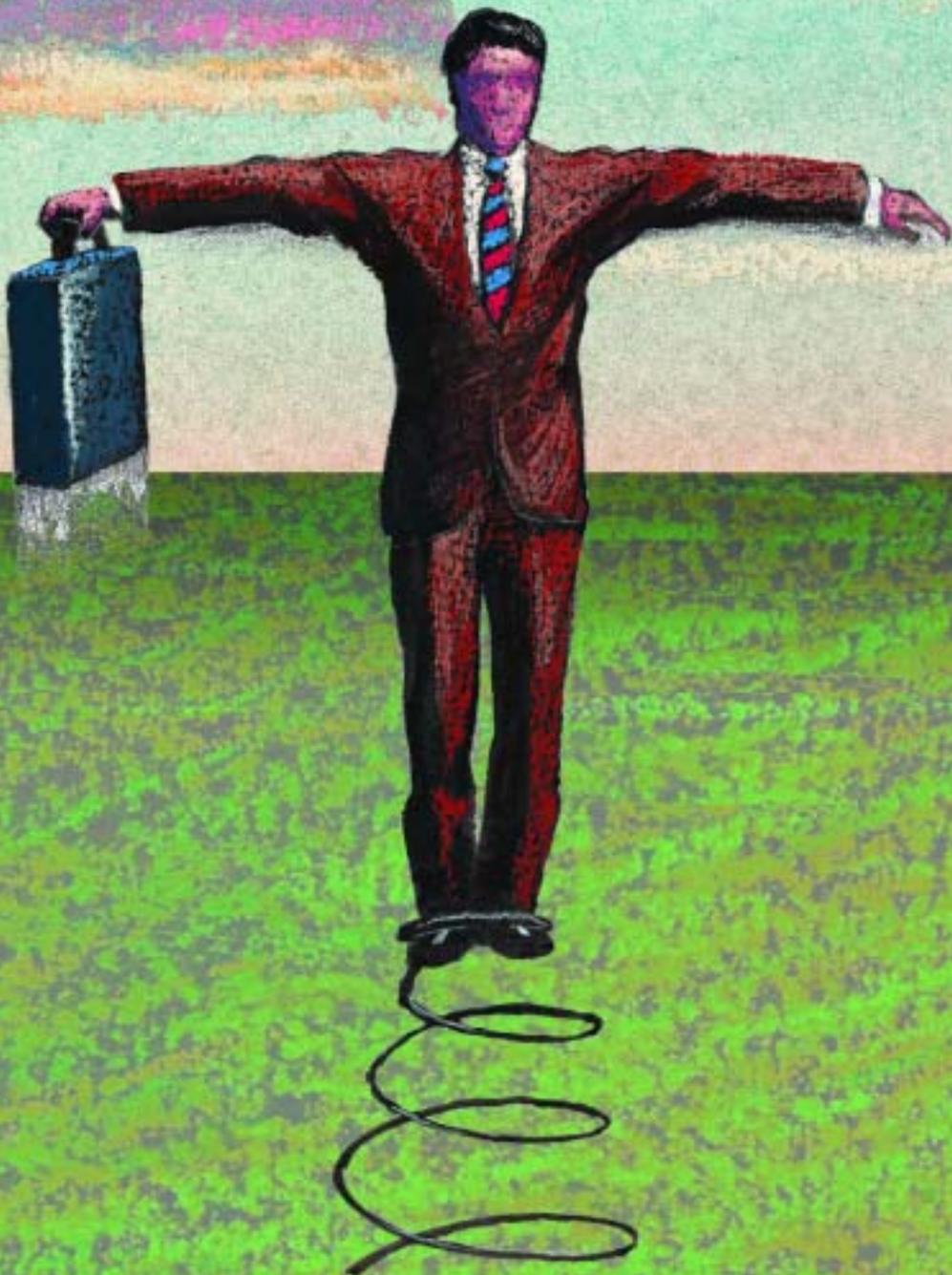


# Better Regulation: Making Good Use of Regulatory Impact Assessments

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL  
HC 329 Session 2001-2002: 15 November 2001



# Better Regulation: Making Good Use of Regulatory Impact Assessments



REPORT BY THE COMPTROLLER AND AUDITOR GENERAL  
HC 329 Session 2001-2002: 15 November 2001

# Contents

## Executive Summary 1

## Part 1 15

### Regulatory Impact Assessments are intended to help Government regulate better 15

Regulation is an important tool for Government but can impose costs on businesses, charities and voluntary organisations 15

The Government introduced RIAs in response to concerns about the impact of regulation 16

Regulatory appraisal is an important element in policy making 16

RIAs should help Government meet the principles of good regulation 19

We examined what could be learned from experience of RIAs 19

## Part 2 21

### Starting early, consulting effectively and costing appropriately, contribute most to the RIA process 21

Starting the RIA process at a sufficiently early stage 21

Consulting effectively with all interested parties 23

Analysing appropriately the costs and benefits of the proposal 26

This report has been prepared under Section 6 of the National Audit Act 1983 for presentation to the House of Commons in accordance with Section 9 of the Act.

*John Bourn* National Audit Office  
Comptroller and Auditor General 5 November 2001

The Comptroller and Auditor General, Sir John Bourn, is the head of the National Audit Office, which employs some 750 staff. He, and the National Audit Office, are totally independent of Government. He certifies the accounts of all Government departments and a wide range of other public sector bodies; and he has statutory authority to report to Parliament on the economy, efficiency and effectiveness with which departments and other bodies have used their resources.

**For further information about the National Audit Office please contact:**

National Audit Office  
Press Office  
157-197 Buckingham Palace Road  
Victoria  
London  
SW1W 9SP

Tel: 020 7798 7400

Email: [enquiries@nao.gsi.gov.uk](mailto:enquiries@nao.gsi.gov.uk)

**Part 3 29****There is much good practice in preparing regulatory impact assessments and some room for improvement 29**

- |   |    |
|---|----|
| Guidance and support from the Cabinet Office and others helps policy makers produce good RIAs | 29 |
| Policy makers could pay more attention to many aspects of preparing RIAs                      | 31 |
| Departments could improve the presentation and publication of RIAs                            | 37 |

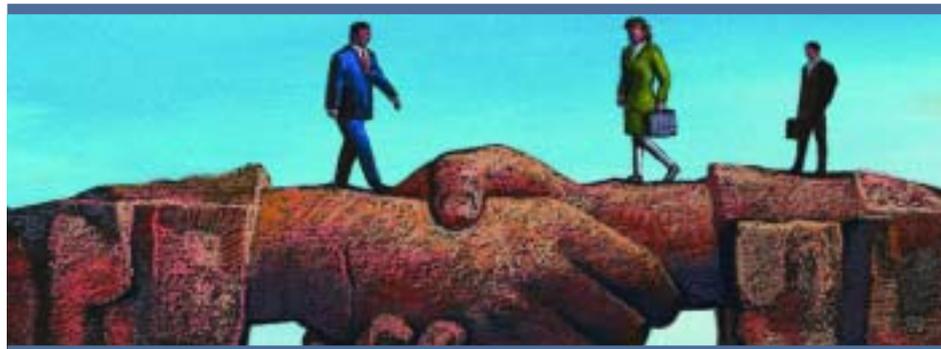
**Appendices**

- |  |    |
|--|----|
| 1. Key developments in regulatory control  | 40 |
| 2. The Better Regulation Task Force  | 41 |
| 3. OECD reference checklist for regulatory decision-making   | 42 |
| 4. The number of regulatory impact assessments by department produced during the period January 1999 to December 2000      | 43 |
| 5. Steps in the development of a Regulatory Impact Assessment illustrated by the case example of the National Minimum Wage | 44 |
| 6. The study methodology   | 45 |

**Annex 46****Glossary 51****Bibliography 53**

# executive summary

- 1 Each year the Government bring forward many regulatory proposals which may affect the daily lives of citizens and the costs borne by business, charities and voluntary organisations. Some of these effects are specifically intended as outcomes of Government policy - others result from the implementation of the policy. For some years the Government have been concerned that the policy making process does not routinely include an informed consideration of these effects. For instance in 1999 the Government stated that: "*regulation for its own sake is too often seen as an easy answer, without proper consideration being given to better ways of achieving the outcome*".<sup>1</sup>
- 2 Representatives of business and not for profit organisations have also been concerned about the burdens that regulation imposes on them. Understanding and implementing new regulations places proportionately greater demands on small businesses, taking up time and resources that could otherwise be applied to running and growing the business. Ninety-nine per cent of businesses have fewer than 50 employees and employ some 44 per cent of the private sector workforce.<sup>2</sup>



- 3 It is Government policy that regulation, where it is needed, should have a light touch with the right balance struck between under-regulating (so failing to protect the public) and over-regulating (so creating excessive bureaucracy). To this end, policy makers in departments and agencies are required to undertake a regulatory impact assessment (RIA) before taking action which has a regulatory impact on business. The process has been evolving since the 1980s, moving to a RIA system in 1998 and reaching its current form in August 2000. Each assessment sets out the costs and benefits of the proposal and the risks of not acting, so as to help deliver better regulation. RIAs go through several stages as the proposal is developed (paragraph 1.23), resulting in an initial RIA when the proposal is being formulated, a partial RIA which forms part of the consultation process and a final RIA that is submitted to Ministers and Parliament.
- 4 This report is about good practice by government departments in preparing RIAs. It draws on a National Audit Office examination of the way RIAs are prepared and the lessons that can be learned from a sample of them. It sets out why RIAs are important, the key features of RIAs that add value to policy making and the further steps that departments could take to improve the regulatory impact assessment process.

<sup>1</sup> Cabinet Office, March 1999, *Modernising Government*, Cm 4310.

<sup>2</sup> Small Business Service, June 2001, *Small and Medium Enterprise (SME) Statistics for the United Kingdom 2000*.

## Main Findings

### Regulatory Impact Assessments are intended to help deliver good regulation

- 5 Regulation is one of the principal instruments available to governments to achieve their objectives. **Figure 1** sets out why governments may wish to regulate. Through regulation governments can, for instance, safeguard their citizens, promote a prosperous economy and protect the environment.

#### 1 The definition and purposes of State regulation

State regulation has been defined as any government intervention or measure which controls, directs or restricts the behaviour of individuals, or sectors of society, so as to:

- Protect and enhance the rights and liberty of citizens;
- Promote a safe and peaceful society;
- Collect taxes and ensure that they are spent in accordance with policy objectives;
- Safeguard health and safety or protect citizens from "harming" themselves;
- Protect consumers, employees and vulnerable groups from abuse;
- Promote the efficient working of markets;
- Protect the environment and promote sustainable development.

*Source: Better Regulation Task Force, December 1997 (revised October 2000), Principles of Good Regulation.*

- 6 Where the Government wish to regulate using primary or secondary legislation, which is likely to impose costs or benefits on business, charities or voluntary organisations, the department or agency concerned is expected to prepare a RIA.<sup>3</sup> They may also choose to prepare RIAs when non-legislative action is contemplated that may affect business. In the two years to December 2000, there were 283 final RIAs (Appendix 4).
- 7 RIAs are expected to cover the matters outlined in **Figure 2**. The purpose of the RIA is to explain the objectives of the proposal, the risks to be addressed and the options for delivering the objectives. It should make transparent the expected costs and benefits of the options for the different bodies involved, such as other parts of Government and small businesses, and how compliance with regulatory options would be secured and enforced. The RIA should be drafted at an early stage in policy making to advise Ministers and be developed in the light of further evidence and consultation. Policy makers should send the RIA to interested parties for comment, and summarise their responses. The RIA is then submitted to the relevant Government Ministers who, following consideration, are asked to sign it off with a statement that in their opinion the benefits justify the costs.<sup>4</sup> The final version accompanies the submission of legislation to Parliament.

<sup>3</sup> Subject to certain exemptions, such as where regulation affects only the public sector or increases statutory fees by a pre-determined formula.

<sup>4</sup> The explicit statement that the benefits justify the costs has only been required since August 2000.



## 2 What a full regulatory impact assessment is expected to cover

Purpose and intended effect	Identifies the objectives of the regulatory proposal
Risks	Assesses the risks that the proposed regulations are addressing
Benefits	Identifies the benefits of each option including the "do nothing" option
Costs	Looks at all costs including indirect costs
Securing compliance	Identifies options for action
Impact on small business	Using advice from the Small Business Service
Public consultation	Takes the views of those affected, and is clear about assumptions and options for discussion
Monitoring and evaluation	Establishes criteria for monitoring and evaluation
Recommendation	Summarises and makes recommendations to Ministers, having regard to the views expressed in public consultation

Source: Cabinet Office, August 2000, *Good Policy Making: A Guide to Regulatory Impact Assessment*.

- 8 The Cabinet Office Regulatory Impact Unit assists Government Ministers, departments and agencies in striking the right balance in regulation. The Unit does so by providing guidance to departments and agencies on the preparation of RIAs, and advising Cabinet Office Ministers, and the Panel for Regulatory Accountability,<sup>5</sup> on assessments supplied with regulatory proposals. The Unit also supports the independent Better Regulation Task Force,<sup>6</sup> works with stakeholders in the public sector to cut public sector red tape, and promotes the better regulation agenda in the European Community. Because of the disproportionate effect that regulation can have on small businesses, the Small Business Service, an executive agency of the Department of Trade and Industry, advise on the small business consultation and analysis during the assessment process and can have their views recorded on the face of the RIA.<sup>7</sup> In line with a report by the Better Regulation Task Force,<sup>8</sup> the Small Business Service are investigating the benefits of research and evaluation of the regulatory burdens on small business.
- 9 RIAs contribute to the Government's aim of modernising policy making, which the National Audit Office have examined separately.<sup>9</sup> For instance, identifying the options for achieving the desired policy outcome and the costs and benefits associated with each option should help assess how policies are likely to work in practice and to develop policies that secure the desired results while avoiding unnecessary burdens. By making RIAs publicly available, members of the community should be able to understand what a proposed regulation is seeking to achieve and what it means for them, and to challenge assumptions with which they disagree. This should contribute to making policies inclusive and decision making transparent. By facilitating Ministerial and parliamentary scrutiny of regulation and subsequent evaluation of whether regulation has achieved what was intended, RIAs should help establish accountability for the regulatory process.

5 The Panel was set up in 1999 and is chaired by the Minister for the Cabinet Office. It discusses legislative proposals and their RIAs with the relevant departmental Ministers.

6 The Government established the Better Regulation Task Force in September 1997 to advise the Government on action which improves the effectiveness and credibility of government regulation by ensuring that it is necessary, fair and affordable, and simple to understand and administer, taking particular account of the needs of small businesses and ordinary people (Appendix 2).

7 The remit of the Small Business Service is to act as a voice for small business at the heart of Government and to seek to improve the quality and coherence of delivery of Government support programmes for small businesses. In addition, the Service have responsibility for improving the regulatory environment overall.

8 Better Regulation Task Force, April 2000, *Helping small firms cope with regulation - exemptions and other approaches*.

9 National Audit Office, November 2001, *Modern Policy Making*.

**10** RIAs should therefore help ensure that proposals meet the Better Regulation Task Force's five principles for good regulation - transparency, proportionality, targeting, consistency and accountability.<sup>10</sup> Because RIAs are a tool for documenting factors that policy makers should consider in any case, any additional costs arising from their preparation are not easy to quantify but are likely to be relatively small. The potential benefits to the community should be much greater than the costs. In the case of the national minimum wage detailed costing in the RIA resulted in a different implementation option being adopted that avoided a £150 million increase in employers' administrative costs. We examined a sample of 23 RIAs prepared since 1998 to obtain a view of what made for an effective RIA and what lessons policy makers could learn from their preparation.

### Three factors characterise effective RIAs

**11** When examining RIAs we looked for examples where they have helped to add value to policy making. We found that it is the process of preparing the RIA and consulting those likely to be affected that adds value. RIAs that added value tended to be characterised by:

- Starting at a sufficiently early stage.
- Consulting effectively with those affected by the proposal.
- Analysing appropriately the likely costs and benefits of the proposal.

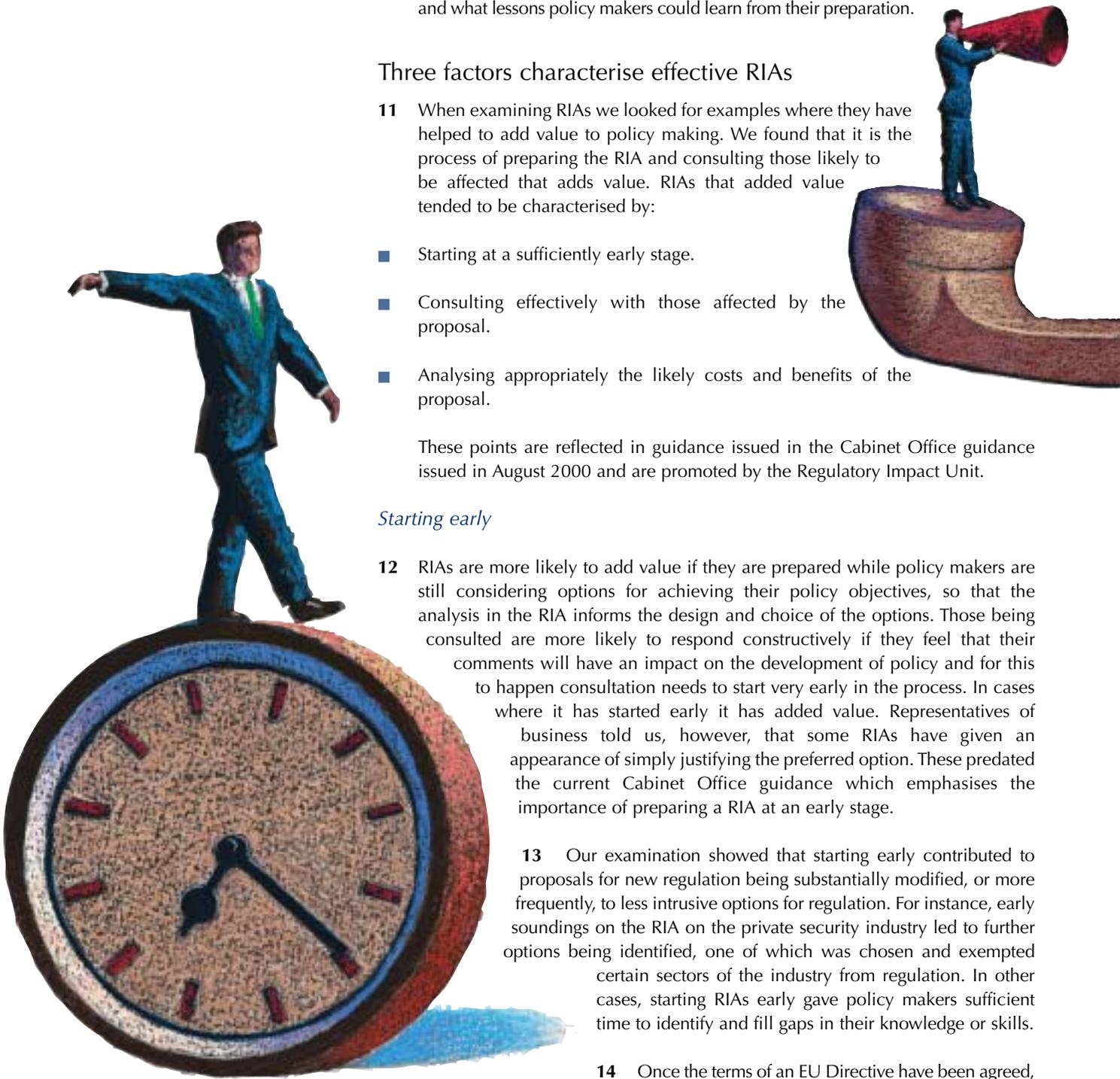
These points are reflected in guidance issued in the Cabinet Office guidance issued in August 2000 and are promoted by the Regulatory Impact Unit.

#### *Starting early*

**12** RIAs are more likely to add value if they are prepared while policy makers are still considering options for achieving their policy objectives, so that the analysis in the RIA informs the design and choice of the options. Those being consulted are more likely to respond constructively if they feel that their comments will have an impact on the development of policy and for this to happen consultation needs to start very early in the process. In cases where it has started early it has added value. Representatives of business told us, however, that some RIAs have given an appearance of simply justifying the preferred option. These predated the current Cabinet Office guidance which emphasises the importance of preparing a RIA at an early stage.

**13** Our examination showed that starting early contributed to proposals for new regulation being substantially modified, or more frequently, to less intrusive options for regulation. For instance, early soundings on the RIA on the private security industry led to further options being identified, one of which was chosen and exempted certain sectors of the industry from regulation. In other cases, starting RIAs early gave policy makers sufficient time to identify and fill gaps in their knowledge or skills.

**14** Once the terms of an EU Directive have been agreed, there may be less flexibility as regards varying the requirements of the UK legislation needed to give it effect. So a RIA is most useful if prepared in time to influence



negotiations before the Directive is adopted. For example, consultation on the RIA on the proposed Directive on waste from electrical and electronic equipment contributed to the Department of Trade and Industry putting the case to European Union partners for exempting, on grounds of disproportionate cost, small retailers from the requirement to take back and recycle or dispose of such equipment.

### Consulting effectively

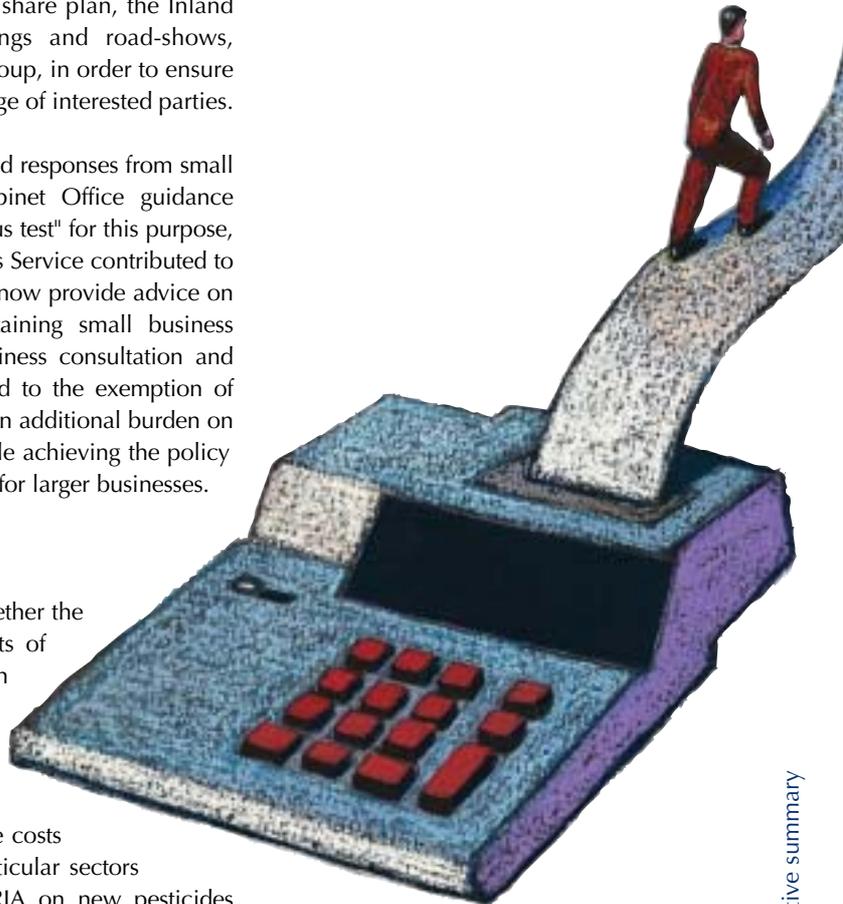
**15** Although knowledgeable in their field, policy makers do not always have practical experience of applying regulation. To ensure that proposals are workable and have minimal side-effects policy makers need to draw on the experience of others during policy design. Persuading businesses and other interested parties to comment on the likely impact of something that could happen in the future is a challenge. The judicious use of face to face, and group approaches may add value to paper-based approaches to consultation.

**16** The quality and quantity of information obtained from consultation exercises we saw varied, and was influenced by the approach taken to consultation. We saw some effective examples. For instance the Home Office set up a task group to take a major role in developing the policy on motor salvage and in drafting the RIA, including generating much of the data presented in the assessment. For the RIA on the all-employee share plan, the Inland Revenue sent out consultation papers, held meetings and road-shows, published articles, used focus groups and an advisory group, in order to ensure that representative views were obtained from a wide range of interested parties.

**17** It is particularly important, but difficult, to obtain informed responses from small businesses, charities and voluntary organisations. Cabinet Office guidance requires departments to undertake a small business "litmus test" for this purpose, but a lack of guidance on the test from the Small Business Service contributed to a wide variation in the quality of responses. The Service now provide advice on request. Some RIAs we examined succeeded in obtaining small business perspectives that added value. For instance, small business consultation and analysis in the RIA on stakeholder pensions contributed to the exemption of employers with less than five staff. This avoids imposing an additional burden on the 60-70 per cent of employers least able to bear it while achieving the policy objective for the 80-90 per cent of employees who work for larger businesses.

### Costing appropriately

**18** A key purpose of the RIA process is to help examine whether the benefits justify the costs. Comparing costs with benefits of policy options can add value. For instance, in the RIA on the licensing of butchers' shops in England, cost benefit analysis of several options showed that a lower cost option still addressed the highest risks and led to less intrusive regulation. Most RIAs we saw quantified the costs. By so doing they sometimes demonstrated that the costs would be disproportionate, overall or in relation to particular sectors and therefore alternative options were adopted. The RIA on new pesticides regulations showed that employers would incur disproportionate costs from a new mandatory training requirement for some types of workers which were not justified by the benefits so regulatory options were dropped. A non-regulatory option was adopted instead.



- 19** Quantifying benefits proved to be harder and sometimes the effort involved in doing so would have been disproportionate to any value served. Many RIAs included general statements rather than figures or quantified only the preferred option. So long as there was a clear analysis of what types of benefit were expected, the absence of quantification did not matter in those cases where costs were self-evidently small compared with the benefits. In few cases, failure to quantify benefits contributed to hostile responses to consultation. An example of the effective quantification of benefits was the RIA on the contained use of genetically modified organisms, where the Health and Safety Executive calculated benefits by estimating how much time the proposals would save those affected, and by attaching a monetary value to the time saved. They then calculated the net present value of each to enable a comparison.

### There is much good practice in preparing RIAs but room for improvement

- 20** Readily understandable and comprehensive guidance for policy makers is important, given that the RIA is a relatively new requirement in Government, the number of policy branches potentially responsible for regulatory measures, and the fairly rapid movement in staff within the Civil Service. It is therefore inevitable that many policy makers preparing RIAs have little previous experience of RIAs, as in many of the cases we examined. The Cabinet Office revised their guidance in August 2000 and many policy makers we consulted found the latest version more helpful. The guidance compares well with other countries which use processes similar to RIAs, although some countries have more examples of alternatives to regulation. Following the guidance ought to result in robust RIAs that add value. Many policy proposals take at least a year to develop to reach the legislative stage. As we could only draw conclusions about the process once it was fully or nearly completed, most of the first drafts of the 23 RIAs we examined in depth pre-dated the August 2000 guidance which strengthened and expanded the requirements of RIAs.
- 21** The guidance cannot set out in detail all of the possible circumstances in which RIAs should be prepared. Some organisations have commented adversely in cases when RIAs have not been produced and those affected believe there to have been regulatory impacts. But the Cabinet Office believe that RIAs are now usually being produced where appropriate.
- 22** Several departmental regulatory impact units supplement Cabinet Office guidance with more specific guidance of their own such as the Department for Education and Skills<sup>11</sup> policy makers' web site. The Cabinet Office are also undertaking a rolling programme of seminars and other training events on implementing good practice in preparing RIAs. There is also a range of guidance from Departments on specific aspects of assessing regulatory impact. The Regulatory Impact Unit intends to revise their guidance again in 2002, which would give it an opportunity to include pointers to other guidance relevant to RIAs. The Unit already reviews and helps improve the quality of some individual RIAs and plans to put their assessment of the extent of the overall compliance with guidance on a more formal and structured basis.

23 Most of the RIAs we examined had aspects of good practice. For instance they were generally good at explaining the objectives of the proposal and identifying possible options. We identified the following examples of good practice:

- **Assessing the risks of not regulating.** Knowing how often the circumstances being regulated lead to harm, and of what sort, informs decisions on whether and how to regulate. The RIA for the building regulations on fire safety contained a risk assessment that clearly set out the hazard or harm that the proposals were seeking to address and quantified the likely hazard (paragraph 3.21 and [Figure 18](#)).
- **Considering the likely level of compliance.** Many RIAs we examined simply named the enforcement body and sanctions for non-compliance. The RIA for the noise Directive demonstrated good practice by considering the likely level of compliance with the proposals, taking account of existing compliance levels, and the consequent impact on the costs of the proposals (paragraph 3.31 and [Figure 20](#)).
- **Explaining how new regulation is to be explained to those affected.** Although policy makers had often considered how they were going to do this, few included details in the RIA. The RIA on the all-employee share plan announced that help and new guidance would be made available for unquoted companies, for example, to enable them to agree valuations quickly and easily. The Inland Revenue also issued guidance including a model trust deed, model rules and a model partnership share agreement (paragraph 3.33).
- **Considering alternative approaches to enforcement.** Many RIAs we examined assumed that existing enforcement methods would continue to be used, often for good reason. But there can be value in re-thinking enforcement. In particular, where there have been substantial structural and/or economic changes such that existing enforcement arrangements are no longer appropriate. For example, in examining the regulation of the gaming industry, the National Audit Office found that the Gaming Board could take more account of structural changes in the industry which meant that major regulated operators had developed their own compliance departments to protect their gaming licence, the loss of which could have major consequences for them and their reputations.<sup>12</sup> The Gaming Board have accepted the National Audit Office's recommendations and are introducing a risk-based inspection strategy to reduce the amount of inspection by relying more on the regulatory and compliance systems of these operators (paragraph 3.36).
- **Setting out arrangements for monitoring and evaluation.** The RIA on stakeholder pensions gave a clear and simple explanation of how the proposal will be monitored after implementation, by whom and with a summary of how the data was to be gathered. Monitoring will contribute to measuring performance against the Department's<sup>13</sup> Public Service Agreement (paragraph 3.39 and [Figure 23](#)).

24 Policy making can be made more transparent if RIAs are readily accessible on Government web sites. The ease with which RIAs can be accessed has been variable and many web sites did not comply with the recommendations on the accessibility of information relating to regulations included in the National Audit Office's 1999 report "Government on the Web".<sup>14</sup> There has been a distinct improvement in accessibility of web sites during 2001, although some departmental web sites still did not comply with good practice. The Cabinet Office have developed a central web-page listing RIAs which are being increasingly linked to the documents themselves.

<sup>12</sup> National Audit Office, June 2000, *The Gaming Board: Better Regulation*, HC 537, 1999-2000.

<sup>13</sup> The Department for Work and Pensions, formerly the Department of Social Security.

<sup>14</sup> National Audit Office, December 1999, *Government on the Web*, HC 87, 1999-2000.

# Recommendations

- 25 RIAs add value to the policy making process and can help deliver better and lighter touch regulation. They represent a significant change in the way policy makers think through the consequences of Government action. Producing robust RIAs and using them as a basis for meaningful consultation with the representatives of business and others likely to be affected calls for considerable commitment from departments and agencies if good use is to be made of them. Since they were introduced RIAs have improved both in design and application, under the influence of the Cabinet Office Regulatory Impact Unit working with departmental regulatory impact units. The Small Business Service have also helped to raise the profile of small business concerns and recommended actions to help small businesses such as successfully pressing for agreement that in each case guidance on how to comply with regulation should be published at least three months before its implementation.
- 26 More can still be done by the Cabinet Office, the Small Business Service, departments and agencies to build further on this achievement so as to make continuing good use of RIAs.

## *The Cabinet Office Regulatory Impact Unit*

- I Using RIAs as a tool for delivering better policy making requires education of policy makers, many of whom are new to RIAs, together with frequent reinforcement of the messages in existing guidance, particularly those highlighted in this report. The Unit does this by means of dialogue with relevant officials on some specific regulatory issues, via the wider network of departmental regulatory impact units, by conducting seminars with departments and agencies, and by updating the guidance. The Unit also provides, in the guidance, a short checklist for policy makers, and has circulated a list of points to watch to departmental regulatory impact units.

**When revising its guidance material, the Unit should refer policy makers to all relevant guidance and provide them with vivid examples of good practice. In doing so it should draw on the checklist attached to this Summary, and on relevant overseas guidance, for instance providing more extensive examples of alternatives to regulation.**

- II The expectation in Cabinet Office guidance that policy makers should prepare a RIA whenever they are proposing regulatory action that will have "non-negligible" effects on business, charities and the voluntary sector can result in differences of opinion between policy makers and those affected as to whether the regulatory impact is negligible. It is also not always clear whether secondary legislation that implements policies already subject to a RIA needs a separate RIA. The guidance is also not specific about the circumstances in which non-legislative regulation, such as national standards, should be accompanied by a RIA.

**The guidance should require policy makers to consult their departmental regulatory impact units in cases of uncertainty and, if necessary, undertake sufficient work to demonstrate that any additional compliance costs that are likely to result will be negligible.**



- III The Cabinet Office guidance states that at the full RIA stage it is important to set out how any proposed regulation would be monitored and reviewed.

**It would be helpful for the guidance to give specific suggestions on possible approaches to determining whether the regulation has resulted in the impacts expected, has been effective and whether the extent of regulation could be reduced.**

- IV The transparency of regulation is improved if RIAs are readily accessible to businesses, members of the public and representative bodies.

**Although the quality of web access to RIAs has improved during 2001, the Cabinet Office should continue to encourage departments to make it easier to find RIAs and associated regulations on Government web sites and to place RIAs on the web at the same time as, or before, they are sent out with consultation documents.**

- V Although the guidance expects policy makers to consider compliance with regulation, RIAs do not always reflect the importance of securing compliance if regulation is to achieve its objectives, consideration of which may strengthen the case for self-regulatory options. The way that businesses respond to regulation can have a significant bearing on the benefits arising from different options and policy makers therefore need to be realistic about the likely level of compliance.

**The guidance should specify that RIAs should be clear about how the desired level of compliance is to be achieved in practice, the current levels of compliance and be realistic about the likely level of compliance.**

- VI The problems experienced by small businesses in handling the administrative load applied by regulation also affect smaller charities and voluntary organisations. The Small Business Service sometimes represent their interests where they coincide with those of small business, but representing their interests more generally is outside their remit.

**The Cabinet Office should consider whether guidance is needed on how the interests of such bodies could be more explicitly taken into account in the RIA process.**



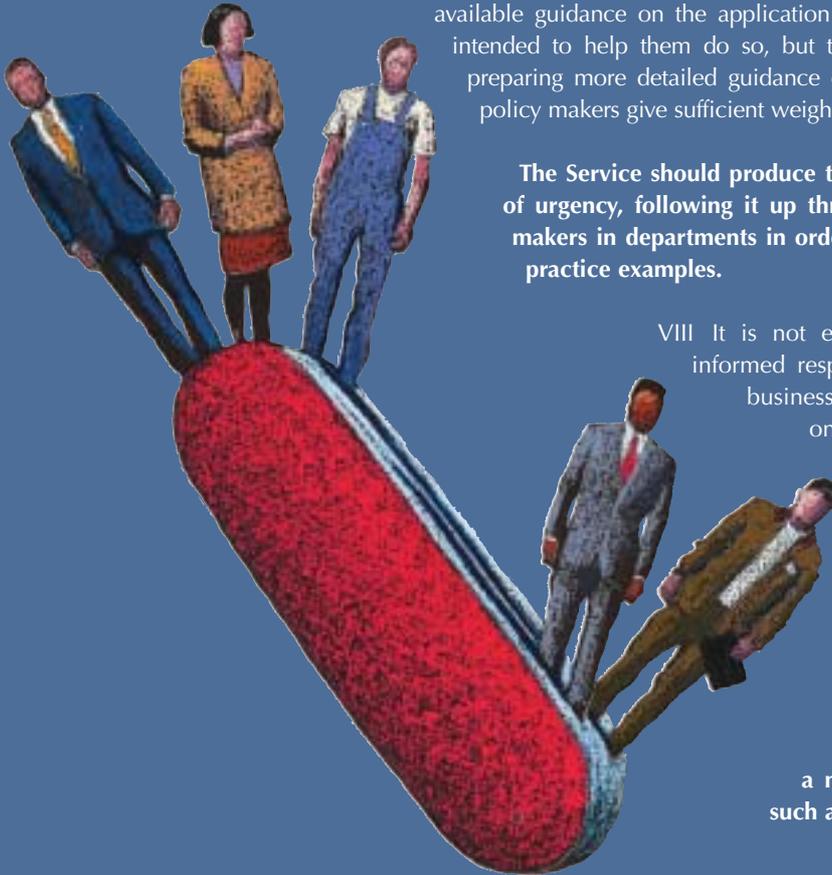
### *Small Business Service*

VII Policy makers do not necessarily understand how to identify and evaluate the likely impacts of regulation on small business, nor how to consider options that limit the applicability of regulation to small business. There is little widely available guidance on the application of the "small business litmus test" intended to help them do so, but the Small Business Service will be preparing more detailed guidance on the litmus test in order to help policy makers give sufficient weight to small business.

**The Service should produce this essential guidance as a matter of urgency, following it up through direct contacts with policy makers in departments in order to build up a database of good practice examples.**

VIII It is not easy for policy makers to obtain informed responses to consultation from small businesses and hence to assess the impact on them. The Small Business Service are developing focus groups and networks of small businesses.

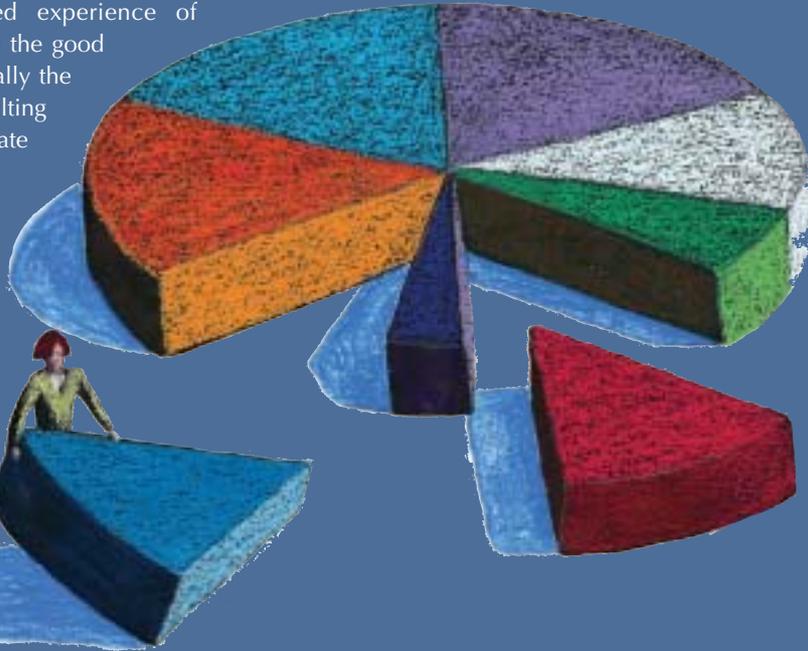
**They should use these more to provide departments with small business responses to RIAs. They could also consider using business panels that give feedback on regulatory proposals, a model adopted in other countries such as the USA and Denmark.**



## Departments and agencies

- IX Many policy makers have limited experience of preparing RIAs and could learn from the good practice set out in this report, especially the importance of starting early, consulting effectively and carrying out appropriate cost benefit analysis.

**The checklist attached to this Summary summarises the key messages which in our view departmental regulatory impact units could usefully draw to the attention of all policy makers who have to prepare a RIA.**



- X Calculating likely benefits is more difficult than calculating likely costs to businesses. It is important that departments provide sufficient support to staff who have to complete RIAs, particularly where a cost benefit analysis is critical in deciding whether to pursue a particular policy option.

**Departmental Regulatory Impact Units should do more early in the process to help policy makers to identify the expertise required, for example assistance from departmental economists or outside consultants in undertaking cost benefit analysis.**

- XI People are less likely to respond to consultation or in due course comply with regulation if they do not understand what they need to do to comply.

**RIAs should summarise the impact the proposal would have and give details of how the implications of new regulation are to be explained to those affected, for instance by seminars and articles in periodicals, along with a summary of how the proposed regulation is to be applied in practice.**

- XII Enforcement contributes to securing compliance with regulation but itself can add to the burden of regulation and reviewing it from time to time can identify scope for lighter touch solutions, including relying wherever possible on the regulatory and compliance systems already applied by the businesses concerned.

**When new regulations are being considered, the associated RIA process should provide a good opportunity to review whether the approach to enforcement is still most appropriate in the circumstances of the business sectors concerned.**

# Checklist

## Key questions for policy makers and regulatory impact units when preparing a Regulatory Impact Assessment (RIA)

This Checklist sets out points which the National Audit Office have found deserve particular attention if good use is to be made of RIAs. It should be read with the guidance in the Cabinet Office document "Good Policy Making: A Guide to Regulatory Impact Assessment". The points are set out under the three main stages of the process set out in paragraph 1.23 of this report.

### Getting started - the Initial RIA

**Start early** - the RIA should facilitate informed consideration of the options available for achieving the objectives of the envisaged regulation, and an Initial RIA should, wherever possible, be produced before decisions are made or there is a commitment to legislate. For EU legislation this should be in time to inform negotiations on the proposed Directive etc.

**Identify the objectives** - the problem and risks to be addressed, and the desired outcomes. This is necessary before the options can be considered.

**Plan the process** - project management principles and techniques provide a useful discipline which can help ensure that all aspects are planned for. In drawing up a timetable work back from any deadline for legislative implementation to allow enough time for each key stage, especially for consultation.

**Consult early** - with the Small Business Service and other policy makers having responsibility in relation to the industry or sector concerned, enforcement bodies and representative bodies, to obtain an informed view of risks, options and a broad indication of the likely costs and benefits concerned. This is not a substitute for effective consultation with the broader spectrum of those concerned later in the process, but should help with planning how effective consultation can be undertaken.

**Assess the risks being addressed** - identify how prevalent the problem to be addressed is, the gravity and nature of the consequences, and highlight areas where more information is needed.

**Identify a wide range of options** - including self-regulation and non-regulatory options. Where the broad policy direction is already determined the focus should be on options for implementing the desired solution most effectively.

**Consider compliance** - the level of compliance with existing regulation and good practice can indicate the types of solutions most likely to achieve the desired outcome. Regulatory solutions are effective only as far as they are complied with, and the way they are implemented can affect the extent as well as the costs of compliance. Adapting existing business or regulatory processes may make compliance easier and hence more likely.

### Obtaining a clear picture - the Partial RIA

**Think through the consultation process** - it may need to cover other public sector bodies, charities and voluntary organisations as well as businesses. A good quality response is important and people may be more responsive if consultation on the RIA precedes formal consultation on draft legislation. Make it easier for respondents to respond to the assumptions in the RIA, for instance by asking a few clear questions up-front. Include questions on the estimates of costs and benefits in the RIA.

**Obtain representative views from small businesses, charities etc** - take advice from the Small Business Service on the "litmus test" and consider asking for their assistance. The test should involve small sufficient businesses, charities etc to be representative. Such bodies respond best to direct face to face or telephone interview when the impact of the regulatory proposal and options can be talked through and a clear view of the likely impact obtained. Focus groups may also be valuable. Sufficient businesses should be selected to be representative of different types of business or sectors. The findings from the test should be included in the RIA sent out for general consultation.

**Analyse separately how costs and benefits apply to different sectors and types of business** - including small businesses and consumers. A proposal that is proportionate overall may be disproportionate for some sectors, especially small businesses. Can the impact in these cases be mitigated?

**Place the RIA on the web** - as soon as it is prepared, so that it is readily accessible to those concerned and where appropriate link it to the relevant consultation document.

**Quantify costs and benefits appropriately** - so as to demonstrate that the preferred option is the most effective and is proportionate. Benefits should be quantified unless they are evidently overwhelming but this is often not easy and may necessitate surveys or sophisticated analytical techniques. Precise monetary values are not necessary - informed figures as to what is likely to happen to which people are, wherever they can be obtained.

**Keep an open mind on options** - quantify the costs and benefits of all practicable options, and be alert for ways of making compliance easier and more likely. Particular attention should be given to self-regulatory options as voluntary compliance can be more effective and less costly.

**Consider compliance in detail** - obtain a clear view of how those affected, including enforcement bodies, will comply with the proposal, perhaps by drafting and consulting on a skeleton of the step by step guide to compliance that will eventually be needed. This should feed into the estimation of costs and benefits. Consider and consult on what action will be needed to inform those affected about the proposal once it is implemented, including enforcement bodies.

## Pulling it together - the Final RIA

**Firm up on compliance and enforcement** - explain the steps being taken to ensure that those affected know what is expected of them and what guidance, seminars, publicity etc will be issued for this purpose. Set out the actions the enforcement body expects to take to secure the intended compliance rate.

**Summarise the results of consultation** - including response rates, responses from different sectors or types of business/body where these vary and

how proposals have been modified to reflect significant concerns.

**Explain arrangements for any review** - including when any review will be carried out, how data will be collected, how compliance will be monitored and what expertise will need to be drawn upon, bearing in mind the importance of the review informing future legislation in the area.



# Part 1

## Regulatory Impact Assessments are intended to help Government regulate better

- 1.1 Since the 1980s successive Governments have taken initiatives to develop arrangements for regulatory appraisal which reached their current form in August 2000 with the introduction of revised guidance from the Cabinet Office on regulatory impact assessments (RIAs). Government departments and agencies are required to prepare a RIA for every regulatory proposal that could impact upon business, charities or voluntary organisations, building on processes developed over the previous 15 years. Each RIA sets out the costs, benefits and risks of the proposal to help to deliver better regulation.
- 1.2 This part of the report explains why government regulation is important, the Government's response to concerns about regulatory impact, how RIAs can help deliver better policy making and good regulation, and summarises how we examined RIAs.

### Regulation is an important tool for Government but can impose costs on businesses, charities and voluntary organisations

- 1.3 Regulation may be defined as any government measure or intervention that seeks to change the behaviour of individuals or groups, by promoting the rights and liberties of citizens and restricting what they can do. Along with taxation and direct expenditure, regulation is one of the three principal instruments available to governments to achieve their objectives. Figure 1 in the Executive Summary sets out why governments may wish to regulate. Through regulation governments can, for instance, safeguard their citizens from harm, promote a prosperous economy and protect the environment.
- 1.4 Regulation also imposes costs, both as a necessary consequence of the regulation and as an unintended side-effect. Many of these costs are borne by business, charities and voluntary organisations, and may ultimately be passed on to consumers. In deciding whether to regulate and on

the level of intervention, it is the Government's job to strike a balance between protecting the citizen and ensuring that the impact on those being regulated is not disproportionate, excessively bureaucratic or counter-productive. Business representatives and others have, however, been concerned for many years about regulation imposing unnecessary costs on businesses, charities and voluntary organisations, and reducing the competitiveness of business.

- 1.5 Representatives of small businesses have raised particular concerns about the burdens regulation places on them. In the UK there are some 3.7 million active businesses, 99 per cent of which have less than 50 employees yet account for some 44 per cent of the workforce and 37 per cent of the turnover of UK industry.<sup>15</sup> In such organisations, usually the proprietor has to give up valuable time not only to read and understand the regulations but also work out what it means for the business in complying with the requirements. The National Council for Voluntary Organisations and the Association of Chief Executives of Voluntary Organisations commented that similar issues can arise for smaller charities and voluntary organisations.
- 1.6 A Better Regulation Task Force report in April 2000<sup>16</sup> found evidence that "*entrepreneurs were being distracted from running and growing their businesses by the cumulative burden of taxation, employment, public protection and environmental regulation*". The report noted that while large companies could employ experts in each of these fields, it was not reasonable to expect the same level of expertise in one person. Other research indicates that a small hotel/restaurant is covered by 1,500 pages of regulation<sup>17</sup> while a group of village shopkeepers estimated that they were spending three to five working days a month dealing with government administration.<sup>18</sup> The need to understand a wide range of regulatory requirements can act as a barrier to entry to small businesses, and hence inhibit competition. Relying on the views of large businesses about new regulation may therefore give a seriously incomplete picture.

<sup>15</sup> Small Business Service, June 2001, *Small and Medium Enterprise (SME) statistics for the United Kingdom 2000*.

<sup>16</sup> Better Regulation Task Force, April 2000, *Helping small firms cope with regulation - exemptions and other approaches*.

<sup>17</sup> Better Regulation Task Force, June 2000, *Tackling the impact of increased regulation - a case study of hotels and restaurants*.

<sup>18</sup> Better Regulation Task Force, July 2001, *Local Shops: a progress report on small firms regulation*.

## The Government introduced RIAs in response to concerns about the impact of regulation

1.7 For some years the Government have been concerned that the policy making process has not routinely included an informed consideration of the impacts of regulation. For instance, in 1999 the Government stated that "*regulation for its own sake is too often seen as an easy answer, without proper consideration being given to better ways of achieving the outcome*".<sup>19</sup> Successive Governments have therefore taken initiatives to develop and strengthen arrangements for regulatory appraisal, see Appendix 1, starting in the 1980s with the Deregulation Initiative which required departments to produce business compliance cost assessments for all new regulations.

### *RIAs are part of the Better Regulation Initiative*

1.8 It is Government policy that regulation, where it is needed, should be introduced with a light-touch, striking the right balance between under-regulating (and so failing to protect the public) and over-regulating (and so failing to preserve freedoms or creating excessive bureaucracy). As part of their Better Regulation Initiative, the Government introduced regulatory impact assessments in August 1998, to replace compliance cost assessments. The intention was to broaden the focus of regulatory appraisal to make regulatory considerations an integral part of policy making. In addition to explaining the purpose of regulation and examining the risks and the financial costs which regulation imposed on business, departments are also required to analyse benefits, and to consider the overall impact on society. There is also much more emphasis on the impact on small businesses. The main factors that a RIA is now expected to cover are set out in **Figure 2** in the Executive Summary on page 3.

1.9 The Government established a unit within the Cabinet Office (since 1999 known as the Regulatory Impact Unit) to assist Government Ministers and departments in finding the right balance between under-regulating and over-regulating. The Unit takes the lead role in promoting the development by relevant departments and agencies of effective RIAs and has issued the guidance on their preparation which was revised and reissued in August 2000.

1.10 The Government also established the Better Regulation Task Force in Autumn 1997 (further details at Appendix 2). Their terms of reference are "to advise the government on action which improves the effectiveness and credibility of government regulation by ensuring that it is necessary, fair and affordable, and simple to understand and administer, taking particular account of

the needs of small businesses and ordinary people". The Task Force have produced 27 reports (to September 2001) covering the impact of regulation on many sectors of the economy. They have also made detailed observations on regulatory proposals. This report draws on their work as appropriate.

1.11 RIAs are one of several instruments that governments can use to help to control regulatory costs of new regulations. Other approaches such as giving exemptions to small businesses, the substitution of self-regulation and introduction of sunset clauses, whereby regulations expire if not renewed, can be considered while preparing a RIA. Different approaches are needed to tackle existing regulation, and the Regulatory Reform Act 2001 has been passed with the aim of making it easier for departments and agencies to remove, simplify and consolidate existing regulation.

1.12 The way the Government regulate bodies within the public sector can also result in a disproportionate administrative burden. The Cabinet Office Regulatory Impact Unit is working with all stakeholders in the public sector to devise a Policy Effects Framework for the public sector. It is intended that this will help policy makers to assess the impact of administrative burdens on the delivery of front-line services.

1.13 The United Kingdom is not alone in considering regulatory appraisal to be important. Systematic approaches to appraising regulatory impacts were first developed in the USA. In 1995 the Organisation for Economic Co-operation and Development published a checklist of questions about regulatory decisions that regulators should consider when deciding when and how to regulate (Appendix 3). These guidelines have informed the development of RIAs in the United Kingdom. Many overseas countries, including the USA, Australia and the Netherlands have introduced arrangements similar to RIAs.

## Regulatory appraisal is an important element in policy making

### *Most RIAs are prepared to support legislation*

1.14 The Cabinet Office guidance requires policy makers in departments and agencies to prepare a RIA where primary or secondary legislation with regulatory impacts upon business, charities or voluntary organisations is contemplated. A RIA has to be produced before a regulatory proposal can be included in the Government's legislative programme. The Minister sponsoring the legislation is required to sign off his or her assent to the final version of the RIA before the legislation can be presented to Parliament.

1.15 The Cabinet Office Regulatory Impact Unit advises its Ministers on emerging proposals, and when to seek to intervene for improvements in assessments. Since 1999 this process has been strengthened by the creation of the Panel for Regulatory Accountability which became a Cabinet Committee in 2001, and is chaired by the Minister for the Cabinet Office. The Panel invites the Chairman of the Better Regulation Task Force and the Chief Executive of the Small Business Service to attend. The Panel takes evidence on specific legislative proposals and their RIAs from the relevant Ministers.

1.16 Cabinet Office guidance suggests that it may be good practice for a RIA to be prepared where regulatory action is taken which does not need legislation, leaving it to the discretion of individual regulatory departments and agencies whether to do so. Independent regulators, such as the utility regulators do not prepare RIAs, although the Financial Services Authority prepares cost benefit analyses where it makes regulatory rules. RIAs are not expected where the proposal affects only the public sector, such as schools and police forces. Nor are they expected where regulation imposes no or negligible additional costs or savings; or increases statutory fees by a pre-determined formula; or for road closure orders.

#### *RIAs involve many parts of central government*

1.17 In the two years to December 2000, Government departments and agencies submitted 283 legislative proposals of a regulatory nature, which were accompanied by a RIA (Appendix 4). Nearly all the RIAs were prepared in support of Government legislation. The legislation concerned ranged from complex Acts of Parliament with a major impact across the economy, for instance the national minimum wage, to statutory instruments specifying detailed regulatory requirements, for instance carrying out inspections under the Good Laboratory Practice Regulations.

1.18 RIAs involve many officials across Government. Policy teams are responsible for producing RIAs in support of their regulatory proposals which includes carrying out or commissioning all the necessary work in support of the assessment. They are supported by departmental regulatory impact units, comprising one to three staff, whose role is to advise and support policy teams in developing their regulatory impact assessments. The units also encourage policy teams to look for ways of reducing the burden of existing regulations and act as a central liaison point in the Department for regulatory issues. Officials can also draw on the Cabinet Office Regulatory Impact Unit expertise (paragraph 1.9 above) and sometimes on departmental specialists such as economists.

1.19 Since August 2000 policy makers have been expected to send a copy of each RIA which impacts on small business to the Small Business Service,<sup>20</sup> an executive agency of the Department of Trade and Industry. The Service's remit is to act as a voice for small business at the heart of Government and to seek to improve the quality and coherence of delivery of Government support programmes for small businesses. In addition, the Service are responsible for advising on how the overall regulatory environment can be improved. In order to ensure that RIAs give proper weight to the interests of small businesses, the Service give feedback on individual RIAs. The RIAs should record the outcome of this consultation. The Service can also have their views recorded in the RIA. In line with a report by the Better Regulation Task Force,<sup>21</sup> the Small Business Service are investigating the benefits of research and evaluation of the regulatory burdens on small business.

1.20 As the preparation of RIAs is an integral part of Government policy making their costs are not separately identified. For instance, policy makers would still need to make submissions to Ministers and to issue consultation documents if RIAs were not required. The potential benefits from preparing RIAs are much greater than any additional costs. The RIA on the national minimum wage played an important part in a re-design of the way the scheme was implemented avoiding potential costs of £150 million a year by reducing the administrative work required of employers.

#### *RIAs contribute to better policy making*

1.21 Regulatory appraisal is part of the wider Government agenda to improve policy making and reduce regulation. The section of the Modernising Government White Paper<sup>22</sup> covering better policy making states that "*the Government expects more of policy makers: more new ideas, more willingness to question inherited ways of doing things; better use of evidence and research in policy making ... this means developing a new and more creative approach to policy making*". A subsequent report by the Cabinet Office on this subject *Professional Policy Making for the Twenty First Century* pointed out that the changes to the policy making process that the White Paper proposed could only be achieved if changes to working practices were accompanied by the development of new and different skills amongst policy makers.<sup>23</sup> These should include the key characteristics set out in **Figure 3**.

<sup>20</sup> *Small Business Service, How we can work together: aide memoire for policy making officials.*

<sup>21</sup> *Better Regulation Task Force, April 2000, Helping small firms cope with regulation - exemptions and other approaches.*

<sup>22</sup> *Cabinet Office, March 1999, Modernising Government, Cm 4310.*

<sup>23</sup> *Cabinet Office, September 1999, Professional policy making for the Twenty First Century.*

1.22 The purpose of a RIA is to help deliver better regulation through requiring departments to set out the costs and benefits of their regulatory proposals, describe the problem that has given rise to a need for regulation and compare the possible options for dealing with the problem. The RIA is therefore essentially a tool to help improve policy making and can help policy makers through the stages of policy making, from policy design through to implementation (Figure 4). The policy making process is examined in more depth in the National Audit Office report "Modern Policy Making" (November 2001).

1.23 The stages in preparing a RIA are supposed to be integrated with the stages in the policy making cycle, and are illustrated in Appendix 5 using the RIA on the introduction of the national minimum wage as an example:

- **An initial RIA** is prepared to establish a clear baseline for policy making by defining the policy objectives, that is the purposes and intended effects of the policy and an assessment of the risks of not regulating. It also includes some rough options for implementing the policy including likely costs, benefits and other impacts of each.
- **A partial RIA** works up the various policy options on the basis of initial research and soundings, consulting interested parties and specialist advisors as appropriate, so that the likely costs and benefits of the options are clear.
- **Formal consultation** uses the RIA to test the assumptions made in the partial RIA by informing those likely to be affected of what is proposed and obtaining their feedback. At this stage (or earlier) RIAs should also be made accessible on departmental web sites.
- **A final RIA** summarises the results of consultation and is revised to take account of consequent changes to the assumptions. It is submitted to Ministers with a recommendation for action and is placed in the libraries of the Houses of Parliament when the legislation is presented to Parliament.
- **Review and evaluation.** Arrangements should be specified in the final RIA as to how the policy will be reviewed and evaluated once it has been implemented. A well prepared RIA and the information it contains should provide a good baseline for review and evaluation, and hence future consideration of whether regulation is still needed and in what form, so completing the policy cycle.

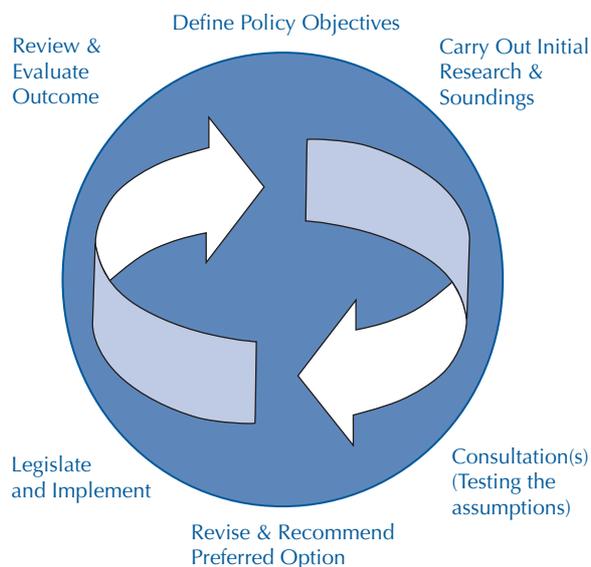
### 3 The key principles of modern policy making

A policy making process which is fully effective should

- **Be forward looking** - take a long term view of the likely impact of policy
- **Be outward looking** - take account of factors in the national, European and international situation
- **Be innovative and creative** - be willing to question established ways of dealing with things and encourage new ideas
- **Use best available evidence** - use a wide range of sources and involve stakeholders at an early stage
- **Be inclusive** - be fair to all people directly or indirectly affected by it and take account of its impact more widely
- **Be joined up** - take a holistic view looking beyond institutional boundaries to the Government's strategic objectives
- **Evaluate outcomes** - build systematic evaluation of early outcomes into the policy process
- **Review existing policy** - to ensure it continues to deal with the problems it was designed to address
- **Learn from experience** - about what works and what does not work

Source: Cabinet Office, September 1999, Professional policy making for the Twenty First Century.

### 4 The role of RIAs in the stages of policy making



Source: National Audit Office.

## 5 The Better Regulation Task Force Principles of Good Regulation

- **Proportionality** - to the risk
- **Transparency** - open, simple and user friendly
- **Consistency** - predictable, so that people know where they stand
- **Targeting** - focused on the problem, with minimal side effects
- **Accountability** - to Ministers and Parliament, to users and the public

*Source: Better Regulation Task Force, December 1997 (revised October 2000), Principles of Good Regulation.*

## RIAs should help Government meet the principles of good regulation

1.24 The ultimate test of RIAs is that they deliver better regulation than would otherwise be the case, to the extent that regulation has sometimes in the past not been well thought through. One of the first outputs from the Better Regulation Task Force was a statement of principles of good regulation (**Figure 5**), drawing on the earlier work of the Organisation for Economic Co-operation and Development (paragraph 1.13 above), against which the quality of regulation can be measured.

1.25 RIAs do not by themselves ensure that regulation achieves the Task Force's definition, as the impact of regulation can only really be known when it has been implemented (if then). They can, however, help improve regulation so that it is more likely to be effective according to the Task Force's principles, as follows:

- **Proportionality** - by comparing the benefits with the costs.
- **Transparency** - by explaining why regulation is needed and how those affected by the regulation are expected to comply in broad terms.
- **Consistency** - by ensuring that regulation does not have disproportionate effects on some sectors and is consistent with other relevant Government regulation.
- **Targeting** - by identifying a range of options, including non-regulatory ones, policy makers are being encouraged to demonstrate they have thought widely about possible solutions and, in the words of the Better Regulation Task Force, have not assumed that "anything less than direct Government regulation is in fact less effective than such regulation".
- **Accountability** - by facilitating Ministerial and, as appropriate, parliamentary scrutiny of regulation and subsequent evaluation of whether regulation has achieved what was intended in the RIA.

## We examined what could be learned from experience of RIAs

1.26 The National Audit Office have in recent years produced a number of reports on the effectiveness of regulation by government bodies and regulators. We have also produced several reports on the implementation of the Modernising Government agenda. As regulatory impact assessments combine elements of both and are a key element in securing effective policy making and good regulation it was natural that we should examine how they are being used. We examined:

- a) the key features of RIAs that have added value to policy making and hence contributed to good regulation; and
- b) what more could be done to improve the way RIAs are prepared.

1.27 Appendix 6 describes our methodology. The main features were:

- a) examination of a sample of some 23 regulatory impact assessments from 13 departments and agencies, designed to track the process from the initial policy proposal through or close to final Ministerial agreement;
- b) interviews with those involved in the regulatory impact assessment process in the Cabinet Office Regulatory Impact Unit, the Small Business Service and the departments from which the sample was selected;
- c) consultation with interested parties.

1.28 We are grateful for the advice and support we received from the expert advisory panel we established for this examination, and the departments and agencies involved.

# Part 2

Starting early, consulting effectively and costing appropriately, contribute most to the RIA process

2.1 In compiling our case studies we looked for examples where the RIA had helped to add value to policy making. We found many examples where the RIA and the process for preparing it had added value. What became clear was that it is the process of preparing and consulting on the RIA that added value, with the document providing the framework for the process. Where this process was effective it tended to be characterised by:

- Starting the RIA process at a sufficiently early stage;
- Consulting effectively with all interested parties; and
- Analysing appropriately the costs and benefits of the proposal.

These features overlap. For instance, starting early contributes to better consultation and cost-benefit analysis, and good consultation leads to more informed cost-benefit analysis.

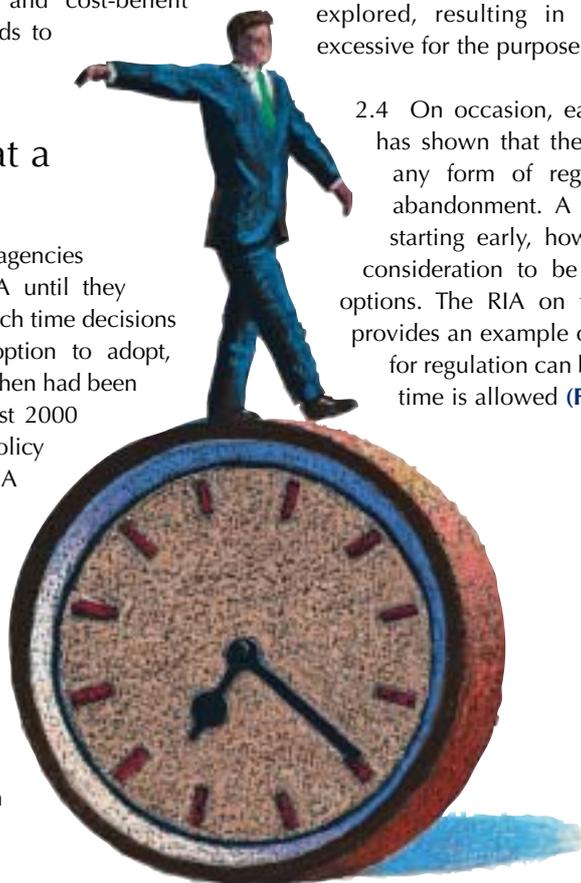
## Starting the RIA process at a sufficiently early stage

2.2 Until August 2000 departments and agencies were not required to prepare a RIA until they reached the consultation stage by which time decisions had often been taken on which option to adopt, although some RIAs prepared before then had been started at an earlier stage. The August 2000 guidance emphasises the value of policy makers preparing an initial RIA when the approach to policy implementation is still being developed. Our experience of the RIA process showed that starting early does increase the scope for the RIA to add value by helping to influence policy direction, improve the quality of consultation, inform discussions on European Union legislation and identify the information and skills policy makers need to find.

## Starting early helps influence the development and choice of policy options

2.3 The purpose of the RIA is to help deliver better regulation by informing policy making. This is more likely if the first draft of the RIA is prepared before policy makers have narrowed down the options too far. Otherwise, as was the case for many RIAs we saw (the first draft of which had been prepared before August 2000), consideration of alternatives to the chosen approach tends not to be well developed. Several bodies we consulted have complained about cases where RIAs were developed only as the legislation was being drafted and after the strategy was decided. In one case, for instance, a trade association<sup>24</sup> considered that less radical but potentially equally effective ways of securing the Government's objectives were not explored, resulting in regulation that may prove excessive for the purpose.

2.4 On occasion, early consideration of the RIA has shown that there is an inadequate case for any form of regulation and has led to its abandonment. A more common benefit from starting early, however, is to enable informed consideration to be given to a wider range of options. The RIA on the private security industry provides an example of how better focused options for regulation can be developed where sufficient time is allowed (Figure 6).



## Starting consultation early increases the likelihood of it adding value

2.5 Consultation is more likely to add value if it starts early as it can help policy makers identify options, improve the analysis in the RIA, for example by testing the practicality of options, and have more time to explore non-regulatory options. Where, the first general consultation accompanies draft legislation, respondents may conclude that the chance to influence policy has passed and to focus on the detail of the legislation rather than the assumptions in the RIA. In the case of the RIA on motor salvage regulation, however, the Home Office recognised they needed substantial input from others and set up a task group to help develop the policy (Figure 7). In the case of the contained use of genetically modified organisms RIA the Health and Safety Executive shared (by means of a questionnaire) their initial thinking with 24 organisations affected by the proposals. The responses provided the Health and Safety Executive with valuable information to include in the RIA, for example on how much time businesses considered they would save under different aspects of the proposals.

## Starting early can inform discussions on European Union legislation

2.6 About 40 per cent of the RIAs prepared in the last two years related to the implementation in the UK of legislation originating in the European Union. Since 1999, Cabinet Office guidance has indicated that producing a RIA should be considered while negotiations on the form of the European legislation are still in hand. For European Directives pre-dating this, many RIAs had been produced only for the transposition into UK law. While a RIA at this stage can potentially add value if the European legislation provides discretion as to how Member States implement the provisions, it is of less value where there is little discretion. Preparing an initial RIA when a regulatory proposal emerges from the European Commission can help inform the early contacts by Ministers and departmental officials with the Commission, as Figure 8 illustrates.

2.7 That an early RIA can contribute to lighter touch regulation was also demonstrated by the Department of Trade and Industry's preparation of a RIA while negotiations were still in progress on the end of life vehicles Directive. This contributed to a change in the original proposals, resulting in a reduction in expected implementation costs of some £140 million a year.

## 6 Developing better focused options for regulating the private security industry

*Department: Home Office*

The Department wished to regulate the private security industry to remove criminal elements and protect vulnerable people. In explaining the problem they intended to tackle, the Department gave examples that included a study of door supervisors at clubs in Northumbria. This reported that 25 supervisors had between them 54 convictions for violence including murder, manslaughter, arson, threats to kill and kidnapping.

The Department prepared a RIA to accompany a consultation white paper in March 1999, well before drafting of legislation. This had three options: do nothing; regulate only the manned guarding sector; or establish a framework which could be applied to any sector of the industry. The consultation document proposed to license alarm and CCTV installers and to include other groups in due course, including locksmiths.

In response to concerns raised during consultation, further options were developed, one of which was chosen. It excluded alarm installers and locksmiths, groups not normally associated with high levels of criminality, from regulation because both the Small Business Service and the Better Regulation Task Force considered the costs of regulating these groups was disproportionate to the benefits.

*Sources: Home Office, March 1999, The Government's Proposals for Regulation of the Private Security Industry in England and Wales, Cm 4254. Better Regulation Task Force, October 2000, Annual Report 1999-2000.*

## 7 Establishing a task group made up of interested parties to prepare the RIA on motor salvage regulation

*Department: Home Office*

When the Department wished to explore the options for driving the criminal element out of the motor salvage industry, they recognised that, with the many different stakeholders involved and the many different factors to take into account, they could not develop the policy alone. They therefore set up a task group, with members from all the key sectors, to take the major role in the policy development and gathering of most of the costs and statistics and to draft the RIA. Subsequent consultation on the policy proposal that resulted gave no compelling reasons to revise the figures in the RIA. The group's work led to the motor salvage regulation provisions of the Vehicles (Crime) Act 2001 which are likely to come into force in early 2002.

## 8 Helping to inform negotiations on EU proposals: the proposed Directive on waste from electrical and electronic equipment

*Department: Trade and Industry*

In June 2000 the European Commission issued a proposal for a Directive on the waste from electrical and electronic equipment. The Department prepared a RIA and sent this out with a consultation document in August 2000. The Small Business Service, on their behalf, also started a focus group to identify the issues arising from the proposal affecting small businesses.

On the basis of responses to consultation, the Department identified several options that would minimise disproportionate burdens on small businesses. These options have been used to inform United Kingdom Government negotiations on the Directive.

2.8 The European Commission have their own impact assessment system, known as the *fiche d'impact*. It aims to analyse the impact of a legislative proposal, particularly on small and medium-sized enterprises. Cabinet Office guidance advises Departments to encourage the Commission to begin preparing a *fiche* early to ensure that the results shape the proposal. If a *fiche* is not produced, the guidance recommends that Departments consider assessing the likely impact of the proposal, using specialist expertise, if necessary. Departments should share the findings of their own RIAs with the Commission and challenge Commission figures when necessary.<sup>25</sup>

### Starting early helps policy makers identify information and skills needed

2.9 Failure to recognise gaps in information and skills until a late stage may leave policy teams with insufficient time to address them properly, and can inhibit appraisal of the impact of the options being considered. Starting RIAs early gives policy makers time to reflect on where there might be potential difficulties in collecting information, weaknesses in their assumptions and gaps in their knowledge. It can also help identify areas where additional or specialist advice might be needed, particularly in the calculation of costs and benefits. For example, starting the RIA on veterinary retailers' records early showed the team that they did not have the knowledge to calculate the cost of their proposals. They were able to fill this gap by asking veterinary practices and pharmacists in time to inform the later stages of consultation.

### Consulting effectively with all interested parties

2.10 The Cabinet Office guidance indicates that a RIA should accompany any public consultation on a regulatory proposal. Although knowledgeable in their field, policy makers are not necessarily expert on the implications for business, charities and the voluntary sector. However good their grasp of the issues to be addressed and the available options, policy makers cannot expect to be able to get it all right first time or



think of all the unintended consequences. They need to be sure that what they are proposing is workable and proportionate, that there are no significant omissions in their work and that they understand the implications for those being regulated on a day to day basis at working level. This type of information can often only be provided by those affected by the proposals. Consultation, and acting appropriately on the responses, is therefore key to successful policy making.

2.11 Our examination has shown that consultation has added value in a number of cases, in particular by helping policy makers to develop their understanding of the likely impact of regulation and providing a small business perspective. In this way regulation can be improved and have a lighter touch or be better targeted. It can also help others understand the proposals and facilitate subsequent evaluation.

### Consulting effectively can help clarify the impact of regulation

2.12 Consultation provides policy makers with the opportunity to develop their assumptions and expose them for consideration, comment, and challenge. In developing policy and in drafting RIAs, policy makers have to make assumptions about:

- **risk** - the probability of an event leading to a particular outcome whether it be undesirable or harmful may be based on scientific evidence but in using that evidence policy makers must invariably make assumptions;
- **costs and benefits** - in estimating costs and benefits, policy makers make assumptions about the impact on organisational procedures and practices;
- **compliance** - passing legislation does not automatically result in compliance. In assessing the effectiveness of regulation policy makers consider what encourages and discourages compliance and make assumptions about the level of compliance.

2.13 There is more to consultation than issuing a formal consultation document. Persuading businesses and other interested parties to comment on the likely impact of something that is yet to happen is a challenge. It also requires careful thought about matching the most appropriate method of consultation with the information needed, for example face to face interviews, focus groups, and surveys. There is limited information available as to what works in which circumstances although policy makers can draw on the experience of the Cabinet Office Consultation Policy Team.<sup>26</sup> The Department of Trade and Industry have commissioned the National Consumer Council to undertake a project on best practice on consumer representation.

2.14 The quantity and quality of feedback on the RIA varied considerably between the RIAs we examined, and was influenced by the approach taken to consultation. Responses to general requests for information sometimes provided limited data about the impact of regulatory options, as either they were not quantified, or if they were, not consistently. The Consultation Unit of the Department for Education and Skills has found through experience that a short questionnaire accompanying the RIA can help focus respondents' thinking on key themes. Ideally, this would have a balance of closed and open questions to gather quantitative and qualitative information. In the consultation package for the lawful business practice regulations, the Department of Trade and Industry policy team posed a series of questions to guide respondents (**Figure 9**).

2.15 Direct approaches to individual businesses sometimes proved more successful and **Figure 10** shows how in one case consultation contributed to reduced implementation costs. Another example of well thought through consultation was provided by the RIA on the all-employee share plan. In this case, the Inland Revenue sent out consultation papers, held meetings and road-shows, published articles, used focus groups and an advisory group, in order to ensure that representative views were obtained from the wide range of interested parties.

2.16 In our examination of RIAs we often found that departments lacked information on the costs that regulated businesses would incur and sensibly used consultation to develop the figures in the RIA. In seeking to fill these gaps, policy makers may on occasion need to be alert to a risk that some respondents overstate costs in order to deter a department from pursuing a particular line. While consultation on the RIA on stakeholder pensions led to changes in the regulatory proposal in the

final RIA and the subsequent legislation, such as exempting employers with under five employees from providing access to such pensions, the Department<sup>27</sup> did not accept unquestioningly everything that was put to them. They considered different options on charges before making a decision. They checked some respondents' views that the one per cent limit on charges would discourage pensions providers from offering stakeholder pensions. The Department found that a number of "pre-stakeholder" schemes were being set up with charges significantly below one per cent. The Department opted for the one per cent limit and were vindicated by the outcome. By September 2001, forty-eight stakeholder pension schemes had been registered.

## 9 Helping those consulted to respond effectively: regulating lawful business practice

*Department: Trade and Industry*

The Telecommunications (Lawful Business Practice)(Interception of Communications) Regulations 2000 authorised certain interceptions of telecommunications which would otherwise be prohibited by the Regulation of Investigatory Powers Act 2000. In going out to consultation, the Department were particularly interested in the views of respondents on specific elements of their preferred option, and therefore included a separate section in the consultation package headed up "Questions for Consultees". This section presented the rationale behind aspects of the draft regulations and asked eight questions on them. There were also two questions about assumptions in the RIA on costs to business generally and to small businesses in particular, and a request for views on the likely compliance costs. This approach proved successful, as many of those replying used the questions as a framework for their comments.

## 10 Obtaining cost information for the retailers' records RIA

*Executive Agency: Veterinary Medicines Directorate, an Agency of the Department for Environment, Food and Rural Affairs, (formerly of the Ministry of Agriculture, Fisheries and Food)*

When the Agency sought to cost the options for regulating retailers' records, they needed a detailed knowledge of day to day record keeping within veterinary practices and pharmacies. They did not have this knowledge nor any means of estimating the costs. They wrote, therefore, to three veterinary practices and two agricultural pharmacists asking for the cost of complying with their draft regulation. They also obtained figures for the number of businesses affected from the two main representative bodies.

The Agency recognised the problems of relying on others to supply cost data. They carried out some simple analyses to test the validity of the data such as comparing the information between organisations and checking with suppliers on the reasonableness of an estimate for capital equipment costs.

The information obtained enabled the Agency to present costed options in a revised RIA that showed that if the regulation went further than was necessary to implement the Directive, they would increase business costs by some £7 million a year.

26 Their guidance includes: Cabinet Office, November 2000, Code of Practice on Written Consultation ([www.cabinet-office.gov.uk/servicefirst/index/consultation.htm](http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm)); and Home Office, May 2000, Consultation and Policy Appraisal: A Code of Good Practice - Compact on Relations between Government and the Voluntary and Community Sector in England.

27 The Department of Social Security, now the Department for Work and Pensions.

## Consulting effectively enables departments to obtain a small business perspective

2.17 The concerns about the disproportionate burden of regulation on the smallest firms, have resulted in the Small Business Service being given the role in advising on RIAs outlined in paragraph 1.19. The Service's "Think Small First" Initiative, launched in January 2001, states that "Departments should... think first about the implications [of regulation] for small businesses rather than assume all businesses will cope".<sup>28</sup> Small businesses do not always have the time or the resources to respond to public consultation exercises,<sup>29</sup> and therefore one way in which policy makers can reflect the real costs of new regulations on them including the time and opportunity costs, is by undertaking a small business litmus test. This involves seeking the views of representative small businesses about their views on the impact of the proposals.

2.18 Many of the RIAs we examined included a litmus test. The example in **Figure 11** shows how the small business perspective identified some unintended consequences of the regulatory proposal.

2.19 There has been little formal guidance explaining what departments should do to make the litmus test effective. As a result, we found a wide variation in what departments had done and how they had presented the results. In the case of the Proposed EC Directive on waste from electrical and electronic equipment (**Figure 8**) the policy makers used the Small Business Service to collect and analyse the information. This added value by contributing to a decision to seek an exemption for some

### 11 Consulting small business to improve motor salvage regulation

Department: Home Office

The Department undertook the litmus test consultation by writing to three small businesses (nominated by the Federation of Small Businesses and a trade association). This produced responses that resulted in improvements to the regulations:

- One business drew attention to the existence of a Local Act that imposed some similar regulatory requirements. To avoid duplication, a power was put in the Vehicles (Crime) Act 2001 enabling the Secretary of State to repeal Local Acts which duplicated provisions.
- Two businesses were concerned about undertaking identification checks of purchasers and vendors of vehicles to be salvaged. There were potential problems in carrying out identity checks when the vehicle was delivered by a third party or collected by the salvage operator. Policy makers accepted that future guidance should cover alternative methods of delivery.

small businesses. Other approaches to small business consultation that added value included:

- For the RIA on the marketing of residential property, the Department of the Environment, Transport and the Regions<sup>30</sup> used consultants to increase participants' confidence in the consultation. Participants were selected because of the diversity of their opinions, and pre-identified issues facilitated informed interviews and led to in-depth exploration of their views and concerns.
- Analysing the impact of the proposals for stakeholder pensions showed that 60-70 per cent of employers employ less than five people, although 80-90 per cent of employees work for employers with five or more staff. Following extensive consultation, the Department<sup>31</sup> concluded that exempting employers with under five staff (subject to review after three years) from the employer access requirement would avoid imposing an additional burden on the smallest employers who may be least equipped to bear it.

2.20 The Small Business Service recognise the gap in the guidance on small business consultation and have been working towards filling it. Until such time as a guide is produced, the Service are encouraging departments through their "aide memoire" to policy makers on their website,<sup>32</sup> and through their regular departmental contacts to speak to the Service for advice and assistance on litmus tests.

2.21 Small and medium sized charities and voluntary organisations face similar issues to those of small business, including not always having the time or the resources to devote to responding to public consultations (no equivalent exists to the small business litmus test). In November 1998, a Compact on Relations between the Government and the Voluntary and Community Sector in England was established. This is underpinned by codes of practice, including one on consultation and policy appraisal for departments and voluntary organisations.<sup>33</sup> The National Council for Voluntary Organisations told us that more detailed guidance is needed for policy makers who do not deal with voluntary organisations regularly. This could cover, for example, recognising when an impact is likely to occur, and who and how best to consult with voluntary organisations.

28 Small Business Service, January 2001, *Think Small First*.

29 In the opinion of the Institute of Directors, the Confederation of British Industry and the British Chambers of Commerce.

30 Now the Department of Transport, Local Government and the Regions.

31 Then the Department of Social Security, now the Department for Work and Pensions.

32 Small Business Service, *How we can work together: aide memoire for policy making officials* ([www.sbs.gov.uk/regulations/aidememoir.asp](http://www.sbs.gov.uk/regulations/aidememoir.asp)).

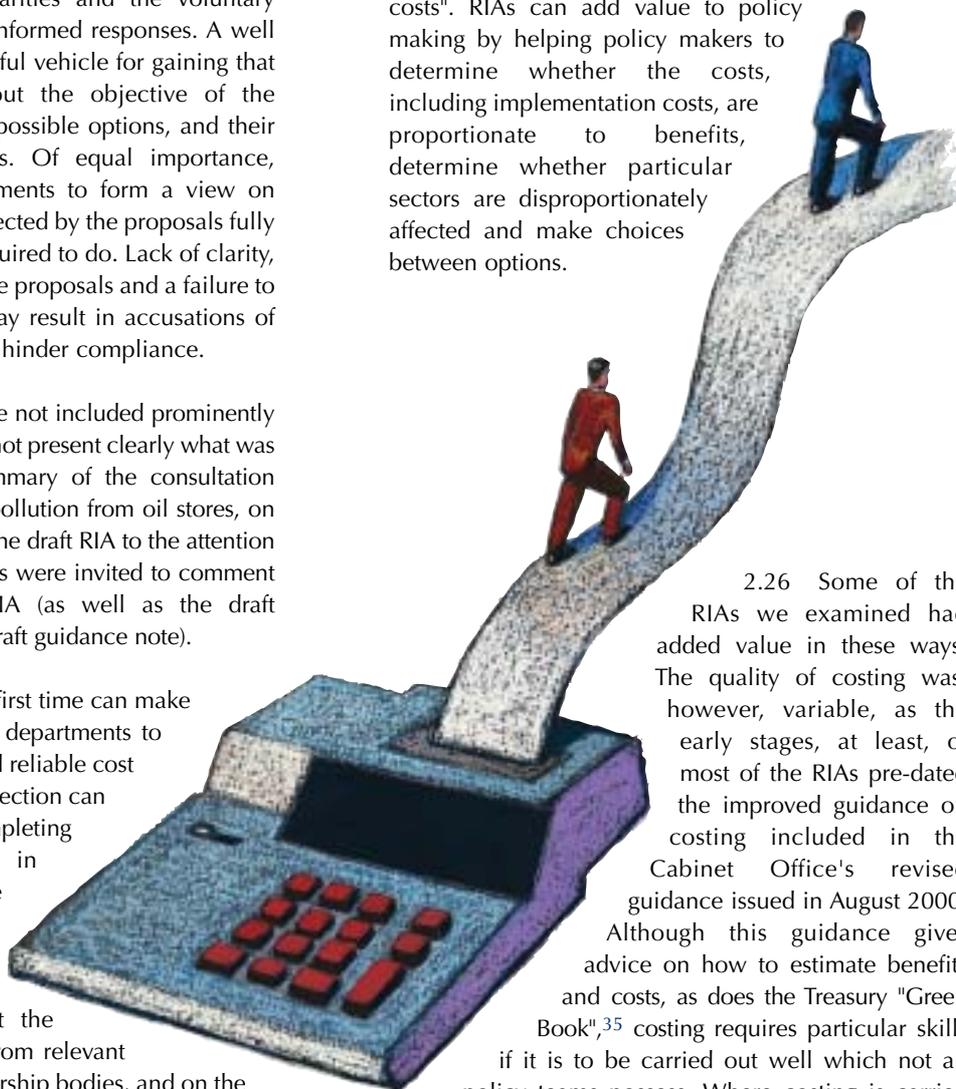
33 Home Office, May 2000, *Consultation and Policy Appraisal: A Code of Good Practice - Compact on Relations between Government and the Voluntary and Community Sector in England*.

## Consulting effectively can help others understand the proposals and facilitate subsequent evaluation

- 2.22 A good understanding of a regulatory proposal is essential for businesses, charities and the voluntary sector to be able to submit informed responses. A well presented RIA provides a useful vehicle for gaining that understanding as it sets out the objective of the department's proposals, the possible options, and their potential costs and benefits. Of equal importance, consultation enables departments to form a view on whether those likely to be affected by the proposals fully understand what they are required to do. Lack of clarity, confusion about aspects of the proposals and a failure to understand the regulation may result in accusations of poor regulation and possibly hinder compliance.
- 2.23 Some RIAs we examined were not included prominently in consultation papers or did not present clearly what was intended. The executive summary of the consultation document on the control of pollution from oil stores, on the other hand, clearly drew the draft RIA to the attention of those consulted. Consultees were invited to comment specifically on the draft RIA (as well as the draft regulations, timing, and the draft guidance note).
- 2.24 Regulating in an area for the first time can make it difficult and expensive for departments to collect sufficient, relevant and reliable cost data. However, such data collection can produce benefits beyond completing the RIA. For example, in preparing the RIA on the licensing of butchers' shops in England, the Department of Health obtained information about the number of butchers' shops from relevant trade associations and sponsorship bodies, and on the cost of training from three organisations that provide relevant training courses. This information should permit the Department<sup>34</sup> to monitor the implementation of the regulations, and to assess their effectiveness in the future.

## Analysing appropriately the costs and benefits of the proposal

- 2.25 Cabinet Office guidance states that "there is an expectation that benefits will almost always exceed costs". RIAs can add value to policy making by helping policy makers to determine whether the costs, including implementation costs, are proportionate to benefits, determine whether particular sectors are disproportionately affected and make choices between options.



- 2.26 Some of the RIAs we examined had added value in these ways. The quality of costing was, however, variable, as the early stages, at least, of most of the RIAs pre-dated the improved guidance on costing included in the Cabinet Office's revised guidance issued in August 2000. Although this guidance gives advice on how to estimate benefits and costs, as does the Treasury "Green Book",<sup>35</sup> costing requires particular skills if it is to be carried out well which not all policy teams possess. Where costing is carried out by individuals with no or little experience, they can, as we found, unknowingly miss opportunities to improve the quality of their figures and hence the quality of the RIA.

- 2.27 Many more sophisticated techniques are available for estimating costs and benefits although they can be expensive to employ, particularly where surveys are involved, time consuming to carry out or unnecessarily intrusive on those organisations supplying them. Departments therefore need to decide on the proportionate level of analysis, and to seek better information as the options in the RIA become clearer.

<sup>34</sup> The function has since transferred to the Food Standards Agency.

<sup>35</sup> Her Majesty's Treasury, 1997, *The Green Book - Appraisal and Evaluation in Central Government*.

## Determining whether costs are proportionate to benefits

2.28 With most regulatory proposals, there is a trade off between the benefits from addressing the issue or problems identified and the associated costs, with the RIA demonstrating the balance between the two. **Figure 12** shows how costs and benefits were compared in one RIA we examined.

### Evaluating costs

2.29 For all the RIAs we examined, policy makers estimated the cost of proposals to those affected. Most sought to estimate the cost to a "typical" business of compliance with the proposals, such as training or changing business processes, and then extrapolated the cost over all businesses affected, to arrive at a total cost estimate. The RIA prepared by the Department of Trade and Industry for informing the negotiations on the European Commission's end of life vehicles Directive was able to demonstrate that the proposals would cost the UK £520 million a year. The Department were able to suggest changes which reduced the costs to £380 million a year.

2.30 Policy makers have been advised since August 2000 to show the policy costs of proposals, that is the direct costs of regulation, for instance the provision of fire doors, separately from implementation costs, that is administrative costs such as reporting on the provision of fire doors. This enables policy makers to show the balance between costs directly attributable to the policy goal, and those associated with administering the policy. While policy and implementation costs may not always be easy to differentiate, the requirement to show them separately should encourage policy makers to think carefully about how compliance with the policy is to be secured and enforced, and the costs arising from the approach adopted. It can also highlight unintended consequences of the proposals, and requires departments to think about whether the benefits of certain elements of their proposals can be justified.

2.31 As the early stages, at least, of most of the RIAs we examined pre-dated the August 2000 guidance many of them did not show implementation costs separately from policy costs. The value of so doing was demonstrated by the RIA for the national minimum wage. For this RIA the Department of Trade and Industry calculated employer administration costs separately from the intended and very large costs of raising pay rates. The RIA therefore showed the costs of requiring employers to produce a national minimum wage statement on every payslip, and to keep specific records. It subsequently became clear that such requirements on employers added little value and the requirement was dropped, avoiding one-off costs to business of around £85 million, and potential recurring costs of around £51 million a year (Appendix 5).

## 12 Costing the contained use of genetically modified organisms regulations

### Health and Safety Executive

Organisations undertaking activities using genetically modified organisms are required to notify the Executive. The proposal was to revise the details of this requirement.

**Estimating benefits to businesses:** The main aim of the proposal was to simplify the notification process, for example by reducing the time necessary to notify activities, and to exempt some activities from the process. The proposal was expected to result in time and cost savings to the organisations affected. The Executive calculated projected benefits by estimating how much time the proposals would save those affected, attaching a monetary value to the time saved. Although the Executive recognised that some benefits were unquantifiable, clear identification of the different types of benefits allowed them to quantify others.

**Estimating costs to businesses:** Among other things, the proposal required those affected to provide training for employees, to familiarise themselves with the requirements. The Executive estimated the number of employees who would need to be trained at each organisation affected by the proposals. They then estimated the cost of training per organisation, including that of staff time, and extrapolated the total cost over all organisations. They also estimated other costs arising from the proposals, for example the costs to themselves of administering and monitoring the proposals.

**Comparing costs with benefits:** In order to compare costs and benefits occurring at different points in time, the Executive discounted costs and benefits, to provide a common basis for comparison, thus making it easier to form a judgement on whether benefits justified the costs. Reflecting the uncertainty of the estimates, they included a range of likely costs and benefits. The Executive then appraised the effect on the cost-benefit balance, depending on whether the actual figures were at the lower or the upper ends of the ranges.

### Evaluating benefits

2.32 Evaluating benefits proved much more challenging for policy makers. As the Cabinet Office guidance recognises, quantifying benefits, and expressing them in monetary terms, is often difficult and can be a highly subjective procedure. This was evident from our case studies, where we found that around half the RIAs had included quantified benefits, for instance see **Figure 12** above, although not all of these had been able to express the benefits in monetary terms. So long as there was a clear analysis of what types of benefit were expected, failure to quantify did not matter in those cases where costs were self-evidently small compared with the benefits. But not quantifying benefits may result in an unbalanced policy proposal where the known costs appear to exceed the unknown benefits. It can also, as we saw in a few cases, lead to opposition to the proposal on the grounds that it has not been justified, which can lead to delay if further consultation becomes necessary.

### 13 Costing showed the disproportionate affect of removing exemptions on pesticides training

*Agency: Pesticides Safety Directorate, an Executive Agency of the Department for Environment, Food and Rural Affairs (formerly the Ministry of Agriculture, Fisheries and Food)*

Ministers wished to extend the statutory training requirements for farmers, forestry and local authority workers in the use of pesticides by removing exemptions from training given to those actively using pesticides when the original legislation was passed. In February 1999, the Agency issued a consultation document on proposed amendments to pesticides regulations. The document had a draft RIA attached which outlined four options (do nothing, amend code of practice, remove exemptions, remove exemptions except for workers over 60).

The RIA estimated the total costs at £102.5 million or £72.5 million, depending on whether an age exemption was retained. The costs would be shared equally between agricultural, forestry and local authority employers. The RIA demonstrated this was extremely costly. Analysis of Health and Safety records showed that of the 55 incidents in 1998-99 where training and competence was relevant, only 12 involved workers with exemptions. So regulation was abandoned and it was decided to adopt a non-regulatory option, in the form of revisions to the training syllabus and a code of practice.

- 2.33 The August 2000 Cabinet Office guidance includes much more advice than the previous guidance on techniques available for quantifying and valuing benefits, including survey techniques to establish valuation by willingness to pay or accept. None of the RIAs that we examined used such techniques, although many preceded the latest guidance. In a few cases this materially weakened the quality of the analysis and the case for regulation. In other cases such techniques would not have been appropriate given the costs of using them.

## Determining whether particular sectors are disproportionately affected

- 2.34 In quantifying costs and benefits, policy makers need to be aware of the risk that some types of businesses, notably small businesses may be disproportionately affected, for example by the costs of training employees to ensure that the employer complies with the proposals. Quantifying the costs and benefits applicable to different sectors of those being regulated allows departments to highlight where particular groups may be put at a disadvantage or unnecessarily burdened. In one case we examined (**Figure 13**), the RIA showed the considerable cost of removing specific exemptions.

## Helping to make choices between options

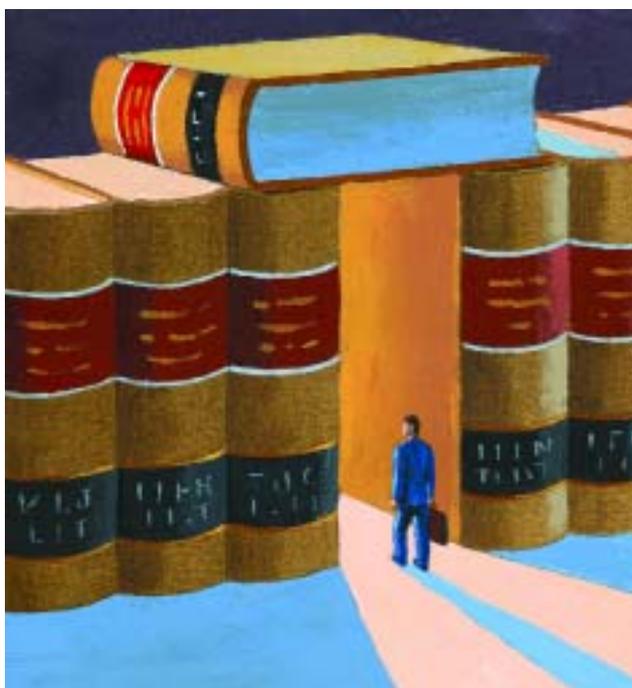
- 2.35 Cost benefit analysis can add value by helping policy makers choose from the available options. Many RIAs we examined did not quantify alternative options, and advanced reasons of practicality or generalised assertions about likely burdens or ineffectiveness to justify the final choice. In many cases, it seemed unlikely that any alternative option would have delivered the policy objectives in a more proportionate manner. Quantifying options expose weaknesses in such assumptions and hence add value. For instance, in the case of the proposed licensing of butchers' shops in England, the Department of Health estimated the impact associated with two options, a proposal to target the regulation only on the identified risk, and a proposal to license on a wider basis. In doing so, they identified the option with the better balance of costs and benefits, which also better addressed the risk.
- 2.36 In choosing between options, decision takers have to balance many different factors. For instance, many proposals costs and benefits occur at different points in time - for example, businesses may incur costs immediately in order to comply with requirements, but the benefits to consumers, employees or the environment may not begin until later. In such cases, the costs and benefits need to be discounted over time as in the example at **Figure 12**.

# Part 3

There is much good practice in preparing regulatory impact assessments and some room for improvement

3.1 This part of the report explains how guidance from the Cabinet Office and others helps departments produce good RIAs, how departments could improve the arrangements for preparing RIAs and how they could improve their presentation and accessibility, assisted by further guidance from the Cabinet Office.

## Guidance and support from the Cabinet Office and others helps policy makers produce good RIAs



### Good quality guidance is important

3.2 RIAs place greater demands than before on policy makers in terms of the depth, breadth and rigour of the analysis needed to support the preparation of the document. RIAs that contribute to policy development based on an informed assessment of risk, costs and benefits and with a full consideration of the available options necessitate a continuing cultural change within departments. The provision of readily understandable

and comprehensive guidance that helps policy makers to make this change is therefore important. This is particularly so given the number of policy branches potentially responsible for regulatory measures, and the fairly rapid movement in staff within the Civil Service. Many of the policy makers preparing the RIAs we examined had little experience in preparing RIAs, given the relative newness of the tool.

3.3 The Cabinet Office provided guidance, "The Better Regulation Guide" and "The Regulatory Appraisal Guide" when RIAs were introduced. In August 2000 they issued revised guidance, "Good Policy Making: A Guide to Regulatory Impact Assessments". The Guide is shorter than the two previous booklets and places greater emphasis on: identifying non-regulatory options; making clear the benefits of proposals; simpler and fairer means of compliance; provision of clear guidance; and small business impacts. It gives the nine key elements of a RIA and a step-by-step guide to the RIA process. It also includes a section on concepts and techniques in identifying and estimating benefits and costs, and examples of RIAs.

3.4 For those involved in negotiating and implementing European legislation, the Regulatory Impact Unit's "Guide to Better European Regulation", is intended as a practical reference to help UK Ministers and Government officials to follow the principles of good regulation. The main guidance is also complemented by an "aide-memoire" produced by the Small Business Service.

3.5 Policy makers we spoke to found both sets of guidance essential reading and helpful in encouraging a disciplined approach and use of a standard framework. They should, however, benefit from more examples of best practice in particular on the distinction between policy and implementation costs and on the small business litmus test, and from having the guidance relevant to RIAs accessible from one place. Following the guidance should minimise the risk of omitting key elements of the process or information important for decision making. It should also result in a document with a logical structure that promotes transparency, by demonstrating all key factors have been considered and by making it easy for those outside the department to

read and understand the reasoning behind decisions taken. The guidance is not, however, overly prescriptive, nor can it cover every eventuality given the diverse range of regulatory proposals across the whole of Government. Policy makers recognise that they need to exercise judgement in deciding how best to develop RIAs on a case by case basis within the framework provided by the guidance.

- 3.6 The Regulatory Impact Unit's guidance compares well with that produced by other countries, where policy makers follow arrangements similar to RIAs (Figure 14). All the guidance we examined encourages broadly similar formats and content. In the case of Australian Regulatory Impact Statements, this results in documents with a similar structure to our case examples. The guidance produced in Australia additionally provides a flowchart to assist policy makers in the planning and timing of key activities, while several countries gave within the guidance more details on alternatives to regulation.
- 3.7 Several departments and agencies supplement the Cabinet Office guidance with more specific guidance of their own tailored to their particular circumstances, for instance the Health and Safety Executive's guide for policy makers on how to produce a RIA. The Department for Education and Skills<sup>36</sup> have developed a policy makers' web site which includes examples of good practice and lessons learnt in policy development and implementation. Examples will include lessons learnt from undertaking RIAs. Guidance is available from a range of other sources such as the guidance on the use of scientific advice in policy making issued by the Department of Trade and Industry.<sup>37</sup> Advice is also available in the Better Regulation Task Force reports.

#### 14 Examples of overseas guidance on arrangements similar to RIAs

- "A Guide to Regulation" produced by the Australian Office of Regulation Review to assist Commonwealth departments and agencies in their development of Regulation Impact Statements.
- "A Guide to Preparing Regulatory Impact Statements" published by the Quality of Regulation team of the New Zealand Ministry of Commerce.
- "Regulatory Impact Statement Guide" from the British Columbian Ministry of Finance and Corporate Relations.

3.8 Policy makers often need advice on individual RIAs and can seek advice from:

- Departmental regulatory impact units - these typically provide advice on the RIA process rather than becoming involved in the technical issues, for example reviewing the first draft of the RIA and offering suggestions for improvement.
- Economists and other specialists in departments who can advise on technical issues especially relating to the analysis and quantification of costs and benefits.
- The Cabinet Office Regulatory Impact Unit - for significant measures, the Unit can offer feedback on the content and presentation of individual assessments including input from their economists on technical aspects.
- Small Business Service - their main focus is on the impact on small businesses in particular the small business litmus test. They also provide feedback on the presentation of individual assessments.

*There is scope to learn from experience in preparing RIAs*

- 3.9 Effecting cultural change needs more than the provision of advice and so the Cabinet Office Regulatory Impact Unit has been undertaking a rolling programme of seminars and other initiatives to encourage good practice across departments. These have included workshops on the current version of the guidance and ways of addressing weaknesses in RIA arrangements. They have also developed a list of key issues to bear in mind when policy makers are considering a regulatory proposal and they are developing a web site to which policy makers can refer for examples of good RIAs.
- 3.10 The Modernising Government White Paper emphasises the importance of learning from experience: "*Government should regard policy making as a continuous learning process, not a series of one-off initiatives ... We will ensure that all policies and programmes are clearly specified and evaluated, and the lessons of success and failure are communicated and acted upon*".<sup>38</sup> Departments and agencies do not evaluate the development of RIAs as a matter of course thus missing the opportunity to learn lessons and to help policy makers coming new to RIAs avoid past mistakes.

<sup>36</sup> Formerly the Department for Education and Employment.

<sup>37</sup> Office of Science and Technology, March 1997 (updated July 2000), *Scientific Advice and Policy Making*.

<sup>38</sup> Cabinet Office, March 1999, *Modernising Government*, Cm 4310.

3.11 The Cabinet Office Regulatory Impact Unit does review many RIAs with a view to helping departments where appropriate. It intends to put its assessments of Department's overall compliance with guidance on a more formal and structured basis. Its counterparts in Australia report annually on compliance with Government's requirements and the Unit may find it useful to refer to this work in providing feedback to departments on the scope for improvement. The Better Regulation Task Force and Panel for Regulatory Accountability have also played a role in helping policy makers improve the policy analysis included in RIAs and develop better regulation (Figure 15).

## Policy makers could pay more attention to many aspects of preparing RIAs

3.12 It takes at least a year for most policy proposals to advance from the initial proposal through to legislation. In choosing our case examples we looked for examples where most if not all the stages in the process had been completed. As there were few such examples which had been started after the August 2000 Cabinet Office guidance, inevitably the early stages of most of our case examples pre-dated the August 2000 guidance. For each case study, we examined how well departments had complied with guidance and other good practice. In doing so we looked for examples of where policy makers had followed the guidance well, from which others could usefully learn. We found departments had broadly followed the steps for preparing a RIA and included the content expected by the Cabinet Office guidance.

### 15 Example of advice provided on the regulatory impact assessment on the private recruitment industry

*Department: Trade and Industry*

In May 1999 the Department circulated a RIA along with a consultation document proposing new regulations to develop existing minimum standards for the conduct of employment agencies and other businesses in the private recruitment industry. The objectives were to promote a flexible labour market underpinned by a framework of employment rights. The preferred option included a proposal to curtail an agency's ability to charge hirers a fee where workers transferred from the agency to permanent employment with the hirer.

The Better Regulation Task Force responded with an open letter to the Secretary of State welcoming the review of the existing regulations and endorsing the Department's objectives, but commenting that some of the proposals were disproportionate to the problem being addressed. The Task Force considered that it was not clear that the evidence of problems was sufficient to justify the proposed changes and that curtailment of fees for transfer to permanent employment could be particularly damaging to agencies and workers. They proposed alternative options and a modified version of one of these was ultimately adopted, after consultation with the industry.

3.13 We found examples of good practice in all our case studies with some exhibiting significantly more good practice than others. The skills and experience of departments appeared to be the major factor contributing to the quality of RIAs. For instance, the Health and Safety Executive have a history of robust policy analysis stemming from their need to maintain scientific technological expertise to underpin their work in policy development, standard setting and enforcement, thus providing policy makers with the necessary grounding to produce good RIAs. The remainder of this section describes how the RIAs we examined compared against the Regulatory Impact Unit's guidance, illustrated with examples of good practice, in a number of key ways:

- Preparing a RIA for all significant regulatory proposals;
- Assessing the risk of not regulating;
- Exploring a range of options;
- Looking at the wider picture;
- Considering and encouraging compliance;
- Evaluating regulation after implementation.

## RIAs should be prepared for all significant regulatory proposals

3.14 Cabinet Office guidance requires a RIA to be prepared whenever a regulatory proposal is expected to have an impact on business, charities or voluntary organisations unless the impact is negligible. It is, however, not necessarily clear when a proposal is being formulated whether there will be non-negligible impacts. In many cases, policy makers have prepared a RIA even though the impacts have proved to be minimal. Nearly one quarter of RIAs over the period 1999-2000 reported that proposals led to either net cost savings for firms, charities and the voluntary sector (not including any other wider benefits) or to negligible/zero costs. There were of course other measures implemented during this period with negligible/zero costs for which no RIA was produced. This does not mean that the RIAs represented wasted effort, as the process of consultation should have given those potentially affected by the legislation the opportunity to draw the policy makers' attention to unintended impacts.

- 3.15 On the other hand, it is not always clear whether secondary legislation that implements policy already subject to a RIA, needs a separate RIA. Business representatives have drawn our attention to legislation where no RIA was produced that they believe will have significant impacts or where alternative options could have been considered which would have been less intrusive.
- 3.16 Not all regulation results directly from legislation. Often legislation empowers government departments or regulators to achieve the legislative objectives through codes of practice, national standards or modifications to licences. These forms of regulation may nonetheless pose significant burdens on those being regulated. While the Cabinet Office guidance indicates that it may be useful to prepare a RIA in such circumstances, it is neither prescriptive nor specific. Whether a RIA is produced may not be determined by the significance of the proposal but by the nature of the enabling legislation. For instance, whereas the national standards for the regulation of day care and child minding in England accompanied secondary legislation and hence had a RIA, national standards for care homes for adults were enabled by earlier legislation and no separate RIA has been produced. The Health and Safety Executive have found it helpful to use the RIA principles in preparing guidance on non-legislative approaches.
- 3.17 Legislation that enables subsequent regulation can potentially specify the circumstances in which RIAs should be prepared thereafter. For instance, the Financial Services and Markets Act 2000 requires the Financial Services Authority to undertake cost benefit analyses of regulatory measures they bring forward. The Authority's analyses share many of the characteristics of

a RIA and have been welcomed by the industry for the way they have helped the transparency of regulation (Figure 16). There are no similar requirements for other arms length regulators, although the Better Regulation Task Force recommended in July 2001 that the economic regulators should be required to produce assessments of the costs and benefits for proposals with a significant impact on business activity.<sup>39</sup>

## Assessing the risk of not regulating

- 3.18 Regulation is commonly aimed at reducing the risk of events occurring that are harmful or damaging to the public or society. For instance the RIA for the Medicines (Aristolochia and Mu Tong etc) (Temporary Prohibition) Order 2000 addressed the serious risk of illness and death arising from using Aristolochia in herbal remedies. The Government recognise, however, that they are "often criticised for intervening too much to protect people from some risks, while failing to protect them sufficiently from others".<sup>40</sup>
- 3.19 The Cabinet Office guidance expects policy makers to articulate the problem and objectives of their proposals, and by identifying the hazard or situation which in particular circumstances can lead to harm, estimate the risk or probability that the harm occurs. By so doing, they can demonstrate why intervention is needed, focus on ways of keeping it to a minimum, and put the costs of intervention into perspective.
- 3.20 Each RIA we examined addressed the purpose and intended effect of the regulatory proposals, describing the issue requiring action in clear terms and explaining the objective of the proposals. Similarly, most RIAs described the risk of no action and who suffered as a

## 16 The approach of the Financial Services Authority to cost-benefit analysis

### *Financial Services Authority (the Authority)*

The Authority aims to deliver cost-effective regulation and its policy is that the costs and benefits of proposed policy options should be weighed up before a decision is taken upon which to adopt. The process of preparing a cost benefit analysis set out in the Authority's guidance is broadly similar to that for a regulatory impact assessment. There are, however, some interesting differences:

- As a regulator of competitive markets, the guidance stresses the importance of analysing the economic impacts of regulation. The role exercised by Departmental Regulatory Impact Units has been assigned to the Authority's central economics team who actively help policy makers analyse the economic impacts of regulation and are involved in policy making in an advisory role from an early stage.
- Its guidance makes it clear that even where there is no legal requirement to produce an analysis, the Authority will generally wish to carry out at least a preliminary analysis to reduce the possibility of making a policy error and to establish the scale of likely benefits.
- There is an explicit step in the process for deciding the scope and depth of the analysis of benefits, bearing in mind that there is a statutory requirement to estimate costs. This recognises that increasing the scope of the analysis increases the possibility of selecting the right option in a demonstrable manner, but requires time and effort. The emphasis is on undertaking sufficient analysis to the point needed to establish for each option the relative magnitude of the net benefits or the qualitative trade-offs involved rather than to the point of being able to estimate precisely the net benefits of each one. The analysis can cease once this point is reached.
- The Authority will from 2002 have to publish information on its performance against its statutory objectives, which include consideration of the principles of good regulation. It expects the cost benefit analysis to feed into its reporting on the proportionality and targeting of regulation, coupled with evaluation of how regulation has performed in practice.

<sup>39</sup> Better Regulation Task Force, July 2001. *Economic Regulators*.

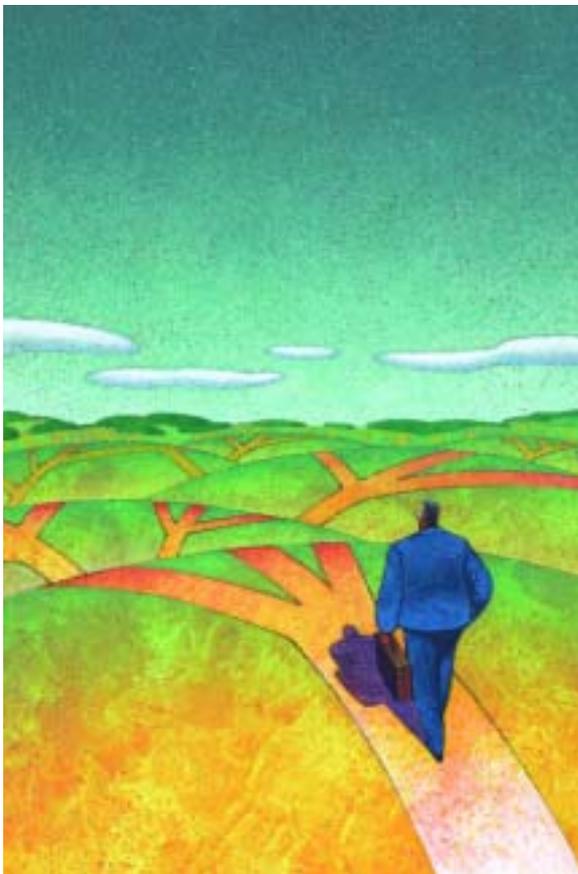
<sup>40</sup> Cabinet Office, March 1999, *Modernising Government*, Cm 4310.

result, but few quantified that risk and several were vague about the extent of the risk being addressed. This effectively meant that the 'do nothing' option in the RIA could not readily be compared with other options. The RIA on the proposed European Directive to protect workers from risks associated with exposure to vibration did, however, provide a good example of explaining and quantifying risk (Figure 17).

3.21 It may be difficult, sometimes impossible, to quantify risk. In these circumstances policy makers need to make the best use of the quantitative and qualitative data that is available, such as in the RIA for the amendments to the building regulations in respect of fire safety. Figure 18 shows how the Department of Transport, Local Government and the Regions<sup>41</sup> presented the need for an amendment for raised storage areas.

### Exploring a range of options

3.22 In its report on "Alternatives to State Regulation", the Better Regulation Task Force stated "*The idea persists that anything less than direct Government regulation is, in fact less effective than such regulation*".<sup>42</sup> It went on to suggest that state regulation can be remote and blunt in its application, whereas alternatives can offer more flexibility and are easier to change, and gave examples of where alternatives can be used. To arrive at the most



appropriate solution, the Cabinet Office guidance recommends that policy makers should consider a range of regulatory and non-regulatory options.

3.23 The extent to which non-regulatory options are a real alternative will depend upon the problem being addressed. For instance, transposing EU legislation into national legislation also usually requires a regulatory solution. In a number of our case examples, regulation was justified on the grounds of health and safety. But in these situations, departments were faced with the decision of how far they should intervene. This was the case for butchers' licensing in England. Initially the Department of Health's intended course of action was to license all butchers irrespective of whether they handled cooked meat. Views expressed during consultation led the department to focus the scope of the Regulations more tightly on the area of highest risk - that is butchers handling both unwrapped raw meat and ready to eat food.

#### 17 Explaining and quantifying the risk - RIA on the proposal for a physical agents (vibration) Directive

*Health and Safety Executive*

The RIA's risk assessment described:

- *Hazard and harm* - that is the link between exposure to vibration and disease is well established;
- *Risk* - some 1 million people in Britain are exposed to potentially harmful levels of hand-arm vibration;
- *Outcome* - high profile court cases leading to significant claims for compensation, for example some £0.5 billion compensation is to be paid to 30,000 retired coal miners.

#### 18 Analysis of risks relating to raised storage areas - the RIA on the proposed amendment of the building regulations in respect of fire safety

*Department: Transport, Local Government and the Regions*

**Hazard:** Raised free-standing floors are frequently erected in single storey industrial buildings and are becoming very large in area. Current provision for fire protection is now inadequate in light of the increasing size.

**Harm:** Such floors could collapse onto occupants beneath or firefighters entering the building.

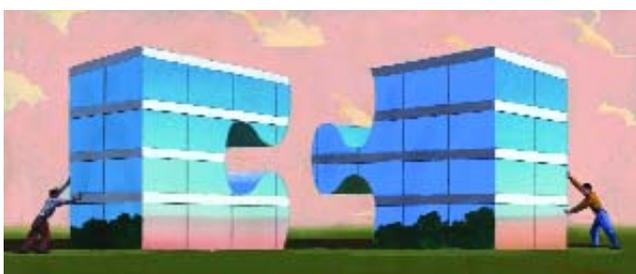
**Risk assessment:** Inspection of fire data for England & Wales from 1994 to 1997 shows that in industrial premises there were 20,574 fires resulting in 11 fatalities and 1,287 non-fatal casualties (including 360 firefighters). It is not possible to say whether any of these casualties arose as a result of large raised floors collapsing, but the concern is that the trend towards larger floors is increasing and this will increase the risk of such an incident occurring.

41 Formerly the Department of the Environment, Transport and the Regions.

42 Better Regulation Task Force, July 2000, *Alternatives to State Regulation*.

3.24 Where there were realistic alternatives to regulation, we found that some policy makers were better than others at giving detailed consideration to alternatives. The RIA on the control of pollution from oil stores considered both tax incentives and a voluntary scheme. Although neither option was adopted, the RIA clearly explained why. The RIA on the private security industry had the largest number of options we saw and a combination of regulatory and non-regulatory intervention was subsequently adopted. As a result, there is to be voluntary self-regulation for some types of employees and voluntary inspections of organisations by a new security authority.

## Looking at the wider picture



3.25 Developing a RIA invariably involves liaising with other Government departments and agencies to ensure for example, consistency with existing requirements elsewhere and with others' regulatory proposals, and to obtain the views of enforcement bodies. We found that in many cases policy makers had worked with other interested departments, and with enforcement bodies, both in drawing up the proposals, and in producing the RIA. Throughout the development of the proposals and the RIA for the control of pollution from oil stores, the Department<sup>43</sup> ensured that the proposals were informed by the views of the enforcement body, the Environment Agency, and that the Agency were fully apprised of their responsibilities.

3.26 In response to a Better Regulation Task Force report in 2000,<sup>44</sup> the Government referred to a new part of the Cabinet Office guidance advising on taking into account existing obligations and their fit with new proposals as a normal part of good policy making. The guidance suggests that policy makers should speak to their Departmental Regulatory Impact Unit for information about other proposals in the pipeline. Most of the RIAs we examined pre-dated this guidance and, while policy makers were generally aware of other regulation from within their departments policy makers did not always consult all the other government bodies and enforcement agencies regulating the same sector of the economy because they saw no likelihood of overlap between their regulation. This was usually not a problem, but policy makers should be aware of the need

to consider the wider regulatory context for sectors potentially affected by new proposals so as to consider whether the new demands being placed on them at around the same time are reasonable.

3.27 Regulations are often intended to influence the way in which markets work and as a result may affect competition. The Cabinet Office guidance suggests policy makers should assess the costs associated with any impact upon competition. The Financial Services Act 1986 and the Financial Services and Markets Act 2000 which will shortly replace it, give a role to the Office of Fair Trading in reviewing the impact of the Financial Services Authority's practices and regulating provisions on competition. The Government have announced<sup>45</sup> that they wish the Office of Fair Trading and other competition regulators to advise where laws and regulations impede competition, and that they will legislate to give the Office of Fair Trading power to query the future impact of proposed laws and regulations.<sup>46</sup>

3.28 Some regulation is intended to deliver benefits for consumers or may constrain consumer choices. The Cabinet Office guidance has a short reference to the need to identify the benefits to various groups in society including consumers. The National Consumer Council have proposed that in these cases policy makers should specifically assess the benefits, and costs, to consumers of the proposal against eight headings (**Figure 19**). The RIA on the control of pollution from oil stores considered the impacts on consumers in as far as it analysed the impact of the proposals, on different groups of business consumers for oil storage products.

### 19 A checklist of the potential consumer impacts of a regulatory proposal

**Value for money:** will it affect the cost to the consumer and the quality of good and services?

**Access:** will it affect consumer ability to get hold of the goods and services they need or want?

**Choice:** will it affect consumer choice of goods and services?

**Information:** will it affect the availability of accurate and useful information on the goods and services?

**Redress:** will it affect consumer ability to obtain redress if there is a problem?

**Safety:** will it have an impact on health and safety standards of goods and services?

**Fairness:** will it have a differential impact on some individuals or groups of consumers?

**Representation:** will it affect the consumer's say on how goods and services are provided?

*Source: National Consumer Council, July 2001, Consumer Impact Assessment, a guide by the National Consumer Council.*

<sup>43</sup> The Department of the Environment, Transport and the Regions. The function has since transferred to the Department for Environment, Food and Rural Affairs.

<sup>44</sup> Better Regulation Task Force, April 2000, *Helping small firms cope with regulation - exemptions and other approaches*.

<sup>45</sup> Department of Trade and Industry, February 2001, *Opportunity for All in a World of Change*, Cm 5052.

<sup>46</sup> Department of Trade and Industry, July 2001, *Productivity and Enterprise: A World Class Competition Regime*, Cm 5233.

## Considering and encouraging compliance

- 3.29 Widespread and enduring non-compliance can devalue regulatory instruments and result in the failure of policy objectives. Many RIAs we examined did little more than name the enforcement body and provide brief details of the sanctions for non-compliance. This was in line with the requirements of the pre August 2000 guidance which looked to departments to outline the arrangements for achieving compliance through enforcement and sanctions recognising that enforcement should not discourage compliance and sanctions should be proportionate.
- 3.30 The emphasis in the revised guidance is aimed more at securing compliance with the view that "*robust enforcement is no substitute for voluntary compliance*". It encourages departments to think how compliance will be achieved at every stage in the development of the regulatory proposal. Policy makers are asked to set out the arrangements for securing compliance with each of the proposed options, for example explaining what they are planning to do on guidance. The guidance also gives advice on arrangements for enforcement.

### Considering the likely levels of compliance

- 3.31 The revised guidance recognises achieving full compliance is not always possible. By considering the possible compliance regimes and the likely levels of compliance while the RIA is being developed, departments can anticipate where problems may arise and flag these up in the RIA. It also provides the opportunity to explore the balance between achieving compliance and the burden that compliance poses. For instance, if regulation seeks to change the behaviour of the small proportion of businesses causing a problem, it is their level of compliance, which may be low, that is relevant, not that of the generality of businesses. Blanket regulation may burden the majority of businesses while leaving the minority's behaviour unchanged. Given that the degree of compliance affects the balance between actual costs and benefits, cost-benefit calculations therefore which take this into account should present a more realistic view of the impact of the proposals. **Figure 20** illustrates the benefits of doing so.

### Considering how new regulation is to be explained to those affected

- 3.32 The quality of explanation given to businesses and others affected by regulation has a strong bearing on the rate of compliance. In the words of one shopkeeper "*generally small shopkeepers wish to comply with the law but it is very difficult to comply with a rule you don't know about or don't understand*".<sup>47</sup> Inadequate time to prepare for the implementation of new legislation can also cause problems for business and hinder

compliance. The Better Regulation Task Force identified this as a factor impeding entrepreneurs, as has a Food Standards Agency task force (**Figure 21**). The Government require, from January 2001 that guidance on new legislation affecting business be issued at least 12 weeks before the legislation comes into force, in line with Small Business Service guidance.<sup>48</sup>

- 3.33 The Cabinet Office guidance expects policy makers to produce guidance to those being regulated. In our examination we found that some policy makers had addressed the need for timely and co-ordinated guidance. This was particularly the case in parts of Government that both make and enforce policy, for instance the Inland Revenue and the Health and Safety Executive. The Inland Revenue promote the development of guidance as an integral part of their regulatory process being carried out alongside the development of the legislation. Their RIA on the all-employee share plan summarised the help being made available for unquoted companies to enable them to agree valuations quickly and easily, and new guidance such as a model trust deed, model rules and a model partnership agreement. The Health and Safety Executive often send out draft guidance alongside the draft RIA and draft regulations thus enabling those being regulated to see more clearly what they will need to do to comply, and this can help improve the quality of responses to consultation.

## 20 Considering compliance - RIA on the proposed EU Directive on noise

### Health and Safety Executive

The cost estimates in this RIA reflected explicit consideration about existing and future compliance. The RIA stated the level of compliance with existing legislation by reference to Institute of Employment Studies data for 1995. In estimating costs, the department made assumptions about the change in compliance since then, and stated these assumptions in the RIA. The costs of the new proposals would be borne by those companies not currently complying with legislation by carrying out assessments, because they would incur costs in undertaking assessments. The department also made assumptions about how future compliance would affect noise levels, which had an impact both on the estimate of costs to business, and on the estimate of benefits to employees.

## 21 What can happen if a small business does not keep up to date with changes in legislation

A small business manufactured a range of foods for the major retailers. The proprietor found out one day by reading the trade press that one of his most important products was illegal under new compositional regulations. The same company did not get enough notice of the introduction of QUID, the Quantitative Ingredient Declaration that concerns the labelling of ingredients of food products, and so had to re-label all their products. The cost was high in the context of the business as a whole, but would have been much lower, perhaps nothing, if there had been adequate notice.

Source: Food Standards Agency, 2001 Report of the Task Force on the burdens of food regulations on small food businesses.

47 Better Regulation Task Force, July 2001, *Local Shops: a progress report on small firms regulation*.

48 Small Business Service, November 2000, *Guidance on Implementation Periods*.

3.34 Explicitly stating what is to be done and by whom, can potentially expose arrangements where attention is primarily focused on those already trying to comply rather than actively seeking out those who are not. For instance, a review of the special waste regulations 1996<sup>49</sup> considered the views expressed by stakeholders that the regulations imposed a significant administrative burden on those who did comply and did little to address non-compliance. The revised RIA consequently included an option to revise the existing regulations to shift the emphasis and reduce the compliance burden.

#### *Alternatives to existing enforcement arrangements*

3.35 Enforcement contributes to securing compliance with regulations but itself can add to the burden of regulation. Many RIAs we examined assumed that existing enforcement methods would be used, often for good reason. Alternatives would often require changes to other regulatory arrangements than those covered in the RIA, which could significantly extend the scope of the policy analysis. Where there are existing or similar requirements, it is often most appropriate to combine the new requirements with those of the existing enforcement authorities, because they have in-depth knowledge of the subject area, and would be more likely to detect instances of non-compliance than a new enforcement body.

3.36 The National Audit Office's report on the Gaming Board for Great Britain<sup>50</sup> showed the value of re-thinking enforcement arrangements to reflect changing circumstances. This found that the gaming industry had changed considerably over the 30 years since the enforcement regime was established, because of the increased involvement in gaming of large, publicly quoted companies which had a strong reputational interest in ensuring that their businesses were well run. The report concluded that the Gaming Board could take more account of the way major regulated operators had developed their own compliance departments to protect their gaming licences, the loss of which could have major adverse consequences for them. There was scope for reducing the amount of inspection by relying more on the regulatory and compliance systems of these operators and using relevant information already collected by other public bodies such as HM Customs and Excise. The Gaming Board accepted the National Audit Office's recommendations and are introducing a risk-based inspection strategy for the continued supervision of the industry which they aim to have fully operational by January 2002.

3.37 One RIA we examined did reflect substantive changes to enforcement arrangements that were given effect through primary legislation following an earlier RIA (Figure 22).

#### Evaluating regulation after implementation



3.38 As time passes and circumstances change, regulations may become outdated, ineffectual or may not be achieving their intended purpose. Establishing arrangements for monitoring and evaluating new regulations enable policy makers to review how they are working in practice and whether changes may be needed not only to the regulation but the compliance and enforcement arrangements. The guidance expects policy makers to state how the policy will be monitored and evaluated. Most RIAs we examined relating to UK legislation did this but with limited details on how evaluation would be carried out or by whom. Most included a time-scale within which review would take place and a few specified clear deadlines, such as the RIA for the national minimum wage.

3.39 As with other performance measurement arrangements, to be effective monitoring and evaluation arrangements are best specified in advance so that policy makers can seek to ensure that they can collect sufficient reliable data for their purposes. Figure 23 gives one of the examples we found of policy makers actively planning their reviews.

<sup>49</sup> Conducted by the Department of the Environment, Transport and the Regions, now the Department for Environment, Food and Rural Affairs.

<sup>50</sup> National Audit Office, June 2000, *The Gaming Board: Better Regulation*, HC 537, 1999-2000.

## 22 How RIAs influenced changed arrangements for applying minimum quality standards to day care

The regulation of day care for young children used to be the responsibility of local authorities, under the Children Act 1989 and overseen by the Department of Health. Consistent standards were not in place and such standards as there were, were not being enforced consistently. The inspection of establishments providing funded early education was the responsibility of OFSTED, under the School Standards and Framework Act 1998, and was overseen by the then Department for Education and Employment. As a result of the Care Standards Act 2000, OFSTED (now overseen by the Department for Education and Skills) have responsibility for inspecting day care against national standards, as well as early education and schools. The standards were issued as part of secondary legislation under a section of this Act.

*Source: SI 2001 No. 1828 The Day Care and Child Minding (National Standards) (England) Regulations 2001, made on 9 May 2001 and came into force on 2 July 2001.*

## 23 Post-implementation review of the RIA on stakeholder pensions

*Department: The Department for Work and Pensions (formerly the Department of Social Security)*

The RIA on stakeholder pensions gave a clear and simple explanation of how the proposal would be monitored. A monitoring and evaluation plan was drawn up before the RIA on the enabling regulations was finalised and has subsequently been further developed. The plan showed who will carry out the monitoring, and summarised how the data will be gathered. The Department's evaluation plan is linked to their Public Service Agreement and hence other performance measurement arrangements.

## Departments could improve the presentation and publication of RIAs

3.40 Presenting clearly the costs and benefits of different options and how different groups may be affected should lead to better informed consultation and decision making. Moreover different audiences for the RIA may have different requirements and these need to be recognised in putting together the RIA.

### Showing how the proposal would impact upon different groups in society

3.41 In many RIAs we examined, the costs and benefits of options, the cost to a typical business, the total costs and those who bore the costs were by necessity integrated within the text of the RIA. The more effective RIAs also summarised this information usually in a table, as recommended in the Cabinet Office guidance. The RIA for the good laboratory practice regulations gives an example of how policy makers produced a good summary table of the costs and benefits of two options to business, charities, citizens and Government. In doing so it gave an overview of who was affected, enabled comparisons between options, and showed the distribution of costs and benefits to different groups, to see whether some are disproportionately affected.

3.42 Effective presentation also includes making a clear statement of assumptions and sources of evidence, as done by the Health and Safety Executive in many of their RIAs including that on the contained use of genetically modified organisms (Figure 12 on page 27). If departments are to maximise the value added by consultation, it is helpful to consultees to be able to judge the reliability of the data and question any assumptions. Where extensive analysis has been undertaken, it may also be helpful for departments to prepare a separate document providing more detailed information such as that prepared to accompany the RIA for the control of pollution from oil stores.

### Summarising the messages from consultation and how these have been addressed

3.43 For the consultation process to have credibility, departments need to demonstrate they have listened to and considered the views being expressed. Most RIAs we examined summarised the consultation exercise setting out how the exercise was conducted, more often out saying how many organisations were contacted than describing who had been contacted. Many also summarised the views of respondents but few demonstrated how these had affected the proposal or the RIA. This approach reflected the pre August 2000 guidance. The current guidance expects policy makers to summarise the results of the consultation exercise, responses received and how the RIA has changed.

3.44 In our examination, we found a number of examples where departments had added value to the RIA by showing where respondents had been critical of aspects of the proposal or how they supported the assumptions and data being presented. The RIA for the proposals to license butchers' shops in England stated who and how many were consulted and responded and summarised the views of respondents giving a feel for the strength of opinion for different viewpoints. It also stated how the proposals had changed following consultation. The Department of Trade and Industry policy team working on the RIA for the lawful business practice regulations went one stage further. After asking each respondent to summarise their own views in one paragraph and publishing them on their web site, they added a detailed analysis of the key issues raised during consultation. This explained the Department's rationale for accepting or rejecting the views expressed and how they had amended the proposed regulations.

## Making RIAs accessible on web sites



3.45 Departmental and agency web sites can help make information on regulation more accessible. The National Audit Office report<sup>51</sup> on Government web sites found that one in five departments and agencies included information on their regulations, and only one in ten agencies had a clickable link for downloading regulations. The report recommended that they should manage their web sites to ensure, among other things, that policy documents, regulations and other information were available in accessible electronic formats on the site. The current Cabinet Office guidance recommends departments should publish final versions of their RIAs on their web sites to aid transparency, with a link to the Cabinet Office Regulatory Impact Unit web site when legislation is presented to Parliament. It does not refer to the earlier versions of RIAs which accompany consultation documents. The Cabinet Office have since encouraged departments to improve their coverage of RIAs on their web pages and there have been significant improvements in accessibility although not for all web sites.

3.46 During 2001, we looked at the availability, accessibility and presentation of RIAs on 14 departmental and agency web sites. During this period, some Departments had to make changes to their web sites following the re-organisation of Government Departments in June. Some Departmental Regulatory Impact Units have considerable influence and control over the content of web pages on RIAs whereas others do not. Access to RIAs was easy from departmental indexes of RIAs, for example, the Department of Trade and Industry and the Inland Revenue web sites. By September 2001, seven out of the 14 web sites had such an index, many of which held the latest version of the RIA.

3.47 RIAs can be accessed through departmental consultation documents. By September 2001 all 14 sites had indexes of consultation documents. In most cases, it was not clear from the title of the document whether a RIA was necessary. Search engines were generally helpful in locating RIAs. Some routes to accessing RIAs show the outcome of the process. For example, the Home Office have web pages on legislation, including the Vehicle Crime Bill. This has links to drafts of the Bill and explanatory notes, debates in Parliament, and four RIAs including one on motor salvage regulation.

3.48 Those who are new to RIAs might benefit from some guidance on departmental web sites or through links to the Cabinet Office Regulatory Impact Unit web site. The Department of the Environment, Food and Rural Affairs is one of the few Departments which provide some guidance on their web sites. And a few departmental web sites have links to the Cabinet Office web site, for example the Department for Education and Skills and the Department of Trade and Industry.

3.49 In early 2001, the Regulatory Impact Unit web site began to list RIAs<sup>52</sup> with the aim of providing a link to the RIA document on departmental sites. In the summer, the Cabinet Office began to use their web site to publicise notification of the European Commission's European Business Test Panel consultation exercises, starting with the Commission's proposal to revise the Electromagnetic Compatibility Directive. It also included the Commission's questionnaire and invited affected businesses to respond.

<sup>51</sup> National Audit Office, December 1999, *Government on the Web*, HC 87, 1999-2000.

<sup>52</sup> [www.cabinet-office.gov.uk/regulation/scrutiny/RegReporting.htm](http://www.cabinet-office.gov.uk/regulation/scrutiny/RegReporting.htm).

# Appendix 1

## Key developments in regulatory control

**1980s** Under the Deregulation Initiative the DTI Deregulation Unit and eight Business Task Forces created to reduce unnecessary regulatory burden on business, especially small and medium sized business, charities and voluntary organisations.

For new regulations, emphasis was on calculating business compliance costs and consulting business about these costs before legislating.

**1995** Deregulation Unit transferred to the Cabinet Office and the Business Task Forces replaced by a single Deregulation Task Force.

Risk assessment introduced into the regulatory process. Ministers to sign risk assessments and compliance cost assessments to certify that the regulation strikes an appropriate balance between costs and benefits.

Concern amongst OECD members about the quality of regulations led to the Council of the OECD adopting the first international standard on regulatory quality. This standard includes a reference checklist for Regulatory Decision Making.

**1997** Better Regulation Initiative introduced, placing greater emphasis on good practice and greater co-operation. The Deregulation Unit renamed the Better Regulation Unit and its Task Force replaced by a new Better Regulation Task Force.

**1998** Cabinet Office guides to Better Regulation and Regulatory Appraisal published to assist policy makers. Regulatory impact assessments replace compliance cost and risk assessments. Assessments to encompass risks, costs and benefits not only to business but more widely. All Final RIAs to be published.

**1999** Better Regulation Unit renamed the Regulatory Impact Unit to reflect wider responsibilities.

The Panel for Regulatory Accountability created and chaired by the Minister for the Cabinet Office. Other members include Chief Secretary to the Treasury. The Chairman of the Better Regulation Task Force is invited to attend.

The Cabinet Office guide to Better European Regulation published.

**2000** Creation of the Small Business Service with a role in offering advice and giving clearance on proposals, and with the right to have their views explicitly recorded in RIAs and papers submitted to Cabinet relating to those assessments. They also are responsible for advising on how the overall regulatory environment can be improved. Their Chief Executive is invited to attend the Panel for Regulatory Accountability.

Cabinet Office publish revised guidance on RIAs in August. The main changes were: submission of an initial assessment to Ministers, before they choose the regulatory option; consultation with the Small Business Service; emphasis on early informal consultation with those likely to be affected; greater emphasis on identifying non-regulatory options and making clear the benefits of proposals; more thorough assessment of costs and benefits; and Ministers to state that they are content that "the benefits justify the costs".

# Appendix 2

## The Better Regulation Task Force

### Background

The Better Regulation Task Force was established as an independent advisory body in September 1997 to advise Government on regulatory issues. It is supported by the Cabinet Office Regulatory Impact Unit. The Task Force's web site is at [www.cabinet-office.gov.uk/regulation/TaskForce/Index.htm](http://www.cabinet-office.gov.uk/regulation/TaskForce/Index.htm) and contains copies of its reports.

### Terms of reference

*Its terms of reference are:*

"To advise the government on action which improves the effectiveness and credibility of government regulation by ensuring that it is necessary, fair and affordable, and simple to understand and administer, taking particular account of the needs of small businesses and ordinary people."

### How the Task Force works

The Task Force tests the quality of existing or proposed regulation against the five principles of good regulation - transparency, proportionality, targeting, consistency and accountability.<sup>53</sup> The Task Force asks whether the regulation is necessary; fair; simple to understand and easy to administer; affordable; effective; and commands public support.

The Task Force also undertakes discrete studies on particular regulatory issues. These reviews are taken forward by sub-groups of Task Force members who set their own working methods and produce detailed reports. As an advisory group with limited resources, the Task Force cannot carry out full consultation, but all sub-groups discuss their proposals with key organisations and individuals, as well as with Ministers and Government Departments. All reports are endorsed by the full Task Force, and then sent to relevant Ministers for their responses.

The Prime Minister has instructed Ministers that they must respond to Task Force reports within 60 days of publication.

The Better Regulation Task Force regularly reviews how Government departments have acted on recommendations in earlier reports.

### Membership

The Task Force currently comprises 16 members and is chaired by Lord Haskins.

Christopher Haskins (Chair)	Northern Foods plc
Teresa Graham (Deputy Chair)	Baker Tilly
Matti Alderson	FireHorses
Sarah Anderson	Mayday Group
Jyoti Banerjee	Technology Analyst
Stephen Falder	HMG Paints
Ram Gidoomal	Winning Communications
Peter Hughes	Scottish Engineering
Deirdre Hutton	National Consumer Council
Chai Patel	Westminster Healthcare plc
Simon Petch	CONNECT
Ian Peters	Engineering Employers Federation
Penelope Rowlatt	Economist, Independent
Janet Russell	Kirklees Metropolitan Council
Ann Shaw	Shaw's Farm
Simon Ward	Director, Whitbread plc (retired)

# Appendix 3

## OECD<sup>54</sup> reference checklist for regulatory decision-making

1. Is the problem correctly defined?
2. Is government action justified?
3. Is regulation the best form of government action?
4. Is there a legal basis for regulation?
5. What is the appropriate level (or levels) of government for this action?
6. Do the benefits of regulation justify the costs?
7. Is the distribution of effects across society transparent?
8. Is the regulation clear, consistent, comprehensible, and accessible to users?
9. Have all interested parties had the opportunity to present their views?
10. How will compliance be achieved?

<sup>54</sup> Organisation for Economic Co-operation and Development, 1995, *Recommendation of the Council of the OECD on improving the quality of Government regulations, including the OECD reference checklist for regulatory decision-making and background note*, OECD/GD(95)95.

# Appendix 4

The number of regulatory impact assessments by department produced during the period January 1999 to December 2000

Government Departments	Number of RIAs	Percentage of all Government RIAs
Department of Trade and Industry	85	30
Department of the Environment, Transport and the Regions <sup>1</sup>	48	17
Ministry of Agriculture, Fisheries and Food <sup>1</sup>	46	16
Home Office	23	8
Department of Health	20	7
Inland Revenue	14	5
Health and Safety Executive	12	4
Food Standards Agency	11	4
Department of Social Security <sup>2</sup>	9	3
Department for Education and Employment <sup>2</sup>	6	2
HM Treasury	5	2
Customs and Excise	2	1
Lord Chancellor's Department	1	<1
Building Society Commission	1	<1
<b>Total</b>	<b>283</b>	<b>100</b>

Source: *Departments and Agencies*

## NOTES

1. Department of the Environment, Transport and the Regions and the Ministry of Agriculture, Fisheries and Food now the Department for Environment, Food and Rural Affairs, and the Department of Transport, Local Government and the Regions.
2. Department of Social Security and the Department for Education and Employment now the Department for Work and Pensions and the Department for Education and Skills.

# Appendix 5

## Steps in the development of a Regulatory Impact Assessment illustrated by the case example of the National Minimum Wage

Stage of proposal	Form of RIA	National Minimum Wage Regulation
<b>Initial policy discussion</b> Rough and ready working up of options	Initial Assessment	The Regulations were designed to set: the National Minimum Wage (NMW) rate, and modified rates for 18-21 year olds and certain other groups; exemptions; how the NMW would be calculated; and record keeping requirements.
<b>Working up options</b> More accurate and detailed analysis of the options	Partial Assessment	Estimates on pay from the Low Pay Commission and the Office of National Statistics.  Estimates of Enforcement Costs from the Arbitration, Conciliation and Advisory Service.
<b>Seeking collective agreement. Making a legislative bid</b> Agreement from Cabinet, Cabinet Committees or No 10 needed before proceeding with proposals. If a proposal is significant, it must be accompanied by a RIA (Slot in Parliamentary timetable required)	Partial Assessment	The Department of Trade and Industry produced a draft RIA. <sup>1</sup>
<b>Announcing proposals and carrying out public consultation</b> A RIA should accompany all public consultations	Partial Assessment	Some 300 individuals and organisations responded to the consultation exercise.
<b>Making recommendations to Ministers</b>	Full Assessment	Consultation led to recommendations to Ministers which included:  Modification of the draft Regulations for workers on annualised contracts or term time contracts, <b>reducing potential recurring costs by £73 million per annum.</b>  Removal of requirements for employers to produce a statement on every payslip reminding employees of the National Minimum Wage, and to keep specific records, <b>reducing potential one-off costs by some £85m and recurring costs by a further £51 million per annum.</b>
<b>Presenting the legislation to Parliament</b>	Full Assessment	The Full RIA was signed off by the Secretary of State for Trade and Industry.
<b>Reporting and evaluation</b>	Final Assessment	The RIA was published with the legislation.  The Government asked the Low Pay Commission to monitor and evaluate the impact of the NMW and report by December 1999.

### NOTE:

- At the time the National Minimum Wage Regulations were created, only draft and full Regulatory Impact Assessments were required. Changes to the process since August 2000 have increased the number of stages of RIA during the process to those shown above.

# Appendix 6

## The study methodology

To draw conclusions on the way in which regulatory impact assessments were prepared and to identify the scope for learning lessons we drew on the following sources of evidence.

- We examined a sample of 23 regulatory impact assessments across 13 departments and agencies. These were selected to give a wide variety of different types of proposal, for instance EU/domestic, large/small, technical and non-regulatory and a wide coverage of policy areas. We also sought to examine RIAs which had gone through most if not all the stages of the process so as to be able to gauge what worked well and draw lessons about the whole process. Given the time that properly considered policy proposals take to develop, commonly over a year, and the need for a wide variety, this meant that most of the RIAs had been started before the August 2000 Cabinet Office guidance, although the later drafts of some RIAs were revised in line with this guidance. We used the Cabinet Office guidance "The Regulatory Appraisal Guide" published in 1998, "The Better Regulation Guide" published in 1998, and "Good Policy Making: A Guide to Regulatory Impact Assessments" published in 2000, as benchmarks for examining how departments went about preparing their assessments. We also examined papers associated with each assessment, and spoke to several of the stakeholders involved.
- We undertook semi-structured interviews with:
  - staff in the Cabinet Office Regulatory Impact Unit and the Small Business Service Regulatory Action Directorate;
  - staff in departmental regulatory impact units and with the policy teams responsible for each of the regulatory impact assessments in our sample.
- We collected and evaluated information on regulatory appraisal processes in Australia, New Zealand and British Columbia. This information enabled us to benchmark the regulatory process against similar processes in other countries.
- We surveyed the web sites of 14 departments and agencies in February 2001 and again in September 2001, to explore the availability, accessibility and presentation of assessments and other key policy documentation for wider consumption.
- As well as speaking to those actively engaged in the regulatory process within departments and agencies we also sought the views of others, these included:
  - The Association of Chief Executives of Voluntary Organisations
  - The British Chambers of Commerce
  - The Confederation of British Industry
  - The Fair Regulation Campaign
  - The Federation of Small Businesses
  - The Financial Services and Market Legislation City Liaison Group
  - The Institute of Directors
  - The National Council for Voluntary Organisations
  - The Small Business Council
  - The Recruitment and Employment Confederation
  - Water UK

### Reference Panel

We set up an advisory panel to provide us with informed comment on the scope of our study, the study methodology, findings and conclusions. The panel had the following members:

#### **Stephen Alambritis**

Head of Press and Parliamentary Affairs at the Federation of Small Businesses and former member of the Better Regulation Task Force

#### **Graham Bannock**

Chairman of Bannock Consulting

#### **Angela Evans / David Andrews**

Deputy Director and Director, Regulatory Action Directorate, Small Business Service

#### **Lord Haskins**

Chairman of the Better Regulation Task Force, and Chairman of Northern Foods plc

#### **Professor Christopher Hood**

Professor of Public Administration and Public Policy at the London School of Economics

#### **Phil Wynn Owen**

Director of the Cabinet Office Regulatory Impact Unit

#### **Professor George Yarrow**

Director of the Regulatory Policy Institute

# Annex

## Annex to methodology Appendix

Department responsible	Title of the Regulatory Impact Assessment	Purpose of Regulatory Proposal
Department for Education and Employment (now Department for Education and Skills)	National standards for the regulation of day care and childminding in England	The objective of the proposals was to ensure consistent minimum quality of day care across the country to minimise the risk to children. The provision of national standards is enabled by secondary legislation under section 79C of the Children Act 1989 (as amended by the Care Standards Act 2000). It forms part of a policy of establishing consistent standards and consistent monitoring and enforcement of day care, increasing parents' confidence. This may help expand the provision of day care, enabling people on benefits to go back to work.
Department of the Environment, Transport and the Regions (now Department of Transport, Local Government and the Regions)	Marketing of residential property regulation	A feature of the home buying and selling process in England and Wales is that neither the buyer nor the seller is legally bound to complete the transaction until binding contracts have been exchanged. This means that during the period between an offer being accepted and contracts being exchanged there is no certainty for buyer or seller. The Department concluded that one of the best ways to deal with delay and uncertainty is to get sellers to provide more information at the outset when the property is first marketed. The objective of any legislation would be to make the marketing of homes with a seller's information pack a statutory requirement.
Department of the Environment, Transport and the Regions (now Department for Environment, Food and Rural Affairs)	<p>The Control of Pollution (Oil Storage) (England) Regulations 2000 Regulatory and Environmental Impact Assessment</p> <p>Proposed Amendment of the Building Regulations: Part B - Fire Safety and its Approved Document</p> <p>The Review of the Special Waste Regulations</p>	<p>The aim was to reduce the number of oil-related water pollution incidents, by setting design standards for all above ground oil storage containers, and requiring that a "bund" or "drip tray" is fitted to prevent oil escaping into controlled waters.</p> <p>To improve the safety of people (including firefighters) in and around buildings from fire without imposing disproportionate bureaucracy and costs on building owners, developers or enforcement bodies. And to clarify existing guidance.</p> <p>The Special Waste Regulations were intended to implement the EU Hazardous Waste Directive. The Department decided to amend the regulations following the commencement of infraction proceedings by the EU. The objective was to reduce the administrative burden of the regulations; encourage the reduction of hazardous waste; and fully implement the Directive.</p>

Department responsible	Title of the Regulatory Impact Assessment	Purpose of Regulatory Proposal
Department of Health (now Food Standards Agency)	The Food Safety (General Food Hygiene) (Butchers' Shops) Amendment Regulations 2000	The Regulations will introduce statutory annual licensing of retail butchers' shops in England handling and selling unwrapped raw meat and ready-to-eat food from the same premises. The measure is intended to improve the food hygiene management and control in these premises in order to enhance public protection.
Department of Health Medicines Control Agency	<p>The Good Laboratory Practice Regulations 1999</p> <p>Medicines (Aristolochia and Mu Tong etc) (Temporary Prohibition) Order 2000</p>	<p>To translate a Directive modifying existing legislation on good non-clinical laboratory practice into national law using a Statutory Instrument. The Medicines Control Agency's Good Laboratory Practice Monitoring Authority (GLPMA) also used the regulations to institute a new criminal offence of fraud and forgery of good laboratory practice statements and reports.</p> <p>The GLPMA inspect laboratories for compliance with the regulations. Their statements of compliance are needed by companies applying for product registration to agencies in the United Kingdom and abroad to demonstrate that good practice has been followed in conducting studies.</p> <p>The aim of the proposals was to protect public health. Renal failure and cancer resulted from use of herbal remedies containing Aristolochia. This led to the Medicines Control Agency issuing prohibition orders. Following a sampling exercise, which found that Aristolochia was being mistaken for safe species, the prohibition was widened to include safe species, which were "confusable" with Aristolochia. The confusion is largely due to poor quality control but also because of the interchangeable nature of ingredients in Chinese medicine and a number of species having common Chinese names.</p>
Department of Social Security (now Department for Work and Pensions)	The Stakeholder Pension Schemes Regulations	The aim of the proposals was to establish the detailed requirements of stakeholder pension schemes under secondary legislation issued under the Welfare Reform and Pensions Act 1999. The introduction of stakeholder pension schemes was intended to: improve incentives for people to save for their retirement; provide new funded second pension schemes, to enable in particular those on moderate incomes and those with intermittent working patterns to build up a secure retirement income on top of the basic pension; and improve portability of pensions.

Department responsible	Title of the Regulatory Impact Assessment	Purpose of Regulatory Proposal
Department of Trade and Industry	National minimum wage	To introduce a national minimum wage, in order to provide benefits to employees on low pay.
	Lawful business practice	Businesses need to intercept communications for a wide variety of legitimate purposes such as keeping essential records of transactions. The regulations aim to ensure that businesses will be able to continue to make interceptions for essential purposes once the Regulation of Investigatory Powers Act comes into force.
	Proposed European Directive for Waste from Electrical and Electronic Equipment (WEEE)	The aim was to inform Government negotiations to influence the provisions of the Directive, in particular to press for an exemption of small firms from certain aspects of the Directive on the grounds of disproportionate cost, while maintaining the environmental benefits of the Directive. The EU Directive concerns preventing waste and increasing recycling etc of electrical and electronic equipment.
	Revision of Regulations for the Private Recruitment Industry	To promote a flexible labour market in which employers and employees work in partnership by establishing minimum standards for the industry. These include securing the proper conduct of employment bureaux; protecting the interests of work-seekers; and protecting the interests of hirers and in turn third parties to whom hirers may owe a duty of care.
	End of Life Vehicles Directive	To inform negotiations with the EU, in particular to press for a reduction in costs to industry, while maintaining aspects that are beneficial to the environment. The EU Directive concerns preventing waste and increasing recycling etc of end of life vehicles.
Health and Safety Executive	Revised Regulations on Contained Use of Genetically Modified Organisms	The Government was required, under a 1995 EU Directive, to amend existing regulations. Organisations undertaking activities using genetically modified organisms are required to notify the Executive accordingly. The main aim of the proposals was to simplify the notification process, for example by reducing the time necessary to notify activities, and to exempt some activities from the process.
	Proposal for a Physical Agents (Noise) Directive	To inform negotiations with the EU, in particular to press for a reduction in costs to industry to a proportionate level, while maintaining aspects that are beneficial to health and safety. The Proposed Directive aims to protect workers from risks to health and safety arising or likely to arise from exposure to noise and in particular the risk to hearing.
	Proposal for a Physical Agents (Vibration) Directive as agreed by the Council of Ministers on 30 November 2000	To implement an EU proposal, in particular, to evaluate the costs and benefits. The Proposed Directive aims to protect workers from risks to health resulting from exposure to vibration transmitted to the hand-arm and whole body.

Department responsible	Title of the Regulatory Impact Assessment	Purpose of Regulatory Proposal
Home Office	<p>Regulation of the motor salvage industry</p> <p>Regulation of the private security industry</p>	<p>The objective is to help reduce vehicle theft by making it more difficult to dispose of stolen vehicles, and to assist the police and other authorities investigating such offences, and to improve detection rates. The intention is to regulate the whole motor salvage industry and drive out the criminal element. This was one of the measures to reduce vehicle crime to meet the Government target of reducing vehicle crime by 30 per cent between April 1999 and March 2004.</p> <p>The public, the police and the private security industry itself have long been concerned about criminals working within the industry. There has been significant growth in the industry in recent years and increasing contact with the public. Potentially the threat to public safety, posed by unscrupulous employers and employees who are placed in positions of trust, is high. The Final RIA stated that the proposals in the Bill would produce a relevant impact in tackling a specific mischief, in protecting people who can be seen to be vulnerable.</p>
Inland Revenue	<p>New all-employee share plan</p> <p>Income tax and company cars: a major reform - an Environmental and Regulatory Impact Assessment</p>	<p>The Government believe that employee share ownership has an important part to play in the strategy for closing the productivity gap with other countries. The new plan seeks to encourage employers to offer all employees the opportunity to take a stake in their company by providing tax and national insurance contributions advantaged share remuneration. The Government's objective was to double the number of companies in which all employees have the opportunity to hold shares (a 1,750 increase), and to assist new businesses to compete in the global market for the best skills and talents.</p> <p>This reform was developed against a background of the Kyoto Treaty to reduce emissions and the Government's integrated transport strategy and is intended to be a revenue neutral, reform of the taxation of company cars to help protect the environment. The objectives are to: remove any incentive to drive extra miles; give employers and employees a tax incentive to choose more fuel efficient cars; and encourage manufacturers to produce cars with lower carbon dioxide (CO<sub>2</sub>) emissions. The new system for charging company car tax by reference to CO<sub>2</sub> emissions is expected to have a significant effect on environmental emissions over the medium to long term. This would help tackle congestion and global warming and improve local air quality.</p>

Department responsible	Title of the Regulatory Impact Assessment	Purpose of Regulatory Proposal
Ministry of Agriculture Fisheries and Food (MAFF) (now Department for Environment, Food and Rural Affairs)	The Retailers' Records for Veterinary Medicinal Products Regulations 1999	To implement EU Directive regarding record keeping requirements for retailers of veterinary medicinal products and establish a fully effective system of product traceability and batch recall.
MAFF Pesticides Safety Directorate	The extension of the requirement for users of agricultural pesticides to obtain a Certificate of Competence	Users of agricultural pesticides are required to hold a Certificate of Competence as evidence of their ability to work safely and take reasonable precautions with respect to human and environmental effects. Exemptions from this obligation are available for workers born before 31 December 1964 and for those working under the direct supervision of a certificate holder. The objective was to remove these exemptions so that all users of agricultural pesticides would hold the Certificate of Competence appropriate for the type of equipment used. It was decided to adopt a non-regulatory option on grounds of cost.

# Glossary

<b>Association of Chief Executives of Voluntary Organisations (ACEVO)</b>	ACEVO have some 1,200 members and 90 corporate members. Members include senior officers as well as chief executives of voluntary organisations. ACEVO support chief executives and promote higher standards of executive leadership.
<b>Better Regulation Task Force</b>	The Better Regulation Task Force was established in September 1997 to advise the Government on action which improves the effectiveness and credibility of government regulation by ensuring that it is necessary, fair and affordable, and simple to understand and administer, taking particular account of the needs of small businesses and ordinary people (Appendix 2).
<b>Cabinet Office Regulatory Impact Unit</b>	The Government established a unit within the Cabinet Office (since 1999 known as the Regulatory Impact Unit) to assist Government Ministers and departments in finding the right balance between under-regulating and over-regulating. The Unit takes the lead role in promoting the development by relevant departments and agencies of effective RIAs and has issued guidance on their preparation.
<b>Departmental Regulatory Impact Units (DRIUs)</b>	The role of the DRIU is to advise and support policy teams in developing their regulatory impact assessments. DRIUs also encourage policy teams to look for ways of reducing the burden of existing regulations and act as a central liaison point in the Department for regulatory issues.
<b>Focus Group</b>	A selection of individuals brought together to discuss specific topics and issues.
<b>National Council for Voluntary Organisations (NCVO)</b>	NCVO is the umbrella body for the voluntary sector in England, with over 2,000 members. It has sister councils in Wales, Scotland and Northern Ireland. The NCVO provides services to its members, including representing their views and those of the wider voluntary sector to government, the Charity Commission and the EU and other bodies. It also carries out research into, and analysis of, the voluntary sector.
<b>Organisation for Economic Co-operation and Development (OECD)</b>	The OECD promotes policies designed: to achieve the highest sustainable economic growth and employment and a rising standard of living in member countries, while maintaining financial stability, and thus to contribute to the development of the world economy; to contribute to sound economic expansion in member as well as non-member countries in the process of economic development; and to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.
<b>Panel for Regulatory Accountability</b>	The Panel discusses legislative proposals and their RIAs with the relevant departmental Ministers. It was set up in 1999 and is chaired by the Minister for the Cabinet Office. Since the election it has been a Cabinet Committee.
<b>Regulatory Impact Assessment (RIA)</b>	Where the Government wish to regulate using primary or secondary legislation, the department or agency concerned is expected to prepare an accompanying RIA. They may also prepare RIAs when non-legislative action is contemplated that may affect business although they have some discretion as to whether to do so. RIAs do not apply to existing regulation or regulation that affects only the public sector. The purpose of the RIA is to explain the objectives of the proposal, the risks to be addressed and the options for delivering the objectives. In doing so it should make transparent the expected costs and benefits of the options for the different bodies involved, such as other parts of Government and small businesses, and how compliance with regulatory options would be secured and enforced.

**Self-regulation**

Allowing industries, organisations or other groups to regulate themselves, for example by a code of practice, is one of several instruments that government can use to control regulatory costs. It can be considered while preparing a RIA.

**Small business**

Although there can be differences of opinion as to how small a business has to be to be categorised as small, the Small Business Service consider that small businesses are those businesses with under 50 employees, including those with no employees. These constitute 99 per cent of businesses and have 44 per cent of private sector employment (Small Business Service, June 2001, Small and Medium Enterprise (SME) Statistics for the United Kingdom 2000).

**Small Business Service (SBS)**

The SBS, an executive agency of the Department of Trade and Industry, advise on the small business consultation and analysis during the assessment process and can have their views recorded on the face of the RIA. They are also responsible for advising on how the overall regulatory environment can be improved.

**Sunset clauses**

One of several instruments that government can use to control regulatory costs, whereby regulations expire if not renewed. This can be considered while preparing a RIA.

# Bibliography

- Australian Office of Regulation Review, December 1998, *A Guide to Regulation*.
- Better Regulation Task Force, December 1997 (revised October 2000), *Principles of Good Regulation*.
- Better Regulation Task Force, April 2000, *Helping Small Firms Cope with Regulation - Exemptions and other approaches*.
- Better Regulation Task Force, June 2000, *Tackling the Impact of Increasing Regulation - a case study of Hotels and Restaurants*.
- Better Regulation Task Force, July 2000, *Alternatives to State Regulation*.
- Better Regulation Task Force, October 2000, *Annual Report 1999-2000*.
- Better Regulation Task Force, July 2001, *Local Shops: A progress report on small firms regulation*.
- Better Regulation Task Force, July 2001, *Economic Regulators*.
- British Columbian Ministry of Finance and Corporate Relations, June 1999, *Regulatory Impact Statement Guide*.
- Cabinet Office, March 1999, *Modernising Government*, Cm 4310.
- Cabinet Office, September 1999, *Professional policy making for the Twenty First Century*.
- Cabinet Office, November 2000, *Code of Practice on Written Consultation*.
- Cabinet Office, Better Regulation Unit, 1998, *The Regulatory Appraisal Guide*.
- Cabinet Office, Better Regulation Unit, August 1998, *The Better Regulation Guide*.
- Cabinet Office, Regulatory Impact Unit, 1999, *Guide to Better European Legislation*.
- Cabinet Office, Regulatory Impact Unit, August 2000, *Good Policy Making: A Guide to Regulatory Impact Assessment*.
- Department of Trade and Industry, February 2001, *Opportunity for All in a World of Change*, Cm 5052.
- Department of Trade and Industry, July 2001, *Productivity and Enterprise: A World Class Competition Regime*, Cm 5233.
- Food Standards Agency, 2001, *Report of the Task Force on the burdens of food regulations on small food businesses*.
- Gaming Board, *Report of the Gaming Board for Great Britain 2000-2001*, HC 95, 2000-2001.
- Her Majesty's Treasury, 1997, *The Green Book - Appraisal and Evaluation in Central Government*.
- Home Office, November 1998, *Compact on Relations between Government and the Voluntary and Community Sector in England*, Cm 4100.
- Home Office, May 2000, *Consultation and Policy Appraisal: A Code of Good Practice - Compact on Relations between Government and the Voluntary and Community Sector in England*.

Home Office, March 1999, *The Government's Proposals for Regulation of the Private Security Industry in England and Wales*, Cm 4254.

National Audit Office, December 1999, *Government on the Web*, HC 87, 1999-2000.

National Audit Office, June 2000, *The Gaming Board: Better Regulation*, HC 537, 1999-2000.

National Audit Office, November 2001, *Modern Policy Making*.

National Consumer Council, July 2001, *Consumer Impact Assessment, a guide by the National Consumer Council*.

National Council for Voluntary Organisations, May 2000, *Consultation and Policy Appraisal: a Code of Good Practice*.

New Zealand Ministry of Commerce Quality of Regulation team, March 1999, *A Guide to Preparing Regulatory Impact Statements*.

Office of Science and Technology, March 1997 (updated July 2000), *Scientific Advice and Policy Making*.

Organisation for Economic Co-operation and Development, 1995, *Recommendation of the Council of the OECD on improving the quality of Government regulations, including the OECD reference checklist for regulatory decision-making and background note*. OECD/GD(95)95.

Small Business Service, *How we can work together: aide memoire for policy making officials*.

Small Business Service, November 2000, *Guidance on Implementation Periods*.

Small Business Service, January 2001, *Think Small First*.

Small Business Service, June 2001, *Small and Medium Enterprise (SME) Statistics for the United Kingdom 2000*.

Statutory Instrument, SI 2001 No. 1828, May 2001, *The Day Care and Child Minding (National Standards) (England) Regulations 2001*.

## Current addresses of relevant web sites

Better Regulation Task Force: [www.cabinet-office.gov.uk/regulation/TaskForce/Index.htm](http://www.cabinet-office.gov.uk/regulation/TaskForce/Index.htm)

Cabinet Office Consultation: [www.cabinet-office.gov.uk/servicefirst/index/consultation.htm](http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm)

Cabinet Office Guidance and Consultation: [www.cabinet-office.gov.uk/index/guidcons.htm](http://www.cabinet-office.gov.uk/index/guidcons.htm)

Cabinet Office Regulatory Impact Unit: [www.cabinet-office.gov.uk/regulation/index.htm](http://www.cabinet-office.gov.uk/regulation/index.htm)

Lists of RIAs from 1998: [www.cabinet-office.gov.uk/regulation/scrutiny/RegReporting.htm](http://www.cabinet-office.gov.uk/regulation/scrutiny/RegReporting.htm)

Small Business Service: [www.sbs.gov.uk](http://www.sbs.gov.uk)