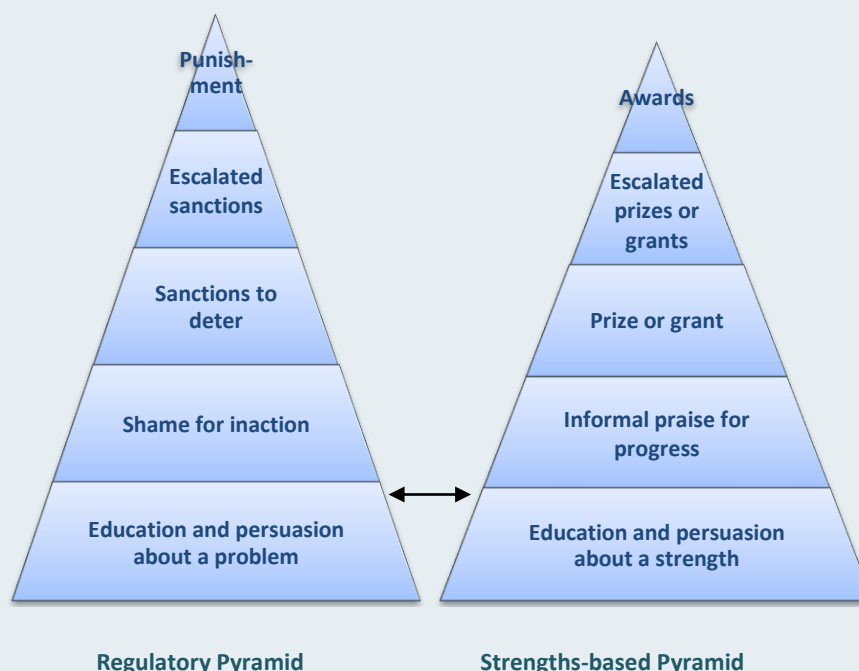**Table 2.2   Design Principles for Strengths-Based Versus Regulatory Enforcement Pyramids**

Regulatory Pyramid	Strengths-based Pyramid
− Risk assessment	− Opportunities assessment
− Fear	− Hope
− Prompt response before problem escalates	− Wait patiently to support strengths that bubble up from below
− Pushing standards above a floor	− Pulling standards through a ceiling

Source   Braithwaite (2008:15)

As described earlier, the *modus operandi* for the regulatory pyramid is to start at the bottom of the pyramid, through informing and encouraging organisations/service providers to comply with regulation. If problems are not resolved, or if there is non-compliance, actions are escalated upwards through shaming, sanctions and punishments. By contrast, in the strengths-based pyramid one again starts at the bottom (and in this way the two pyramids are inter-connected) but progresses up the pyramid by identifying and building on strengths through providing praise, prizes and awards.

Braithwaite (2008) argues that it is necessary to adopt both approaches—to ensure compliance at a minimum but also to improve quality through encouraging good performance. It is difficult to build rewards into a sanctions-based system, hence the need for the complementary pyramid. Again, the balance needs to be right as too much emphasis on extrinsic rewards can result in perverse behaviours as people may become more motivated to achieve the award, rather than improve the quality of service provision holistically.

Figure 2.2   An Example of a Strengths-based Pyramid Complementing a Regulatory Pyramid

Regulatory Pyramid (left, bottom to top):
- Education and persuasion about a problem
- Shame for inaction
- Sanctions to deter
- Escalated sanctions
- Punish-ment

Strengths-based Pyramid (right, bottom to top):
- Education and persuasion about a strength
- Informal praise for progress
- Prize or grant
- Escalated prizes or grants
- Awards

Regulatory Pyramid   Strengths-based Pyramid

Source   Braithwaite (2008:116)

Thus, the dual pyramid system is about continuous improvement, by identifying problems and fixing them, but also by identifying opportunities and developing them. As stated earlier, both pyramids are linked at the bottom to educational activities, support and self-regulation, but deviate as one moves up the pyramid, i.e. shame versus praise, sanctions versus prizes, and punishment versus awards. The strength of this dual pyramid approach is at the bottom, where they are inter-connected. This is where most of the activity takes place within the service-delivery organisation, with limited support and/or intervention from external organisations, such as regulators and overseers. There is further discussion on the continuous-improvement aspects of this approach later in the chapter.

In '**smart regulation**', advocated by Gunningham, Neil and Grabosky (1998), the actions of third parties (such as professional organisations, trade unions, NGOs) are included in regulatory practice (see also the trilemma of standards discussed in the next section). The central argument of this approach is that, in most cases, the use of multiple—rather than single—policy instruments and a broader range of actors will produce better regulation. 'Smart regulation' builds on Braithwaite's regulatory pyramid in two ways:

i. It allows third parties to act as 'quasi-regulators' (Gunningham 2010:132). In this model escalation is possible up any face of the pyramid, for example, the first face through state regulation, the second face through self regulation, the third face through NGOs.[21]

ii. It conceives of the possibility of regulation using a number of different instruments implemented by a number of parties at different levels. For example, in some cases functioning of the lower levels of the pyramid may be dependent on government sanctions at the peak on those who do not comply.[22] In such scenarios 'it is the presence of the regulatory gorilla (possessing formal legal powers) in the closet that secures ultimate success' (Gunningham, 2010:133).

The preferred role for government under smart regulation is to create the necessary preconditions for second and third parties to take on a greater share of the regulatory mandate. It is argued that this approach has the added benefits of reducing the drain on scarce regulatory resources and provides greater ownership of the regulatory issues by service providers and the wider community. While supporting the need for multiple regulatory interventions, Braithwaite *et al*., (2007:312) caution against a 'kitchen sink' approach to regulatory strategy, citing Gunningham, Neil & Grabosky's (1998) 'powerful analysis' of the dangers of 'smorgasbordism', i.e. 'trying a little bit of everything'.

One of the most developed variants of responsive regulation is **meta-regulation**, which is in itself integral to the regulatory pyramid, as described earlier, see Figure 2.1. Meta-regulation is based on the idea that organisations should put in place systems of self-regulation and that regulators and overseers seek to assure themselves that these systems are adequate and being followed, i.e. it is the regulation of self-regulation. In the aftermath of many regulatory failures, governments have encouraged organisations to adopt advanced systems of managing risk and require regulators to assess how well these systems are operating, rather than directly inspecting for risk themselves.

One example of this kind of meta-regulation was introduced in the aftermath of the Piper Alpha oil rig disaster, which resulted in the loss of 165 lives. Regulation of offshore oil and gas production has become based on a rig operator developing a safety-management system that has to be submitted to the national regulator for approval. Instead of government inspectors directly enforcing rules, they have moved to a system of ensuring that the operator is self-enforcing its own safety system and continuously improving it (Braithwaite, 2005). The regulator specifies the goals that are to be achieved and leaves it to those operating at the frontline to

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21 Noting that the basic shape of a pyramid is a solid figure with a polygonal base and triangular faces that meet at a common point at the top.

20 Gunningham (2010:133) cites the example of the self-regulatory programme of the Institute of Nuclear Power Operators (INPO). Even after the Three Mile Island nuclear disaster, which led to improved regulations for the nuclear industry, there were industry laggards who did not respond to education, persuasion, peer group pressure, gradual nagging from the INPO, or shaming. The INPO's ultimate response was to turn to the government regulator, the Nuclear Regulatory Commission (NRC), to get them to comply.

work out how best this can be done. Similar approaches have now been adopted in environmental management systems and food safety, and are being introduced in some human services areas (see the specific human services reports).

Critical to the success of the meta-regulation approach is the development of appropriate performance measures, usually as part of an agreed plan outlining the key objectives to be achieved. These plans and the progress made against a baseline can then be audited by a regulatory agency as well as by the delivery organisations. Such an approach allows for the regulatory infrastructure to deal with complex organisations and complex regulatory issues, while at the same time encouraging and facilitating self-evaluation and 'reflexivity'[23] by delivery organisations.

Gunningham (2010:137-8) points out some of the limitations of the meta-regulation approach. He notes that the systems, plans and processes have the potential to fail, both in their design and implementation. There is evidence, however, that carefully designed, systems-based approaches can deliver substantial and sustained improvements in performance. But this is not so in all cases. Outcomes are often dependent on the 'motivations' of the delivery organisations, particularly their managements. This leads Gunningham to conclude that for those who do not want to comply with the required regulations, or are incompetent, there may be a lack of compliance and accountability in the meta-regulation approach. Parker (2007) argues, however, that it is possible to incorporate legal provisions into a meta-regulation approach in order to hold organisations to account. Competence arises as an issue across the various regulatory approaches, as often it is found that incompetence rather than wilfulness is the reason for lack of compliance or poor performance. This finding points to the importance of education and training in the application of regulation, standards and quality improvement.

We can conclude, therefore, that there is no single approach that functions effectively and efficiently in all circumstances. Rather, it is the 'nuanced application' of the most suitable approach appropriate to the circumstances that is required, in seeking to improve quality outcomes in human services (Gunningham, 2010:141). We will return to these issues throughout the report.

2.4   Involving the Service User

In the past decade the involvement of service users has been seen as an important factor in the development and application of standards for the provision of quality human services. This approach, sometimes referred to as the trilemma of standards, understands that 'the centre' seeks accountability and assurances regarding standards, 'the local provider' seeks autonomy and the freedom to

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23   Here 'reflexivity' is understood as the assessment and review of one's own performance, while taking on board the views of others.

respond to local circumstances, while 'the client' seeks services 'tailored' to their needs. Actions to resolve only one dimension of the trilemma will fail as the excluded parties rightly protest at the failure to address their concerns. Finding a satisfactory resolution to this trilemma is one of the key standards and accountability challenges.

Today, the involvement of service users is broadly accepted as a central component in the development of standards to improve the quality of services. There are a number of dimensions specifically relating to this involvement. While current documentation and practice in relation to the design and operation of standards suggest that the involvement of service users should be integral to these processes, there is little research on the impact or outcome of user participation (French & Swain, 2007; Carr, 2004; Robson *et al.,* 2003). The main reason put forward for service user involvement is the importance of getting a range of perspectives, especially from the actual users of services, on their experience of accessing and receiving the service. In some cases, the importance of user involvement can be enshrined in law, as an important human rights principle, for example Article 10 of the European Convention on Human Rights, which has established the right to self-expression.[24] Involving service users, their families and communities can also create awareness of, and generate interest in, the quality of the service and engender 'buy in' in improving the provision of the service; see for example the Irish National Quality Standards Framework for Youth Work.[25] Service users are also becoming increasingly involved in the monitoring of standards.

According to the Framework for Public and Service User Involvement in Health and Social Care Regulation in Ireland (Health and Social Care Regulatory Forum, 2009:6)[26] service users and members of the public should be involved in the work of regulatory bodies:

- To promote **openness and transparency** by enabling the public to review service quality and be directly involved in the development of rules and standards;

- As a **safety solution** so that service providers can learn from the experiences of service users, carers and others, particularly as it relates to adverse events;

- To **improve the quality** of regulated services by ensuring that services are sensitive to the needs and preferences of service users and the public; and

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24 It is noted that even though a 'right' is enshrined in law, this does not mean that it will be upheld.

25 The National Quality Standards Framework is a support and development tool for the youth sector, developed through an extensive consultation process. The standards outlined in the framework are intended to be reflective of the work being carried out in youth work organisations. The framework provides organisations with an opportunity to articulate, through a common language, their youth work practice. It also provides a structured framework for organisations to assess, indicate and enhance their work (Office of the Minister for Children and Youth Affairs, 2010).

26 Adapted from the NHS Quality Improvement Scotland (2003) Patient Focus and Public Involvement. Edinburgh: NHS Quality Improvement Scotland.

- To focus the work of regulatory bodies on service users and **encourage public accountability** by complementing the expertise of health professionals and information from scientific literature.

There are a number of issues to be taken into consideration in involving service users in the design and operation of standards, including practical, organisational and cultural barriers. Issues to be considered include which methods to use (e.g. methods include committees, user panels, surveys, focus groups, submissions, public meetings, forums, suggestion boxes); and the level of user involvement (e.g. from the level of provision of information, through consultation, to agenda-setting, to joint problem-solving and decision-making, to user control). In addressing these issues consideration needs to be given to whether service users will be involved as individuals or as collectives, e.g. residents' committees or patients' councils. A challenge in this respect is the ability to reconcile a diversity of views with the resources available, and to prioritise. Ongoing feedback is required, so that the involvement is 'built in' as part of the service design and delivery, rather than as an 'add on', which can be perceived as 'tokenistic'. Service users may require advocacy and support to enable them to be involved to their full capacity; see for example Nuala's story in Box 2.4

Box 2.4   Nuala's Story

Nuala is 43 years old. When she was 14 (in 1979) her mother brought her to a residential service to live. She was there for 12 years and shared with nine other girls. They had to get up and go to bed at set times. They had no choice in the food they ate or the clothes they wore—the staff decided for them.

In 1991 Nuala was transferred to a community house, where she shared with four other people. There the staff listened to her and tried to help her, through meetings, but still she felt people were talking about her, rather than really listening to her.

Then, in 2007, things started to change. Nuala could choose who she wanted at the meetings, what she wanted to talk about, could decide what was on the agenda and in some cases chair the meetings (circle meetings). Subsequently, with support, Nuala got her own apartment, does her own shopping and cooks her own meals. She has a paid cleaning job for four hours, four days a week, and does voluntary work in a day-care centre one morning per week. She has her own bank account and pays her own bills. She goes to the gym and art classes and has friends who call around.

Nuala's life has changed for the better. She feels that this is because she has control over her life. This has diminished her mood swings and means that she can now control herself. She feels this is because she doesn't have people telling her what to do, but is listened to and respected. She believes people trust her more and as a result she has more confidence.

Edited from *Report of the Working Group on Congregated Settings* (HSE, 2011:97)

Source   HSE (2011)

One of the key challenges in user involvement is recognition and acknowledgement of the power relationships involved. Whatever level of user involvement is engaged in, it usually involves some transfer of power (from information sharing through to user control) from the service provider to the service user. A dimension of this power relationship is the reluctance of some service users to complain about a poor-quality service for fear of making matters worse, especially where services users may be in a vulnerable situation. The existence of this possibility demands openness and transparency in the provision of services with strong systems of redress for service users. It also requires access to good clear information about the service, service users' rights and the mechanisms for redress, where required. As mentioned above, advocacy and support may be required to ensure service users, especially vulnerable service users, can exercise their rights in this regard. Cognisance also needs to be taken of the role of families of service users, and the extent to which the service user's needs and views and those of their family are aligned (or not).

There are a range of mechanisms available to address service users' concerns, from discursive fora, through complaints' mechanisms to formal redress systems. However, through ongoing service user involvement in standards development, and contributions to how services can be delivered, recourse to formal redress mechanisms can become less frequent and less necessary. As part of this widening involvement, service users are now increasingly used in the monitoring of standards as members of inspection teams and visiting committees. For example, this is increasingly the case in the monitoring of disability services internationally. The UK, in particular, uses this approach through involving people with intellectual disabilities in the monitoring of residential services for people with intellectual disabilities. It is argued by those involved that such participation assists inspection committees in better identifying meaningful results and quality outcomes for the users of such services.

2.5   Addressing Costs While Improving Quality

In today's economic climate a key concern is how to improve quality in service provision, while at the same time cutting costs.   There is limited undisputed evidence on this, but a recent meta-analysis of health providers, commissioned by the UK Health Foundation and carried out by Swedish Professor Ovretveit (2009) concluded that:

> although the scientific evidence is not strong, improvement initiatives can reduce costs to service providers. To achieve this requires careful planning, leadership, expertise, perseverance and not a little healthy scepticism. It especially requires a sustained and relentless focus on high-quality implementation (Ovretveit, 2009:viii).

In the search for savings, Ovretveit guards against using 'metaphorical slash and burn activities' or making radical structural changes. Instead, he suggests that the solutions are generally found by those working in, or near, the frontline of service provision. The approaches he has found from the literature and evidence to be

most effective include the centrality of the service user; the importance of work processes and systems; the fundamental importance of measurement; and recognising and rewarding the expertise of those who work on the frontline.

Some of the issues in assessing whether savings are being made, while at the same time quality is being improved, relate to what we understand by quality improvement, to whom the savings are attributed and the time period under consideration. Poor quality service provision can be costly from both a financial and human point of view if services have to be re-provided or mistakes rectified. For example, it is estimated that hospital-acquired infections cost the UK's National Health Service £1 billion per year. The implementation of improvements or solutions can be costly, especially where additional infrastructures or supports are required. Where savings are made, it can depend on the financial systems used as to whom the savings are attributed and whether they are directly related to improvements or additional costs. For instance, savings depend on which timescale is used—interventions usually incur initial high costs and some, such as preventative care, may only return savings many years later, and probably not to the original provider (Ovretveit, 2009:ix). In some cases there may not be an incentive to combine cost reduction with quality improvement e.g. doctors on commission from drug companies, educators providing 'grinds'.

John Seddon, a UK critic of public-service reforms based on targets and specifications, highlights the potential to reduce waste, which ultimately leads to reduced costs and improved quality. Seddon's focus is on the regulatory systems associated with the provision of quality public services in the UK. He highlights five types of waste associated with regulatory and quality improvement systems based on targets, incentives and inspections:

i.   The costs of people spending time writing specifications (often based on opinion and ideology rather than knowledge, and which drive the 'wrong' activity and behaviour);

ii.   The costs of inspection (a culture of compliance 'stifling' innovation and improvement);

iii. The costs of preparing for inspection by those being inspected, especially where inspection visits are announced in advance;

iv.   The costs of specifications being wrong;

v.   The costs of demoralisation (when purpose and performance is replaced with compliance) (Seddon, 2008).

Instead, Seddon (2008:193) contends that 'the public sector reform that is most needed is the one that is never talked about—that of the regime itself, the vast pyramid, hundreds of thousands strong, of people engaged in regulating, specifying, inspecting, instructing and coercing others doing the work to comply with their edicts'. Instead, he focuses on a 'systems-approach', where the emphasis is on

providing a quality service to the service user, through learning about what works, and supporting staff to do a better job.[27]

A recent UK report *Reducing Costs in Public Sector Organisations in an Age of Austerity* (Deloitte, 2010:1) argues that the current austere economic climate provides an opportunity 'to focus and engage the whole delivery network around adding value for citizens, through reducing waste and improving both efficiency and effectiveness'. They identify three specific actions to help achieve 'more with less':

- Engage frontline staff to assist in reducing costs;

- Work across organisational boundaries to minimise both gaps and duplication; and

- Hold managers to account.

The Deloitte report cautions against 'uniform, knee-jerk cuts that directly affect service delivery'. In the area of human services, staffing is a large part of the budget, but also the central component of good service delivery. The challenge is to organise work systems and practices in such a way that staff resources can deliver the optimal quality service within the financial resources available, and that associated regulation, standards and quality improvement initiatives support this approach.

2.6   Adopting a Quality Improvement Approach

International developments have sought to move from compliance with minimum standards towards efforts to continually improve performance, i.e. from floor to ceiling. This is relevant in human services where many of the current approaches to standards have been adopted or adapted from other fields. Examples include TQM (Total Quality Management), 'root-cause analysis' and the regulation of hazardous industries. A key lesson from TQM, sometimes referred to as 'continuous quality improvement' is the need to build quality into the process—it should not be an 'add on' or a separate 'end process'. Root-cause analysis demonstrates the importance of problem-solving routines to get from an 'on the surface' presentation of a problem to the deeper identification of causes. The regulation of hazardous industries has pointed up the need for a systems approach by recognising that human error is natural and inevitable—therefore, there is a need to have systems that remove or mitigate that human error. A key element of the systems approach is shifting the culture of organisations away from one seeking to apportion blame, to a culture of trust and open disclosure, which seeks to identify the root causes of the errors and to rectify them. These developments have been referred to as a **quality and standards revolution.**

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27   Seddon's work is also referenced in the next section 'Adopting a Quality Improvement Approach'.

An influential figure in the development of TQM was W. Edward Deming (1900 to 1993). Deming, an American statistician, is renowned for his work after World War II in Japan where he revolutionised car manufacturing. His central thesis was that by adopting certain principles of management, organisations can increase quality while at the same time reducing costs and waste. The key to the success of this approach is continual improvement and taking a holistic systems approach, rather than focusing only on parts of the system. In particular, he advocated that managers should have a *sy*stem of **'profound knowledge',** based on his famous '14 Points for Management' (Deming, 1982:23-24).

Deming understood a system as:

> A network of independent components that work together to try to accomplish the aim of the system. A system must have an aim. Without an aim, there is no system. The aim of the system must be clear to everyone in the system. The aim must include plans for the future. The aim is a value judgement (Deming, 1994:50).

He argued that a system will not manage itself and therefore must be managed. Hence, his emphasis on management. Deming sought to convince managers that organisations should be managed as systems, not functional hierarchies. Thus, a focus solely on people's activities was a waste of management time and demoralising for workers. Instead, he encouraged managers to study variation from the norm and its causes, usually found in system design and operation. He argued for the need to look beyond measurement to methods, as the method of measurement can influence the results, directly and indirectly by influencing behaviour. In this context he focused on the value of 'profound knowledge' stating that:

> Knowledge is built on theory. ... Without theory, experience has no meaning. Without theory, one has no questions to ask. Hence, without theory there is no learning. ... Information ... is not knowledge. ... Knowledge comes from theory. Without theory, there is no way to use the information that comes to us on the instant (Deming, 1994:102-106).

This argument is consistent with the findings of Parker and Nielsen (2006), researchers in corporate compliance and regulatory policy, that formal compliance system implementation can only contribute to improved performance through better management in practice. They argue that the organisational values that support compliance, organisational resources, and managerial competence are ultimately the most influential, stating that 'right managerial values may be more significant than right managerial activity' (Parker & Nielsen, 2006:12).

Box 2.5   W. Edward Deming's 14 Points for Management

1. Create constancy of purpose for the improvement of goods and services.

The organisation should constantly strive to improve quality, productivity, and consumer satisfaction to improve performance today and tomorrow.

2. Adopt a new philosophy to reject mistakes and negativism.

Customers, managers, and employees all need to change their attitudes towards unacceptable work quality and sullen services.

3. Cease dependence on mass inspection.

Instead of inspecting products after production to weed out bad quality, improve the process to build in good quality.

4. End the practice of awarding business on price alone.

Create long-term relationships with suppliers who can deliver the best quality.

5. Improve constantly and forever the system of production and service.

Improvement is not a one-time effort; managers must lead the way to continuous improvement of quality, productivity, and customer satisfaction.

6. Institute training.

Train all organisation members to do their jobs consistently well.

7. Institute leadership.

Managers must provide the leadership to help employees do a better job.

8. Drive out fear.

Create an atmosphere in which employees are not afraid to ask questions.

9. Break down barriers between units.

Ensure that people in organisational departments or units do not have conflicting goals and are able to work as a team to achieve overall goals.

10. Eliminate slogans, exhortations, and targets for the workforce.

These alone cannot help anyone do a better job, and they imply that employees could do better if they tried harder; instead, management should provide methods for improvement.

11. Eliminate numerical quotas.

Quotas count only finished units, not quality or methods, and they generally lead to defective goods, wasted resources, and demoralized employees.

12. Remove barriers to pride in work.

Most people want to do a good job but are prevented from doing so by misguided management, poor communication, faulty equipment, defective materials, and other barriers that managers must remove to improve quality.

13. Institute a vigorous program of education and retraining.

Both managers and employees have to be educated in the new quality methods.

14. Take action to accomplish the transformation.

With top-management commitment, have the courage to make the changes throughout your organisation that will improve quality.

Source   Deming (1982:23-24)

Of relevance here is an understanding of the **process of standardisation**. At first, this may appear paradoxical as standardisation might seem to involve a process of uniformity, whereas continuous improvement involves building on, or breaking from, established procedures. However, if continuous improvement and innovation are to be justified and distinguished from aberrations, then practitioners and regulators must have a clear view about what has constituted appropriate practice hitherto. Back in 1926, Henry Ford (of the Ford Motor Company), in the context of continuous improvement (kaizen),[28] explained that:

> To standardise a method is to choose out of the many methods the best one, and use it. Standardization means nothing unless it means standardizing upwards. Today's standardization, instead of being a barricade against improvement, is the necessary foundation on which tomorrow's improvement will be based. If you think 'standardization' as the best you know today, but which is to be improved tomorrow—you may get somewhere. But if you think of standards as confining, then progress stops (Ford & Crowther, 1926).

Deming developed this line of thinking, with an emphasis on continuous improvement, particularly through developing 'profound knowledge'. Thus, his idea of 'standardisation' was to build quality into the overall system.

A disciple of Deming, Seddon (2008) advocates a 'systems thinking approach' to the delivery of quality public services in the UK. Seddon (2008:193) contends that more thought should be given to how work is organised rather than increasing levels of inspection. Specifically, he focuses on increasing purpose and performance rather than compliance, and on involving frontline staff in driving improvements.

Based on his UK experience, Seddon proposes 'providing a platform for innovation'. This approach would involve:[29]

i.   Changing the locus of control, from the public sector 'regime' to the public-sector manager, so that instead of being measured on compliance, people would be assessed on how they are improving the work they do;

ii. In inspection, a focus on addressing the key question, 'What measures are you using to help you understand and improve the work?';

iii. Learning about 'what works'; and

iv. Having a more positive view of human nature by assuming people are more motivated by pride in their work than by money, that they are vocational, and that they are capable of using their ingenuity and initiative.

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28   Kaizen is the Japanese understanding of continuous improvement, reflected in practices such as 'Just-in-Time' manufacturing and 'lean manufacturing'.

29   This approach is demonstrated in Ireland through the 'Futures Ireland' project, see section 3.7.

Another British author concerned with regulation and improving performance is Malcolm Sparrow. Sparrow's thesis is to adopt a **problem-solving approach within a risk management framework**. A former detective chief inspector with the British police, Sparrow argues for 'picking important problems and fixing them' (Sparrow, 2000: viii). He contends that while apparently simple ideas about risk control and problem-solving remain, by and large, poorly understood, they represent the opportunity for profound changes in regulatory practice. He argues for risk control and focused enforcement (which has many similarities to the responsive regulation approach discussed earlier in this chapter). Using the 'Boston Gun Project' (see Box 2.6) to illustrate his points, he suggests that problem-solving is not an alternative to enforcement, but that qualitative changes in societal conditions can be achieved when the relevant resources come together with a clear purpose; what he calls 'partnerships with a purpose'.

Box 2.6   The Boston Gun Project

The Boston Gun Project was a project to address the large number of youth homicides in Boston in 1997. A large inter-agency group was established to study the problem and co-ordinate a response. The Group identified the source of the guns and the main offenders and victims involved in the killings. Both the offenders and victims were mainly related to a small group of gangs who were already engaged in criminal activity. The police subsequently talked to the gang leaders (in brokered forums) and then came down hard on them. They focused their resources and sanctions on one or two gangs. When the authorities were seen to be serious in addressing this problem, the homicide rate greatly dropped. This approach was seen to be more effective than one employing a broad-ranging 'zero-tolerance' policy, where resources have to be spread much more widely to cover all eventualities.

Source   Sparrow (2000:171)

Sparrow sees what he terms the 'traditional myth' of regulatory practice as one where regulators enforce 'all of the laws all of the time, uniformly, across the board' (Sparrow, 2000:237). He argues that a focused risk-control strategy is different, in that it requires regulators and oversight authorities to understand and embrace various forms of discretion, including the right to chose what to work on and how to work on it. He encapsulates this argument as a dilemma between centralisation (which increases uniformity and control) and decentralisation (which allows for frontline workers to respond effectively to local or particular circumstances that remote law and policy makers could not have considered). Sparrow's empathy with focusing on 'the spirit of the law' rather than 'the letter of the law' has some parallels with the concept of the sociological citizen/networking individual, discussed earlier (Section 2.1).

Sparrow also highlights the importance of performance measurement in making the connections between lower-level activities and higher-level goals. In summary, it is Sparrow's thesis that the story of important problems solved, and of important risks

reduced, and the story of how particular parts of them were tackled, that has been the missing piece in the story of regulatory effectiveness (Sparrow, 2000:308).

Gawande (2010) has also made an interesting contribution towards the achievement of quality in human services through his description and analysis of '**the** *checklist*'. Drawing on diverse examples from aircraft pilots, to building skyscrapers, through the response to Hurricane Katrina to his own work, both as a surgeon and as a leader of the World Health Organisation's Safe Surgery Saves Lives Progam, Gawande advocates the benefits of the simple checklist. His argument is that the main two reasons why we fail are: (a) ignorance, i.e. we do not have enough knowledge; and (b) ineptitude, i.e. failure to correctly apply the knowledge we have.

Gawande contends that in areas of 'extreme complexity', the use of a checklist can overcome 'ineptitude' by helping with memory recall and setting out the minimum steps necessary in a process. Checklists can also establish a higher standard of baseline performance and ensure a consistency of approach. Gawande argues cogently that communication is an integral part of the use of the checklist—that it should be used as a tool to stimulate discussion in team work. The main advantage of this process is that it pushes the power of decision-making out to the periphery and away from the centre, e.g. from the consultant surgeon to the attending nurse; from the pilot to the co-pilot, and so on (Gawande, 2010). In effect, this means that 'the checklist' gives any member of a team the authority to raise questions if procedures are not followed, thus reducing the risk of error.

In a critique of the 'checklist approach', Bosk *et al.*, (2009) also make this point—that it is not the checklist itself, but how it is used, which is the main benefit of the approach. In fact, in relation to health care they argue that 'widespread deployment of checklists without an appreciation of how or why they work is a potential threat to patients' safety and to high-quality care' (Bosk *et al*., 2009:444). Their contention is based on the claim that checklists are technical instruments being applied in sociocultural contexts—thus the need to also take the sociocultural context into account.

On the mechanics of checklists, Gawande suggests that they should be kept precise, be easy to use in difficult situations, and that they do not spell out everything but provide reminders of the most critical and important steps (Gawande, 2010). He does caution, however, that checklists of themselves cannot make anyone follow them. Checklists should be used as an aid in making systems work, and it is how the components fit together that is important in ensuring standards are met and outcomes are improved.

This section has summarised some of the main approaches to building in continuous quality improvements. An important component of ensuring standards are met— and ongoing improvements are an integral part of any system—is how the learning from these experiences is captured and shared, and how it contributes towards improved practices across a service area. The next sections in this chapter discuss two of these approaches.

Box 2.7   Use of the Checklist

I had one case, however, in which I know for sure that the checklist saved my patient's life. Mr Hagerman, as we'll call him, was a fifty-three-year-old father of two and CEO and I had brought him into the operating room to remove his adrenal gland because of an unusual tumor growing inside it. ... I've now removed somewhere around forty adrenal tumours without complication. So when Mr Hagerman came to see me about this strange mass in his right adrenal gland, I felt quite confident in my ability to help him. There is always a risk of serious complications, I explained—the primary danger occurs when you're taking the gland off the vena cava, the main vessel returning blood to the heart, because injuring the vena cava can cause life-threatening bleeding. But the likelihood was low, I reassured him.

... I was doing the operation laparoscopically, freeing the tumor with instruments I observed on a video monitor using a fiberoptic camera we put inside Mr Hagerman. All was going smoothly. ... I'd gotten the tumor mostly separated when I did something I'd never done before: I made a tear in the vena cava.

This is a catastrophe. I might as well have made a hole directly in Mr Hagerman's heart. The bleeding that resulted was terrifying. He lost almost his entire volume of blood into his abdomen in about sixty seconds and went into cardiac arrest. I made a huge slashing incision to open his chest and belly as fast and wide as I could. I took his heart in my hand and began compressing it—one-two-three-squeeze, one-two-three-squeeze—to keep his blood flow going to his brain. ... But in the grip of my fingers, I could feel the heart emptying out.

I thought it was over, that we'd never get Mr Hagenman out of the operating room alive, that I had killed him. But we had run the checklist at the start of the case. When we had come to the part where I was supposed to discuss how much blood loss the team should be prepared for, I said, 'I don't expect much blood loss. I've never lost more that one hundred cc's.' ... But I added that the tumor was pressed right up against the vena cava and that significant blood loss remained at least a theoretical concern. The nurse took that as a cue to check that four units of packed red cells had been set aside in the blood bank, like they were supposed to be—'just in case', as she said. They hadn't been, as it turned out. So the blood bank got the four units ready. And as a result, from this one step alone, the checklist saved my patient's life.

Just as powerful, though, was the effect that the routine of the checklist—the discipline—had on us all. Of all the people in the room as we started that operation—the anesthesiologist, the nurse anesthetist, the surgery resident, the scrub nurse, the circulating nurse, the medical student—I had worked with only two before, and I knew only the resident well. But as we went round the room introducing ourselves—'Atul Gawande, surgeon.' 'Rich Bafford, surgery resident.' 'Sue Marchand, nurse'—you could feel the room snapping to attention. We confirmed the patient's name on his ID bracelet and we all agreed which adrenal gland was supposed to come out. The anesthesiologist confirmed that he had no critical issues to mention before starting, and so did the nurses. We made sure that the antibiotics were in the patient, a warming blanket was on his body, the inflating boots were on his legs to keep blood clots from developing. We came into the room as strangers. But when the knife hit the skin we were a team. As a result, when I made the tear and put disaster upon us, everyone kept their head. ... And Mr Hagerman survived.

Extract from A. Gawande, The Checklist Manifesto

Source   Gawande (2010:190-3)

2.7 Triple-Loop Learning

One of the most advanced systems of structured reporting from which systematic learning can be derived and continuous improvement instilled is **triple-loop learning**; see Figure 2.3. The first loop of learning occurs when practitioners monitor their achievement and make adjustments to gain improved outcomes. The second loop occurs when this kind of practical learning is noted by managers who subsequently adjust their systems and routines to take note of this. And the third loop occurs when regulators and oversight authorities learn from monitoring the organisation's improved goals and revise their strategy for the entire field.

Figure 2.3   Triple-Loop Learning
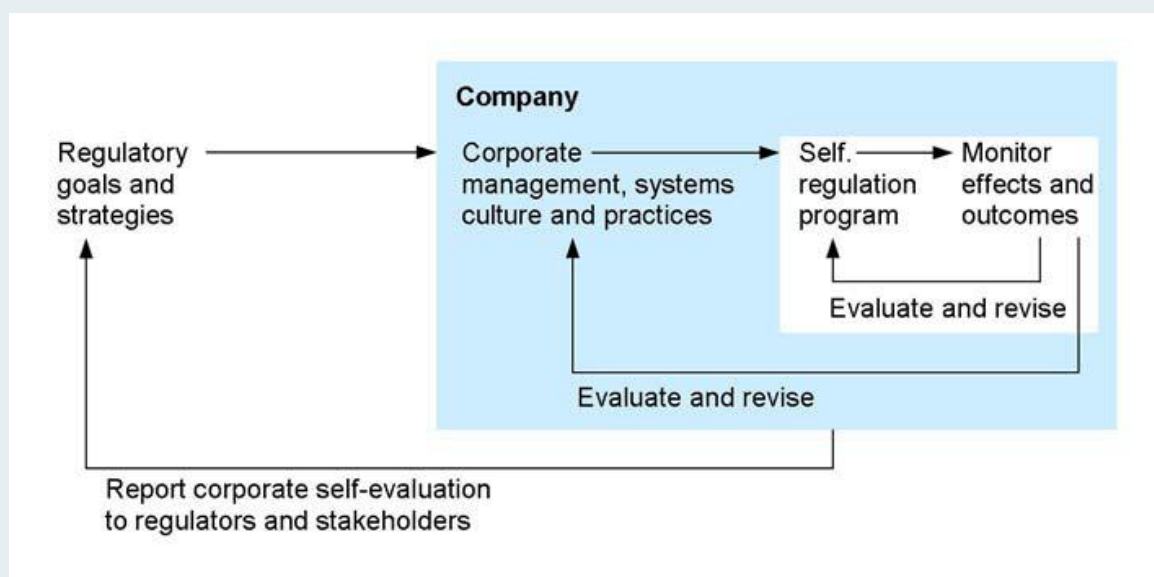
Source   Parker (2002:278)

While the idea of triple-loop learning has proven influential, the features necessary to support each level of learning have not been clearly elaborated. This has meant that whilst it has been easy to endorse the idea of triple-loop learning in the abstract, implementing it is another matter. To address this shortcoming, we outline some of the conditions necessary for its realisation below.

Single-loop learning – the first necessary condition of single-loop learning is that the organisation in question possesses some capacity and motivation to undertake monitoring and evaluation of the activities that it pursues. Evaluating in this manner needs to go beyond the recording of outputs and encompass some attempt to specify what effect the organisation's activities have had on the reduction of harms and/or improvement in the provision of a quality service.

This is not easy to accomplish. The OECD's review of the Irish public service noted that it has been dominated by a compliance rather than performance culture, conducted through adherence to rules and regulations rather than by focusing on the attainment of valued outcomes. It was noted that even if the interest to pursue such outcomes is there, 'departments and agencies in some cases do not have the expertise or knowledge to develop performance measures or even effectively monitor performance' (OECD, 2008:158). The Organisational Review Programmes conducted on several government departments have confirmed this deficit in terms of monitoring outcomes (Murray, 2010).

An example of how trends can be analysed to identify component parts of a problem is provided by Sparrow (2008). In a particular study of road deaths, Sparrow identified four distinct causal factors: slippery roads, lack of stop signs at rural crossroads, teenagers taking parents' cars at night, and infants not being properly restrained. Understanding a macro-item like road fatalities in terms of its component parts not only allows tailored interventions but it also permits a more plausible assessment by focusing on each of these micro-level outcomes. Thus, the evaluation does not only consist of monitoring overall changes in a large-scale variable like road deaths. Rather the 'substance of the performance account now revolves around the project-based work, and therefore consists of a collection of short stories, one for each project' (Sparrow, 2008:131).

Double-loop learning – judging outcomes on the basis of a story of how well an intervention fares may mean that establishing what constitutes success is likely to be mainly a qualitative affair, based on comparison and judgement. Quantitative estimates will still have a part to play, for example, relaying a percentage drop in road fatalities could be an aspect of a 'story', and comparisons can have a valuable role in helping practitioners assess how well their interventions have fared and how they might do better.

Taking the example of child literacy, it seems reasonable to assume that this could have multiple causes and solutions (see, for example, NESF, 2009). Children may have poor reading ability because they failed to progress at an earlier level of schooling; they may have attitudinal issues with schooling and their disengagement is reflected in poor performance at reading; or English may be a second language for them and their poor scores reflect a general inability to master this subject. These distinct analyses of the problems each call for a different solution; the best way of assessing these solutions is through a comparison with similar efforts elsewhere, reinforcing the value of documented accounts of processes, i.e. what has been done. For example, how have other areas dealt with the issue of people with poor literacy whose second language is English? Asking questions such as these would shine a light on the relative success or otherwise of literacy interventions and suggest what makes for a successful intervention against illiteracy.

Practitioners may not naturally compare their interventions against those of others, yet they are often well placed to identify what works. More usually, however, it falls to a central authority to undertake the task of double-loop learning by establishing reasons for apparent success or failure, suggesting what these results might mean for operational procedures and then disseminating these findings to all

relevant practitioners who would consider them and revise their interventions accordingly.

Triple-loop learning – many public sector organisations may see the task of monitoring their own operations and revising practice in the light of results as onerous. Even if these entities do monitor their own performance, this can often lead to 'passive provision of data that has no real weight in the decision-making process' (OECD, 2008:158).

One of the tasks of the regulator or oversight authority that is essential for the realisation of triple-loop learning is to oblige organisations to report on their own self-regulation strategies so that regulatory agencies can determine whether the ultimate objectives of quality service provision are being met (Parker, 2002:259). This does not mean setting down either a) detailed targets that should be achieved; or b) detailed tactics through which desired outcomes should be delivered. This would make no sense since success depends upon a careful parsing of risk, which cannot be done in an ex-ante fashion. Equally, if detailed indicators are imposed on an organisation, there is a risk that they will not be aligned with everyday practice and hence not used in day-to-day decision-making. It is necessary for regulated organisations to be given a degree of freedom to introduce their own processes and systems to manage problems, preferably allied to national systems. Subsequently, organisations will be assessed on the efficacy of these systems. Regulators and oversight bodies are not assessing organisations directly on their efforts to reduce a harm or promote a good service, but on the cogency of their efforts to do so, both in terms of the specific rationale that underlies any intervention and how this compares to the reasons for other interventions.

Let's take an example to illustrate this issue. Analysis of complaints against gardaí might reveal that a large number relate to junior personnel with only a few years' service. The oversight body might make a recommendation to the gardaí that this problem be analysed and a solution devised. It would make little sense for the oversight body to specify by how much complaints should be reduced or how this should be done. It is up to the organisation in question that employs these personnel to analyse the problem, implement a solution and assess whether it has been effective. This requires the oversight body not to be prescriptive and the regulated organisation not to be defensive and not to seek prescription, but to analyse the problem and seek their own appropriate solutions. In many instances, this may require a 'mindset' change in the operation of the oversight body and the regulated organisation and the relationship between the two to engage in constructive dialogue. It is subsequently up to the oversight body to perform a 'double-check' on the solutions devised by the regulated organisation. Parker is adamant that this should not be a desk job and that oversight bodies and regulators should be 'proactive in checking how self-regulation was implemented' (Parker, 2004:113). Part of this evaluation would involve engagement with relevant stakeholders, including service users, and subsequent publication of the results, thus promoting transparency.

Policy learning through meta-regulation—one of the principal themes of a great deal of research on regulation—demonstrates that it is not usually a bilateral relationship. High standards are often achieved through the involvement of

multiple parties, what might be termed a regulatory regime, that involves formal regulators, oversight bodies, campaigning groups, service users and concerned citizens (see reference to 'smart regulation' in section 2.3).

If this is the case, then it behoves some organisation to ensure that this regime is working in an optimal way, in terms of its coherence and ultimate effectiveness. This could be conceived of as an element of meta-regulation, ensuring that all relevant regulatory bodies and strategies are in tune with and supporting each other. This might mean creating a regulatory forum at which progress around agreed standards could be discussed and assessed, and the contribution of each relevant body staked out. In this vein, the OECD spoke of Irish government departments as sectoral conveners that would be responsible for 'identifying and fostering clusters of experts, resources and good practice that become a *resource* for responding to policy needs (OECD, 2008:248, italics in original). However, the OECD reported that this would require a major shift in how departments operate as they 'tend to focus on controlling resources and processes rather than on monitoring outcomes' (*ibid.*). This approach also points towards the use of networks, as outlined in Section 2.1.

Box 2.8   Triple-Loop Learning in a Nursing Home

Nursing-home care in the USA in the 1980s was renowned for its use of physical restraints. While there was a public movement to try and restrict this practice, it made little headway because it was condoned by physicians and nursing-home managers. However, a quality improvement committee in one particular nursing home was committed to changing practices so that it could become 'restraint-free'. This was eventually achieved—micro-change in the first loop of learning. Over time the nursing home chain to which this particular nursing home belonged adopted the restraint-free care of the innovative nursing home—meso-change in the second loop of learning. Over time, through a national campaign, drawing on the practices in this particular nursing home the change to restraint-free nursing care was adopted nationally— macro-change in the third loop of learning.

Source   Braithwaite (2008:149); Parker (2002:278)

2.8   Quality Service Review

One of the most developed accounts of what a regime of triple-loop learning might look like can be found in the approach called Quality Service Review (QSR), described and analysed by Sabel (Sabel, 1994; Sabel & Simon, 2009). According to Sabel, both top-down and bottom-up regulation exhibit similar flaws. Both assume that there exists some set of agents who know with high precision what needs to be done, even if they cannot fully solve some problem in advance of any effort actually to do so. Accordingly, the chief problems for governance are identifying these knowledgeable actors and either letting them get on with the task in hand or devising institutions that keep them under the control of the relevant principals. Both models come to grief on the idea that, in some situations, ideas about how to

progress may be uncertain and can only be defined and refined through practice. Therefore, what is needed is some mechanism that enables practitioners to learn from, and revise, their own *modus operandi*. Such a mechanism comes in a variety of different forms, but its essential features can be captured through the idea of 'diagnostic monitoring'.[30]

Diagnostic monitoring is used when there is less certainty about the process by which to achieve outcomes and/or when the eventual outcomes are not always clear at the beginning of a project. It requires monitoring on an ongoing basis to ensure that review and learning, which can be described and demonstrated, are a constant feature of what people at a local service-delivery level do. This form of **diagnostic monitoring and review** is increasingly prevalent in a range of areas. For example:

- Business firms have found that they cannot ensure quality and safety purely by writing rules; instead they insert quality and safety in the design of products and processes and monitor closely their achievements and failures in each phase of production and marketing;

- The growing need for tailoring of services to diverse needs prompts organisations to ask themselves: how do we tailor services? How do we know that we have successfully adapted our work to the needs of those we serve?

- The fact that many policies and activities addressing complex problems—such as literacy or home-care packages—can only be determined in the process of doing them, suggests the need for widespread experimentation;

- The need to decide what pilots and experiments should be mainstreamed requires some way of telling which are working well;

- The continued role of diverse providers—statutory, voluntary and private—generates demand for new ways of defining what to expect of one another and determining whether expectations are being met; and

- While the failure of centralised command and control is now widely acknowledged, the argument for more delegation of responsibility looks unlikely to succeed if those who deliver services or work at local level cannot persuade central departments and agencies that they can use more freedom responsibly. New forms of diagnostic monitoring seem central to that demonstration.

Sabel reports that this form of diagnostic monitoring has now been extended into the provision of human services. For example, he discusses how progress in child welfare cases has been enabled through a 'quality service review' (QSR) (Noonan *et al.,* 2009). In QSR, each case reviewed is a test of the system and is conducted by two people who must score the case under two broad headings: child and family status, and system performance. Data are derived through a series of interviews with clients as well as professionals, see Box 2.9 for an example.

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30   For further explanations and examples of diagnostic monitoring, see documentation of the Futures Ireland project in NESDO (2009).

Box 2.9   Quality Service Review (QSR) Example

Quality Service Review (QSR) is a broad term for a set of processes and tools designed to review human services systems. It is based on an in-depth case review method involving multiple stakeholders, and uses a performance-appraisal process to assess how service recipients benefit from services and how well service systems address their needs.

In relation to child welfare in Florida, the QSR is based on the premise that each individual child and family case can be used as a test of the service system at a particular place and time. Typically, small representative samples of children (12 to 25) are reviewed to determine child/family status and related system-performance results. This method is seen as particularly suited to targeting problem areas and implementing practice change. This approach looks at each individual within the context of their home and community. By doing so, the QSR is able to examine the pattern of status and performance results and to develop a better understanding of what is really happening for the child and family and to what the current situation may be attributable.

The Florida example of child protection QSR has 24 elements it addresses—12 for 'child and family status' (e.g. safety of the child, safety of the caregiver, emotional well-being, etc.) and 12 for 'system performance' (e.g. child and family engagement, service team functioning, family support network, etc.).

The basic method is to assign a pair of reviewers to each child case to be reviewed. One of the pair conducts the interview while the other attends as a 'shadow'. This provides the interviewer with a second perspective on the interview itself. Interviews are scheduled around a target child. For example, the reviewers may meet with the child, his/her biological parents, foster parents, teachers, mentor, therapist, sports coach, service counsellor, etc. All of these interviews are conducted over one or two days. After conducting all of the interviews the reviewer is asked to make ratings on each of the twelve elements, on a scale of one to six, where one is 'least severe' and six is 'most severe'. When the review process is complete a series of feedback sessions are arranged for each case worker and his/her supervisor.

At the same time the 'system performance review' takes place. This involves an extensive examination of policies and procedures as well as interviews with key stakeholders, such as members of the judiciary, lead agency staff, family counsellors, foster parents, and the police. Again, each of the 12 elements in the system performance review are ranked on a scale one to six.

In the concluding session of QSR, a presentation of each summary case takes place, where conclusions from the two reviews (child and family status, and system performance) are presented to a broad spectrum of people invited to a meeting. This presentation is intended to present a 'big picture' for the community.

Some of the benefits of this approach are the richness of the information collected (rather than statistical power), that the process is developmental and forward-looking (rather than retrospective), and that it facilitates continuous improvement while simultaneously promoting increased accountability. It does this by requiring staff to make explicit the tacit professional knowledge that informs their actions, making the basis for their decisions clear.   This transparency enables improved oversight by governing bodies, at the same time as frontline discretion is increased. Thus, the agency learns to improve while monitoring what it does, and the same process that makes customisation of services effective makes it accountable as well. One limitation of QSR is its reliance on 'point-in-time' rather than longitudinal data.

Quality Service Review (QSR) Child Protection example, Florida, USA

Source   Kershaw *et al.* (2002)

The QSR approach has several advantages. It shows practitioners that a monitoring regime can be used to showcase strengths and achievements. But it also forces reviewers and frontline workers to articulate why standards were operationalised in the way that they were. And it can be used as a tool of systemic reform if certain patterns are shown to reoccur.

The model adopted by QSR emphasises the search for underlying causes of the incidents that threaten the safety and well-being of children and encourages social workers to look beyond surface indicators. After revealing the causes, a response plan must be tailored to the individual circumstances of each child and should anticipate problems as best as possible.

As well as customisation, the QSR encourages collaboration, both with relevant relatives of the child, as well as other professionals. Review scores for 'system performance' are reduced when parent participation is unsatisfactory for whatever reason. One of the advantages of a collaborative model is that decisions must be made explicit as they are made in a team setting. As the team is drawn from a diverse background, the members must often articulate assumptions that would remain unstated in more homogeneous settings.

And lastly, the QSR encourages a form of monitoring that is distinct from the audit focus of conventional monitoring. It is not enough that there is a service plan for each child in the system but that this plan should be relevant to the present and future needs of the child.

2.9　　Summary of Key Issues

The dilemma of trying to ensure that the provision of human services meets certain standards, while at the same time not stifling innovation, continuous improvement and a learning culture, is captured well in the following quote by Sparrow (2000:17):

> Regulators, under unprecedented pressure, face a range of demands, often contradictory in nature: be less intrusive—but more effective; be kindlier and gentler—but don't let the bastards get away with anything; focus your efforts—but be consistent; process things quicker—but be more careful next time; deal with important issues—but don't stray outside your statutory authority; be more responsive to the regulated community—but do not get captured by industry.

Skok (2000:11) brings some clarity to this debate. She notes that the 'notion of standards implies clear-cut criteria whereas the notion of continuous improvement implies a continual process of self-examination and a never-ending search for improvement without a fixed destination'. She suggests that the tension between these concepts (standards requiring certainty and continuous quality improvement requiring continual revision) is being resolved by the development of more flexible and less prescriptive standards. A related aspect to this resolution is the development of standards specifically requiring organisations to demonstrate continuous improvement systems.

Brennan (1998:728) also puts this case, stating that:

> Slavish adherence to traditional principles of regulation which are devoted to the task of culling 'bad apples' will do little to improve quality. ... Private and state institutions should be encouraged to continue to identify methods of regulation that permit organisations to measure their own quality, to gauge it against the standards of others, and to adopt strategies for change.

This chapter has provided an overview of the regulatory environment before going on to discuss a range of approaches to standards-setting and quality improvement. It contains sections on involving the service user and the implications of addressing costs while at the same time improving quality. Consideration is given to models of learning, such as 'triple-loop learning' and 'quality service review'.

The key issues emerging from this overview are as follows:

- Regulation, through direction, surveillance and enforcement, is one of a number of interventions that can improve the quality of service provision. There are different purposes for regulation. These include: to improve performance and quality; to provide assurance that minimally acceptable standards are achieved; and to provide accountability both for levels of performance and value for money;

- The growth in social regulation, relevant to the provision of quality services, has been related to a number of factors, including an increasing concern for the welfare of society and the well-being of individuals, as well as the role of social movements in seeking improvement in conditions for their members or society in general. A notable feature of social regulation is its different forms. As a result there is a wide mix of regulatory tools, from traditional coercive approaches to newer facilitative approaches;

- The range of approaches, along with a move from compliance towards problem-solving, co-operation and performance, have led to the emergence of networks to bolster capacity. The concept of the 'networking individual' ('sociological citizen') has also come to the fore, as someone who sees their work as a link in a complex web of interactions and processes, who acts beyond their institutional boundaries, and adopts a problem-solving attitude to their work. Networking individuals work to the 'spirit', rather than the 'letter', of the law;

- In relation to standards setting, conceptual thinking has moved beyond traditional 'command and control' and purely self-regulatory approaches towards 'responsive regulation'. Responsive regulation can be thought of as moving up a pyramid, with self-regulation and voluntary approaches at the base and sanctions at the top. The regulator or oversight organisation begins at the bottom of the pyramid with information provision and persuasion, but has the capacity to escalate towards punishment if persuasion fails. An advantage of this approach is the recognition of the importance of information, education, skills development and competence to support the provision of quality services. For those who are recalcitrant (or incompetent) there is the threat (and reality) of sanctions, sometimes referred to as 'the gorilla in the closet';

- A number of variants of responsive regulation have been developed including a 'strengths-based' pyramid, which complements the 'regulatory' pyramid, but focuses on the promotion of opportunities and awarding of incentives as one moves up the pyramid. The two pyramids are joined at the base where the focus is on education and persuasion. 'Smart' regulation includes the actions of third parties, such as professional organisations and NGOs, based on the premise that multiple policy instruments and a broader range of actors will produce better results. Meta-regulation is the 'regulation of self-regulation', based on the idea that organisations put in place systems of self-regulation and that regulators and oversight authorities assure themselves that these systems are adequate and are being followed. The evidence suggests that there is no single approach that functions effectively and efficiently in all circumstances. Rather, it is the 'nuanced application' of the most suitable approach appropriate to the circumstances that is required. Indeed, even this more extensive approach may not be applicable in all circumstances;

- The modern experience of regulation and standards-setting sees the involvement of service users as fundamental, notwithstanding the challenges in applying effective systems of involvement, with the ultimate aim of tailoring services to meet users' needs. The benefits of service user involvement have been articulated as the importance of getting a range of perspectives; more openness and transparency; greater assurances of safety; improved quality through more tailored services and greater public accountability. A key challenge in user involvement is recognition and acknowledgement of the power relationships involved, with greater user involvement usually requiring some transfer of power from the service provider to the service user. Advocacy and support may be required to ensure service users, especially vulnerable service users, can fearlessly exercise their rights and engage adequately in service user involvement initiatives. In an increasing number of instances service users participate in the monitoring of standards as members of inspection and oversight arrangements;

- In the current economic climate there is an increasing concern about how to improve quality in service provision while at the same time cutting costs. Even though the evidence is limited, approaches that have been found to be effective include focusing on the service user, the importance of work processes and systems, the centrality of measurement, and recognising and rewarding those who work on the frontline. The identification and reduction of waste is a key element in reducing costs while at the same time improving quality;

- Adopting a quality improvement mindset is important in improving the quality of service provision. A number of approaches, many adapted from the private sector, inform continuous quality improvement. These include incorporating quality improvement into the processes of service delivery, documenting and standardising methods (within bands of variability), focusing on purpose and performance rather than compliance, adopting a problem-solving approach, accumulating knowledge, and applying and sharing that knowledge; and

- An integral part of continuous improvement is structured and shared learning. One of the most advanced systems of structured reporting and shared learning is 'triple-loop learning'. The first loop of learning occurs when practitioners monitor their achievement and make adjustments to gain improved outcomes. The second loop occurs when this kind of practical learning is noted by managers who subsequently adjust their systems and routines to take note of this. And the third loop occurs when regulators and oversight authorities learn from monitoring the organisation's improved goals and revise their strategy for the entire field. One of the most developed accounts of the application of 'triple-loop learning' is 'quality service review' (QSR). QSR involves a process of 'diagnostic monitoring' with a focus on the issue in hand as well as on the wider system. All those involved discuss the issues arising, thus making decisions explicit and providing the ability to devise tailored solutions.

This chapter has reviewed conceptual approaches and experiences of regulation, standards-setting and quality improvement initiatives as they relate to the provision of human services. The next chapter explores these issues as they apply in Ireland.

Chapter 3
The Evolution of Regulation, Standards and Quality Improvement Initiatives in Ireland

This chapter provides an overview of the evolution of regulation, standards and quality improvement initiatives in Ireland. The first three sections provide a general overview of regulation developments in Ireland through the influence of the European Union; the general development of regulation in Ireland; and the evolution of social regulation. Section four becomes more specific and presents some examples of regulatory and standards-setting bodies in human services in Ireland. Section five provides a short overview of standards accreditation in Ireland. Quality improvement initiatives, including some local examples are presented in sections six and seven. The final section summarises the main issues.

3.1 The Influence of the European Union

A key player in the development of the regulatory environment that impacts on Ireland has been the European Union. Indeed, as NESC has previously observed, one of the distinctive features of the European Union is that traditionally it is a regime primarily based on rules (NESC, 1997) and that it should be understood as a 'regulatory machinery rather than a spending spree' (Pelkmans, 2006:25). To maintain progress towards the European Single Market, the EU set rules to facilitate the free movement of goods, services, capital and labour. Following a period that sought to take down barriers to free-market enterprise, there is now an increasing amount of regulation applied to the markets, related to the prevention of environmental damage, or to 'fair competition', for example. As part of this regulatory regime, common standards have been agreed across a range of areas, such as environment, food safety, biotechnology, labour and equality. This rule-making role has increased, with Eberlein and Grande (2005:153) noting that the EU passed more than twice as many regulations and directives in 1991 as it did in 1970,[31] and leading some writers on the subject to comment that we are now living in a 'regulatory state' (Majone, 1996) and 'regulating everything' (Scott, 2008).

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31 To some extent this increase in regulations and directives also reflects the expansion in the EU's areas of competence.

In relation to social regulation and human services, a number of European frameworks for defining and enforcing standards have been created in areas such as health, disability and eldercare.[32] EU developments have provided a framework for policy and service advances in areas where Ireland has traditionally been limited or service delivery has been disjointed. However, NESC (2010:184) has noted that results from social-policy frameworks have to date been disappointing and unfulfilled. These issues are explored in more depth in the chapters on specific human services areas.

NESC has argued that the EU's approaches to regulation have been most successful where member states have agreed to strive for certain goals and pool their knowledge about how they have fared. Subsequently, they adjust their strategies in light of their peers' experience. This form of policy-making has become known as **experimentalist governance** (NESC, 2010). In some spheres, the EU has now moved away from applying uniform approaches and making detailed prescriptive rules towards methods of 'reflexive (or responsive) regulation' where, within a framework of overarching goals, there is joint goal-setting along with decentralised execution, benchmarking, review and learning with a view to continuous improvement (NESC, 2010:229). While it has been acknowledged that there are advantages to this approach, criticisms include that the 'floor is set too low' or in some cases there is a lack of sanctions for non-compliance.

3.2 Overview of Recent Developments in Regulation in Ireland

Much of the documentation on regulation in Ireland starts with the 1990s, which was a period of regulatory reform.[33] The late 1990s was also a time of extraordinary economic growth. Much of the documentation on regulation over this period is on economic regulation, and on regulation of utilities, especially as a result of the influence of the European Union. Most accounts of the development of regulation in the 1990s note the diversity of approaches and instruments across and within sectors and service areas.

Distinctive features in the development of Irish regulation include its relationship with the proliferation of agencies and its fragmentary nature. There are a number of estimates of how many regulatory agencies are operating in Ireland, with the White Paper on Regulation, *Regulating Better* (Department of the Taoiseach, 2004), estimating that there were 'over 500 public agencies/bodies in Ireland, many of which have a regulatory function—either as a "rule-maker" or "rule-enforcer"'

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32 For example, the development of an EU Council Recommendation on Patient Safety, the European Framework for Standards of Osteopathic Practice, the European Framework Directive on Safety and Health at Work, and the development of an European Charter on the Rights and Responsibilities of Older People in Need of Long-Term Care and Assistance.

33 See, for example, OECD (2001); Nolan (2008); Economist Intelligence Unit (2009).

(Department of the Taoiseach, 2004:14). Further research by the Better Regulation Group (BRG)[34] identified some of these bodies as falling into categories such as 'quasi-judicial bodies', or 'professional representative bodies' rather than 'regulators' and were excluded from their list. The BRG subsequently identified a final list of 213 regulatory bodies, of which 205 are public-sector regulators. The list includes 114 local authorities and town councils, and 9 Fisheries Commissioners; see Box 3.1 and Appendix A.[35]

Box 3.1   Regulatory Bodies in Ireland

The Better Regulation Group defined a regulatory body as:

A body that has statutory recognition and has functions in at least two of the following areas of activity:

- **The formulation of goals, the making of rules, [and/or] the setting of standards;**

- **Monitoring, gathering information, scrutiny, inspection, audit and evaluation;**

- **Enforcement, modifying behaviour, applying rewards and sanctions.**

To be included in the list of 213 regulatory bodies, a regulatory body also has to have the following features:

- **It is an independent organisation, separate from any other body;**

- **It has some capacity for autonomous decision-making;**

- **There is some expectation of continuity over time; and**

- **It has some personnel and financial resources**

Source   Better Regulation (2007:3)

This expansion of regulatory agencies in Ireland is in line with global trends in public management. The increase in the number of agencies has led to comments on the fragmentary nature of Ireland's regulatory landscape. Scott and Brown (2010:19) have argued that fragmentation occurs when different agencies are charged with implementing different aspects of public policy 'with little co-ordination between them'. Given the unsystematic nature of the development of Ireland's regulatory environment, the nature and extent of such fragmentation varies within and

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34 The Better Regulation Group is a group of senior government officials and independent sectoral regulators, which has been set up to oversee the implementation of the commitments in the White Paper, *Regulating Better.*

35 There have been additional regulators added to this list of 213 since 2007, for example, the Health Information and Quality Authority (HIQA), while some have closed or been merged.

between different sectors. This fragmentation has implications for the citizen/service user interacting with the various service providers.

The early part of the new millennium has seen a period of substantive regulatory development in Ireland. Initially, this was influenced by the OECD report, *Regulatory Reform in Ireland,* published in 2001. Subsequently, the government published a White Paper in 2004, *Regulating Better,* which set out six principles of 'Better Regulation': necessity, effectiveness, proportionality, transparency, accountability and consistency. Parallel developments have included the establishment of the Better Regulation Unit in the Department of the Taoiseach, complemented by the Better Regulation Group. Regulatory Impact Analysis (RIA) was formally introduced in 2005, reviewed in 2008 and revised in 2009. The OECD reviewed progress in 2010, commenting on the main developments since 2001.

While the OECD's emphasis was on regulatory reform to improve economic competitiveness, there was some reference to wider public services, particularly those provided by local government, which the OECD considered 'to be inefficient and fragmented' (OECD, 2010:10). They suggested the need for 'market-oriented reforms' in the delivery of public services, although they did note that:

> cost savings in public services result from efficiency gains through better management, increased job flexibility and economies of scale and scope, not from social dumping or reductions in quality (OECD, 2010:10).

Table 3.1 shows the main institutional developments in the regulatory environment in Ireland from the late 1990s through to 2010. The Better Regulation Unit (BRU), originally established in 2000 in the Department of the Taoiseach, has overall responsibility for promoting and supporting 'Better Regulation Initiatives' across government. The OECD (2010:16) noted that the BRU has 'established itself as a small but highly active and enthusiastic advocate of Better Regulation across government and beyond (commendably so, given its small size)'.

Other institutional developments include the establishment of the Better Regulation Group, the Regulatory Impact Analysis (RIA) Network, and the Annual Regulatory Forum. The Better Regulation Group was established in 2004 to oversee the implementation of the action programme in the White Paper, *Regulating Better,* and contains a broad range of departmental and agency representatives. The RIA Network, set up in 2007, is a network of people involved in regulatory impact assessment across departments, with the purpose of exchanging information and providing support.

Table 3.1   Milestones in the Development of Better Regulation Institutions in Ireland

Late 1990s	**Working Group on Regulatory Reform** *Ad hoc* **High-level Group on Administrative Simplification for the 'Reducing Red Tape' Policy** **Task Force on Small Businesses and Services**
1999	**Statute Law Revision Unit established in the Office of the Attorney General**
2000	**Better Regulation Unit established in the Department of the Taoiseach**
2001	**Working Group established in the wake of the 2001 OECD Report to develop a RIA model**
2004	**Establishment of Better Regulation Group following publication of the 2004 White Paper,** *Regulating Better***, to oversee implementation of the Action Programme proposed in the White Paper**
2005	**Establishment of the Small Business Forum** **Establishment of the Business Regulation Forum (BRF)**
2007	**Senior Officials Group on Economic Regulation set up to guide work on a Programme to review the economic regulatory environment** **Establishment of Regulatory Impact Analysis (RIA) network** **Establishment of the Business Regulation Unit in the Department of Enterprise, Trade and Innovation (DETI), to oversee the programme on administrative burden reduction, and of an inter-departmental officials group in administrative burdens** **Establishment of the High-level Group on Business Regulation, chaired by the secretary general of DETI. It replaces the BRF**
2010	**Establishment of the Annual Regulatory Forum**

Source   Based on OECD (2010:70, Table 2.1)

A key development in the regulatory environment in Ireland has been the introduction of Regulatory Impact Analysis. Regulatory Impact Analysis is defined as:

> A tool used for the structured exploration of different options to address particular policy issues. It is used where one or more of these options is new regulation or regulatory change and facilitates the active consideration of alternatives to regulation or lighter forms of regulation. It involves a detailed analysis to ascertain whether or not different options, including regulatory ones, would have the desired impact. It helps to identify any possible side effects or hidden costs associated with regulation and to quantify the likely costs of compliance on the individual citizen or business. It also helps to clarify the costs of enforcement for the state (Department of the Taoiseach, 2009:3).

Further information on Regulatory Impact Analysis is available in Appendix B or at www.betterregulation.ie.

The OECD has been complimentary about aspects of Ireland's RIA process, stating that 'Ireland was a relative latecomer to Regulatory Impact Analysis but has been catching up', and that some aspects of Ireland's RIA 'reflects the best international practice, including the requirement for an integrated RIA', concluding that 'the principles and practical guidance and training disseminated by the BRU are among the best' (OECD, 2010:21). However, the OECD has also been critical of aspects of Ireland's RIA process, stating that 'the acceptance of RIA as an integral part of policy and rule-making has some way to go, and the gap between the principles of RIA and the practice generally remains wide', and that 'the analytical framework and the quantitative support for RIAs remain relatively weak' (OECD, 2010:22).

Critiques of RIA processes in other countries also have lessons for Ireland. For example, a review of RIAs carried out in the UK found that there were doubts about whether RIAs could be done to a sufficiently high technical standard to influence the policy process. There was difficulty quantifying costs, even more difficulty in assigning and quantifying benefits, often a lack of consideration of alternative options, and many departments who were undertaking RIAs lacked the resources and expertise to do so (Baldwin, 2010:269).

In summary, advocates of RIAs argue that they have brought greater economic efficiency, transparency, rigour and evidence to regulatory decision-making. Critics contend that challenges remain in improving the quality of the information and analysis in RIAs, in finding the appropriate balance between providing better evidence and in making regulatory processes more streamlined, in embedding RIAs in the policy-making and legislative processes, and ultimately, in ensuring that RIAs contribute to improving quality and performance, and not just in ensuring compliance. While it can be argued that these technical weaknesses can be overcome, there are sceptics of RIA who, on a more substantive point, are of the view that we can never know enough in advance of applying a policy (*ex-ante)* to fully anticipate what all the outcomes and consequences will be. There is an associated danger that an over-emphasis on *ex-ante* RIA could deflect attention from the need to build systems of *ex-post* monitoring.

To recap, many of the Irish regulatory developments have originated from the 2001 OECD review of regulation in Ireland. The OECD undertook a subsequent review in 2010, which provided an assessment of the key developments over the nine year period, but focusing mainly on economic regulation. The main findings were that Ireland has made considerable progress since the 2001 review. Notable achievements included the 2004 White Paper, *Regulating Better*; the development and application of Regulatory Impact Analysis; simplification and accessibility of the law; administrative simplification; greater public consultation; the development of a framework for the effective functioning of regulatory agencies; a stronger framework for the management of EU regulations; and a stronger institutional framework, led by the Better Regulation Unit. However, as noted by the OECD, this remains very much a 'work in progress', with a number of shortcomings to be addressed. The most significant of these is the gap between principles and practices, the OECD noting that 'Ireland is confronted with the classic difficulty ... of converting principles and strategy into reality' (OECD, 2010:14).

3.3   Overview of Social Regulation in Ireland

Relatively little has been written on the development of social regulation in Ireland. Much of the social regulation in the first half of the 20th century in Ireland related to censorship (Hardiman & Scott, 2010:186). More recently, social regulation has sought to ensure the safe provision of public goods, to make professionals accountable for their actions and to tackle social inequities (Koornneef, 2008).

Originally, many social services were provided by the voluntary sector, and especially by religious orders. For example, a church-based education system (for primary and secondary schooling) and voluntary hospitals predated the formation of the Irish state in 1921. Even after the establishment of the Irish Republic, religious organisations had a primary role in providing education, health and social care services. In the 1950s the state gradually began to play a wider role in both providing and funding social service provision. Over time the role of religious organisations has diminished, being replaced by the statutory sector and other voluntary and community organisations (Government of Ireland, 2000). By international standards, the role of voluntary and community-sector organisations in the provision of public services in Ireland is relatively large.

Towards the end of the 20th century, Ireland followed the international trend to seek greater efficiency in public services, with a more business-like dimension to their provision. The Strategic Management Initiative (SMI) was launched in 1994, followed by the Delivering Better Government (DBG) initiative in 1996. In relation to regulatory reform these initiatives had the twin objectives of (i) sustaining national competitiveness and economic growth; and (ii) promoting inclusiveness and good government for all citizens.

In 2008, the OECD in their report *Towards an Integrated Public Service* commented that the institutional context in Ireland for embedding effective regulatory management is complex and highly fragmented. They recommended moving towards a more integrated system with improved accountability structures, along

with the expansion of networks to improve connectivity across the public service and to overcome the 'stovepipe' system. The OECD also stressed the need for a greater focus on outcomes, and to increase flexibility to allow managers to achieve those outcomes, along with greater mobility of staff to develop and broaden the competency base. In order to deliver on an integrated public service the OECD concluded that 'it is not about changing structures and systems, but is primarily about getting people to think and work outside of institutional boundaries and putting in place the right accountability arrangements' (OECD, 2008:267). Some of these ideas are very much in line with those of the networking individual ('sociological citizen'); see Chapter 2.

In response to the OECD report the Irish government published a report, *Transforming Public Services* (TPS) (Department of the Taoiseach, 2008)[36] endorsing the core messages of the OECD review. While there is no explicit reference to 'social regulation', emphasis is placed on improving service standards, particularly through a greater focus on and engagement with citizens, through greater accountability of organisations and individuals, and through a greater weight being given to performance and the measurement of outcomes. A central tenet permeating these core messages is the need for greater trust through 'increased delegation and operational autonomy' in ensuring optimal value in the use of scarce resources and the best possible outcomes for service users; see Box 3.2.

Since the financial crisis of 2008 there has been an emphasis on reducing public expenditure and making the public service more efficient. A menu of options was provided in the report of the *Special Group on Public Service Numbers and Expenditure* (McCarthy, 2009). A key focus of the 'McCarthy' report was the rationalisation of government agencies, with closures, mergers and absorption into government departments proposed for many agencies. Additional proposals included the need to evaluate existing agencies, assess the requirement for new agencies before their establishment, and maximise synergies through the shared use of services. However, the OECD cautioned that 'in the rush to make cuts, these will be carried out in the wrong places, and the public sector reform agenda on which Ireland depends for strengthening its economy and society will be neglected' (OECD, 2010:66).

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36 The Transforming Public Services Initiative comprises two documents: (i) The Report of the Task Force on the Public Services, Transforming Public Services: Citizen-centred – Performance Focused; and (ii) The Government Statement on Transforming Public Services. Both are available on the Department of the Taoiseach's website at www.taoiseach.gov.ie

Box 3.2   Greater Focus on Outcomes and on Value in the Use of Scarce Resources

More detailed performance reporting by organisations, in terms of outputs and outcomes, to ensure accountability and underpin the focus on delivery is the corollary of increased delegation and operational autonomy and should not be used as an additional form of centralised control, but rather to focus attention on outcomes and on value in the use of scarce resources.   It should also be seen as an opportunity to streamline current reporting requirements so that the overall administrative burden of different reporting requirements is reduced.   The systems employed for the measurement and reporting of outputs should be subject to external validation or audit.

Source   Department of the Taoiseach (2008:11)

3.4   Infrastructures for Social Regulation, Standards-setting and Quality Improvement in Human Services in Ireland

Regulation and standards-setting in the human services landscape in Ireland has changed over the last decade. One of the most significant developments has been the establishment, in 2007, of the Health Information and Quality Authority (HIQA), an independent regulatory body tasked with promoting quality, safety and accountability in the health and social services. The remit of HIQA is very broad, ranging from advisory to regulatory functions, and includes both health and social care.[37] Its remit extends from standards-setting to the monitoring of services, to improving services across the health sector. Its work also includes extensive consultation with service users and providers.

Independent regulatory bodies have also been set up in other human services areas. The mental health area has seen the establishment, in 2002, of the Mental Health Commission with a Mental Health Inspectorate to regulate mental health provision. In the school system, the Teaching Council was established on a statutory basis in 2006, to protect the standards of entry to the teaching profession and protect and maintain the standards of those already in the profession.   Some of the other statutory bodies with regulatory remits that cut across the human services area include the Health and Safety Authority, the Food Safety Authority, the National

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37 HIQA's Social Services Inspectorate (SSI), referred to as the Office of Chief Inspector, are empowered to regulate the quality of residential care in designated centres for children, older people, and people with disabilities. In relation to using its enforcement powers to protect the health, safety and welfare of the residents of designated centres and to improve the quality of care provided in these centres it applies 'an enforcement pyramid of escalating actions'. For further information see Appendix C and www.hiqa.ie.

Consumer Council, the National Employment Rights Authority, and the Equality Authority.

As well as independent bodies established with a specific regulatory remit there are a wide range of public, private and NGO bodies that regulate or have an influence on the quality of human services in Ireland. Such bodies include:

- Ombudsman's Offices—for example the Office of the Ombudsman, the Ombudsman for Children, the Garda Síochána Ombudsman Commission and the Pensions Ombudsman. These offices are mainly concerned with complaints from individual members of the public on how a particular public service has been provided;

- Inspectorates—for example, the Inspectorate in the Department of Education and Skills, the Inspectorate of Mental Health Services, the Garda Síochána Inspectorate. Inspectorates are usually located within a 'parent' organisation (rather than being 'independent') and are concerned with ensuring certain standards are met within their area of responsibility. Inspectorates can see quality improvement as part of their remit;

- Private, professional and NGO bodies—there is a plethora of bodies who are concerned with standards and quality improvement in human services. These range from bodies such as the Medical Council and the Irish Hospice Foundation, to a range of disability and children's organisations, to Schools' Boards of Management to local policing fora. These bodies are all concerned to maintain or improve standards in their particular area of interest. In some cases their members' interests are their primary concern, whereas in other cases it is service users or the general public who are the focus of their interest.

As well as organisations which have a specific remit to maintain and improve standards, many service-delivery organisations also incorporate a regulatory or quality improvement element within their organisations. For example, the Health Services Executive (HSE), has a wide range of standards and quality-assurance schemes in place, including internal self-assessment and performance-monitoring. Hospital services and an increasing number of health services in the community are provided by the HSE, or by independent contractors (e.g. GPs, dentists, pharmacists and optometrists), as well as voluntary and community groups, on behalf of the HSE. These services are subject to internal self-assessment and performance monitoring, as well as external monitoring and regulation by HIQA and others.

In relation to health, the health reforms of the 21st century established, for the first time in Ireland, independent regulatory bodies in health-service provision. As noted, the two main bodies are HIQA, established in 2007 to promote quality, safety and accountability in the health and social services, and the Mental Health Commission, established in 2002, to regulate mental-health service provision. Other bodies such as the Medical Council, the Pharmaceutical Society of Ireland, the Dental Council, the Opticians Board, the Health and Safety Authority, the Food Safety Authority, the Ombudsman and the Children's Ombudsman also have important roles in ensuring standards are met across various aspects of the health

service. Organisations such as the Irish Society for Quality in Healthcare, and the Health and Social Care Regulatory Forum also play a role.

A number of specific human services areas (eldercare, end-of-life care, disability, schools, policing) were considered in more depth, and the results of this work will be published in separate reports. The analyses of these discrete service areas reflect a range of different approaches to regulation, standards and quality improvement initiatives. A brief preview of each of these areas is provided below.

In relation to **eldercare**, services are generally provided in an institution such as a nursing home, a community residence or day-care centre; or in a person's home as home help, as a home-care package, or through informal care provided by relatives and/or friends.

A variety of government bodies influence the development and implementation of standards in eldercare. The main government bodies involved are: the Department of Health which influences the strategic development of standards on eldercare; HIQA which has devised standards for eldercare in residential settings, and inspects these settings; HSE which implements standards in eldercare in the services it provides and the National Council for Professional Development of Nursing and Midwifery (NCPDNM), which is a statutory agency that developed the professional roles of nurses and midwives, including support for nurses delivering eldercare.[38]

There is also a range of non-governmental organisations involved in eldercare standards. These include: Nursing Homes Ireland (NHI), which is the representative organisation for private sector and voluntary nursing homes in Ireland; and the Home Care Association (HCA), which represents a number of private home care providers. So, there are now comprehensive regulations and standards in relation to residential care for older people, and voluntary standards for home care.

In relation to **end-of-life care**, the Irish Hospice Foundation (IHF), which is a not-for-profit organisation, supports the development of hospice and palliative care, through developing standards and quality improvements on a voluntary basis.

With respect to **disability**, service provision for people with disabilities is complex, as the providers vary from county to county, and the services are provided in residential centres, day services and in people's homes, and cater for very different needs. The voluntary sector has had a major role in creating and providing a wide range of services for people with disabilities and this has been recognised in recent years by formal contracts with the HSE, rather than the informal arrangements of earlier provision. There is now a move towards a more commercial, contract-based relationship, with the introduction of competitive tendering. Many service providers maintain high-quality standards on a voluntary basis, with overseas accreditation. However, the system as a whole currently lacks any external oversight.

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38 The National Council for the Professional Development of Nursing and Midwifery is currently closing down, with some functions and staff going to the Department of Health and some to the Health Services Executive.

Standards have been developed in relation to the provision of disability services by the National Disability Authority (NDA) and, more recently in relation to residential services by HIQA, but as yet, these standards are only used only on a voluntary basis. Therefore, the disability sector is without a formal regulation system, so that it is difficult to assess the overall quality of services being delivered. The Department of Health is currently looking at the HIQA standards with a view to putting them on a statutory footing.

There is an ongoing policy shift in the nature of provision of services for people with disabilities, with a move from institutional care towards individual supports, mainstream services and personalised funding. The proposed goal is to create a high-quality, cost-effective, responsive and accountable system, with a strong governance framework, (Expert Reference Group on Disability Policy, 2011). As part of this, rather than compliance with rules, provision would focus on the attainment of outcome-based standards and a demonstrated commitment to continuous quality improvement.

On **schools**, up until recently Ireland's school system has operated in an environment with a very limited amount of legislation. This situation has changed significantly during the last decade or so with the enactment of a range of new regulatory instruments and the establishment of a number of key agencies to support the work of the Department of Education and Skills, including the National Education Welfare Board, National Council for Curriculum and Assessment, National Council for Special Education, the Teaching Council and the State Examinations Commission. Nevertheless, responsibility for the school system in Ireland remains with the Department of Education and Skills for all aspects of education policy, including curricula, syllabi and national examinations. Inspection and evaluation of the quality of schooling, advising on educational policy, and supporting teachers and school management are core tasks for the Department.

The Education Act 1998 sets out the responsibilities of three stakeholder groups who are individually and collectively responsible for the setting and achievement of standards and accountability in compulsory education: the Department of Education and Skills, in particular the Inspectorate Division; the Boards of Management and Patrons of Schools; and the Teaching Council. All state primary and post-primary schools in Ireland must be inspected by the Department of Education and Skills. School inspections can take many forms at primary and post-primary level, but one of the most detailed is the Whole School Evaluation (WSE) Report.

In relation to **policing**, An Garda Síochána was left to regulate itself for much of its history. However, following a number of claims about abuses of power, the Garda Síochána Act 2005 made provision for the establishment of a range of new bodies to enhance standards and accountability within the police service. These include the Garda Síochána Ombudsman Commission, the Garda Síochána Inspectorate, the Garda Síochána Professional Standards Unit, Joint Policing Committees and Local Policing Fora.

Drawing on this work it becomes evident that a key feature of the current human services landscape in Ireland is the degree to which many services do not fall under formal regimes of regulation, standards and inspection. In many areas standards

are informally regulated by voluntary codes and quality systems, developed or adopted by service providers, e.g. in the disability area. There are, in consequence, a wide range of actors, agencies and mechanisms that have a role in the setting, applying and monitoring of standards. In other areas, there are formal institutional responses, most notably where substantial new architectures of standards and accountability are currently under construction, for example, through the work of the recently established HIQA.

Applying this diversity of approaches to the responsive pyramid of regulation and its variants (see Chapter 2) is proving difficult, as the pyramid presumes a relatively simple bilateral relationship between the regulator and the regulated, which is not evident in the human services sectors we are examining in depth. While it has been 'widely acknowledged' that responsive regulation is a 'considerable advance' on the previous 'compliance and deterrence' models (persuasion and punishment), and that 'responsive regulation remains hugely influential worldwide' others have found limitations to the approach (Baldwin and Black, 2007:5). Accepting that in a regulatory context, responsive regulation is principles-based and problem-centred rather than rule-centred, Baldwin and Black (2007:17) argue that to be 'really responsive' regulators or oversight bodies have to pay attention to a number of other factors: the attitudinal settings of the regulatees; the broader institutional environment of the regulatory regime; the different logics of regulatory tools and strategies; the regulatory regime's own performance; and to changes in each of these elements.

In our examination of a number of human services sectors we are finding multiple routes to quality, involving a composite of bodies concerned with standards, both formally and informally connected, in a number of different ways. An emerging challenge is how these bodies are co-ordinated to bring about a quality regulatory regime. These issues are explored in some depth in the specific human services reports and will be elaborated upon in the synthesis report.

3.5 Standards Accreditation

In providing tailored services, some form of individualised statements of standards is required as well as more generic statements, as made explicit by NESC (2005:xxi):

> Standards are both statements to service users and statements by service deliverers. They allow service users to see the content of their social and economic rights in the context in which they are living, and express what the individual has a right to expect and what she or he is committed to support being provided on his/her behalf for others. Standards also express how service deliverers understand what it is within their competence to provide (based on current technological, knowledge and organisational frontiers) and what constitutes the hallmarks of doing so professionally.

In Ireland, there are a number of bodies who formally accredit statements of standards, on a voluntary basis. Some of these are briefly outlined below.

The National Standards Authority of Ireland (NSAI) provides a range of services to the public sector. For example, the ISO 9001 standard sets out the requirements for a quality-management system focused on eight principles: customer focus; leadership; involvement of people; process approach; systems approach to management; continual improvement; factual approach to decision-making; and mutually beneficial supplier relationship. The ISO 9001 can be purchased through the NSAI who then supports its implementation and provides certification.

The Excellence Ireland Quality Association (EIQA) provides supports and accreditation to organisations on hygiene and quality standards, and also supports the work of the Garda Professional Standards Unit. For example, the EIQA has worked with the Irish Nursing Homes Organisation (INHO) and the Irish Society for Quality and Safety in Healthcare (ISQSH) to develop a Q Mark for nursing homes. This standard incorporates a number of aspects of managing a nursing home such as: organisational commitment; employee engagement; support systems and processes; and quality of life. To achieve certification an organisation has to ensure that they have complied with all the requirements of the standard. The accreditation programme is assessed by a team of nursing-home assessors, who produce a 'scored report' following the assessment, which identifies areas of best practice, areas of positive performance and areas requiring improvement.

Advocates of standards accreditation cite its usefulness in ensuring certain minimum standards are met, and in providing transparency to service users, service providers and the general public. Critics, however, claim that they can be based on compliance rather than service improvement, involving a lot of unnecessary time and paperwork for very little added value (Seddon, 2008). As stated in Chapter 2, in order to ensure a move beyond compliance to a performance and learning culture there is a need for continual and reliable feedback so that organisations can learn about what is working well, identify emerging problems, and make adaptations accordingly. These tenets are well articulated by Eileen Munro, in her review of the UK's child protection system, when she acknowledges that such a learning culture is needed both within and between agencies, and should include people at all levels in

organisations, from the frontline workers to the senior managers (Department of Education, 2011).

It is now recognised that progressive standards include quality improvement criteria. For example, the Draft National Standards for Disability Services produced by the National Disability Authority (National Disability Authority, 2004) include quality improvement criteria in the standards and audit tool, an approach which endorses reflective practice and rewards quality improvement as part of the accreditation process. Many of HIQA's standards include a focus on quality improvement. It is also the case that many standards promote and reward innovation and creativity. Some local examples of these approaches are presented in the next two sections.

3.6   Quality Improvement Initiatives

A dimension to the provision of quality public services in Ireland, especially services provided by some voluntary and community organisations, has been the focus on quality improvement initiatives. As outlined in Chapter 2, there are many facets to quality initiatives, but primarily they have been adapted from the private sector, they focus on outcomes, they are driven from within organisations (bottom up), their development and application can be integral to the standards process, and they have some form of accreditation. The National Economic and Social Forum (NESF) has defined 'quality' as:

> a way of managing the organisation at all levels, top management to frontline, to achieve customer satisfaction by involving all employees in continuously improving the work processes of the organisation (NESF, 1995:45).[39]

Defining features of a quality approach are that the desire for improvement is usually driven from within the organisation itself and involves 'learning' from experience so that changes and improvements can be incorporated into organisational processes. The setting and meeting of standards is often part of this process, and in some cases these standards are also externally accredited (see last section), to bring visibility and credibility to organisations striving to provide a quality service.

In some human services' fields, the voluntary and community sector have, to some extent, led the way in seeking to bring about quality improvements. For example, in the disability field, Western Care is a voluntary organisation that provides services, on behalf of the HSE, to people with intellectual disability in Co. Mayo. Western Care aspires to provide a 'person-centred' service, and in so doing uses 'personal outcomes measures' to learn how to be person-centred and to measure the extent

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39   The NESF definition is derived from Federal Quality Institute (1991), *Introduction to Total Quality Management in the Federal Government,* USA.

to which this is being achieved. 'Personal outcomes measures' is a 'quality system', which identifies the needs and priorities of the individual with the individual and their family, and then sees how the service can meet those needs through an agreed individualised plan. There is a strong emphasis on 'shared values' such as valuing people as individuals and supporting people to have meaningful connections within their communities. Basic assurances such as rights, safety, well-being and quality of life are also central to this quality approach (Western Care Association, at www.westerncare.com).

This quality system is accredited by the Council for Quality and Leadership for people with disabilities (CQL). An international organisation, originating in Maryland, USA, the CQL has been working with organisations in Ireland since 1997.[40] The CQL develops and implements person-centred quality measures, performance indicators and evaluation methods, and provides an international accreditation programme. In the case of Western Care, CQL staff met with a representative sample of people and families to undertake 19 Personal Outcomes meetings (Western Care Association, 2011). The purpose of the meetings was to explore, with the individual and their families, how well Western Care supported them in meeting the outcomes they sought in their lives. There were also focus groups and in-depth interviews with specific individuals. Following the assessment, accreditation was awarded, as well as a number of recommendations for areas to improve.

Another example of a quality improvement initiative is the Statutory Code of Practice on the Accessibility of Public Services and Information provided by public bodies (National Disability Authority, 2006). This code of practice is a statutory instrument developed to guide public bodies in meeting their accessibility obligations under the Disability Act 2005. The code stipulates that all public bodies must appoint at least one access officer to support customers with disabilities in accessing their services. There are a range of stipulations to ensure that customer services and information provided by public bodies are responsive to service users with disabilities. The NDA has a statutory function to monitor compliance with the code.

These examples have been provided to illustrate a quality approach to providing good human services. Further detail is provided in the report on disability services. There are many other examples in both the disability sector and the other human services areas.

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40 Disability organisations interested in CQL in Ireland are part of an informal network of agencies called the Outcomes Network of Ireland (ONI), which was formed in 2000. Its members are interested in quality enhancement, with some being currently accredited by CQL, and others using the CQL approach or interested in doing so. The ONI liaises with CQL and other relevant Irish bodies such as the National Federation of Voluntary Bodies, the Health Information and Quality Authority, Inclusion Ireland, and the Disability Federation of Ireland. Membership of the Outcomes Network of Ireland includes Western Care Association; St. John of God's Hospitaller Services; Sunbeam House Services; Cheshire Foundation; St. Michael's House; HSE North West Intellectual Disabilities; Cheeverstown House; Sisters of La Sagasse Services; Cregg House in Sligo; Brothers of Charity; Dara Residential Services; Irish Wheelchair Association; St. Patrick's Services in Kilkenny and HSE North East Intellectual Services.

In their report *Improving the Delivery of Quality Public Services,* the NESF (2007) asserted that a key factor in delivering quality services is that providers and users have common expectations as to the anticipated results. Thus, consultation between users and providers is an important element in agreeing a set of standards that user-centred services are expected to meet. In addition, developing good performance indicators helps measure the extent to which the standards are being met, as well as identifying areas where there is a requirement for improvement. The evidence gathered by NESF (2007)[41] indicated that performance indicators work best where both quantitative and qualitative data are collected from service users and providers, and benchmarked against best practice. Such an approach enables continuous learning and improvement, both within the organisation and potentially more widely across the sector, and at national level.

It was stated earlier that many of the quality improvement initiatives have been led by the voluntary and community sector. The NESF, however, has highlighted the need to recognise capacity issues within the community and voluntary sector. Where organisations in the community and voluntary sector provide services on behalf of the state, they are increasingly being asked to meet higher standards, resulting in greater demands for professional working standards and reporting systems (NESF, 2007). These standards may require more rigorous accounting procedures, and premises' upgrading and adaptations, as well as meeting additional health and safety requirements. This may prove challenging, especially for smaller organisations—submissions received by the NESF in 2007 highlighted the uncertainty brought about by lack of core funding, and an ongoing imbalance between the pursuit of funding and enhancement of service delivery. These submissions also identified the need for a balance between formal accountability for public money and service delivery on the one hand and flexibility, responsiveness and innovation on the other.

Community and voluntary organisations recognise the importance of good governance in the delivery of quality service, that is, how organisations are run. A new Governance Code is being developed by and for community, voluntary and charitable organisations in Ireland and the people who sit on their boards and management committees. The Governance Code is intended to support organisations in the management of risk and to improve operational efficiency. There has been consultation with stakeholders and it is intended that a definitive Governance Code will be launched in late 2011/early 2012; see www.governancecode.ie.

Also of relevance here is the Charities Act 2009, which will establish a new regulatory authority—the Charities Regulatory Authority. Charities in Ireland have been unregulated since the foundation of the state, and the intention of the Act is that an integrated system of mandatory registration, and proportionate regulation

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41 Evidence was gathered through reviewing international and national policy developments, as well as a broad range of national and local consultations, including presentations by a number of public service experts, focus-group meetings with service providers and users, submissions from the public, and workshops and conferences.

and supervision of the charities sector will be introduced. When established, the Charities Regulatory Authority will create a public Register of Charities and every charity wishing to operate in Ireland will be legally obliged to be on the register.[42]

3.7   Some Local Examples of Quality Learning

In a study published in 2009 (Futures Ireland Study)[43] NESDO explored how Ireland might become a more innovative, learning society (NESDO, 2009). To explore this, it gathered evidence on innovation and innovative practice in business, social organisations and public agencies. A remarkable feature of many of the cases reported was the prevalence of systematic review in organisations' approach to innovation and continuous improvement. For example, a workplace training programme reported how their approach changed in recent years. Their overall approach was based on simulating a real-life workspace for people who had never worked, helping them to learn the rhythm and routines of work in a company. When unemployment was falling rapidly, the partnership's client group was increasingly composed of people more 'distanced from the labour market' who were taking longer to place into employment. This prompted the organisation to look more closely at its training process and how it impacted on participants. It created a new set of measures that would capture the 'distance travelled' by an individual through participation on the programme. From there, the partnership staff worked to identify where they could make a difference and focused on 'how to wrap supports around the individual based on where they are in the lifecycle' (NESDO, 2009).

This example provides a strong insight into the nature of review and the ability of people working on local problems to develop metrics that really enabled them to improve their service. The review led to innovation—i.e. new services—but it also produced a new system of measurement, 'distance travelled'. This metric meant that the local partnership could assess and monitor its work. Because a set of detailed customised metrics was established, there was no conflict between reconfiguring services and maintaining stability in the overall work of the partnership as a contributor to local development.

Another example from the Futures Ireland project demonstrates this point (NESDO, 2009). A school for children with special needs was required to devise Individual Educational Plans (IEPs), as required by the Education for Persons with Special Educational Needs (EPSEN) Act 2004. Despite the requirement, there was little by way of clear guidance on how to do this and, within the school, each teacher was

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42 It will take some time for the full establishment and operation of the Charities Regulatory Authority as there is a considerable body of work to be undertaken to put in place the statutory regulatory framework provided for in the Act.

43 *Ireland at Another Turning Point: Reviving Development, Reforming Institutions and Liberating Capabilities* (NESDO, 2009).

working in his/her own way, with varying levels of success, to refine how to improve their IEPs.

The school principal recognised the lack of consistency among her teachers in their approach to IEPs and the complexities of the change involved. The original plan was to develop a template or templates; but it was assumed that this could not be done for the whole school because the children had such diverse levels of disability and need. Teachers working with the children with moderate learning disabilities tended to group together and be less involved with the teachers of the children with profound disabilities. The principal decided to reconfigure the timetable to allow half the teachers to come together every week to attempt to develop an appropriate template for IEPs.

This enabled teachers to share their know-how in a supportive way, to the benefit of the children and the teachers themselves. Each highlighted what was working best for him/her and this was shared among groups of teachers. Putting good practice under the spotlight provided teachers with ideas and resources they could draw on. This created an environment where people could feel safe to ask questions or raise problems they faced. It also motivated teachers to help each other to answer those questions. The result was that the school implemented a formal peer learning process among teachers, which enabled them to both agree on a template for an IEP and to question previous practices, such as a strict demarcation between the classification of having a 'moderate' and 'severe' learning difficulty.

3.8   Summary of Key Issues

This chapter has provided an overview of the evolution of regulation, standards and quality improvement initiatives in Ireland. There is a specific focus on how they apply to the provision of human services. The key issues emerging from this chapter are as follows:

- The EU has had an influence on regulation and standards-setting in Ireland, through EU regulations and directives. In some areas the EU has now moved away from applying uniform approaches and making detailed prescriptive rules towards methods of responsive regulation, where, within a framework of overarching goals, there is joint goal-setting along with decentralised execution, benchmarking, review and learning with a view to continuous improvement. These approaches, however, lack sanctions, i.e. there is no 'gorilla in the closet';

- There has been much development and reform of regulation in Ireland since the 1990s. Distinctive features of Irish regulation are the large number of agencies involved and the fragmented nature of the regulatory 'regime'. The OECD has had an influence on Irish regulatory reform, stimulating the production of a White Paper in 2004, establishment of a 'Better Regulation Group' (to complement the work of the Better Regulation Unit), and the introduction of Regulatory Impact Analysis (RIA). There are mixed reactions to the strengths and weakness of RIA and its application;

- Social regulation has received relatively little attention in Ireland. Historically, many social services were provided by the voluntary sector, gradually being replaced by the state, although by international standards the role of the voluntary and community sector in the provision of public services remains relatively large in Ireland. More recently, influenced by an OECD review of the Irish public service, greater emphasis is being placed on improving service standards, increasing engagement with citizens, putting in place better accountability structures, and placing more weight on performance and the measurement of outcomes;

- Recent years have seen the establishment of a range of regulatory and standards-setting bodies in the human services in Ireland. These include independent statutory regulators such as the Health Information and Quality Authority, Ombudsman's Offices which address complaints from members of the public, Inspectorates who are generally concerned with standards within their own organisational areas, and a plethora of private, professional and NGO bodies who are concerned with specific aspects of standards in their own areas of interest within the human services. Many service-delivery organisations also incorporate a regulatory or quality improvement element within their organisations;

- A number of human services areas are reviewed in detail in subsequent reports—eldercare, end-of-life care, disability, schools and policing. From brief previews of their regulatory, standards, and quality improvement arrangements, it becomes evident that a key feature of the current human services landscape is the degree to which many services do not fall under formal regimes of regulation, standards and inspection. In many areas standards are informally regulated by voluntary codes and quality systems, often developed or adapted by service providers. There are, in consequence, a wide range of actors, agencies and mechanisms that have a role in the setting, applying and monitoring of standards;

- There are a number of bodies who formally accredit statements of standards on a voluntary basis. The National Standards Authority of Ireland (NSAI) provides a range of services, e.g. ISO 9001, and the Excellence Ireland Quality Association (EIQA) provides supports and accreditation to organisations on hygiene and quality standards, e.g. Q Mark. Advocates of standards accreditation cite their usefulness in ensuring certain minimum standards are met, and in providing transparency of the standards, while critics claim that they can be based on compliance rather than service improvement, often involving a lot of unnecessary time and paperwork for very little added value. It is now recognised, however, that progressive standards include quality improvement criteria, with many standards also promoting and rewarding innovation;

- A dimension to the provision of quality public services in Ireland has been the focus on quality improvement initiatives, as integral to the standards process. Defining features of a quality approach are that the desire for improvement is usually driven from within the organisation itself and involves 'learning' from experience so that changes and improvements can be incorporated into

organisational processes. Consultation between service users and providers, as well as developing good performance indicators, are central elements of many quality improvement initiatives;

- A predominant feature of many quality improvement initiatives is the prevalence of systematic review in organisations' approach to innovation and continuous learning. Such systematic review can lead to quality learning outcomes through the development of customised metrics, peer review and shared learning. The NESDO Futures Ireland project provides good examples of this approach.

Chapter 4
Conclusions on Quality and Standards in Human Services in Ireland

The preceding chapters have set out the background to, and focus of, this report; provided a conceptual overview of regulation, standards-setting and quality improvement, drawing on theory and international evidence; and outlined the evolution of regulation, standards-setting and quality improvement initiatives in Ireland.   This chapter draws together some key points emerging from this exploration of quality and standards in the provision of human services and poses some questions for consideration in the specific human services reports on eldercare, end-of-life care, disability, schools and policing.

4.1 Overview of Key Concepts

As stated at the outset, the primary focus of this work is on what shapes quality and ongoing improvement in human services provision, with an emphasis on the role of standards and systems of accountability. Associated issues that were identified include regulation, especially responsive regulation; the role of the service user; how services are organised; optimising resources; and systematic learning from experiment and experience.   Throughout chapters 2 and 3 these concepts have been addressed conceptually, and knowledge presented on how they have been considered internationally and in Ireland.

Conclusions on each of these areas are presented in the next sections, followed by a number of key observations to emerge from the study, finishing with a number of questions which are considered in the reports on specific human services areas.

4.2 Responsive Regulation

There has been a growth in regulation across all areas—economic, social and administrative. While a number of commentators have suggested that there was an ambition to 'deregulate' or reduce regulation during the 1980s and 1990s, others have argued that the reality has been regulatory reform, with current thinking promoting more responsive forms of regulation.

A defining characteristic of social regulation is that it tends to cover specific risks, such as health and safety, employment rights and social inclusion, across a number

of sectors. This is in contrast to economic regulation, which tends to focus on a specific industry such as utilities or financial services. Social regulation, therefore, lends itself to an approach that looks at risks or 'important problems', which can then be addressed in different ways across a wide spectrum of areas, also providing the potential to create learning loops leading to continuous improvement.

A key issue emerging from this overview is that effective regulation is much more than rules and regulation, and more than compliance. Effective regulation focuses on performance and outcomes, adopting a collaborative problem-solving approach. The evidence suggests the need to build on strengths as well as focusing on addressing problems, while reserving sanctions for non-compliance.

Thinking on regulation has also moved beyond traditional 'command and control' and purely self-regulatory approaches towards 'responsive regulation'. Responsive regulation can be thought of as moving up a pyramid, with self-regulation and voluntary approaches at the base and sanctions at the top. The regulator or oversight organisation begins at the bottom of the pyramid with information provision and persuasion, but has the capacity to escalate towards punishment if persuasion fails. A number of variants of responsive regulation have been developed including a 'strengths-based' pyramid, which complements the 'regulatory' pyramid, but focuses on the promotion of opportunities and awarding of incentives as one moves up the pyramid. The two pyramids are joined at the base where the focus is on education and persuasion. 'Smart' regulation includes the actions of third parties, such as professional organisations and NGOs, based on the premise that multiple policy instruments and a broader range of actors will produce better results. Meta-regulation is the 'regulation of self-regulation', based on the idea that organisations put in place systems of self-regulation and that regulators and oversight authorities assure themselves that these systems are adequate and are being followed. The evidence suggests that there is no single approach that functions effectively and efficiently in all circumstances.

However, in our examination of a number of human services sectors we are finding it difficult to apply the responsive pyramid of regulation. Rather than a relatively simple bilateral relationship between the regulator and the regulated we are finding multiple routes to standards-setting and quality, involving a composite of bodies concerned with standards, both formally and informally connected, in a number of different ways. An emerging challenge is how these bodies are co-ordinated to bring about a quality regulatory regime. Our preliminary findings are discussed in more detail in the sections at the end of this chapter.

4.3   Focus on Service Users

Both in the provision of services and in their regulation there is an increasing emphasis on the needs of service users. This is reflected in the references to 'person-centred services', 'tailored services' and in 'money following the patient/client'. While this model of service provision is not yet fully in place, there is movement in this direction. Examples of this trend include proposed changes in the way services for people with disabilities are being provided, the role of parents'

associations and student councils in the school system, and community policing initiatives.

The evidence examined in this report places an increasing emphasis on taking into account the needs and voice of service users, with greater levels of consultation and user involvement. This is based on a rationale of the importance of getting a range of perspectives, especially from the actual users of services and on their experience of accessing and receiving the service. The benefits of service user involvement are seen as: more openness and transparency; greater assurances of safety; improved quality through tailored services and greater public accountability. Service users are also now increasingly used in the monitoring of standards as members of inspection and oversight arrangements. A diversity of approaches can be used to elicit the views and input of service users.

A dimension of service user involvement is the recognition and acknowledgement of the power relationships involved. Whatever the level of user involvement it usually involves some transfer of power from the service provider to the service user. An element of this power relationship is the reluctance of some service users to complain about a poor-quality service for fear of making matters worse, especially where service users are in a vulnerable situation. The existence of this possibility demands openness and transparency in the provision of services with strong systems of redress for service users. Advocacy and support may be required to ensure service users can exercise their rights in this regard. The role of the families of service users may also need to be taken into account, and the extent to which the service user's needs and views and those of their family are aligned (or not).

This trend towards a greater focus on the service user and more 'tailored' services has implications for the way services are delivered. Budgets have to be allocated and monitored differently, the practice of service delivery is different and thus the context for regulation, accountability and quality improvement is different.

4.4   Devolution with Accountability

There are many arguments in the literature and evidence from practice that those who are delivering services directly to the service users know well what is required. Acting on this information, there is a requirement to ensure that certain standards are met and that resources are allocated and used as efficiently and effectively as possible.

The evidence suggests that a fruitful approach is to set a broad regulatory framework or a small number of guiding principles 'at the centre'[44] and then devolve their application to the local context. The centre continues to have an

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44 Depending on the context, 'the centre' can be government, a government department, a regulator etc. The important point is that power (to varying degrees) is devolved from a central to the local or 'frontline' context.

oversight role to ensure compliance but local providers have the opportunity, and in some cases, the incentive, to improve quality and performance. The over-riding priority is on achieving and improving outcomes for the service users.

In Ireland at the moment in some service areas there is talk of a greater delegation of authority to local level, to 'protect the frontline'. However, this is proving very challenging, especially in the current economic climate where there is a conflict between delegating authority and the desire to control resources more directly from the centre. This is reflected in the trend towards rationalising and centralising many services. Yet, the evidence would suggest that supporting the people who deliver the service directly to the public results in more creativity and innovation, in different ways of doing things, and ultimately a better-quality service, with some sort of oversight body to deal with those who might be recalcitrant.

In their report on reforming the Irish public service, subsequently endorsed by the Government, the OECD proposed a move towards a more integrated system with improved accountability structures, along with the expansion of networks to improve connectivity across the public service (OECD, 2008). They stressed placing greater emphasis on improving service standards, on increasing engagement with citizens and on placing more weight on performance and the measurement of outcomes.

In the environmental field, for example, there is a greater use of networks to support these devolved approaches. The use of networks can improve co-ordination, capacity-building and shared learning. The 'networking individual', as someone who sees their work in a complex web of interactions and processes, who acts with consent beyond their institutional boundaries, and adopts a problem-solving approach to their work, has a role to play in these devolved structures and networks.

4.5　　Optimising Resources

A recurring theme in the current economic climate is how to improve quality in service provision while at the same time cutting costs. The evidence is limited on the costs and benefits of regulation and quality improvement, partly because of the difficulties of assessing the long-term benefits of short-term investments. The limited research that does exist, however, suggests that approaches that have been found to be effective include the benefits of focusing on the service user, the importance of work processes and systems, the centrality of measurement, recognising and rewarding those who work in the frontline, working across organisational boundaries to minimise both gaps and duplication, and holding managers to account. The identification and reduction of waste is a key element in reducing costs while at the same time improving quality.

Changing the way things are being done, however, often with the need for greater co-operation and co-ordination, and increased flexibility, is proving a major challenge in many areas, requiring behavioural and cultural change.

4.6   Monitoring and Learning

A focus on 'outcomes' is now integral to the vocabulary of many service providers, but more consideration remains to be given to what outcomes are being sought and how they will be measured. Most of the services have a commitment to monitoring and assessment and these functions are carried out in a variety of ways. However, what is less clear is the extent to which the monitoring process can diagnose and address problems, how the results of monitoring and assessment are acted upon, the extent to which the information gathered and analysed is shared, and how it might be used by other service providers to improve their services or bring about more systemic changes.

A particular challenge is to interrogate the reasons why a service is provided in a specific way, especially if that service deviates from agreed standards or norms. By making these reasons explicit, weaknesses or gaps in service provision can be identified and addressed, especially where service provision cuts across organisational boundaries.

A key message from all the evidence reviewed is the need for a learning culture in the provision of quality human services. Ideally, learning should take place at a number of levels: the level at which the service is delivered; at regional or sectoral level; and at the level of regulator or at national level. This approach is sometimes referred to as 'triple-loop learning'.

Data are required to inform the learning, but these data have to be useful to both the service provider at the frontline as well as to the centre and regulator. Ideally, this information, or in Deming's words 'profound knowledge', is made available through feedback loops in the development of a 'learning culture'.

4.7   Emerging Ideas

There are three main ideas emerging from the study: multiple routes to quality; connecting a composite of bodies concerned with standards (weaving the web); and advancing through the 'adjacent possible'. We have explored the concept of 'responsive regulation' in some depth, but have found it limiting in its application to the diversity of approaches to standards and quality improvement that we are encountering in the human services sectors we are examining: eldercare, end-of-life care, disability, schools and policing. These three emerging ideas are discussed in a preliminary way in the following sections, but will be studied in more depth in the specific human services reports. A synthesis report will draw together the lessons from across these human service areas and respond in a more comprehensive way to these ideas.

4.8　　　Multiple Routes to Quality

The evidence throughout the analysis points not to 'one correct way' but to 'multiple routes' to quality. Some consideration needs to be given to the desired destination(s), often referred to in policy documents as 'vision', 'aims', 'goals', 'outcomes'. Ideally, there should be 'shared agreement' among stakeholders on what this destination should be with the proviso that this can change in the light of experience. This sentiment is captured by Skok (2000:11) who states that:

> the notion of continuous improvements implies a continual process of self-examination and a never-ending search for improvement without a fixed destination.

The search for quality, then, involves moving towards a desired (but not fixed) destination; the route to be taken depending on context, culture and capacity. Sabel and Zeitlin (2011) refer to this approach in their description of experimentalism in governance. They highlight three salient features:

- 'Multiple routes' accommodate diversity in adapting general goals to local contexts, rather than imposing 'one-size-fits-all' solutions;

- 'Multiple routes' provide a mechanism for co-ordinated learning from local experimentation through 'disciplined comparison' of different approaches to advancing common goals; and

- The goals themselves and the means of achieving them are explicitly conceived as provisional and subject to revision in the light of experience, so that problems identified in one phase of implementation can be rectified in the next iteration.

For this approach to work effectively, however, Sabel and Zeitlin require that:

- Framework goals and metrics for assessing their achievement are provisionally established by some combination of 'central' and 'local' units, together with relevant outside stakeholders;

- Local units are given broad discretion to pursue these ends in their own way;

- But, as a condition of this autonomy, these local units must report regularly on their performance and participate in a peer review in which their results are compared with those employing alternative means to the same general ends; and

- The goals, metrics, and decision-making procedures themselves are periodically revised in response to the results of the review process.

This approach is a response to uncertain environments, where effective solutions to problems can only be defined in the course of pursuing them. Fundamental to this approach is the distribution of power, so that no one single actor can impose their own preferred solution without taking into account the views of others.

The sectoral human services reports will explore the different routes to quality and these will be summarised and discussed in the synthesis report.

4.9 Connecting a Composite of Bodies Concerned with Standards - 'Weaving the Web'

Another of the messages to emerge from this exploration of regulation, standards-setting and quality improvement initiatives is that the 'regulatory regime' in Ireland in many of the service areas considered is a composite of state, local, private, voluntary and community bodies, rather than one single regulator driving standards and improvements. While this is where many other jurisdictions are ending up, it is Ireland's starting position.

This is an important point as it informs our ideas about what regulation is, how it should operate and, consequently, what drives standards. It is in contrast to the more dominant modes of thinking about how to improve standards that have been operative in Ireland (either 'light-touch' minimal regulation or 'heavy-handed' coercive regulation). It points up how unfeasible both of these options are, because standards and quality are not driven at the behest of a single legally empowered central organisation with sanctioning powers, which should be minimised or elevated. Rather, standards and quality are affected by a range of different organisations operating in a variety of ways. To date, this has not been sufficiently recognised or documented.

Nevertheless, even though a composite of bodies exist who are concerned with standards in a human services area, there is something of a disconnection between the different parts. As highlighted earlier, there is an argument for better co-ordination and linkages between the different actors, through (often temporary) networks and greater identification of the role of the 'networking individual', and the possibility of the 'networking institution'. In this scenario a 'networking institution' is understood as an institution which recognises its 'inter-relational interdependence' with others and which connects with other institutions, often on a temporary basis, to address problems and maximise positive outcomes. Thus, a networking institution works in a flexible, co-operative way, adapting to the situation in hand. It fulfils its statutory duties, but it does so by sharing responsibility for addressing problems and acting collaboratively for the 'greater good'. For networking institutions to operate effectively attention needs to be paid to the devolution of authority, accountability mechanisms and governance arrangements. The idea of the networking institution is considered further in some of the service specific reports, and again in the synthesis report.

As a way of connecting the relevant interests consideration could be given to the development of a 'quality improvement framework' which would set out the various interlocking elements of a comprehensive quality approach. Such a framework could include standards and external oversight, capacity development initiatives, with the possibility of a legislative underpinning. Consideration could be given to a forum or fora of relevant stakeholders to inform, discuss, and monitor the development and implementation of the quality improvement framework.

4.10   Advancing through the 'Adjacent Possible'

One way to advance these ideas, with a view to having in place a system of continuous quality improvement and good performance, is through ongoing incremental improvements. The writer Steve Johnson (2010) in his book on innovation contends that innovative breakthroughs are often made by what he terms the 'adjacent possible'. This is described as 'a kind of shadow future, hovering on the edges of the present state of things, a map of all the ways in which the present can reinvent itself'. Johnson makes a convincing case that our idealised view of invention—the solitary genius who has a revelatory moment—is mostly bogus. Instead, great inventions and advances are largely the result of a creative process in which many minds contribute in innovative increments.   Johnson suggests that 'the trick to having good ideas is not to sit around in glorious isolation and try to think big thoughts. The trick is to get more parts on the table'.

In trying to develop a culture of continuous quality improvement in human services within our current fragmentary regulatory regime, it may be possible to begin to breach the borders of the 'adjacent possible' by demonstrating how different policy fields could learn from one another. The development of a quality improvement framework could facilitate this approach, with fora of relevant stakeholders sharing problems and solutions.

4.11   Key Questions for Further Exploration

Drawing on all the concepts and issues summarised in this report, a number of key questions emerge for consideration in the detailed examination of the regulation frameworks, standards-setting and quality improvement initiatives in a number of specific human services areas.

Questions, suggested as instruments to tease out the issues, are as follows:

Responsive Regulation

- To what extent is the regulatory, standards and quality improvement regime driven from a command-and-control, self-regulatory, or responsive regulation perspective?

    o   is there evidence of responsive regulation, and if so, in what form?

    o   what is the balance between persuasion and punishment?

    o   who are the main actors involved, what are their roles, and how are they connected, if at all?

Involvement of Service Users

- To what extent, and in what way, are service users involved in the provision and/or regulation of services?

    o does the regulatory, standards and quality assurance regime encourage service providers to ask what works?

    o does the regulatory, standards and quality assurance regime support the involvement of service users, and if so, in what ways?

Costs

- Have attempts been made to improve quality, while reducing costs?

    o if so, how?

    o what impact, if any, has this had on the quality of outcomes?

    o are there any barriers preventing implementation?

Devolution with Accountability

- Who are the main actors (state, local, private, community and voluntary) driving the regulatory, standards and quality improvement regime, and what are their respective roles and responsibilities?

    o what are the linkages, if any, between them?

    o what is the role of the centre?

    o do frontline staff have the ability to make improvements?

    o which actors are the drivers of quality improvement?

Monitoring and Learning

- What, if any, are the mechanisms for continuous learning?

    o are the mechanisms recognised and used within the regulatory and quality improvement regime?

    o to what extent is there a focus on outcomes and how are these outcomes measured?

    o is the learning shared, and if so, how?

Three Overriding Issues

In the light of this review of human services areas and consideration of the above questions, there are three over-riding issues:

i.   Overall, service users, government and the wider public will want to ask: how convincing is the regulatory, standards and quality assurance regime?

ii.   To what extent does the regulatory, standards and quality assurance regime (a) prevent the most serious harms/abuses; and (b) promote quality improvement?

iii. Are there elements in the regulatory, standards and quality-assurance regime that need to change to ensure the provision of a quality service? If so, what are they and how can they be changed?

Appendix A
List of Bodies in Ireland With Regulatory Powers, Compiled by the Better Regulation Group in 2007[45]

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45 This was the configuration and names of government departments and agencies in 2007 – some of these have since changed.

Department of Agriculture and Food

- Department of Agriculture and Food

- National Milk Agency

- Veterinary Council

Department of Arts, Sport and Tourism

- Department of Arts, Sport and Tourism

- Fáilte Ireland

- Horse Racing Ireland

- Irish Greyhound Board/Bord na gCon

  Private Bodies

  - The Turf Club—Office of the Governing Bodies

Department of Communications, Marine and Natural Resources

- Department of Communications, Marine and Natural Resources

- Broadcasting Commission of Ireland

- Commission for Communications Regulation

- Commission for Energy Regulation

- Sea-Fisheries Protection Authority

- 9 Fisheries Boards and Commissioners

Department of Community, Rural and Gaeltacht Affairs

- Department of Community, Rural and Gaeltacht Affairs

- An Coimisinéir Teanga

- The Commissioners of Charitable Donations and Bequests for Ireland

- Waterways Ireland

Department of Defence

- Department of Defence

Department of Education and Science

- Department of Education and Science

- FETAC: Further Education and Training Awards Council

- HEA: Higher Education Authority

- HETAC: Higher Education and Training Awards Council

- National Education Welfare Board

- National Qualifications Authority of Ireland

- State Examinations Commission

- The Teaching Council

Department of Enterprise, Trade and Employment

- Department of Enterprise, Trade and Employment

- Companies Registration Office

- Competition Authority

- Health and Safety Authority

- Irish Auditing and Accounting Supervisory Authority

- Irish National Accreditation Board

- Irish Takeover Panel

- Labour Court

- National Consumer Agency

- Office of the Director of Consumer Affairs

- National Standards Authority of Ireland

- Office of the Director of Corporate Enforcement

- Office of the Registrar of Friendly Societies

- Patents Office

Department of Environment, Heritage and Local Government

- Department of Environment, Heritage and Local Government

- An Bord Pleanála

- EPA: Environmental Protection Agency

- Private Residential Tenancies Board

- Radiological Protection Institute of Ireland

Department of Finance

- Department of Finance

- Central Bank and Financial Services Authority of Ireland

- Commission for Public Service Appointments

- Institute of Incorporated Public Accountants

- Irish Stock Exchange

- Irish Taxation Institute

- Office of the Appeals Commissioners

- Officer of the Revenue Commissioners

- Standards in Public Office Commission

- The Financial Regulator

Department of Foreign Affairs

- Department of Foreign Affairs

Department of Health and Children

- Department of Health and Children

- Adoption Authority of Ireland

- Food Safety Authority of Ireland

- Health Insurance Authority

- Irish Medicines Board

- Mental Health Commission

- Pre-Hospital Emergency Care Council

  Private Bodies

  - An Bord Altranais/Irish Nursing Board

  - Dental Council

  - Medical Council

  - Opticians Board

  - Pharmaceutical Society of Ireland

Department of Justice, Equality and Law Reform

- Department of Justice, Equality and Law Reform

- Censorship of Publications Board

- Dublin Carriage Office

- Film Censor's Office

- Office of the Data Protection Commissioner

- Office of the Refugee Applications Commissioner

- Private Security Authority

Private Bodies

- Bar Council

- Law Society of Ireland

Department of Social and Family Affairs

- Department of Social and Family Affairs

- Pensions Board

Department of the Taoiseach

- Department of the Taoiseach/Central Statistics Office

Department of Transport

- Department of Transport

- Commission for Aviation Regulation

- Commission for Taxi Regulation

- Commissioners of Irish Lights

- Córas Iompair Éireann

- Irish Aviation Authority

- National Roads Authority

- Railway Procurement Agency

- Railway Safety Commission

- Road Safety Authority

Local Government Authorities

- 29 County Councils

- 5 City Councils

- 5 Borough Councils

- 75 Town Councils

When this list was published (2007), nine further regulatory bodies were proposed, many of whom are now in place. These are;

- Broadcasting Authority of Ireland - established 2009

- National Transport Authority - established 2009

- Health and Social Care Professionals Council – established 2007

- National Employment Rights Authority – established 2007

- Property Services Regulatory Authority – established 2007

- Register of Charities – to be established

- Health Information and Quality Authority (HIQA), incorporating the Office of the Chief Inspector of Social Services – established 2007

- A body to regulate the provision of Education Services – part of proposed Education Ireland Bill.

In general, the types of bodies listed are:

- Government departments/offices – which can make primary or secondary legislation, and may also be responsible for enforcing legislation.

- Local authorities which can make bye-laws.

- Independent statutory sectoral regulators, e.g. ComReg, Financial Regulator.

- Public sector bodies under the aegis of government departments/agencies such as the Food Safety Authority of Ireland. Not all bodies or agencies under the aegis of a department may have the necessary powers to 'make' legislation, but they can be responsible for enforcing or implementing legislation.

- In addition to public bodies, there are also a number of private bodies mandated or approved by government to regulate in particular areas, e.g. the Law Society.

Bodies that are not included comprise:

- Regulatory bodies which are not national eg. the European Union, bodies specifically relating to Northern Ireland (all-island and North/South regulatory bodies are included).

- Judicial and Quasi-Judicial Bodies; Gardaí and Defence Forces; Ombudsman Services and Office, because they may have a role in enforcing regulation but they cannot of themselves introduce regulatory change.

- Professional Representative Bodies, such as trade unions, professional associations and sporting associations.

- Ethical Committees.

- Port and Harbour Authorities.

This information has been sourced from the Better Regulation Publication *Bodies in Ireland with Regulatory Powers* (Better Regulation, 2007), see www.betterregulation.ie.

Appendix B
Description of Regulatory Impact Analysis[46]

Drawing on international experience and OECD recommendations, a draft Regulatory Impact Analysis model was developed in 2002 and piloted in five government departments in 2004.[47] The pilot experience was deemed to demonstrate many of the ascribed benefits of RIA, and so RIA was subsequently formally applied across government departments and offices (Department of the Taoiseach, 2005a). Guidance, training and other supports were put in place to assist in the application of RIA and there was a commitment to publish RIAs, in the interests of transparency and accountability. On foot of the experience to date, and a review of operation of RIA (Goggins & Lauder, 2008; see Box A.1), revised guidelines were issued in June 2009.

The format for undertaking a RIA generally involves the identification of the policy problem and subsequent objectives for the policy, the identification of options, structured consultation with stakeholders, an analysis of the impacts including the costs and benefits of each option, a statement on how the policy will be enforced, review arrangements and then publication. These steps do not necessarily follow one another, as the RIA should develop in response to the consultation and analysis of the impacts.[48]

Regulatory Impact Analysis is used by all government departments and offices and is applied to:

- Proposals for primary legislation;

- Significant Statutory Instruments;

- Proposals for EU Directives and significant EU Regulations; and

- Policy Review Groups bringing forward proposals for legislation

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47 The five government departments were: Department of Health and Children (Medical Practitioners' Bill); Department of Justice, Equality and Law Reform (Coroners Bill); Department of Enterprise, Trade and Employment (Export Control Bill); Office of the Revenue Commissioners (Betting Duty Regulations); and Department of Environment, Heritage and Local Government (draft EU Groundwater Directive).

48 An example of a RIA conducted on primary legislation is that undertaken for the Nursing Homes Support Bill 2008, available at www.dohc.ie.

Box A.1   Identified Shortcomings of Regulatory Impact Analysis

A review of the operation of the original RIA was undertaken with the findings published in 2008. The review highlighted a number of shortcomings, including the following:

– **The need for greater high-level support for RIA, otherwise there is a danger that it will be seen as a purely technical exercise;**

– **The need to start the RIA earlier in the process, through producing an earlier draft for consultation and greater consideration of options;**

– **The need to remove the distinction of a 'screening' RIA and a 'full' RIA, and instead identify proportionate levels of analysis on a case-by-case basis related to the significance of the measure;**

– **Suggestions for improving the guidelines and other supports, such as more detail on how to calculate costs and benefits, the inclusion of practical examples, a variety of training options and development of the RIA network;[49]**

– **The need to improve the publication and visibility of RIAs;**

– **The need to integrate RIA into management systems within departments and agencies; and**

– **The need for the Department of the Taoiseach, in co-operation with the RIA Network, to conduct quality assessments of RIAs.**

Source   Goggins & Lauder (2008)

Consultation is seen as an important part of the RIA process, with the *Reaching Out Guidelines* aimed at assisting in this aspect of the assessment.[50]   As well as contributing to the framing of regulations, it is argued that a good consultative process can promote a better understanding of the proposals, and subsequently better compliance with legislation and regulations.   The guidelines provide a structured approach to carrying out consultation, involving its planning, execution and analysis.   The need to draw on a broad canvas of stakeholder perspectives is emphasised.

The consultation process can help identify the extent to which there are likely to be significant impacts as a result of the policy.   A number of impacts must be considered as part of the RIA process: national competitiveness; the socially

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49   A RIA Network was established in 2007 to bring together officials from each government department/office in order to share experience and develop best practice in conducting RIAs. The RIA Network meets quarterly.

50   *Reaching Out: Guidelines on Consultation for Public Sector Bodies* was published by the Department of the Taoiseach in 2005 (2005b).

excluded and vulnerable groups; the environment; whether there is a significant policy change in an economic market, including consumer and competition impacts; the rights of citizens; compliance burden; and North–South and East–West relations. Some of these areas have their own impact-assessment tools. For example, in relation to socially excluded and vulnerable groups it is a requirement in the Cabinet Handbook (1998) that memoranda for government 'indicate clearly the impact of the proposal on groups in poverty or at risk of falling into poverty in the case of significant policy proposals'. In 1999 Poverty Proofing Guidelines were issued to all government departments to help them assess their proposals for their impact on poverty. Following a review by NESC (2001) the guidelines were revised, with updated Poverty Impact Assessment Guidelines now available.[51] RIA reinforces the requirement to carry out Poverty Impact Assessment (PIA) on the impacts of regulations on socially excluded and vulnerable groups, with the procedures for carrying out a RIA in line with those already in place for PIA.

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51   The latest version of the Poverty Impact Assessment Guidelines are available at www.socialinclusion.ie.

Appendix C
HIQA Social Services Inspectorate's Enforcement Pyramid

Figure C.1 HIQA Social Services Inspectorate's Enforcement Pyramid

Emergency
action

Cancel
registration

Prosecute for an
offence

Seek court order to enforce
decisions

Attach, vary, remove registration
conditions

Letter warning of statutory enforcement
action

Request provider to submit action plan

Inspection report - improvements required

Statutory Action

Non-Statutory
Action
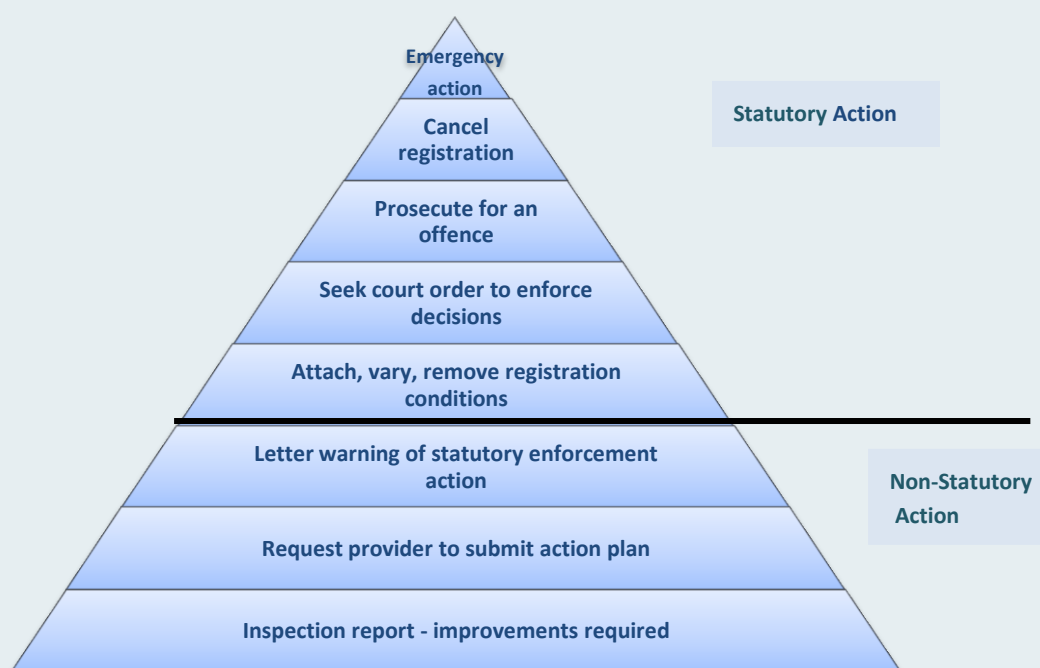
HIQA's Social Services Inspectorate (SSI), referred to in the Health Act 2007 as the Office of the Chief Inspector, was established to regulate the quality of residential care in designated centres for children, older people, and people with disabilities. SSI applies a pyramid of 'escalating enforcement actions' in using its enforcement powers under the Health Act 2007 to protect the health, safety and welfare of the residents of designated centres and to improve the quality of care provided in these centres.

The pyramid diagram demonstrates the range of enforcement actions available to the Social Services Inspectorate from the most commonly used non-statutory action at the bottom, to rare and exceptional emergency action at the top. The SSI encourages improvement wherever possible, with the level of risk dictating the enforcement action.

Further information is available from www.hiqa.ie, specifically the 'Guidance for Providers on Compliance', HIQA 2009.

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