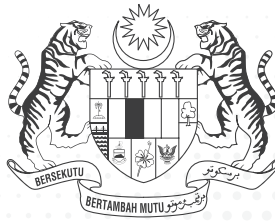


NATIONAL POLICY ON GOOD REGULATORY PRACTICE NPGRP

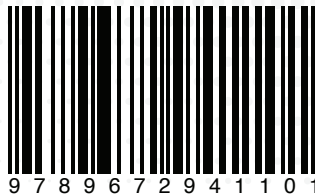
Boosting Productivity Through Quality Regulation

July 2021



NATIONAL POLICY ON GOOD REGULATORY PRACTICE (NPGRP)

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Foreword



The Malaysian Government is committed to institutionalising regulatory reforms as an important pillar to boost national productivity and competitiveness. Regulations impact almost every aspect of our daily lives. Having good regulations that are effective and efficient will contribute significantly to the enhancement of productivity and economic growth, which would lead to an improved quality of life.

The National Policy on the Development and Implementation of Regulations (NPDIR) introduced in 2013 has been pushing for economic productivity and competitiveness, as well as the adoption of Good Regulatory Practice (GRP) among regulators.

Continues efforts are required to ensure that Malaysia's regulatory regime effectiveness promotes Malaysia as an attractive business hub. While maximising public good remains the primary guiding principle, the regulatory regime must be sensitive and responsive to the needs of the business community.

The new National Policy on Good Regulatory Practice (NPGRP) will provide clear guidelines for wider dissemination and effective adoption of GRP. Furthermore, new and existing regulations are in compliance with GRP principles and the Government's intervention in the economy.

A large inventory of regulations governs the economy and new regulations are being added from time to time. The economy will certainly benefit from a regulatory regime that undertakes periodic reviews to ensure the regulations remain relevant towards creating a sustainable business environment.

A handwritten signature in black ink, appearing to read 'Zuki', written over a horizontal line.

YBhg. Tan Sri Dato' Seri Mohd Zuki Bin Ali
Chief Secretary to the Government of Malaysia

Acknowledgement

This preparation of the National Policy on Good Regulatory Practice document was the result of an extensive consultation undertaken by Malaysia Productivity Corporation. It also was built on the work and lessons learnt through the implementation of the National Policy on Development and Implementation of Regulation. The Team acknowledges the guidance received from the Director General, Malaysia Productivity Corporation.

The team also wishes to acknowledge the invaluable support from the Attorney General's Chambers of Malaysia and Regulatory Coordinators serving at various Ministries, Departments and the Agencies, in particular in giving inputs and feedback to the project during the consultation process. Comments were also received from the private sector participants as well as other stakeholders.

In the preparation of this document, references were made to the OECD Guiding Principles for Regulatory Quality and Performance, the OECD Recommendation of the Council on Regulatory Policy and Governance, and the Australian Government Guide to Regulation.

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Acronyms

AGC	Attorney General Chambers
BI	Behavioural Insights
DRN	Digital Regulatory Notification
GRP	Good Regulatory Practice
INTAN	National Institute of Public Administration
MPC	Malaysia Productivity Corporation
MyCC	Malaysia Competition Commission
NDPC	National Development Planning Committee
NPDIR	National Policy on the Development and Implementation of Regulations
NPGRP	National Policy on Good Regulatory Practice
OECD	Organisation for Economic Co-operation and Development
PIR	Post Implementation Review
RC	Regulatory Coordinator
RIA	Regulatory Impact Analysis
RIS	Regulatory Impact Statement
RPMS	Regulatory Process Management System
RURB	Reducing Unnecessary Regulatory Burdens
SCM	Standard Cost Model

SECTION 1 // Introduction

“Boosting Productivity through Quality Regulation”

The launching of the National Policy on the Development and Implementation of Regulations (NPDIR) in 2013 was an important milestone in Malaysia’s regulatory reform journey. The NPDIR key goal was to improve regulatory quality so as to eliminate or minimise the impact of less friendly regulations towards businesses. The NPDIR formalised the development processes of quality regulations and emphasises on the use of regulatory impact analysis (RIA) for informed rule-making decisions.

As Malaysia seeks to sustain the dynamism of its economy and to recalibrate its strategy towards transforming into a developed country, there is a greater need to strengthen public sector delivery so as to ensure that the milestones towards this goal are achieved effectively and efficiently as well as being guided by good governance principles. Governmental intervention in the economy, even though necessary, must be done judiciously in order to avoid stifling economic dynamism.

Burdensome and ineffective regulations must be avoided and existing regulations must be reviewed to ensure they remain relevant and effective in an increasingly competitive global economy. Rapid technological changes are disrupting businesses in unprecedented ways. Traditional business models governed by existing rules and regulations are facing competition from new businesses which take advantage of opportunities offered by new disruptive technologies. Rules and regulations have to be in synchronisation with marketplace dynamics so as not to adversely affect business competitiveness.

It is imperative that regulators recognise of the impact of the regulatory ecosystem on business environment. A more comprehensive regulatory reform approach is needed to give equal emphasis on promoting the entrepreneurial spirit, encouraging orderly transformation and protecting the welfare of the community. Towards this end, the reformation must address the quality of both new and existing regulations. A new National Policy on Good Regulatory Practice (NPGRP), benchmarked against international practices, is introduced.



A nation's regulatory ecosystem is a vital catalyst in building a progressive, participative and dynamic economy. Towards this end, and following through on the initiatives and advances made under the NPDIR, the new NPGRP subscribes to the following principles in its rule-making process:

1. Governmental Intervention is necessary and justifiable;
2. Accountability;
3. Transparency, Accessibility and Effective Stakeholders Consultation;
4. Benefits Outweigh Costs; and
5. Proportionality.

The Government requires its regulatory agencies to adopt and implement good regulatory practices by:

- i) Embracing the NPGRP and the underlying principles of Good Regulatory Practice;
- ii) Ensuring a ready capacity to undertake the responsibility of delivering a high-quality regulatory environment; and
- iii) Establishing systems and procedures to ensure regulatory quality.

SECTION 2 // National Policy on Good Regulatory Practice (NPGRP)

2.1 Policy Objectives

The objective of the NPGRP is to promote an effective, efficient and accountable regulatory system and a rule-making process that support efforts to realise the Nation's economic development goals.

2.2 Scope

NPGRP applies to all regulatory activities affecting economic, social and the environment. The preparation of Regulatory Impact Statement (RIS) is not required for:

- Regulations that are implemented for reasons of national security and sovereignty;
- Regulations relating to criminal law, such as the Penal Code; and
- Administrative circulars that are intended for public service administration.

NPGRP is not intended to apply to formulation of policy documents (plans and blueprints) which set out broad goals, objectives and strategies. Where specific regulatory measures are envisaged in these documents, RIS should be prepared at the time when these measures are being considered for implementation. Nonetheless, NPGRP contains tools which policy makers may find useful and appropriate at policy formulation as well.

In addition, regulator may proceed to implement regulations without RIS in exceptional circumstance when dealing with urgent matters which require immediate action. In such cases, MPC must be informed by the regulator and be provided with reasons for the decision. A post-implementation review is however required for all such regulations.

2.3 Principles of Good Regulatory Practice

1. Government intervention is Necessary and Justifiable

Governmental intervention in the economy should be based on clear evidence that such action is necessary and justifiable. Implementing regulations should not be the default option as non-regulatory options should be considered first. Regulator should avoid imposing unnecessary regulatory burden which may stifle economic activities.

2. Accountability

Regulator must be answerable/responsible for their decisions which should be able to withstand public scrutiny. Regulator must also ensure regulatory actions are backed by legal provisions and inter-agency coordination to avoid conflict of policies.

3. Transparency, Accessibility and Effective Stakeholders consultation

Transparency is of the utmost importance for a credible regulatory process. Regulator are to disclose information on the regulatory process, issues, decisions and their bases unless there is justification for non-disclosure. Regulator must ensure that parties which will be directly or indirectly affected by any proposed regulatory action are duly informed and their views are sought after and considered. Affected parties should have access to the regulations affecting them.

4. Benefits Outweigh Costs

Ex-ante assessment of costs, benefits and risks is an essential component of regulatory analysis. The costs and benefits to all affected parties must be taken into account. Such analysis should be based on quantitative data whenever possible and qualitative analysis is to be used when necessary. A regulation should be imposed only when it can be shown to offer a net benefit to the community as a whole and that any adverse impact is minimised.

5. Proportionality

Proportionality ensures that regulators' actions do not 'over-reach' or unnecessarily extend beyond addressing the specific problem(s). The scope or nature of governmental action should be commensurate with the magnitude of the problem, its impacts, and the level of risk involved. The principle of proportionality is applicable to the analysis, design and implementation of regulations including the use of appropriate risk assessment and management approaches.

2.4 Implementation

2.4.1 National Development Planning Committee (NDPC)

For monitoring purpose, MPC will undertake assessment on the effectiveness of the implementation of the policy and report to NDPC.

2.4.2 Malaysia Productivity Corporation (MPC)

MPC will be responsible to promote and support the implementation of the NPGRP which includes undertaking outreach and promotion and providing advisory and training to assist regulators in complying with the national policy. In performing this function, MPC will:

- i) Develop guidelines and programmes for the implementation of national policy;
- ii) Examine the adequacy of Regulatory Impact Statements (RIS) and provide appropriate recommendations;
- iii) Provide guidance and assistance to regulators on RIA and RIS preparation;
- iv) Conduct periodic reviews of the progress made and to submit reports to Government; and
- v) Promote the transparency in RIS.

2.4.3 National Institute of Public Administration (INTAN)

INTAN, the nation's premier public sector training institute, will assist in providing training on NPGRP.

2.4.4 Regulator

Regulator consists of Government agencies such as Ministries, Departments, Statutory Bodies, Regulatory Commissions, etc. etc. that are responsible for developing, maintaining and enforcing regulatory programmes. Regulators are to adhere to the NPGRP and comply with the requirements of the Regulatory Process Management System (RPMS).

Regulators are responsible to appoint Regulatory Coordinators to facilitate the implementation of GRP in their respective agencies.

2.4.5 Stakeholders

Stakeholders consist of members of the public who are affected either directly or indirectly by, or have interest in, a proposed new regulation or any amendment to existing regulations. They may include groups such as business entities, employees, consumer rights groups, special interest groups, professional organisations and individuals.

2.4.6 Attorney General Chambers (AGC).....

In the context of NPGRP, AGC is responsible to advise the Cabinet or any Minister upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned by the Cabinet, and to discharge the functions conferred by or under the Constitution or any other written law.

2.5 Periodic Review of NPGRP

MPC shall initiate and conduct a review of the NPGRP 5 years after its implementation or earlier if the need arises. The policy review should be undertaken with active participation from stakeholders. The review will take into account, amongst other factors, the successes achieved, constraints encountered, changes in the national priorities and in the international business environment as well as the impact of any other national policies that are related to the NPGRP.

SECTION 3 Regulatory Process Management System (RPMS)

3.1 Application

All federal Government regulators are required to adopt the RPMS for regulations that are related to economic, social and the environment. This requirement does not apply to matters concerning national security and sovereignty. In addition, State Governments and Local Authorities are also encouraged to adopt RPMS in their operations.

3.2 Definition of Regulation

Regulations are measures of general application in various forms that are undertaken by regulators at various levels for which compliance is mandatory. Regulations include primary legislations (Acts of Parliament, Enactments and Ordinances) and subsidiary legislations (Regulations, Rules, Bylaws, Orders) and Guidelines.

Regulations are used by Governments as an instrument, in combination with other instruments, to achieve public policy objectives. Regulations set out principles, rules, and conditions that govern the behaviour of citizens, businesses, and organisations towards achieving the desired public policy objectives.

3.3 Requirements

3.3.1 General Responsibility

In adopting and meeting the requirements of the RPMS as set out in this section, regulators should be proactive and collaborative in order to achieve policy coherence and the whole-of-government approach. The regulators' responsibilities include:

- i) To appoint Regulatory Coordinators (RC) to champion the implementation of NPGRP and to liaise with MPC (Terms of reference of RC are as set out in Annex 1);
- ii) To ensure that the development of regulations is in compliance with the requirements of the RPMS;
- iii) To monitor, review and improve on the existing regulatory system; and
- iv) To maintain a system to document RPMS compliance for each regulation introduced or amended.

3.4 Regulatory Process

Under the RPMS, the formulation of new regulations or review of regulations must observe the procedure set out below:

- i) Digital Regulatory Notification (DRN) Assessment: Regulator must first notifies MPC through DRN on any proposals to create or amend regulations (Refer to Annex 2: DRN Assessment Process);
- ii) Initial Assessment: If RIS is required (This process is defined in Annex 3- Initial and Final Assessment Process), regulator needs to provide first 4 element which covered problem statement, objectives, listing of options and preferred method for impact analysis. MPC's initial assessment note will be issued after reviewing the first 4 elements; and
- iii) Final Assessment: Regulator provides RIS covering all 7 elements. MPC's final assessment note will be issued after reviewing the 7 elements of RIS.

Guidance for implementing the RPMS and for the preparation of RIS is provided in the GRP Handbook published by MPC.

3.5 Regulatory Impact Analysis (RIA)

Regulator proposing new regulations or amendments to regulations must undertake RIA. The purpose of RIA is to improve the quality of regulations through a robust and thorough analysis of regulatory proposals. RIA is intended to provide assurance that problems are adequately identified and addressed through regulatory or non-regulatory measures and ensure that specific policy solutions have been drafted to enhance the public interest.

RIA involves the following elements:

3.5.1 Problem Statement

Regulator must clearly establish the issue or the problem that the regulators seek to address, evidence that a problem has arisen, the magnitude of the problem and why governmental intervention is required. Where public risks, such as public health and safety, and environment protection, are involved, regulator must ensure that the risks are significant enough to justify Government intervention.

This process is applicable to regulations and other legally-binding instruments which are issued by regulators.

3.5.2 Objectives

The intended objectives of the proposal to address the problem must be identified, described, analysed and documented clearly and concisely. Intended objectives refer to the outcomes, goals or targets sought after.

3.5.3 Options

Options refer to a range of feasible solutions (regulatory, non-regulatory or any other alternative mechanisms) that must be identified to ensure that the decision maker is presented with alternatives to choose from to address the identified problem.

3.5.4 Impact Analysis

An assessment of the possible impact of the options (cost, benefits and, where relevant, level of risks) on consumers, businesses, the Government and the community must be carried out. It must be demonstrated that the benefits are greater than the costs and all efforts will have been undertaken to minimise costs.

The impact of additional regulatory burden on small businesses, in particular, must be considered, and the least burdensome yet effective alternative should be chosen.

3.5.5 Consultation

Regulator proposing new regulations or amendments must carry out timely and thorough consultations with affected parties. Stakeholders must be given a minimum period of 30 days to provide feedback. The consultation initiative should be proportionate to the significance of the impact of the proposed regulations or amendments and should begin as early as possible. Other regulator having an interest in the matter must also be consulted. Wherever possible, regulators must adopt online consultation to promote transparency, inclusiveness and expediency. Regulators should publish a consultation report providing a summary of the consultations held and their outcomes.

3.5.6 Conclusion and Recommendation

The RIS must provide a recommendation on the preferred option with accompanying reasons. The recommendation should demonstrate that the preferred option will give the greatest net benefit for the community, taking into account the impact on all parties.

3.5.7 Strategy for Implementation

The implementation strategy should include plans on communications, enforcement, monitoring and evaluation. The inclusion of these plans will ensure that decision makers are fully informed of the implementation and resource requirements.

3.6 Behavioural Insights (BI)

Behavioural Insights (BI) derives from the behavioural and social sciences, including decision-making, psychology, cognitive science and social science which has been tested empirically to discover how humans actually make choices. Behavioural insights can be used as a tool to support the development, evaluation and iteration of policy options. As a starting point, it is important to understand the drivers of the behaviour of the regulator/policy maker hopes to change, particularly when the regulation is aimed at individuals.

3.7 Ex-post Evaluation

All regulations must be subject to regulatory review once every 5 years. The objective of the review is to determine whether a regulation has achieved its purpose or whether it remains relevant. Regulators may seek the assistance of MPC to undertake such reviews.

3.8 International Obligations and International Standards and Practices

Regulators must ensure that domestic regulations have taken into account Malaysia's obligations arising from its commitments under international treaties and agreements. Wherever possible, regulatory measures or standards should be compatible with relevant international or internationally-accepted standards or practices.

3.9 Risk Analysis

An integral part of the RIA is determining the nature and the level of risks involved, and the necessary action to reduce or eliminate risks. Risk refers to potential harmful or hazardous impact, particularly pertaining to health, safety and the environment. Risk assessment is also applied to economic and financial policy initiatives. More accurate policy intervention can be determined by comparing the status quo risk with the risk after governmental intervention.

3.10 Business Compliance Cost

Compliance costs are costs borne by regulated businesses when undertaking actions to comply with regulatory requirements such as costs of administrative burden and enforcement costs. The Standard Cost Model (SCM) is a widely-used framework to measure compliance costs and to quantify administrative burdens for businesses. Analysis of business compliance costs is particularly pertinent when undertaking ex-post review of regulations.

3.11 Competition Consideration

If the regulatory proposal is likely to restrict competition, the RIA must demonstrate that the benefits of the restriction outweigh the costs and there is absence of alternative means of achieving the same objective. Regulators should consult with the Malaysia Competition Commission (MyCC) on the possible impact of the proposed regulation on competition.

3.12 Post Implementation Review (PIR)

Post-Implementation Review is required when a regulation has been introduced or significantly amended or repealed without a RIS. The PIR must be completed within 2 years from the implementation of the regulation.

3.13 Publication of Regulatory Impact Statement (RIS)

A RIS is to be published on the GRP Portal as soon as practicable from the date of the official announcement of the decision to proceed with the development of a proposed regulation or a proposed regulatory amendment. The regulator will consult with MPC prior to the publication.

3.14 Record and Documentation

Regulators must document their regulatory policy analysis and processes. The documentation should include, but not limited to, a description of the problem, alternative solutions, risks involved, reasons for regulating, consultation methods, consultation outcomes, cost-benefit analysis and the conclusion and recommended option. A comprehensive set of these documents must be retained to be the reference in the 5-year review process.

3.15 Communication

Regulators creating new regulations or amending regulations must inform stakeholders about the proposal in simple, clear and concise language that even the general public can easily understand. New regulations and amendments as well as the material incorporated by reference must be publicised and made easily accessible to affected parties. The RIS should include a communications plan for implementation.

3.16 Competency

Regulators must ensure their personnel are competent to implement the RPMS.

Terms of Reference Regulatory Coordinator

1. Introduction

The National Policy on Good Regulatory Practice (NPGRP) requires every Regulator to appoint at least one senior officer as Regulatory Coordinator and notify the appointment to MPC.

It is the responsibility of each regulator to develop and maintain a regulatory management system as defined in the NPDIR guidelines.

2. Duties and Role

The Regulatory Coordinator acts as the focal point for his Ministry or Agency in connection with the amendment and enforcement of regulations. The Regulatory Coordinator also acts as the main contact point for communication with MPC.

The Regulatory Coordinator is responsible for:

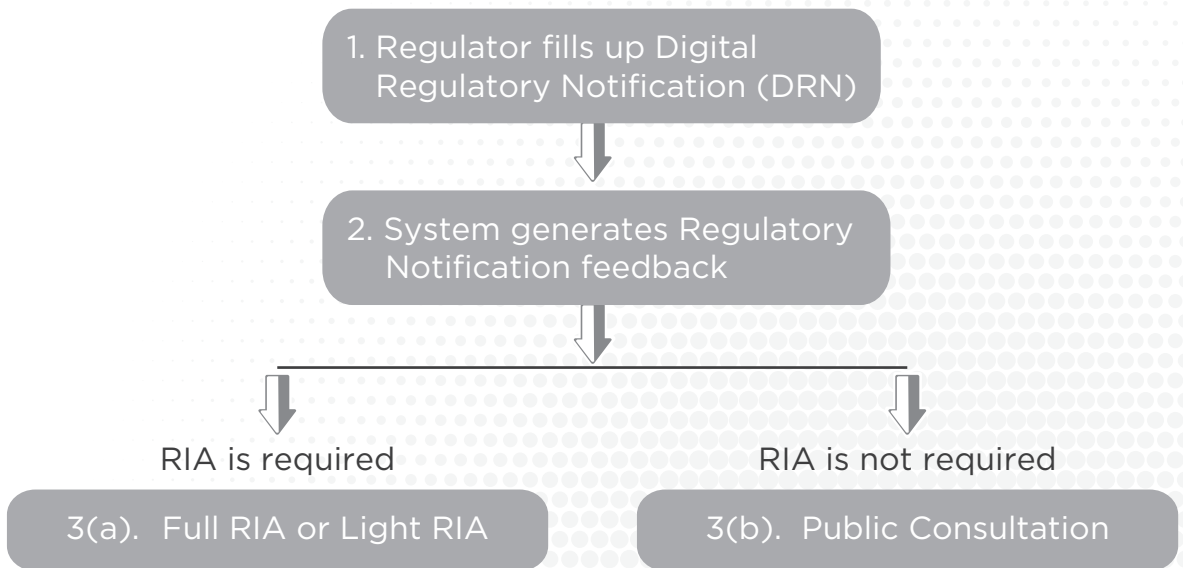
- i) Facilitating the implementation of regulatory policies in his Ministry/Agency by:
 - Serving as the champion to raise awareness of the importance of quality regulatory management systems;
 - Sharing and promoting best practices on Regulatory Impact Analysis (RIA);
 - Ensuring good coordination across Ministries and regulators; Identifying training and advisory services, seeking feedback on regulatory changes and recommending follow-up action;
 - Disseminating guidance and information on the requirements under the NPGRP.
- i) Monitoring and Governance by:
 - Notifying MPC of all proposals for the development of or amendment to regulations;
 - Ensuring the quality of Regulatory Impact Assessments (RIA) and Regulatory Impact Statements (RIS);
 - Identifying areas for improvement in the regulatory management system and reporting to the senior management; and
 - Representing the Ministry/Agency on proposals to strengthen the RPMS.



3. Submit annual reporting to MPC, comprises:

- Annual regulatory plan, which contains the proposal for amendments of the existing regulations and/or development of new regulations, for the current year;
- Fulfilment of and compliance with the requirements stipulated in NPGRP; and
- List of new regulations and amended regulations completed in the previous year.

Digital Regulatory Notification (DRN) Assessment Process



Initial and Final RIS Assessment Process

1. Initial Assessment:

Regulator submits RIS that consists of first 4 elements (Problem statement, objectives, listing of options and preferred method for impact analysis)



2. MPC assesses the first 4 elements, then provides and submits initial assessment note together with cover letter



3. Final Assessment: Regulator provides all 7 elements and submits to MPC



4. MPC assesses the adequacy of all the 7 elements, then provides final assessment note together with cover letter

Notes

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Driving Productivity of the Nation

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