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# Regulatory Best Practices Legislation, organizational design and permitting

## A Presentation for Environmental Ministries & Regulators

Simon Bingham

International Development Manager, Scottish Environment Protection Agency

Recorded for the OECD on Zoom - 28<sup>th</sup> February 2024

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## Introduction to the Presenter – Simon Bingham



### **Regulatory Experience – 30+ years**

Permitter, Inspector, Specialist & Manager

Implementer of new legislation (Waste, Water, Integrated, Radioactive)

Developer of systems (Permitting, Risk & Inspection Frequency etc)

### **International Experience – 19+ years**

Project Executive & Project Manager of numerous technical projects

Team Leader of 15+ organizational reviews

IMPEL Board Member & Expert Team Leader for 9 years

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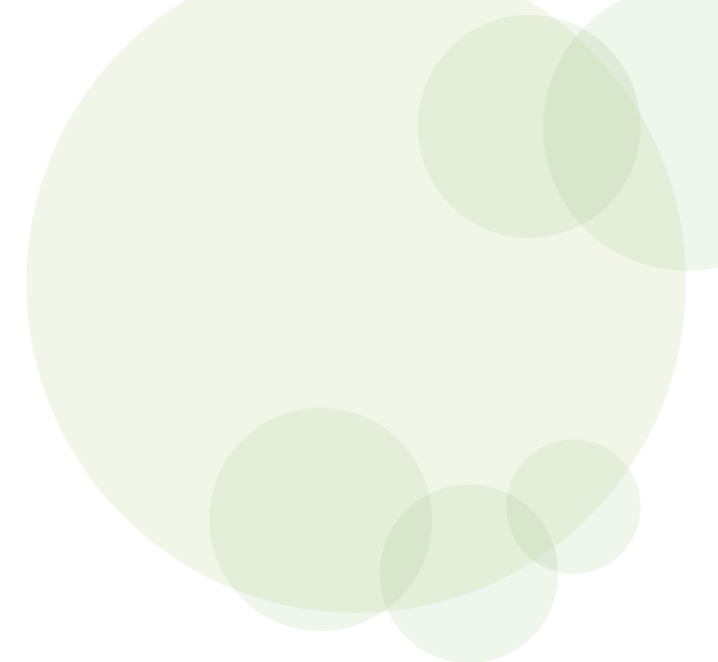
## Topics Covered

1. Good Legislation, Organizational Design & The Regulatory Cycle
2. Regulatory Strategy, Resourcing & Strategic Alignment
3. Permissioning (including Permitting/Licensing/Authorising)

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# Topic 1.

## Good Legislation, Organizational Design & The Regulatory Cycle

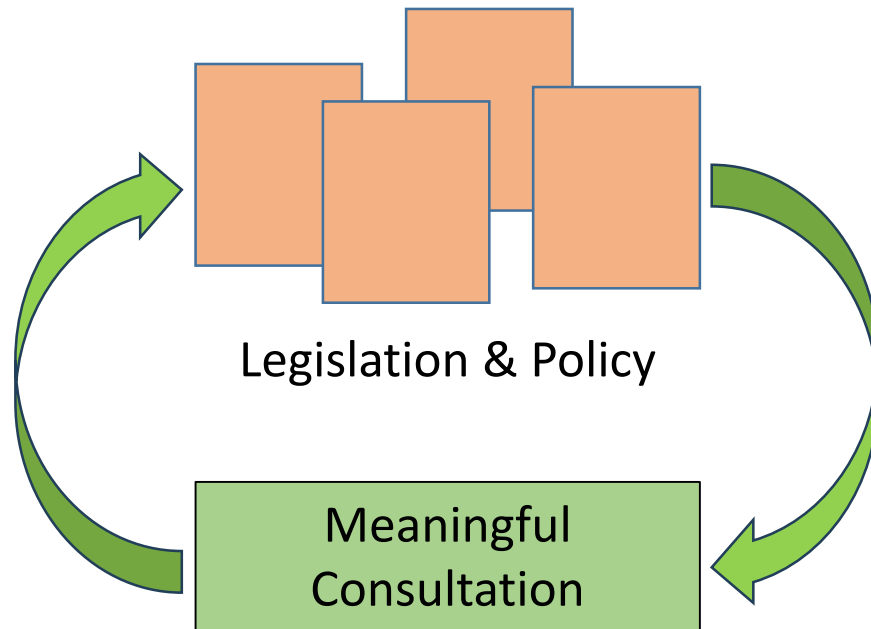
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## The Starting Point – Good Legislation (& Policies)



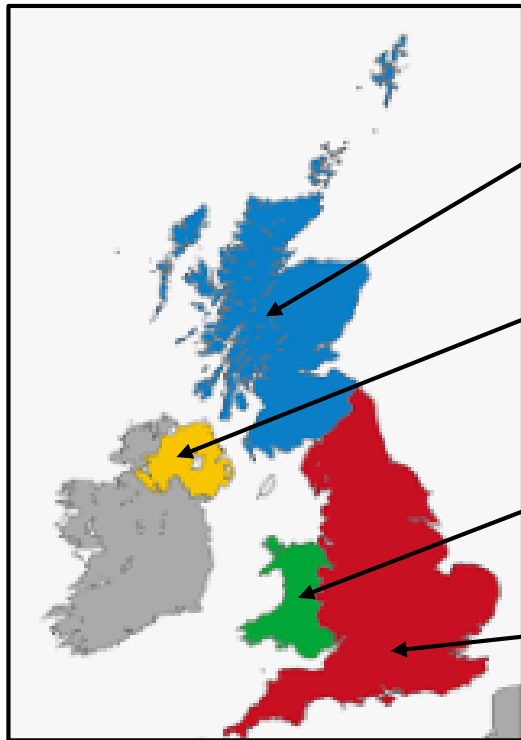
- Meaningful consultation: site operators, trade associations, NGOs, General Public and Regulators & other public bodies.
- No single model of implementation.
- Operational Flexibility vs Prescription.
- Keeping it up-to-date eg Index linking.
- Feedback loop.

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## Organisational Design – What the institution does



**Scotland** – Scottish Environment Protection Agency  
Industrial Regulation & Flood Warning

**Northern Ireland** – Northern Ireland Environment Agency  
Industrial Regulation & Protected Areas

**Wales** – National Resources Wales  
Industrial Regulation, Protected Areas, Forestry & Flood Warning

**England** – Environment Agency  
Industrial Regulation, Flood Warning, Flood Protection & Prosecution

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## Organisational Design



It doesn't matter what competency a particular organization has so long as:

- All required competencies are contained within some institution within the country. Institutional mapping required.
- The institution with the competency has the resource and capability to deliver their responsibilities. There is not a fixed amount of resource needed, it is flexible and you have choices.

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## Organisational Design - No Standard Delivery Model



**Estonia** – one national organization

Central Permitting & Inspection - Environmental Board

**Poland** – multiple organizations – national & regional

Central Inspectorate – Chief Inspectorate for Env. Protection

Regional Permitting in Voivoderships (“Provinces”)

**Slovenia** – two national organizations

Central Inspectorate – Inspectorate for Env. and Spatial Planning

Central Permitting – Ministry for the Environment and Energy

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## Organisational Design



**Good Communication** between institutions or departments is **paramount**

- Permitters & Inspectors – constant feedback, access to permits
- Shared knowledge & intelligence
- Shared or interfacing ICT systems
- Shared training
- Joint Inspections

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## Organisational Design



Regional or Local delivery (authorities or sub-offices)?

Important to ensure enough knowledge and capability exists at the chosen level.

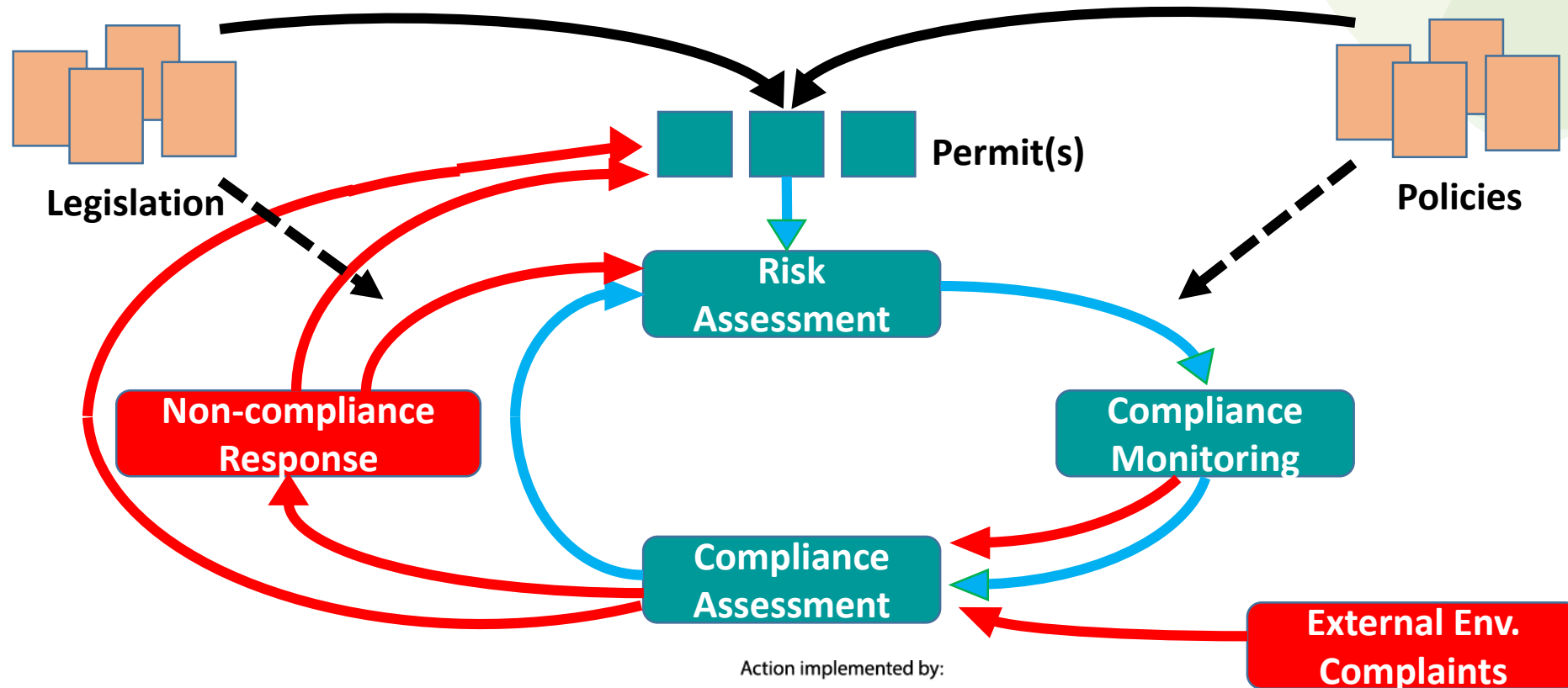
- Support Network, Training & Staff Rotation
- Common ICT Platforms
- Practicalities of inspection & response to consider
- Ensure easy access to the institution exists for the wider public

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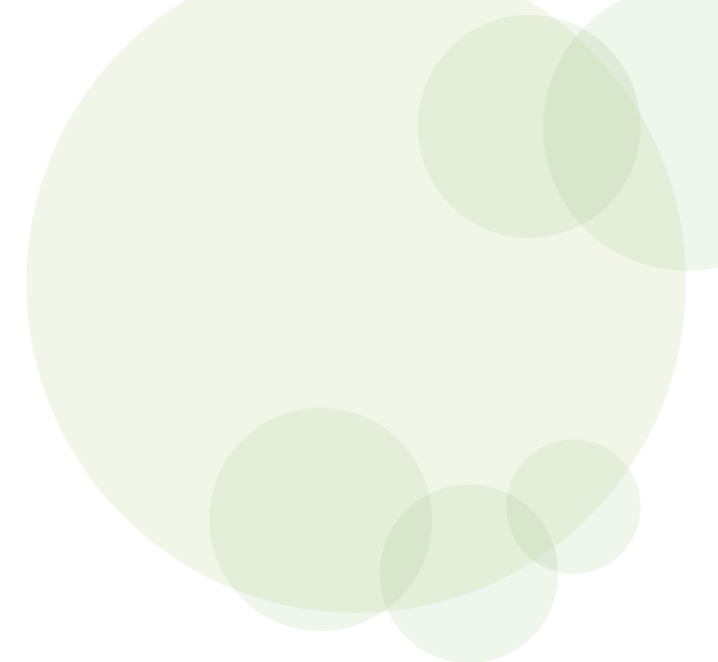
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# Simplified Regulatory Cycle & Risk-Based Regulation





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## Topic 2.

It is all about choices

# Regulatory Strategy, Resourcing & Strategic Alignment

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## Regulatory Strategy



Describes:

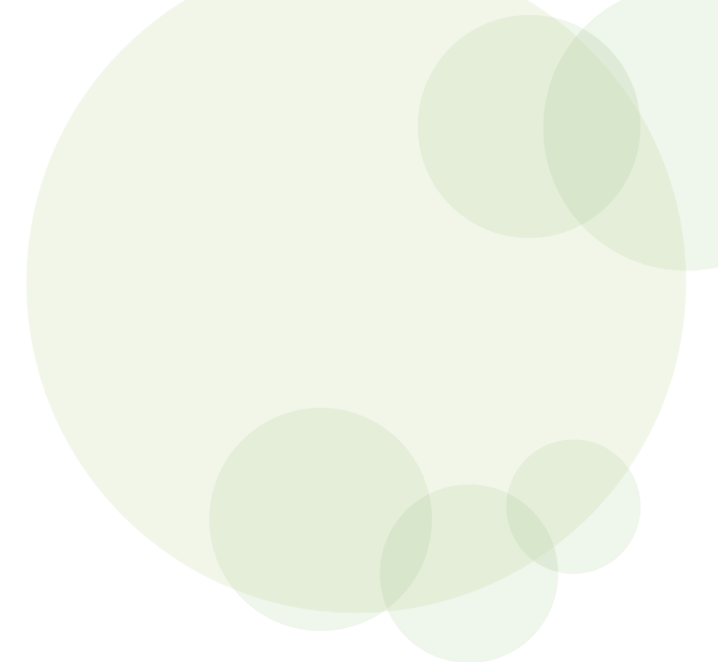
- Clear role
- Clear focus
- Approach to regulation
- How you will work

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Resource.

The Regulatory Craft by Malcolm Sparrow  
ISBN 0-8157-8065-6

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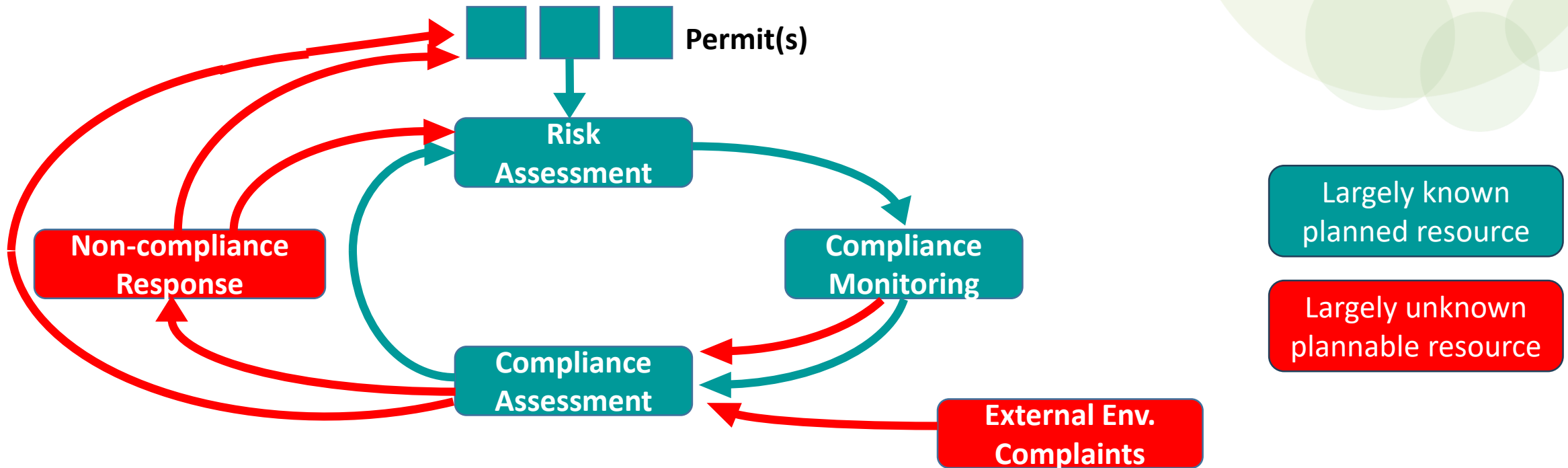


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## Resourcing



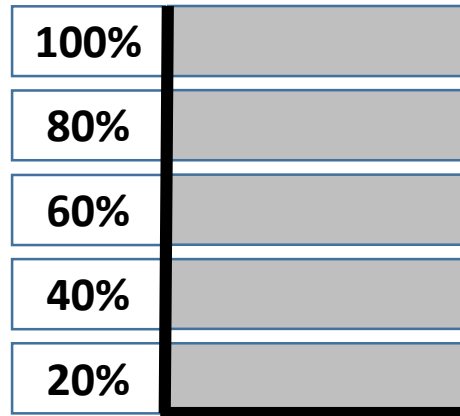
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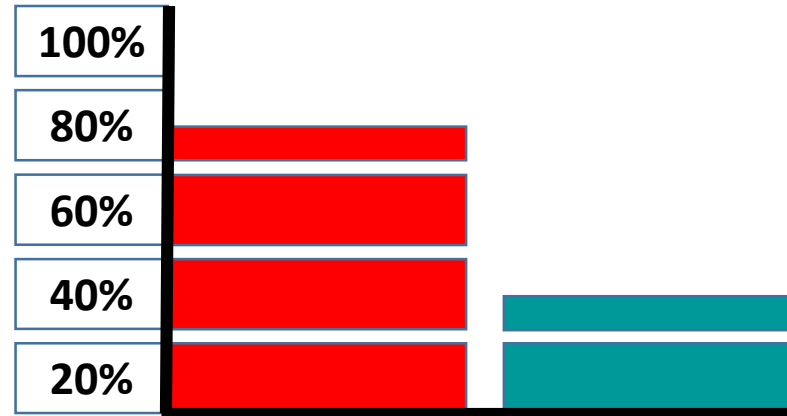


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## Resource – Reactive vs Active Regulation



The Resource You  
Have



Reactive Deployment Model



Active Deployment Model

Largely known  
planned resource

Largely unknown  
plannable resource

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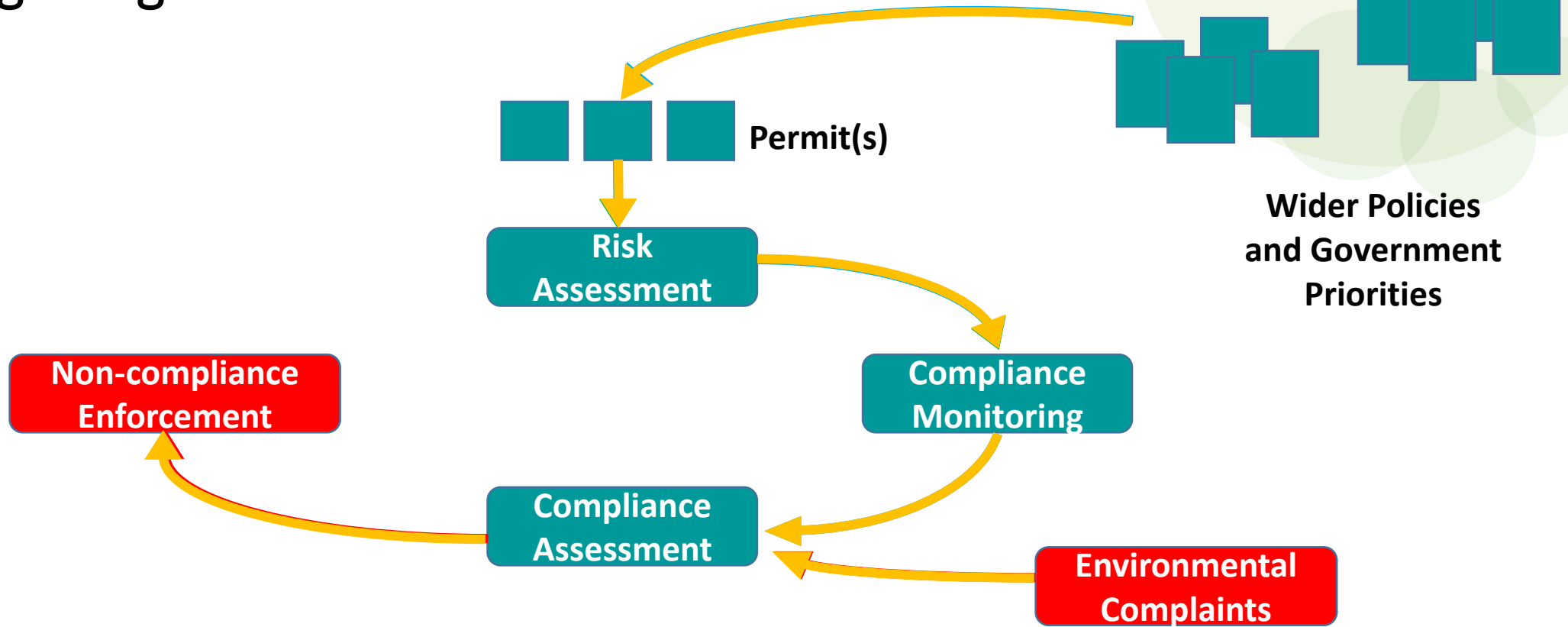


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## Strategic Alignment



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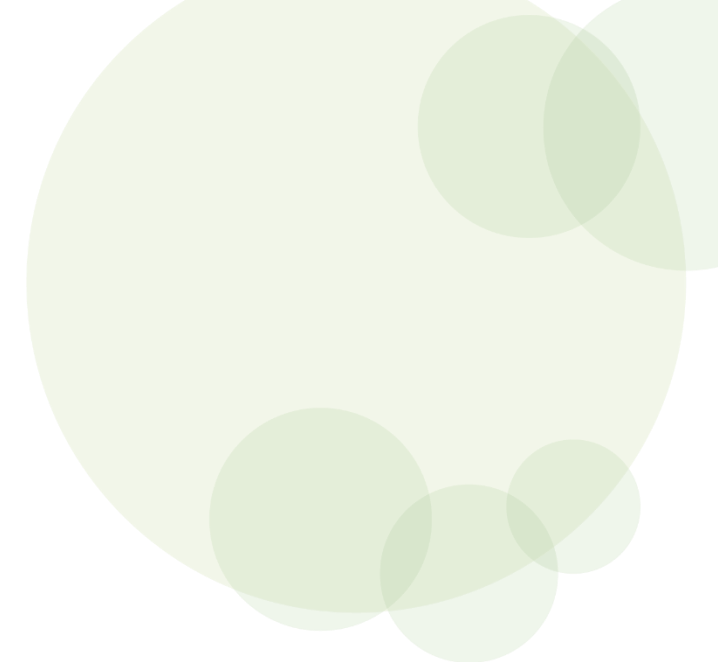
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## Topic 3. Permissioning

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## Permissioning Principles

**Simple, clear, proportionate, outcome-focused, enforceable, with minimum number of conditions to achieve universal outcomes:**

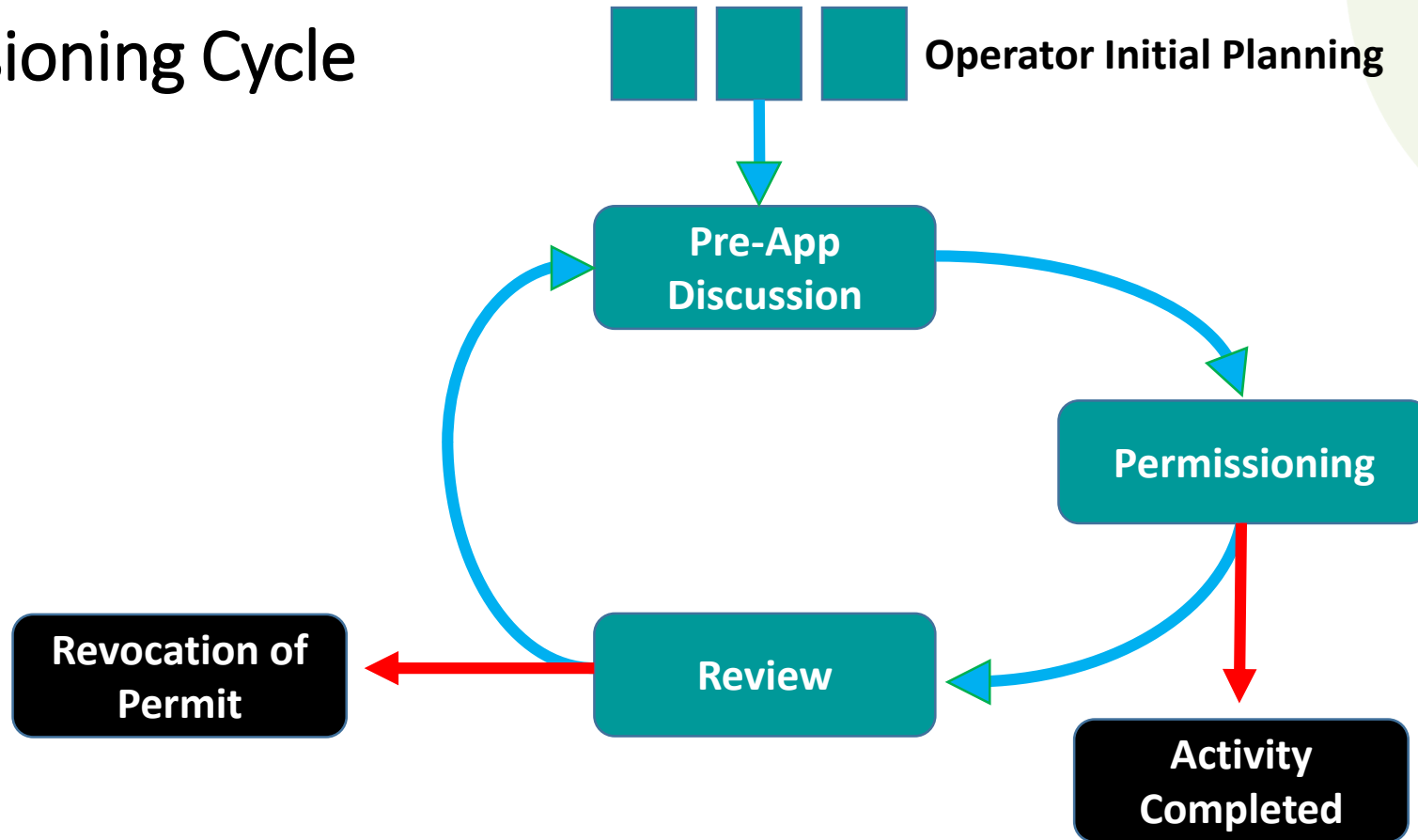
- Prevention of harm
- Prevention of incidents/minimising impacts
- Sustainable use of resources

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## Permissioning Cycle



\*8-12 year  
fixed term

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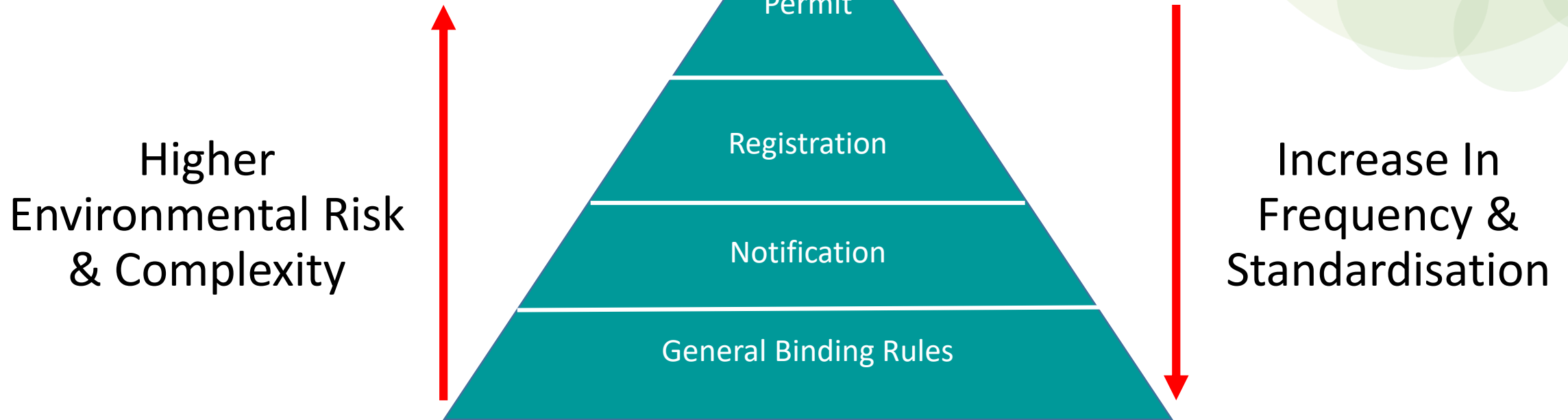


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## Permission Hierarchy



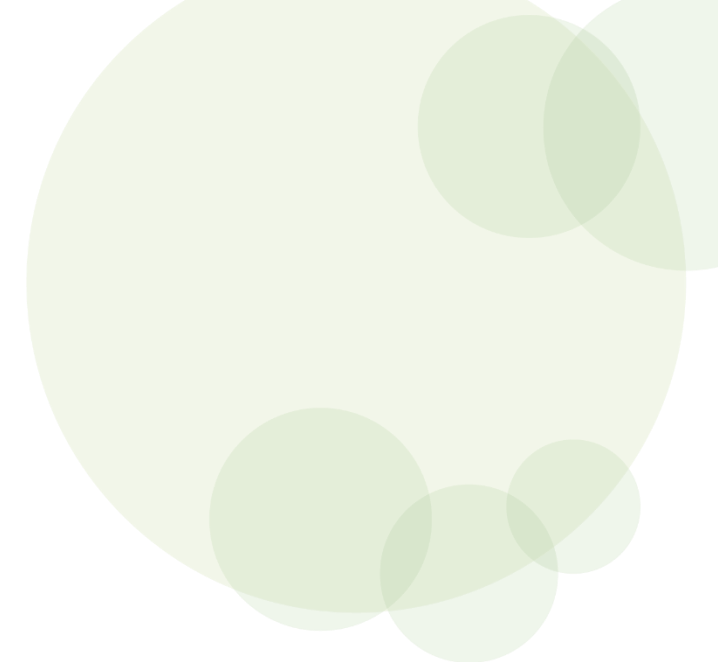
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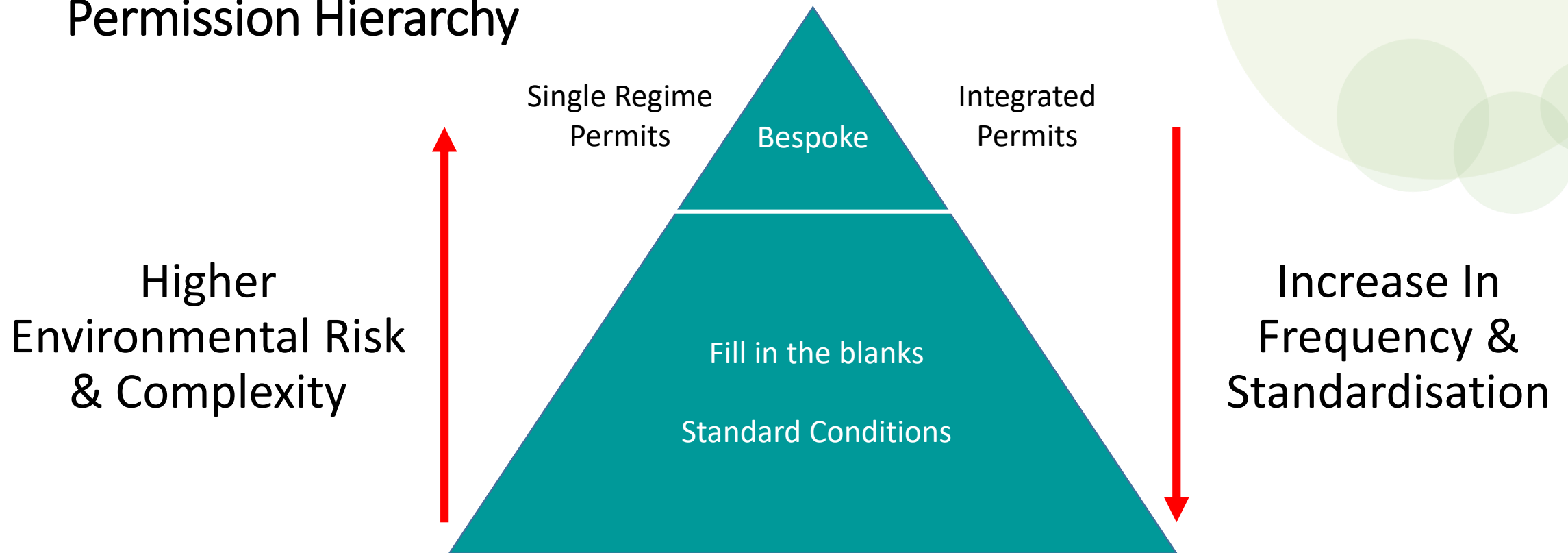
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## Permission Hierarchy

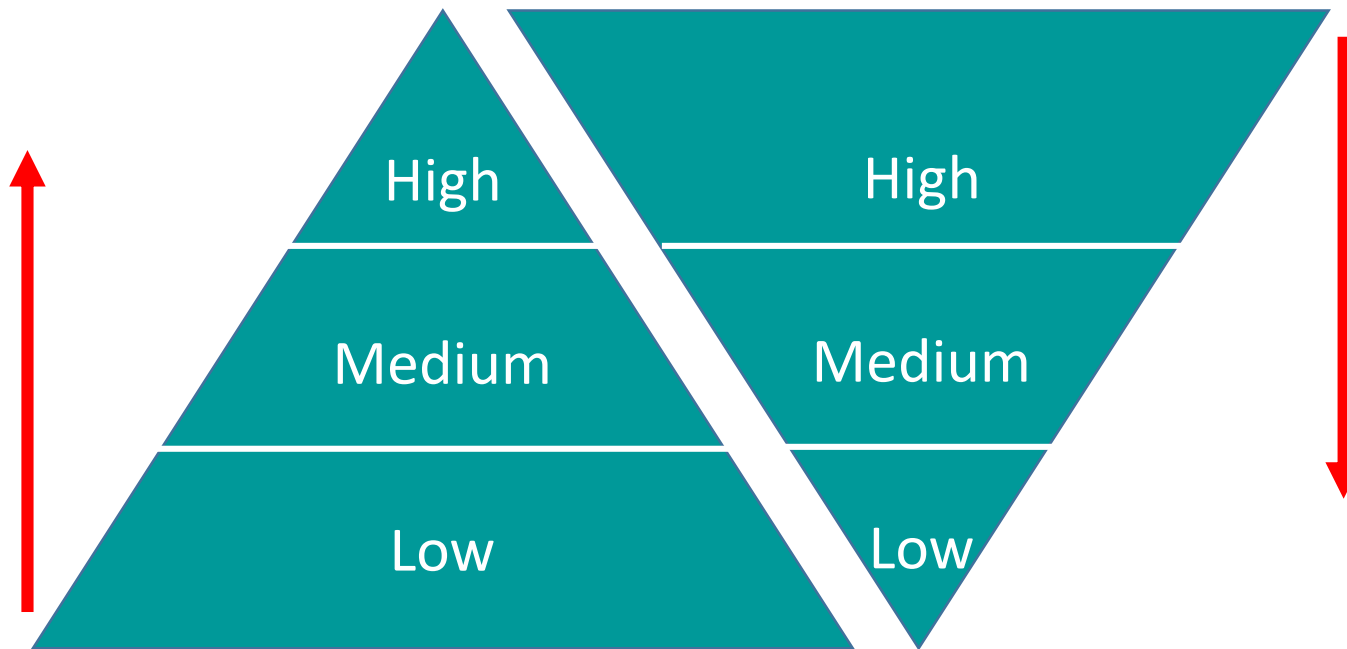


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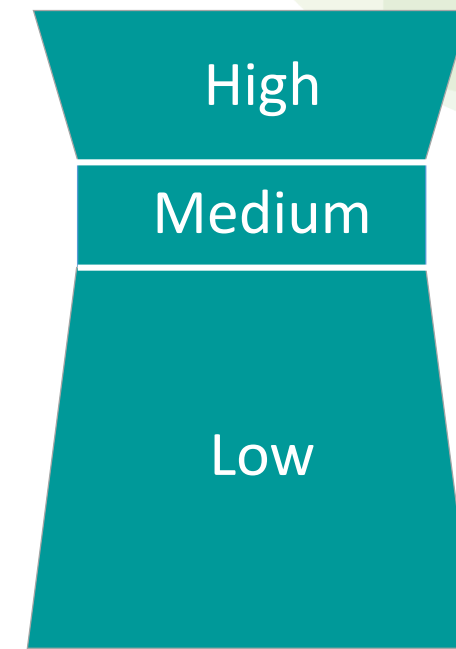


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Higher Risk = Higher Effort\*



(Versus Reality)



High risk  
permits take  
too long to  
process

Spend too  
much time on  
low-risk  
activities

\* Total effort across all permits

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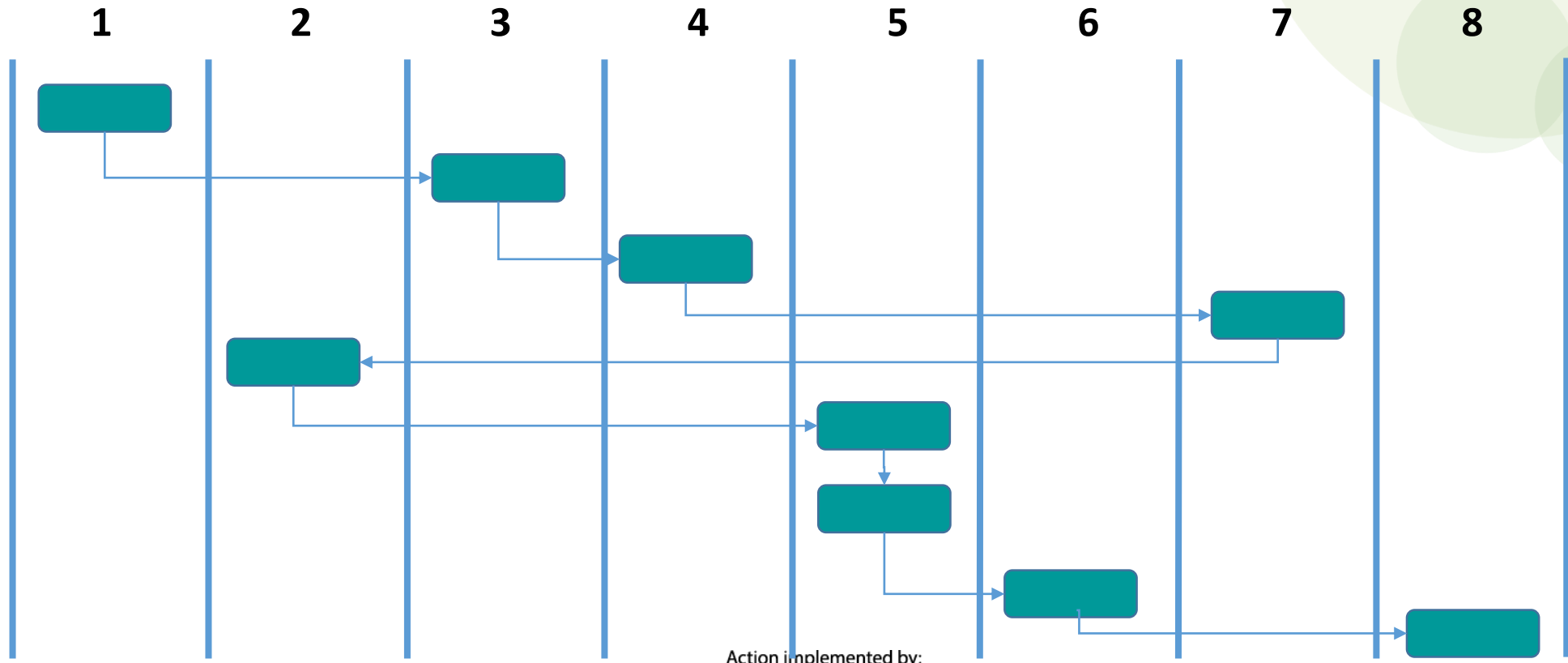


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## Process Efficiently





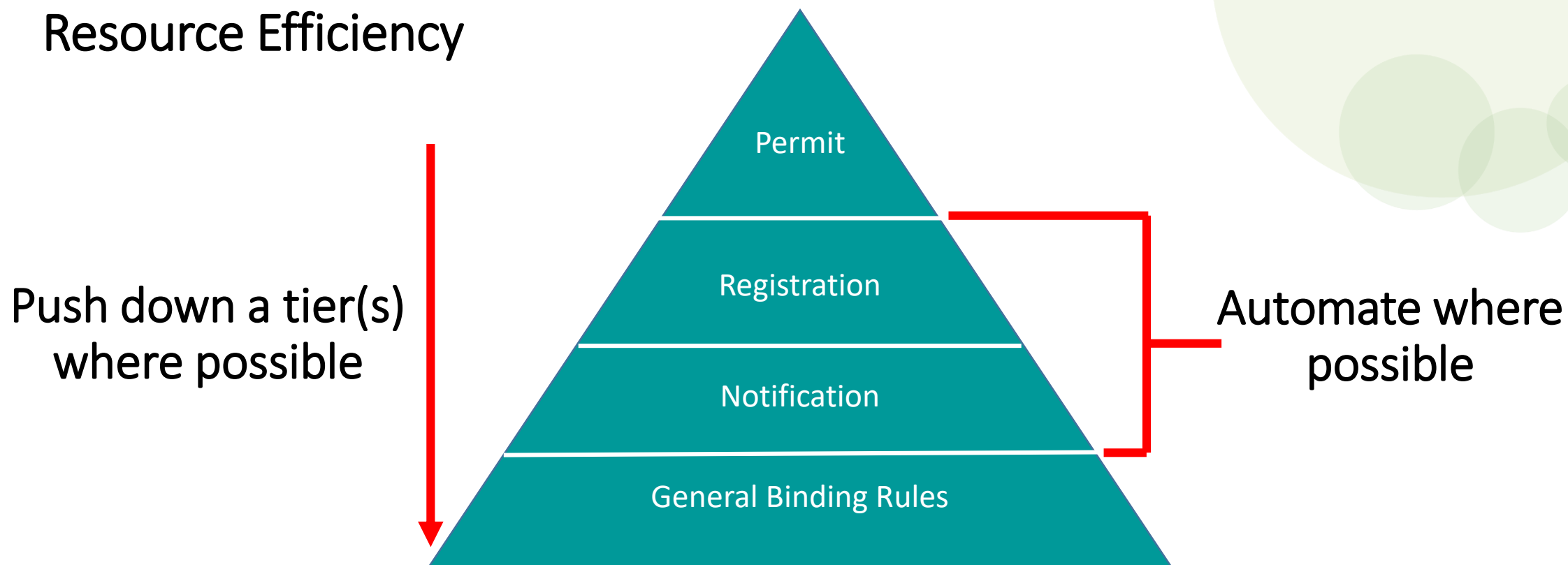


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## Resource Efficiency



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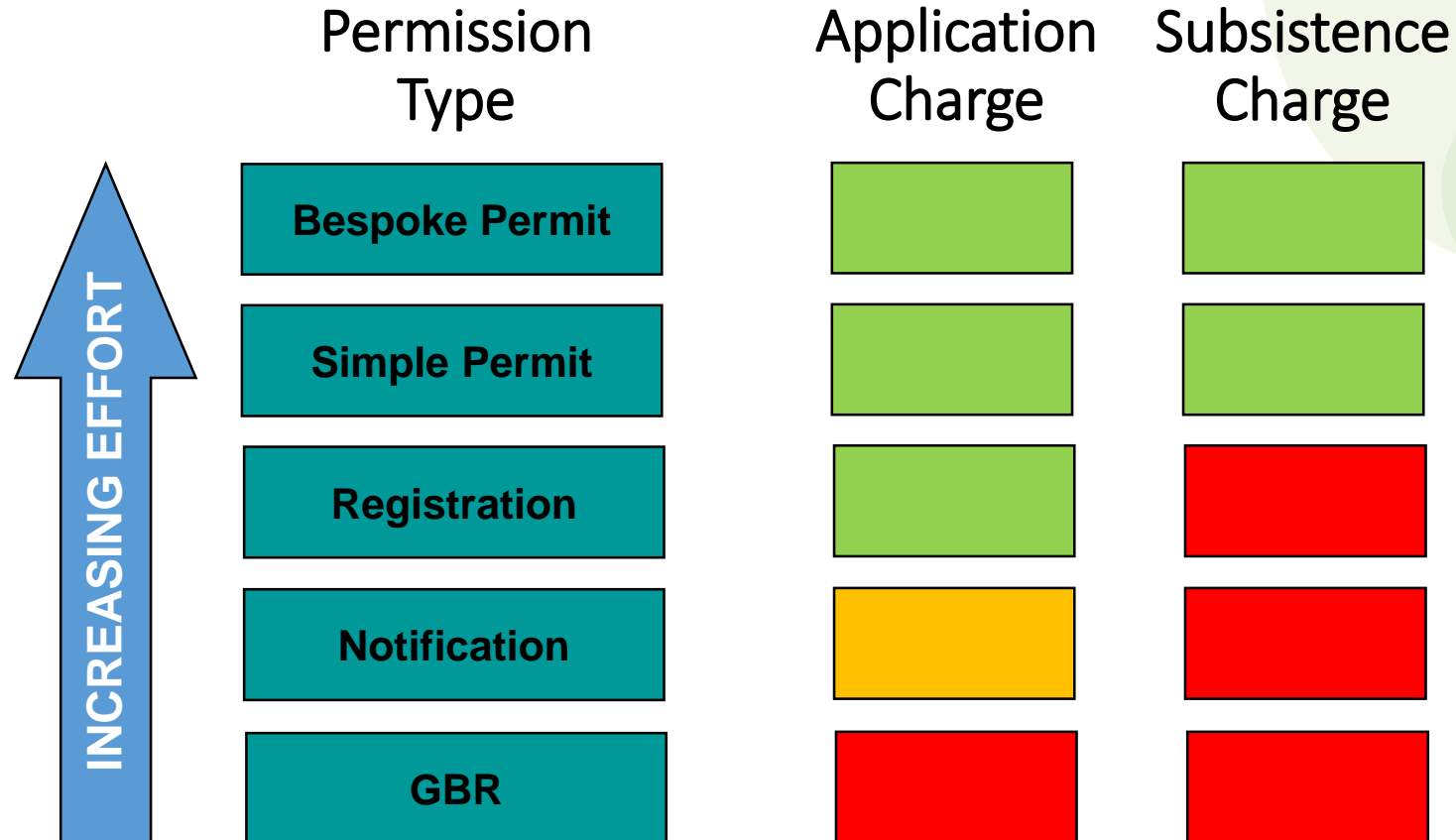


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## Polluter Pays



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## Language & Accessibility

“Except where specified otherwise in this licence, any reference to an enactment or statutory instrument includes a reference to it as amended (whether before or after the date of this licence) and to any other enactment, which may, after the date of this licence, directly or indirectly replace it, with or without amendment”

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## Language & Accessibility

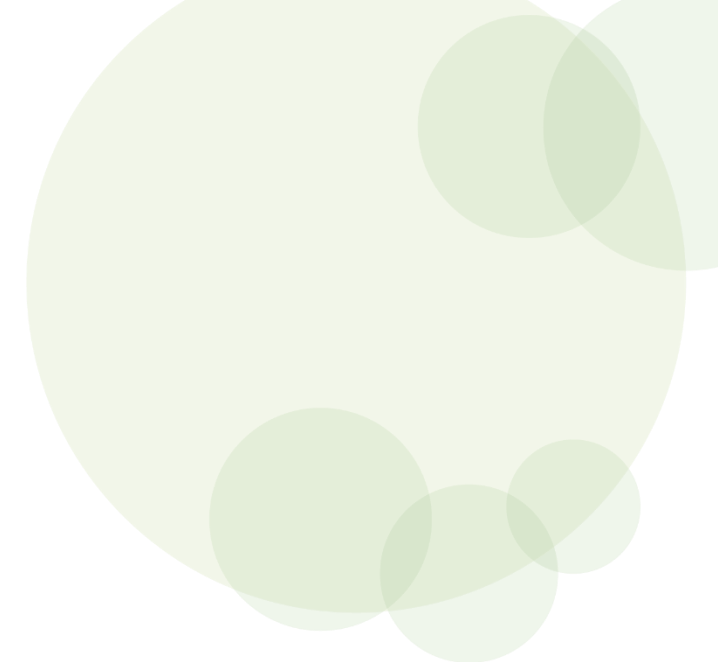
The challenge is to make our permissions accessible so that they can be complied with yet still be enforceable.

- Use the language of the recipient whenever possible.
- Use clear concise, easy to understand language.
- Explain what the conditions are for and describe what compliance looks like.

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Resource.

Doing The Right Things Inspection & Permitting Methodologies  
[www.impel.eu](http://www.impel.eu)

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# TYPES OF BEHAVIOUR AND RESPONSES



Champion



Compliant



Confused



Careless



Under-resourced



Opportunistic



Contemptuous



Criminal



REWARD



ENGAGE



ENABLE/FUND



EDUCATE



INSPECT/CHECK



ENFORCE



European  
Commission



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# End – Thank you for your attention

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