

Evaluation of Regulatory Impact Assessments Compendium Report 2003-04



REPORT BY THE COMPTROLLER AND AUDITOR GENERAL
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EXECUTIVE SUMMARY

- 1 The NAO's report: *Better Regulation: Making Good Use of Regulatory Impact Assessments* (HC329 Session 2001-02), published in November 2001 defined regulation 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 do", and added: "along with taxation and direct expenditure, regulation is one of the three principal instruments available to governments to achieve their objectives."
- 2 The report examined how government departments assessed the likely outcomes of regulating in order to try to achieve the right balance between under-regulating, which may fail to protect the public, and over-regulating, which may create excessive bureaucracy. Since 1998, the Government has used a process known as Regulatory Impact Assessments (RIAs) to assess likely outcomes. RIAs identify the costs and benefits of a policy proposal and the risks of not acting. They are intended to inform the policy decision making process and communicate clearly the objectives, options, costs, benefits and risks of proposals to the public to increase the transparency of the process.
- 3 The Government produces over 200 RIAs a year and our 2001 report reviewed a sample of 23 to identify good practice and how to make the process effective within departments. It found three main factors which characterised effective RIAs:
 - starting the process early;
 - consulting effectively with those affected by the proposal; and,
 - analysing appropriately the likely costs and benefits of the proposal.
- 4 The Cabinet Office has updated its guidance on preparing RIAs, taking on board factors identified in our 2001 report. Following a hearing of the Committee of Public Accounts (PAC) on that report, in December 2002 the Cabinet Secretary invited the Comptroller and Auditor General to undertake a new ongoing role of evaluating the quality and thoroughness of a sample of RIAs each year, with the aim of identifying positive and negative learning points, and this report is the result of the first year's evaluation of a sample of ten.

Main Findings

Influence of Regulatory Impact Assessments on policy making

- 5 Regulation, whether formal legislation or other means of government intervention, may impact on businesses, charities and voluntary organisations. This may be in the form of imposing costs, foreseen or unintended, which are generally then passed on to the consumer, or providing benefits, for example through administrative simplifications. It is important that government departments consider all potential impacts throughout the policy making process in order to ensure that policy decisions are well informed and do not have disproportionate or counterproductive effects. A rigorous approach, rigorously applied in policy making and analysis, maximises the chance of obtaining a good outcome.
- 6 Since the 1980s the Government has been developing procedures to ensure that departments consider the likely impacts of new regulations on those affected with the aim of improving the regulatory process, and introduced the Regulatory Impact Assessment (RIA) in 1998 for any proposal that is expected to have an effect on business, charities or voluntary bodies. Cabinet Office guidance states:

"A Regulatory Impact Assessment (RIA) is a tool which informs policy decisions. It is an assessment of the impact of policy options in terms of the costs, benefits and risks of a proposal."
- 7 The purpose is to inform all stages of the policy making process from the initial rationale through to preparing the procedures for monitoring and evaluation prior to implementation of a regulation. All stakeholders of the regulations - government, business, individuals and the voluntary sector - must see the RIA process as credible.

NAO examination of a sample of RIAs

- 8 In April 2002, the Committee of Public Accounts (PAC) considered the report on Better Regulation¹ and recommended that the NAO should evaluate a selection of RIAs. The Cabinet Secretary responded in December 2002 inviting the Comptroller and Auditor General to evaluate a sample of RIAs each year. For this pilot year we examined the thoroughness and quality of a sample of ten from over 200 RIAs which had been approved by the departmental Minister. The sample reflected suggestions in the Better Regulation Task Force's Annual Report², and our own criteria (Appendix 2). We are grateful to the Task Force for providing an excellent sample of RIAs containing many useful examples of good practice and also learning points where the process might have been better. We look forward to receiving further recommendations in the Task Force's next Annual report.

¹ *Better Regulation: Making Good Use of Regulatory Impact Assessments* (HC329 Session 2001-02).

² *The Government established the Better Regulation Task Force (the Task Force) in 1997. Its terms of reference are now: "to advise the Government on action to ensure that regulation and its enforcement are proportionate, accountable, consistent, transparent and targeted."* The RIA suggestions were included in the Task Force's 2001/02 Annual Report: *Champions of Better Regulation*.

- 9 Neither the suggestions by the Task Force nor our final sample were intended to be representative of the 200 or so RIAs undertaken across Government, nor were they selected at random. Ten out of the eleven suggestions by the Task Force were RIAs it considered to be of poor quality, and we chose six of these plus the Task Force's suggestion of a good quality RIA. We chose the other three in our sample according to our criteria (Appendix 2) with no prior expectations as to their quality or thoroughness. Four of the ten cases concerned European regulations which the UK was legally obliged to implement. For these cases we evaluated the RIA produced by the UK department but not the earlier role of the UK in negotiating the European regulations.
- 10 The Cabinet Office Regulatory Impact Unit has achieved significant progress in raising the profile of RIAs, ensuring that all new regulations are subject to the process and increasing the quality of the RIAs produced. We consider that it is important that civil servants continue to see RIAs as an important part of the regulatory process and our evaluation aims to help highlight this. Our evaluation also seeks to encourage a culture of scrutinising regulatory proposals within the policy making process by drawing out a series of learning points for the preparation of RIAs.
- 11 The quality and thoroughness of the RIA process within departments varied greatly across our sample, and it was clear that the RIA process needs to be properly resourced to be effective. All RIAs examined contained elements of good practice but there was often room for improvement, as illustrated by the case studies in Part Two of this report. Some departments had expressed doubts as to whether the RIA process was appropriate in some cases, but they had nevertheless prepared full RIAs and had found that the process had provided a good framework for analysing likely impacts of the regulation. Our findings are only drawn from our sample of ten RIAs. We have only looked at these ten RIAs so are unable to comment on the quality or thoroughness of the other RIAs in the 200 or so being undertaken each year. Nevertheless we consider that our recommendations should be seen as good practice points for all RIAs.

Results of evaluation

- 12 We examined six main areas of the RIA process (**Figure 1**) to evaluate the quality and thoroughness of the whole RIA process in each case, including the Initial, Partial and Final RIAs. The remainder of this summary outlines the results which are discussed in more detail in Part Two of this report. Overall, it was clear that departments could gain most from the RIA process if it was properly planned and resourced, and started early enough to form a genuine part of the decision making process. Good project planning can feed through to all elements of the RIA process, such as ensuring that sufficient time is planned for public consultation. This can enable the process to be undertaken properly whilst achieving objectives and policy deadlines. A project planning approach to introducing legislation is in line with a recent Task Force recommendation, which has been agreed by Government, though this was not in place at the time the RIAs in our sample were being prepared³.

³ *The Better Regulation Task Force July 2003 report: "Environmental Regulation: Getting the Message Across" included the recommendation: "The Government should adopt a project planning approach to introducing new legislation, drawing on advice from the Office of Government Commerce's 'Programme and Project Management Centres of Excellence' within Departments. Project plans should be published so that stakeholders know what will happen and when in implementing new legislation."*

1 Main questions in NAO evaluation framework

1. Was the RIA process started early enough?
2. Was consultation effective?
3. Did the RIA assess costs thoroughly?
4. Did the RIA assess benefits realistically?
5. Did the RIA realistically assess compliance?
6. Will the regulation be effectively monitored and evaluated?

Appendix 1 outlines the full range of questions and sub-questions in the framework

Policy objectives

- 13 Clear objectives at the outset derive from what a department's policy aims to achieve and allow the department to consider a choice of possible options. A clear statement of objectives at the outset is an important feature of a good quality RIA.
- 14 Only half of our sample included a reasonably clear statement of objectives. Where objectives were poorly defined the lack of clarity fed through to the rest of the RIA, affecting factors such as the consideration of options.

Options considered

- 15 Departments are expected to consider a range of options to achieve their policy objectives, as there is often more than one way to deliver these objectives. A good quality RIA will include a "Do Nothing" option and alternative regulatory methods where appropriate, and will consider the appropriate enforcement regime for each of the different options. Considering a range of options allows departments to demonstrate clearly the reason for their choice of preferred option.
- 16 Only two RIAs in our sample discussed a range of options, and both included alternatives to regulation⁴. Another presented a single option, plus a "Do Nothing". The remaining seven cases presented only the relevant department's preferred option and did not explicitly discuss a "Do Nothing", which made it difficult to assess and present the net benefits of the regulation. Although these included four RIAs concerning European regulations which the UK was obliged to implement, a discussion of the existing situation would have enabled clearer judgement of the net benefits of the regulation.

⁴ The RIAs for the Enterprise Bill and the Copyright etc and Trade Marks Bill.

Analysis of problem

- 17 Cabinet Office guidance is that RIAs should include an assessment of the risks. "Risks" in this context refers to the problems the regulation aims to address. All but one of the RIAs in our sample included a risk assessment but some of them were vague. None of the risk assessments in our sample included a clear statement of what the department expected to happen in the absence of the regulation, known as the counterfactual. Only two RIAs in the sample provided quantified assessments of the problem the regulation aimed to address.
- 18 Some RIAs presented the problems that wider policy aimed to address in the area relevant to the regulation. Whilst this can usefully put the regulation concerned in context, an assessment focusing on the regulation itself and the specific problem it is aimed at allows the net benefits of the regulation to be judged more clearly.

Consultation

- 19 Consultation is more likely to add value if a department: starts early; makes documents accessible; uses appropriate techniques; allows at least twelve weeks' response time in line with guidance; makes full use of the results; and publishes the department's response to the results.
- 20 Consultation was consistently the strongest element of the RIA process in our sample; in all except one of these the department had undertaken at least one thorough and wide ranging formal public consultation. The remaining one had nevertheless consulted widely with a range of internal and external key stakeholders. In addition to written consultation, departments had used pro-active techniques such as focus groups, meetings with key stakeholders and "tours" across the country to obtain stakeholders' views. The extent to which departments had recorded how they had used responses in altering their policy proposals as a result of consultation varied, however, and in some cases risked the perception that responses had been ignored. Although consultation was generally done well in the sample, this did not always lead to a good quality RIA.

Comparisons of costs and benefits

- 21 Final RIAs are approved by the relevant Minister who states that the benefits of the regulation justify the costs. RIAs therefore need to demonstrate this, using quantitative and qualitative techniques, and reflecting uncertainties as appropriate.
- 22 All but one of the RIAs in the sample contained some form of quantified estimate of costs and all acknowledged a level of uncertainty about the data used for the estimates. But the uncertainties were not always reflected in the costs and benefits, which presented single point estimates rather than ranges. Only one gave the results of sensitivity tests showing the consequences of changes in key assumptions. All considered the costs to small businesses and concluded that there would be none or that they would not be disproportionate.

Difficulty of estimating benefits

- 23 Of the nine RIAs that presented quantified estimates for at least some of the expected costs, only three included quantified estimates of benefits. The expected benefits of many regulations are changes or outputs for which no market exists, making quantification difficult. However, it is usually possible to include some form of order of magnitude estimate or qualitative statement about the type of benefit expected, even if full quantification is not possible. Departmental experts, such as economists, can often provide advice on methodologies to estimate benefits, reflecting uncertainties as appropriate.
- 24 As benefits were difficult to estimate most RIAs did not include a quantified comparison of the expected costs and benefits, which could be used to demonstrate that the benefits of the regulation justified the costs. All RIAs provided a discussion of the expected costs and benefits, though the clarity and detail of these discussions varied. One RIA did have summary tables of the expected costs and benefits in quantitative and qualitative terms, allowing the reader to compare the options.

Enforcement and sanctions

- 25 Regulations are often introduced to achieve the government's policy objectives by encouraging changes in behaviour. RIAs therefore need to consider how the regulations will be enforced, whether different policy options require different enforcement regimes, how different enforcement regimes would affect compliance and costs, how patterns of compliance affect costs and benefits, and the sanctions that would apply in the event of non-compliance.
- 26 Only half of the RIAs in the sample considered enforcement and sanctions, and only one provided estimates of the costs of enforcement of all the options. Six RIAs in the sample included a section entitled "Enforcement, Sanctions, Monitoring and Review", but only three of these discussed enforcement in that section. "Enforcement and Sanctions" and "Monitoring and Evaluation" involve different issues and RIAs would benefit from separate discussions of the two areas.

Monitoring and evaluation procedures

- 27 Good quality RIAs will outline how the regulation and its effects are to be measured and monitored, and describe the reviews and evaluations which will be used to judge how far the regulation is achieving defined objectives. An explanation of how information from monitoring and evaluation will be used to inform future policy making improves the transparency of the process.
- 28 All but one of the RIAs described how the regulation was to be monitored, but often in a very brief and vague way, and only four stated that there would be a formal review to evaluate the success of the regulation. In cases where departments had developed detailed plans, the RIAs would have benefited from including more information on these procedures.

RECOMMENDATIONS

- 1 RIAs should be undertaken early in the policy making process for any measure which may impact on businesses, charities and voluntary organisations and should evolve throughout the process. As part of this process it is essential that policy makers plan as early as possible the timetable for the RIA process and for implementation of the policy, for example ensuring that sufficient time is allowed for public consultation and that any necessary guidance on the policy is produced at the appropriate time to improve compliance.
- 2 The RIA process is often crucial to good policy making and departments should ensure that the process is properly resourced and that appropriate training is given.
- 3 Where possible, departments should draw on previous experience of producing RIAs, thus encouraging a culture of thorough scrutiny of regulatory proposals within the policy making process.
- 4 RIAs should include a clear statement of the objectives for the regulation to demonstrate that the department knows exactly what the regulation is trying to achieve, and the objectives should properly inform the consideration of policy options, including alternatives to regulation.
- 5 Departments should consider a range of options to achieve their policy objectives, and present these in the RIA. These should include a "Do Nothing" option and alternative regulatory methods where appropriate, and consider the appropriate enforcement regime for each of the different options.
- 6 The RIA should include a detailed risk assessment of the problem or risk which the policy is trying to address. This should include the consequences of not regulating, to help identify and analyse the net benefits of the regulation. Where practicable the risk assessment should present evidence-based estimates to illustrate the scale of the issue or market failure the regulation aims to address.
- 7 Departments should undertake a full public consultation to obtain the views of key stakeholders and any other interested parties. They should ensure that the planned timetable for the RIA process allows at least twelve weeks' response period in line with guidance.
- 8 RIAs should be realistic and have regard to the uncertainties, for example by presenting ranges of costs and benefits where appropriate, rather than single point figures. They should normally include the effect of changes in key assumptions by undertaking and presenting sensitivity tests.
- 9 Departments should, wherever practicable, present quantified estimates of the costs and benefits of the regulation, including any wider costs and benefits. They should also draw on advice from in-house experts such as economists to ensure methodologies are robust.
- 10 Departments should consider the consequences of achieving less than 100 per cent compliance with the regulation. Whilst it is reasonable to present the expected impacts of the regulation if there is full compliance, RIAs should also show the impacts of lower levels of compliance so that this can inform the decision making process. Departments should also consider patterns of compliance in their assessments.
- 11 Departments should outline in the RIA how the regulation and its effects are to be measured and monitored, and describe the reviews and evaluations which will be used to judge how far the regulation is achieving defined objectives. They should also explain how information from monitoring and evaluation will be used to inform future policy making.