Choosing New Paths at Regulatory Crossroads: Helping Regulatory Agencies to Respond to Change

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Challenges of Regulatory Change

- Changes in legislation & “punctuation points” in internal policy (Baumgartner and Jones. 1991) or “third order” change in policy (Hall, 1993).

- Punctuation points require normative change in agency practices

- Human and financial resources limit ability to change

Holistic approaches e.g. EU Water Framework Directive 2000/60/EC
EU Flooding Directive 2007/60/EC

Managerial approaches e.g.
Environmental Protection Act 1990 s. 7 Best Available Techniques

End of pipe e.g. Control of Pollution Act 1974

Existing Legislative Devices I

• Obligations to consider particular types of information e.g.
  – Environmental Permitting (England & Wales) Regulations 2010 Schedule 22 para. 7

• Obligations to give reasons for decisions
  – Waste Management Licensing (Scotland) Regulations 2011 reg. 7

• Review Processes
  – Appeals
  – Judicial Review
    • C.f. R (on the application of Greenpeace Ltd) v Secretary of State for Trade and Industry [2007] EWHC 311 (Admin) para. 63
  – Adaptive management
    • WFD & Floods Directive Management plans
    • National Environmental Policy Act
Existing Legislative Devices II – Public Participation I

• Bringing in new expertise/ideas
• Redressing the balance of power in advocacy-coalitions

Public represents entrenched view
e.g. wind farm objections
Legislation does not ensure a range of voices are heard

e.g. Environmental Permitting (England and Wales) Regulations 2010 r.26
Existing Legislative Devices II – Public Participation II

• Redressing the balance of power in advocacy-coalitions
• Bringing in new expertise/ideas

• Lack of awareness of best practice in PP leads to e.g.
  – Meetings held at inconvenient times
  – Information not conveyed in user friendly way
  – Oversight of pertinent information

• Lack of consistency across decision making
Participatory Action Research

• Similar to Adaptive Management but feedback loops involve ‘friendly outsider’

• Use in practice has revealed some problems
  – Research v. legislative timescales
  – Divergence in participant and researcher expectations

• (Collins, Ison and Blackmore, 2005)
Modified Participatory Action Research

• Embed PAR in regulatory process
• Focus on transition stages
• Link to Participatory Processes
The Way Forward

• Research collaborators wanted
  – Grant proposal
    • (see Kirk and Reeves “Regulatory Agencies and Regulatory Change: Breaking Out of the Routine” (2011) 13 Env. L. Rev. 155–168)
  – Edited book on modified PAR and adaptive management processes

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