



Evaluation of Regulatory Impact Assessments Compendium Report 2004-05

The National Audit Office scrutinises public spending on behalf of Parliament. The Comptroller and Auditor General, Sir John Bourn, is an Officer of the House of Commons. He is the head of the National Audit Office, which employs some 800 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. Our work saves the taxpayer millions of pounds every year. At least £8 for every £1 spent running the Office.



Evaluation of Regulatory Impact Assessments Compendium Report 2004-05

LONDON: The Stationery Office
£8.25

Ordered by the
House of Commons
to be printed on 14 March 2005

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
Comptroller and Auditor General
National Audit Office

14 March 2005

The National Audit Office study team consisted of:

Rachel Bateson
Kevin Browne
Claire Exell
Shyam Gupta
Ruth Hancock
Ed Humpherson
Phil Jones
Jodie Kemp
Anushiya Kugathas
Simon Lacey

This report can be found on the National Audit Office web site at www.nao.org.uk

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

© National Audit Office 2005

CONTENTS

EXECUTIVE SUMMARY	1
Findings	1
Characteristics of RIAs	2
Three approaches to RIAs	3
Recommendations	4



PART 1

The role of Regulatory Impact Assessments	6
The introduction of Regulatory Impact Assessments	7
The increasing importance of Better Regulation	8
Ensuring the quality of Regulatory Impact Assessments	9
Other sources of quality control and scrutiny	10

PART 2

Findings of the NAO evaluations	14
Regulatory Impact Assessments as a tool of policy-making	15
Regulatory Impacts Assessments as a communication tool	22

PART 3

Approaches to Regulatory Impact Assessments and their influence	24
Three approaches to Regulatory Impact Assessment	25
The influence of Regulatory Impact Assessments in our sample	25

APPENDICES

1. Methodology	28
2. Approaches to Regulatory Impact Assessment	30
3. Findings in 2003-04	31
4. Learning points from Evaluations	33
5. Competition Filter Test	34

EXECUTIVE SUMMARY



1 Regulation is an important instrument available to governments for fulfilling their objectives. Regulation can however impose costs on businesses, the voluntary sector and individuals, and may not always be the most effective way of achieving a Government's objectives.

2 Since 1998, the Government has used a process known as Regulatory Impact Assessment (RIA) to identify the objectives, and review the likely costs, benefits and uncertainties, of regulations. RIAs should inform decisions on alternative options to achieve those objectives, and should also communicate clearly why the preferred option has been selected.

3 In April 2002, the Committee of Public Accounts recommended that the NAO evaluate a sample of the RIAs produced each year and in December 2002 the Cabinet Secretary invited the Comptroller and Auditor General to undertake an annual evaluation of a sample of RIAs. In March 2004, the results of the first such annual evaluation were published.¹

4 This report summarises the second year of RIA evaluations. Out of some 175 RIAs produced in 2003-2004 we selected a sample of ten. This was based on RIAs identified by the Better Regulation Task Force as those from which lessons could be drawn.² We are, once again, grateful to the Task Force for providing an excellent sample of RIAs containing many useful examples of good practice and also learning points.

Findings

5 The NAO's evaluation considered seven technical aspects of RIAs: defining the problem; the identification of alternative solutions; the analysis of costs and benefits; competition assessment; compliance analysis; taking account of small business; and monitoring and evaluation. In addition to the technical aspects, we broadened our scope to consider the RIA process as a whole and undertook structured interviews with key staff to consider aspects such as how well departments felt the process worked, and the role of the Cabinet Office. Appendix 1 gives a full description of our methodology. Our findings are based on a similar framework of evaluation to that used in our 2003-04 report, and in some areas in this report we draw attention to the relevant findings from last year's evaluations.

Defining the problem

6 Clear objectives at the outset derive from what departments aim to achieve with their policy proposals. Departments need to define the problem the proposed regulation aims to address. This is referred to in Cabinet Office guidance as risk assessment. A robust analysis of the problem, quantified where possible, will allow departments to consider how their objectives relate to the problem, and to analyse the relevant costs and benefits of the proposed regulation. Eight out of ten RIAs in this year's sample contained good or acceptable problem definitions, with quantified estimates in four of them.

The identification of alternative solutions

7 Departments should consider a range of options to achieve their policy objectives. These options should include alternatives to regulation, and an analysis of the Do Nothing option. This should provide a clear analysis of the likely situation in the absence of the proposals. Without this there can be no proper assessment of the costs and benefits of the proposal. A good RIA should demonstrate and justify the reason for the choice of the preferred option.

8 The extent to which some RIAs could consider a full range of options was limited, because they were started at a late stage in the decision making process. Nine of the ten RIAs in our sample did however include a Do Nothing option. Six of the RIAs in our 2003-04 sample did not.

The analysis of costs and benefits

9 RIAs go through a number of stages of development, the last of which is the Final RIA. This includes a statement signed by the relevant Minister indicating that the benefits of the regulation justify the costs. Eight of the ten RIAs in our sample included some quantified assessments of costs. Benefits are often more difficult to quantify than costs and only four RIAs in the sample did so.

10 Cabinet Office guidance states that a central component of the RIA is the analysis of costs and benefits. It is therefore important that departments involve specialists, such as economists, at an early stage to advise those preparing the RIA of available methodologies. But estimating costs and benefits involves judgement and many cannot be calculated to a fine degree of precision.

¹ C&AG's report: Evaluation of Regulatory Impact Assessments Compendium Report 2003-04, HC 358, 4 March 2004.

² The Better Regulation Task Force is an independent body, set up in 1997 to advise Government on action to ensure regulation and its enforcement accord with good practice (paragraph 1.22).

11 Departments should reflect uncertainties when they present quantified estimates. Where a single point estimate is presented, departments should be clear about the assumptions or strength of evidence supporting the estimate. They can reflect uncertainties by undertaking sensitivity analysis. Where evidence is sufficiently robust, departments can present a range of costs and benefits, which can be used to inform consideration of different scenarios. Here again, departments should be clear about the degree of uncertainty underlying the ranges. Some of the quantified estimates in the RIAs in our sample were presented as single point estimates, but without clearly reflecting the underlying uncertainties.

The assessment of competition

12 For all RIAs produced from 2002 departments must consider the implications for competition of the regulatory proposals and include a competition assessment in the RIA. Where an initial test indicates there may be an impact departments should discuss the competition assessment with the Office of Fair Trading,³ which also provides expert advice and training. All departments in our sample included an initial competition assessment, and all sought the advice of the Office of Fair Trading.

The analysis of compliance

13 Compliance with regulations by the targeted bodies or individuals is crucial to the achievement of the regulating Department's objectives. Analysis of likely compliance should inform a Department's choice of policy options, and the regime by which the regulation will be enforced. Departments should consider the level and pattern of compliance to ensure the proposals are properly targeted. In our sample departments did not present their consideration of different levels or patterns of compliance. As in last year's sample, all RIAs presented a discussion of 100 per cent compliance with the proposals.

Taking account of small businesses

14 Small businesses are important to the UK economy and regulations can have a disproportionately large impact on them. Departments must therefore pay particular attention to the potential impact of their proposed regulations on small businesses, and all the departments in our sample did so. Where appropriate, departments should consult with the Department of Trade

and Industry's Small Business Service (SBS) in preparing RIAs. Departments did so in all eight appropriate cases in our sample, and the SBS was generally content that the RIAs reflected its views.⁴ However, it felt that in four of the eight cases it had not been given sufficient time to provide a considered response.

Monitoring and evaluation

15 Monitoring and evaluation are important parts of any effective policy making framework, and they can inform future policy development in the relevant areas. RIAs should include an outline of how the regulation and its impacts are to be measured and monitored. Four out of the ten provided a reasonable description of the monitoring and evaluation procedures, such as when and how reviews would be undertaken. The remaining six did not.

The consultation process

16 Departments are expected to undertake formal consultations with affected stakeholders on the proposal. The consultation document should include and draw attention to the Partial RIA and ask for consultees' comments on the estimates in it. Consultation was generally done well in our sample. Nine of the ten RIAs in the sample undertook formal consultations.⁵ The Partial RIAs and consultation documents in our sample were clear and explained well the relevant department's expectations of impacts. We found that consultation was most effective where departments held ongoing discussions with stakeholders throughout the process, in addition to the formal consultations.

17 Cabinet Office guidance states that RIAs should act as stand alone documents, which should contain sufficient information to explain a department's justification for choosing the preferred policy option to achieve its policy objectives. The RIAs in our sample set out the proposed regulations fairly clearly, though there were gaps in some areas noted above, such as monitoring, evaluation and compliance.

Characteristics of RIAs

18 Our overall finding is that the RIAs in our sample demonstrated an improvement in technical terms compared to last year's sample. The sample illustrates, however, important areas where there is still scope for significant improvement.

³ Office of Fair Trading, Guidelines for Competition Assessment, OFT355.

⁴ The nature of the High Hedges and The Financial System and Major Operational Disruption proposals meant that consultation with the SBS was not appropriate, as there were no likely impacts on small businesses. The SBS agreed with this view.

⁵ The RIA for the National Care Standards Commission Fees and Frequencies of Inspection 2003-04 did not consult, as it merely updated elements of existing legislation. Legal advice had confirmed that consultation was not necessary.

19 We also considered the influence on policy of the RIAs in our sample, because one of their main roles is to inform the policy process. Four of the ten RIAs in our sample led to some changes in policy, ranging from minor refinements to the department deciding not to regulate at all. One in particular showed how the RIA process can have a major impact on the policy making process. The Treasury considered measures to protect the financial system in the event of major disruption using the RIA process. This resulted in the Department deciding not to proceed with regulation.

20 The RIAs in our sample which influenced policy were generally started early in the process, involved good consultation processes, and produced good assessments of the impacts of the policy proposals. These characteristics were similar to those identified in our 2001 Report: *Better Regulation: Making Good Use of Regulatory Impact Assessments*.⁶

21 Three factors limited the influence of RIAs on policy:

- Some RIAs are produced after important decisions have been made. In such cases the RIA may not have much influence on policy, but can still be useful to communicate the decision and its expected impacts;
- Some RIAs deal with the implementation of European Union Directives. In such cases, the measures have already been decided and the UK and other Member States are obliged to implement them.⁷ While the RIAs cannot influence policy directly, it is important that departments continue to produce them. They allow departments to identify the flexibility allowed under the Directive to implement regulation in the least burdensome way; and
- Some RIAs are produced to update aspects of an existing policy, whilst leaving the rest of the policy unchanged.

22 Nevertheless, even in these cases departments can derive some benefit from producing RIAs. Regardless of their influence on policy, RIAs fulfil a vital communication role in line with the Transparency principle of Better Regulation (Figure 1, page 10). For example, departments told us that their RIAs had been used as reference documents and sources of information for Members of Parliament, businesses and others. This illustrates the usefulness of the role of RIAs in gathering evidence and information.

Three approaches to RIAs

23 On the basis of our experience of evaluating RIAs,⁸ we have identified three approaches to preparing RIAs, differentiated in terms of their technical quality and their influence on policy-making:

- **Pro-Forma RIAs:** These have no impact on policy and are produced merely because there is an obligation on departments to do so and may be started after the decision has been made. This can lead to poor RIAs as they may be inadequately resourced and produced too quickly;
- **Informative RIAs:** These have limited impact on policy. These RIAs are not integrated into the policy-making process; for example, they may have been started fairly late. Although the RIA will have only limited relevance, a department can still produce a high quality RIA that clearly outlines the expected impacts, and is therefore a useful communication tool; and
- **Integrated RIAs:** These inform and challenge policy-making. These RIAs are started early and are properly resourced, which allows better gathering and analysis of evidence. In these cases the RIA can help shape the policy making process and communicate the reasons for the department's decision to regulate in the chosen way. In some cases the role of the RIA in challenging policy makers will lead them to a non-regulatory response.

⁶ HC 329 Session, 2001-02.

⁷ In the case of European Directives, the UK will have been involved in the negotiations and consideration of policy options that took place before the Directive was passed. These discussions may also have been the subject of Impact Assessments. In our work for this report, we have not looked at the negotiations that informed the passing of the Directives, or at any Impact Assessments that may have been carried out at that time. We may consider such assessments in future evaluations.

⁸ The C&AG has published two reports which examined RIAs: *Better Regulation: Making Good Use of Regulatory Impact Assessments* (HC 329 Session 2001-02); and *Evaluation of Regulatory Impact Assessments Compendium Report 2003-04* (HC 358 Session 2003-04).



RECOMMENDATIONS

To Departments

A Regulation may not always be the best response to achieve objectives. Departments should use the RIA process to assess options to achieve their objectives, including alternatives to regulation, and whether a regulatory response is the best option.

B Final RIAs should summarise briefly options that have been considered and discarded. This increases transparency and demonstrates that departments have considered a range of options.

C Departments should analyse and present the Do Nothing option in all cases to provide a measure of the impact of the proposals. They should ensure this takes account of the contribution which known existing measures can make to the proposals in the RIA.

D Departments should involve specialists, such as economists, in completing competition assessments at an early stage, and should seek advice from the Office of Fair Trading.

E Departments should include in the RIA process the impacts of different levels and patterns of compliance, and the effectiveness of different enforcement strategies. This should help inform the choice of options and the most appropriate enforcement regime.

F Departments should allow the Small Business Service sufficient time to consider the implications of proposals on small businesses.

G RIAs have the greatest value if they are integrated into the policy process. Departments should aim to produce good quality RIAs that inform and challenge policy-making.



H Departments should ensure that the RIAs produced are fit for the required purpose. There is no point in producing complex or elaborate RIAs for small-scale regulations, while other regulations demand in-depth analysis integrating the efforts of economists, statisticians, lawyers and subject-matter experts.

I Producing RIAs and monitoring and evaluation lead to collection and analysis of a great deal of information. Where this information relates to departments' performance measurement indicators, departments should ensure that the information is incorporated into their performance reporting.

To the Cabinet Office

J Around 175 RIAs were produced across the Government in 2003. If RIAs are to maximise their influence, and to serve as a communication tool, it is important that businesses and others can obtain up to date lists of RIAs. Cabinet Office should update its website regularly to ensure all RIAs are included.

PART ONE

The role of Regulatory Impact Assessments



This part of the report focuses on the development of RIAs, and the context within which they operate. The RIA process involves a wide range of stakeholders and several organisations within and outside Government which aim to improve the quality of the RIA produced.

The introduction of Regulatory Impact Assessments

1.1 Regulation is an important instrument available to governments for fulfilling their objectives. It is not necessarily legislation but includes 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.⁹ Regulation can however impose costs on businesses, the voluntary sector and individuals, and may not always be the most effective way of achieving a Government's objectives.

1.2 Since the 1980s successive Governments have been developing procedures to ensure that departments consider the likely impacts of new regulations. During the 1990s departments undertook Compliance Cost Assessments of new regulations, analysing which parties were likely to be affected and estimating the costs they might incur in complying with the new rules. In 1997, the Government decided that these assessments were not comprehensive enough, that departments should consider wider costs and benefits, and that they should consult stakeholders and the public on proposals. In 1998 it replaced Compliance Cost Assessments with Regulatory Impact Assessments (RIAs), which are defined as:

“A tool which informs policy decisions. It is an assessment of the impact of policy options in terms of the costs and benefits of a proposal.”

1.3 The move to RIAs represented a shift in emphasis away from focusing solely on business burdens. By including wider assessments of costs, benefits and uncertainties, RIAs allow departments to consider the full impacts of their proposals. This encourages them to focus on the quality of regulation, rather than only on its costs.

1.4 In August 1998 the Prime Minister announced that no regulatory proposal which had an expected effect on business, charities or voluntary bodies should be considered by Ministers without an accompanying RIA. The Cabinet Office became responsible for ensuring departments deliver better regulation through full compliance with the Regulatory Impact Assessment process.

The Regulatory Impact Assessment process

1.5 The RIA process provides a rigorous framework within which departments develop a policy proposal, from the initial idea through to laying a Bill before Parliament, or the decision not to legislate. The process can inform, but not replace, decision making. RIAs help departments and agencies to think through the full impacts of their proposals; identify alternative options for achieving the desired outcome; and determine whether the benefits of the proposal justify the costs.

9 C&AG's report: Better Regulation: Making Good Use of Regulatory Impact Assessments (HC329 Session 2001-02).

1.6 RIAs should evolve through four stages:¹⁰

- **Initial RIA:** This forms part of the submissions seeking Ministerial agreement to a proposal. It should be undertaken at the outset of a new policy and may involve initial discussions with stakeholders, though it is not likely to have much detail. Cabinet Office guidance states that it should include best estimates of the problem, the benefits, costs and uncertainties, and help identify where departments need more information.
- **Partial RIA:** This builds on the Initial RIA through research and discussions with affected stakeholders. It must accompany the formal public consultation for proposals. It should set out the alternative ways of meeting the policy objective, based on a consideration of options; include more refined estimates of benefits and costs and a fuller analysis of the problem; and include discussions on compliance and monitoring. It should seek input on areas where there are gaps in information.
- **Full RIA:** The Department draws on the results of the consultation process and further research to produce the Full RIA. It should include a department's estimates of the problem, benefits, costs and uncertainties, based on further refinement following consultation. The Full RIA is submitted to the relevant Minister who is required to sign it to state that the benefits of the proposal(s) justify the costs.
- **Final RIA:** The document signed by the Minister is known as the Final RIA. The Final RIA should act as a stand alone document explaining the development of the policy. It is submitted to Parliament with the appropriate Bill/Statutory Instrument.

The increasing importance of Better Regulation

Initiatives aimed at delivering Better Regulation

1.7 RIAs are part of a wider Government agenda known as Better Regulation. It aims to deregulate sectors of the economy where possible, reduce burdens on businesses and improve the way regulation is enforced. RIAs focus on only adding new regulations where necessary, and doing so in a proportionate way, whereas the other elements of Better Regulation are concerned with the existing body of regulation.

1.8 The Regulatory Reform Act of 2001 allows the reform of primary legislation by Regulatory Reform Orders (RROs). These Orders can reform entire regulatory regimes and one or more Acts. They can also remove any limit on the statutory powers of any person, thereby enabling them to do something that they could not otherwise do. RROs can also repeal and replace, amend or re-state statute law affecting business, individuals, the voluntary sector, charities and the wider public sector.

1.9 The Department of Trade and Industry (DTI) is committed to reducing the burdens on business of DTI regulations, by more than £1 billion over its five year programme. The Department has also established two specific implementation days a year for employment regulations to ease the burden on employers. New employment regulations will take effect from the same days each year. And in December 2004, the Minister for the Cabinet Office announced a new award for civil servants who had found ways to deliver policy objectives without regulation, sponsored by the Better Regulation Task Force.

1.10 There are also measures to promote effective enforcement of regulation. The DTI's Consumer and Competition Policy Directorate, along with the Small Business Service (SBS) and the Cabinet Office, is involved in the Government's work to ensure effective enforcement of all regulations. The Enforcement Concordat was signed in 1998 by local and national enforcers. To date over 96 per cent of all central and local Government organisations with an enforcement function have adopted the Enforcement Concordat. This aims to help businesses to comply with regulations, and help enforcers to achieve higher levels of voluntary compliance.

1.11 In 2004 the Chancellor of the Exchequer asked Philip Hampton, Chairman of J Sainsbury plc, to lead a review into regulatory inspection and enforcement with a view to reducing the administrative cost of regulation to the minimum consistent with maintaining the UK's desired regulatory outcomes. The Review examined the overall regulatory framework; interactions between business and regulators, including form-filling, enforcement action and licensing and inspection; and the extent to which regulators act in a proportionate, risk-based manner.

10 Based on guidance in: Better Policy Making: A Guide to Regulatory Impact Assessment, published by Cabinet Office Regulatory Impact Unit, 2003.

The international profile of Better Regulation

1.12 The development of RIAs and Better Regulation initiatives in the UK is mirrored by similar initiatives elsewhere, including the European Commission and in other national governments.

1.13 According to the Cabinet Office, around half of all legislation with a significant impact on business, charities or the voluntary sector starts off in the European Commission (EC). These measures must be implemented by the UK and other Member states. In 2001 the Mandelkern Group¹¹ recommended that the EC adopt a formal process of impact assessment. The EC published a Better Regulation Plan in June 2002, committing to a systematic approach including Impact Assessment. The Commission has recently announced that all major policy-defining documents and legislative proposals will be subject to Impact Assessment, and that the process will be simplified. "Roadmaps" will be presented at the early stages of the proposals. These will set out the issues, options, impacts, assessments and consultations to be undertaken, and their timing. A further Impact Assessment may then be undertaken to consider the economic, social and environmental impacts of the proposals.

1.14 Other national governments have also developed impact assessments and since 1996, around half the countries in the OECD have been using some form of the process. The US, for example, has required impact assessments since 1981. The Netherlands and Australia are also fairly advanced in Regulatory Impact Analysis. More generally, the OECD endorses well-prepared RIAs and stresses the importance of considering a range of options, including alternatives to regulation, as part of policy making.

Ensuring the quality of Regulatory Impact Assessments

1.15 To raise the quality of RIAs, the Government has created a framework for quality control and scrutiny. This section describes the different levels of scrutiny and how they fit in the process to improve the quality of RIAs.

The Cabinet Office Regulatory Impact Unit

1.16 The Cabinet Office is responsible for ensuring that departments achieve full compliance with the RIA process. To ensure that the RIA tool is applied consistently to all policies, the Cabinet Office has a Public Service Agreement target of full compliance with the RIA process. There will always be exceptions, such as emergency measures, however, and in practical terms the Cabinet Office aims for 95 per cent compliance. Exercises in June and December 2004 to establish snapshots of compliance both showed a rate of 96 per cent.

1.17 During the development of RIAs, the Cabinet Office's Regulatory Impact Unit works with departments to raise their quality. The Unit's Scrutiny Team consists of staff with a wide range of experience of policy development and implementation. The team works closely with other Cabinet Office Units, other departments, regulators and the regulated. It focuses on those regulations which may have a significant impact on business, charities, the voluntary sector, and the public sector.

1.18 The Unit issues guidance to departments on preparing RIAs. It also advises on the preparation of individual RIAs. Departments can seek the Unit's advice on particular points, such as the appropriate level of cost benefit analysis. It can also submit draft RIAs to the Unit for comment, and the Unit will advise on how to improve the quality. As compliance with the requirement to produce RIAs increases, the Unit has shifted its focus to improving overall quality. For example, the Scrutiny Team reviews the RIAs for all significant proposals and assesses their quality.

1.19 All departments have a Departmental Regulatory Impact Unit (DRIU), which promotes the principles of good regulation and better policy making in each department. Departments should first approach the DRIU for advice on producing RIAs, which acts as a liaison point between the Cabinet Office and the relevant department. Additionally, each department should have a Better Regulation Champion, who promotes the principles of good regulation and better policy making at departmental board level.

¹¹ The Mandelkern Group of Member State experts on better regulation was set up by the European Commission in November 2000. Its task was to develop a coherent strategy to improve the European regulatory environment. Chaired by Dieudonne Mandelkern, a French Government official, the Group produced a final report in November 2001 which supported the adoption of a process for assessing the impacts of regulations on similar lines to the UK model. The report stated that: "Regulatory Impact Assessment can play a significant role in improving the regulatory environment. It can be an effective tool for modern, evidence based policy making."

The Prime Minister’s Panel for Regulatory Accountability

1.20 To supplement the role of the Cabinet Office Regulatory Impact Unit, the Prime Minister’s Panel for Regulatory Accountability (PRA) was announced at the Budget 2004 to reduce the flow and improve the quality of regulation at UK level. This aims to ensure that regulation is used only where necessary. The Panel, chaired by the Prime Minister, scrutinises all new regulation likely to impose a major cost on business.¹² Clearance by the Panel is based on a thorough impact assessment of the proposal, agreed by the Cabinet Office Regulatory Impact Unit. The Panel has already rejected or delayed some regulatory proposals, where it considered that departments had not properly analysed or justified extra burdens on businesses.

Other sources of quality control and scrutiny

1.21 RIAs are also subject to scrutiny by organisations outside central Government. Such scrutiny aims to identify good and bad practice in Final RIAs and ensure lessons are learned for future RIAs. Scrutiny of the final, published document is therefore very important for the development of the RIA and policy processes.

The Better Regulation Task Force

1.22 The Better Regulation Task Force (the Task Force) was established in September 1997. It is an independent body that advises the Government on action to ensure that regulation and its enforcement accord with the five Principles of Better Regulation, as stated in **Figure 1**.

1 The Five Principles of Better Regulation	
Proportionality	Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed and costs identified and minimised.
Accountability	Regulators must be able to justify decisions and be subject to public scrutiny.
Consistency	Rules and standards must be joined up and implemented fairly.
Transparency	Regulators should be open and keep regulations simple and user friendly.
Targeting	The regulation should be focused on the problem and have minimal side effects.

1.23 The Task Force comments on the quality of existing or proposed regulation and carries out studies of particular regulatory issues. The Government must respond to Task Force reports within 60 days. In March 2005, the Better Regulation Task Force published *Regulation - Less is More* which looks at the feasibility of the UK adopting the Dutch approach to reducing administrative burdens, and a “One in, One out” rule for regulation, where new regulations have to be matched by deregulatory measures. In addition, the Task Force has recently published the following reports: *Make it Simple, Make it Better - Simplifying EU Law* (December 2004); *Avoiding Regulatory Creep* (October 2004); and *The Challenge of Culture Change: Raising the Stakes* (June 2004, Annual Report 2003-04).

1.24 The Task Force also considers the quality of completed RIAs and comments on elements of good and bad practice. It draws the attention of the NAO to a number of RIAs from which it believes lessons can be drawn. These were outlined in the Task Force’s Annual Report 2004: *The Challenge of Culture Change: Raising the Stakes*.

¹² The Panel consists of the Prime Minister; Cabinet Secretary; Minister of the Cabinet Office; Secretary of State for Trade and Industry; Chair of the Better Regulation Task Force; and Chief Executive of the Small Business Council.

Other Stakeholders

1.25 Additionally, there are a number of other organisations and stakeholders in academia, and the public and private sectors who undertake research on regulatory issues. Some are particularly interested in the impacts of regulation on business. They produce publications on RIAs and act as a further incentive for departments to produce better quality RIAs. The London Business School and Manchester Business School jointly undertake an annual review of RIAs on behalf of the British Chambers of Commerce.¹³ Other bodies also include the European Policy Forum,¹⁴ the Institute for European Environmental Policy,¹⁵ and the University of Exeter.¹⁶

Consultation

1.26 Departments usually undertake at least one formal public consultation during the course of policy and RIA development. This involves seeking opinions and comments on proposals and the Partial RIA from outside Government. Consultation acts as a form of external scrutiny of the proposed policy.

1.27 The results of consultation may inform aspects of the proposals where the department has little data. They can also help identify potential unintended consequences of the proposals that may not have been considered by the department or agency. The consultation responses can then be used to inform the further development of the Government's analysis of policy options. Consultation is most effective where departments engage in regular discussions with stakeholders affected by the proposals from an early stage of the policy development process. This can provide specialised advice and scrutiny in particular areas, such as impacts on business. In some cases stakeholders can help to draw up better regulation. Continuing dialogue can also mean that formal consultation responses are easier to take into account as the consultation documents and Partial RIAs are better targeted.

The NAO's role regarding RIAs

1.28 Since December 2002, the NAO has undertaken annual evaluations of a sample of RIAs. Following a hearing by the Committee of Public Accounts in April 2002 on the Comptroller and Auditor General's 2001 Report,¹⁷ the Committee recommended that we should evaluate a sample each year. In December 2002, the Cabinet Secretary formally invited the Comptroller and Auditor General to undertake an evaluation, and the first report was: *Evaluation of Regulatory Impact Assessments Compendium Report 2003-04* (HC 358 Session 2003-04).

1.29 For this second report the NAO reviewed a sample of ten RIAs to assess their quality and the thoroughness with which they were prepared. In selecting ten RIAs we took account of the suggestions in the Task Force's Annual Report. Our final sample included nine of the Task Force's suggestions, and one which we selected using our own criteria (**Figure 2 overleaf**).

Methodology

1.30 In our evaluations we consider the whole RIA process, rather than just the Final RIA. We review relevant documents at the Departments and discuss the process with staff responsible for the assessment's preparation. In doing this we obtain an understanding of how the RIAs were developed by relevant Departments so as to identify learning points to improve RIAs in the future.

1.31 Our evaluation appraised departments' performance against seven technical aspects of RIAs:¹⁸

- A** Defining the problem;
- B** Identification of alternative solutions;
- C** Analysis of costs and benefits;
- D** Competition assessment;
- E** Compliance analysis;
- F** Taking account of small business; and
- G** Monitoring and evaluation.

¹³ The British Chambers of Commerce reports annually on UK regulatory impact assessments. Its report on RIAs published between July 2003 and June 2004 will be available in April 2005.

¹⁴ The European Policy Forum is an independent international research institute. It has published reports such as the 'EU Regulatory Impact Scorecard' which examined the first 20 assessments carried out in 2003.

¹⁵ The Institute for European Environmental Policy is a centre for the analysis and development of environmental and related policies in Europe. An example of its work is a report on 'Sustainable Development in European Commission Impact Assessments' published in 2003.

¹⁶ The University of Exeter's Department of Politics includes comparative regulatory policy among its main areas of research. It has recently strengthened the faculty with the appointment of Professor Radaelli, a member of our Expert Panel, who has published numerous papers on European regulatory issues.

¹⁷ C&AG's report: Better Regulation: Making good use of Regulatory Impact Assessments (HC 329 Session 2001-02).

¹⁸ These seven aspects arose in completing our framework for analysis as areas worth highlighting for particular learning points.

2 The 2004-2005 sample of RIAs included in the NAO Evaluation

RIA Title and Summary

High Hedges (No.2) Bill. This Bill gives local authorities powers to intervene where neighbours cannot resolve disputes over high hedges. If the local authority considers the circumstances justify it, they can order the owner to cut the hedge and make sure they comply.

Local Government Act 2003 (Small Business Relief). This was prepared as part of the overall Local Government Act 2003, following research which identified that small businesses pay a disproportionate amount of rates as a proportion of turnover and profits when compared with larger businesses. It changes the rating system to reduce the rates bills of small businesses.

National Care Standards Commission Regulatory Fees: Fees and Frequencies of Inspection 2003-04. This updated fee proposals which were specific elements of an existing regulation, whilst leaving the rest unchanged. The existing regulation had been subject to an earlier RIA.

Recovery of NHS Treatment and Ambulance Costs where people claim and receive compensation. This aims to allow the NHS to recover the hospital treatment and ambulance services costs of all those injured as a result of someone else's actions where personal injury compensation has been paid.

Reform of the Welfare Foods Scheme. This was prepared alongside changes in legislation to be introduced in the Health and Social Care Act 2003, without specifying the detailed amendments. The overall aim was to reform the scheme to ensure that children in poverty have access to a healthy diet and to provide increased support for breastfeeding and parenting.

Anti-Social Behaviour Bill. This aims to provide the tools for practitioners and agencies to tackle anti-social behaviour.¹

Courts Bill: Proposals to improve fine enforcement. Amongst other things, this Bill provides powers to pilot several sanctions to establish which, if any, are effective in improving the collection rates of fines imposed by magistrates.

The Financial System and Major Operational Disruption. This Partial RIA asked if new statutory powers should be sought to assist in promoting order in the financial system in extreme circumstances of operational disruption.²

Statutory Instrument for implementing the EU Savings Directive (2003/48/EC): Reporting of Savings Income Information Regulations 2003. The Directive aims to combat tax evasion on cross-border savings by individuals. It requires automatic collection of information about the payment of savings income to residents of other countries and that this is exchanged with tax authorities in those countries.

Statutory Instrument for transposing Articles 4, 5, 6, 8 and 9 and Annexes I and II of Directive 2000/53/EC on End of Life Vehicles (The ELV Directive) in the UK. This aims to reduce the amount of waste from vehicles. It implements parts of the Directive that require Member States to ensure that vehicles can only be scrapped by authorised dismantlers or shredders.

Department

Office of the Deputy Prime Minister

Office of the Deputy Prime Minister

Department of Health

Department of Health

Department of Health

Home Office

Department for Constitutional Affairs

Treasury

Inland Revenue

Department of Trade and Industry³

NOTES

1 Our Evaluation concerned an overarching RIA produced by the Home Office, and four separate RIAs covered by the overarching RIA, concerning: Restricting the sale of spray paints to under 18s; Amendments to firearms legislation to ban the sale, transfer, manufacture and import of weapons using the self-contained air cartridge system; Amendments to firearms legislation aimed at reducing misuse of air weapons and imitation weapons; and, Closure of properties causing nuisance through the supply or use of Class A drugs.

2 This was a Partial RIA as the Department decided not to introduce regulations, but to undertake further research.

3 The Department of Trade and Industry led this RIA, but the Department for Environment, Food and Rural Affairs was responsible for some elements.

Structured Interviews

1.32 In addition to these technical aspects, we broadened our scope this year to consider the RIA process as a whole and undertook structured interviews with key staff responsible for preparing the RIAs in our sample, including the Departmental Regulatory Impact Units. We asked them about the effectiveness of the overall framework for producing RIAs, including the Regulatory Impact Unit and the usefulness of the Cabinet Office guidance. Appendix 1 gives a full description of our methodology.

1.33 The results were generally favourable. Most teams felt that the Unit had provided useful and timely advice. They felt there was clear communication, whether directly or through the Department's own Regulatory Impact Unit. Some comments are shown in **Figure 3**.

3 Comments from Structured Interviews on the Cabinet Office RIU

"They [the Cabinet Office] commented effectively on the drafts and pointed the Department in the right direction".
(Reform of Welfare Foods Scheme).

"Overall they provided useful information for the RIA as it was drafted, providing further advice on where the gaps were and areas that need further analysis. The Cabinet Office feedback was a positive influence on the RIA".
(End of Life Vehicles).

"They showed strong project management [which] meant that different areas were well co-ordinated".
(Anti-Social Behaviour Bill).

"They were good at co-ordinating contact with the Office of Fair Trading/Small Business Service".
(Courts Bill: Proposals to Improve Fine Enforcement).

1.34 All departments in the sample had used the Regulatory Impact Unit's guidance on RIAs. Again, most found it very useful and clear although some found it too long. The Unit is currently working to revise the guidance.

1.35 We also asked for feedback from our first year evaluation of ten RIAs, which formed the basis of our 2003-04 Report.¹⁹ Departments told us that the additional level of scrutiny offered by the NAO undertaking such evaluations acted as a useful incentive to produce better RIAs.

Presentations

1.36 We have also made many presentations on our RIA work, to government and the European Commission, and at a number of conferences in order to take a more interactive role in explaining our experience of RIA Evaluations.

1.37 Our findings in Parts Two and Three are based on a similar framework of evaluation to that used in our 2003-04 report, and in some areas in this report we draw attention to the relevant findings from last year's evaluation. We have included these because we feel that the results of elements of our methodology, such as our interviews with departments on wider aspects of the process, are strong enough to suggest that there may be some improvements since last year. However, it must be borne in mind that these are illustrative only. The small size of our sample and the fact that the samples are not randomly drawn mean we can not make firm, statistically meaningful conclusions as to whether there are improvements in the overall quality of RIAs.

19 HC 358, Session 2003-2004.

PART TWO

Findings of the NAO evaluations



RIAs have two main roles: informing policy decisions; and communicating those decisions. This part of the report discusses the findings from our sample of ten RIAs in terms of how they performed in these two main RIA roles.

Regulatory Impact Assessments as a tool of policy-making

2.1 The NAO's evaluation considered the technical aspects of using RIAs as a tool of policy making including: defining the problem; alternative solutions; analysis of costs and benefits; competition assessment; compliance analysis; taking account of small business; and monitoring and evaluation. The evaluation led to a number of learning points, and these are illustrated below by a number of Case Studies from our sample.

A Defining the problem

A robust analysis of the problem will allow departments to consider how their objectives relate to the problem.

2.2 Clear objectives at the outset derive from what departments aim to achieve with their policy proposals (**Case Study 1**). Departments need to define the problem the proposals aim to address, defined in Cabinet Office guidance as risk assessment. A robust analysis of the problem will allow departments to consider how their objectives relate to the problem; to identify and analyse alternative options; and to analyse the relevant costs and benefits of the proposed regulation.

2.3 Eight out of ten RIAs in this year's sample contained good or acceptable risk assessments which set out the current problem that the regulatory options aimed to address. The Cabinet Office Guidance says that, where possible, risks should be quantified as this assists with the estimation of costs and benefits of the different options. Four of the ten RIAs provided quantified estimates in their risk assessments (**Case Study 2**).

CASE STUDY 1

Anti-Social Behaviour Bill

The purpose of the Anti-Social Behaviour Bill (ASB Bill) was to provide the tools for practitioners and agencies effectively to tackle anti-social behaviour. It contains measures from five Government Departments and builds on existing legislation to clarify, streamline and reinforce the powers that are available to practitioners. Our evaluation concerned an overarching RIA produced by the Home Office, and four separate RIAs covered by the overarching RIA, concerning: restricting the sale of spray paints to under 18s; two amendments to firearms legislation; and closure of properties causing nuisance through the supply or use of Class A drugs.²⁰

The Department set clear objectives for the Misuse of Firearms element of the overall ASB Bill - "to control and reduce the anti-social misuse of air weapons and imitation firearms". This objective is specific, realistic and achievable, and allowed for a range of options to be explored. The objective within the sub-RIA for 'Banning the sales of weapons using the self-contained air cartridge system' was "to control the use of these weapons in gun crime, and to increase public safety". This objective also allowed the Department to consider a range of options. Five options were considered in this case

CASE STUDY 2

The Recovery of NHS Treatment Costs

The Recovery of Costs RIA clearly illustrates the scale of the risks associated with the current situation. The RIA includes data on: the number of people affected; the average length of hospital stays; the number of out-patient visits; the potential amount recoverable for each type of treatment; and the overall current cost to the NHS

2.4 In cases where there is particular uncertainty and a lack of data it can also be appropriate for departments to indicate the levels of risk using more qualitative measures. This was the case with the Partial RIA for the Financial System and Major Operational Disruption. The Treasury was unable to estimate accurately the costs and benefits so it gave an indication of the problems associated with major operational disruption by using a case study of the challenges raised by the terror attacks on 11 September 2001.

20 We also evaluated separately the RIA on the High Hedges (No.2) Bill, produced by the Office of the Deputy Prime Minister.

2.5 The problem described in the RIA should be directly related to the specific policy proposal. Again, this allows departments to demonstrate more clearly the net benefits of the proposal (**Case Study 3**).

2.6 If departments have relevant information that describes the problem, they should include it in their RIAs. This will increase the transparency of the proposals, and support the basis of their decisions (**Case Study 4**).

B The identification of alternative solutions

Options should include alternatives to regulation, and an analysis of the Do Nothing option.

CASE STUDY 3

The National Care Standards Commission Fees and Frequencies of Inspection 2003-04

This RIA updated fee proposals which were specific elements of an existing regulation, whilst leaving the rest unchanged. The existing regulation had been subject to an earlier RIA.

The risk assessment did not address the specific problem covered by the RIA, which was the increase in inspection fees. The RIA repeated the risk assessment for the existing legislation which described the general risks of allowing the pre-2002 rules to continue unchanged. A more accurate description of the problem that the fee increases aimed to address would be that the Department would not meet its objective of full recovery of the cost of care homes inspections within five years.

CASE STUDY 4

Rate Relief for Small Businesses

The Department's aim of helping Small Business through a rate relief scheme was backed up by detailed research which had been carried out in 1995. This research had shown that rate relief could be used as a way of reducing the disproportionate impact of rates on smaller businesses.

The Department did not include this research or updates in the Final RIA. If it had included a summary of this research in the risk assessment section of the RIA this would have demonstrated clearly that rates can have a disproportionate impact on small businesses and supported the Department's legislative solution.

2.7 Departments should consider a range of options to achieve their policy objectives. These options should include alternatives to regulation, and an analysis of the Do Nothing option. A good RIA should consider these different options and the appropriate enforcement regimes that apply to them. It should then be able to demonstrate and justify the reason for the choice of the preferred option (**Case Study 5**).

2.8 The consideration of options should always provide a clear analysis of the likely situation in the absence of the proposals, known as the counterfactual. This should form the basis of the analysis of the costs and benefits. A clear counterfactual will allow a department to demonstrate the net costs and benefits of its proposed regulations, and in doing so, make the regulatory process more transparent. Nine of the RIAs in our sample used the Do Nothing option as a counterfactual. Six RIAs in our 2003-04 sample did not include an analysis of the Do Nothing option.

2.9 The extent to which some RIAs could consider a full range of options was limited, because they were started at a late stage in the decision making process. Although some of these presented other options, only the preferred option was fully analysed. Nine of the RIAs in our sample included a Do Nothing option but in one case this did not take account of the impacts of existing legislation, which may have meant that the benefits were overstated in the RIA (**Case study 6**).

CASE STUDY 5

High Hedges (No.2) Bill

This Bill gives local authorities powers to intervene where neighbours cannot resolve disputes over high hedges. If the local authority considers the circumstances justify it, they can order the owner to cut the hedge and make sure they comply.

The Department considered four options in the RIA. In addition to the preferred option the RIA considered a 'Do Nothing' option; a non-regulatory option; and one other regulatory option. The Department also stated that it had considered several other possible solutions, especially other legislative approaches. The Department had given due consideration to these options before ruling them out as disproportionate.

Policy development in this area shows a light-touch approach with a code, information and guidance being tried prior to the legislative option being adopted. The legislative option chosen is also light-touch as it encourages people to resolve disputes through negotiation, with powers for local authorities to determine unresolved cases.

2.10 The End of Life Vehicles RIA did not present a Do Nothing option, since this RIA was for the implementation of a decision that had been taken at the European level. Where the policy decision has already been taken, as in this case, it would still be useful for departments to include the Do Nothing option as a baseline against which to demonstrate more clearly the costs and benefits of the proposals. Additionally, where RIAs are prepared for the transposition of European Directives into UK law, departments should consider any flexibility allowed in the Directive for the method of transposition (**Case study 7**).

C The analysis of costs and benefits

An analysis of the key costs and benefits of a proposal is the central analytical component of the RIA. Departments should involve specialists, such as economists, at an early stage of the technical analysis.

2.11 Final RIAs include a statement signed by the relevant Minister indicating that the benefits of the regulation justify the costs. Cabinet Office guidance states: “An analysis of the key costs and benefits of a proposal is the central analytical component of the RIA. It is the anticipated stream of benefits that flow from regulation or other policy measures that may justify the costs that are imposed on business or other sectors of the economy and society. The purpose of the analysis of benefits and costs is to determine whether these costs are proportionate to the expected benefits.”²¹

2.12 Robust analysis of the expected costs and benefits should, where possible, underpin decisions made by departments. RIAs can add value by helping policy makers to compare costs with benefits to inform the choices between options. The assessment of costs and benefits can also help to determine whether particular sectors, such as small businesses, are likely to be disproportionately affected by proposals. Final RIAs are expected to present clearly estimates of costs and benefits, quantified where possible, but also using qualitative techniques. This should demonstrate to the reader that the preferred option is the most appropriate way of achieving the department’s objectives.

CASE STUDY 6

The Courts Bill Proposals to Improve Fine Enforcement

The Courts Act provides powers to pilot several sanctions to establish which, if any, are effective in improving the collection rates of fines imposed by magistrates.

The Department included a Do Nothing option in the RIA, but this did not take account of developments involving existing policies, which would have been known to the Department.

For example, the Do Nothing option analysis did not include the potential impact of an existing Home Office pilot scheme focusing on non-legislative measures (improved training) that had resulted in a fourfold increase in collection rates for court fines in the area involved. This could mean that, to some extent, the net benefits arising from the introduction of new legislation were overstated in the RIA, since the beneficial effects of this small pilot scheme would have been attributed to the new proposals

CASE STUDY 7

The Transposition of the EU Savings Directive

The Directive aims to combat tax evasion on cross-border savings by individuals. It requires automatic collection of information about the payment of savings income to residents of other countries and that this is exchanged with tax authorities in those countries. This Directive was unusually prescriptive and left little flexibility in the method of implementation. For example, the regulations set out the exact type of information required and how to collect and exchange it.

Despite the inflexibility of the Directive the Final RIA included three options. The Do Nothing option was included at the suggestion of the Department’s Regulatory Impact Unit, although doing nothing would have breached the UK’s obligations under EU law. Including a discussion of the Do Nothing allows the Department to communicate the impact of this option to the reader, giving an illustration of the likely counterfactual in this case.

The RIA discussed a second option which involved introducing a completely new system for collecting and reporting information. It made clear that this option would involve duplication and would therefore place additional costs on business. The preferred option involved building on the existing reporting systems, whilst allowing businesses to introduce new compatible systems should they choose to do so. This option ensures the Directive’s requirements will be met and should mean lower costs to businesses than the second option.

21 Cabinet Office, Better Policy Making: A Guide to Regulatory Impact Assessment, page 16.

2.13 Given the importance of costs and benefits, departments should involve specialists, such as economists, at an early stage of the technical analysis. Benefits in particular can be difficult to quantify or estimate in monetary terms. Consulting specialists at an early stage can ensure that those preparing the RIA are aware of appropriate methodologies that may be available to provide quantified or monetary estimates.

2.14 Departments should reflect uncertainties when they present quantified estimates. Where a single point estimate is presented, departments should be clear about the assumptions or strength of evidence supporting the estimate. They can reflect uncertainties by undertaking sensitivity analysis. Where evidence is sufficiently robust, departments can present a range of costs and benefits, which can be used to inform consideration of different scenarios. Here again, departments should be clear about the degree of uncertainty underlying the ranges.

2.15 Departments can use a range of approaches to derive the estimates of costs and benefits for their RIAs. These include: in-house modelling; in-house modelling which is confirmed by or revised after consultation; estimates provided by stakeholders; and estimates provided by Business Test Panels. None in our sample had used a Business Test Panel. **Figure 4** sets out the range of approaches used by Departments in the RIA sample. This shows that most used a combination of in-house modelling confirmed by consultation. Some also used figures provided by stakeholders. Where reasonable, figures

provided by stakeholders can be particularly useful in cases where departments do not have detailed knowledge, or where costs and benefits are particularly uncertain.

2.16 Eight of the ten RIAs in our sample included some quantified estimates of costs and four included quantified estimates of benefits. Benefits are often more difficult to quantify than costs.

2.17 Where RIAs present a range of options, the transparency of the decision making process will be improved if departments include quantified estimates of costs and benefits for all the options, rather than just the preferred option. However, the level of detail need not be as great for the discarded options. Some departments in our sample had prepared estimates for the costs and benefits for options other than the preferred one, but had chosen to present only those for the preferred option (**Case Study 8**). This can give the impression that the Department had not fully considered alternative options and reduces the transparency of the decision making process.

2.18 It is important that departments only claim costs and benefits that are relevant to the proposed regulation. If additional costs or benefits are claimed it may result in the department proposing an inappropriate regulatory response to the identified risk. For example, the Recovery of NHS Treatment Costs RIA claimed some impacts on the levels of economic growth and tax receipts in the wider economy, which could not reasonably have been attributed to the proposed regulation (**Case Study 9**).

4 Derivation of Cost and Benefit Figures for the RIAs in our sample

	Derived in-house by modelling	Derived in-house by modelling, confirmed by consultation	Provided by stakeholders	Provided by Business Test Panels
Recovery of NHS Treatment Costs		✓	✓	
National Care Standards Commission Fees and Frequencies of Inspection 2003-04	✓			
Reform of Welfare Foods Scheme		✓	✓	
High Hedges (No.2) Bill		✓	✓	
Rate Relief for Small Business		✓		
EU Savings Directive		✓	✓	
EU End of Life Vehicles Directive		✓	✓	
Financial System and Major Operational Disruption proposals		✓		
Proposals to Improve the Collection of Fines		✓		
Anti-Social Behaviour Bill		✓	✓	

CASE STUDY 8

The Reform of the Welfare Foods Scheme

The Reform of the Welfare Food Scheme RIA was prepared alongside changes in legislation to be introduced in the Health and Social Care Act 2003, without specifying the detailed amendments. The NHS Plan in 2000 set out a commitment to reform the scheme to ensure that children in poverty have access to a healthy diet and to provide increased support for breastfeeding and parenting.

The Department of Health had identified the cost of abolishing the current Welfare Foods Scheme, Option 2, but this was not presented in the RIA. Although the Department had therefore considered fully the alternative options, it had not communicated this effectively in the RIA. This reduces transparency of the process.

CASE STUDY 9

The Recovery of NHS Treatment Costs

The NHS has traditionally been able to recover the costs of treating the victims of road traffic accidents from those paying compensation. The arrangements for this were consolidated and updated in the Road Traffic (NHS Charges) Act 1999. The proposals in the Bill sought to expand the scheme to cover the treatment and ambulance costs of all those injured as a result of someone else's actions and where compensation has been paid.

The RIA stated that: "These benefits [cash receipts via the scheme] need to be offset by the costs to the Exchequer. There will be reduced tax receipts on business profits and in the future productive capacity of the economy. Businesses can pass the additional insurance and other costs on to consumers through price rises and so the impact on business profits is likely to be reduced. Even if the costs are not passed on, the reduction in taxation elsewhere that will result from these savings to the Exchequer may lead to increases in economic growth and tax receipts."

This attributes very broad benefits to the proposal without analysing in detail how they would arise.

2.19 Some of the quantified estimates in the RIAs in our sample were presented as single point estimates, but without clearly reflecting the underlying uncertainties; for example, by presenting the results of any sensitivity tests to test the impact on the estimates of changes in key assumptions, such as the impact of different levels of compliance. This helps avoid spurious accuracy.

2.20 A further way to reflect the uncertainties underlying cost and benefit estimates is to use the results of consultations as sources of estimates to inform the RIA. For example, in the RIA for the transposition of the EU Savings Directive the Department reflected the fact that at least one major institution was expected to have much higher costs than others (**Case study 10**).

D The assessment of competition

Departments should include an assessment detailing the impact of the proposed legislation on competition.

2.21 All RIAs produced from 2003 onwards now include an assessment detailing the impact of the proposed legislation on competition. Competition is seen as an essential part of a healthy economy. Although regulations can facilitate competition, they can also have negative impacts; for example, they can deter potential new entrants to a market or introduce distortions between existing competitors. Departments must now consider the implications for competition of the regulatory proposals and include a summary of the results in the RIA in a competition assessment.

CASE STUDY 10

The Transposition of the EU Savings Directive

The Inland Revenue, during its consultation exercise for the EU Savings Directive, confirmed that the costs to businesses would be dependent on the size of institutions subject to the Directive and presented these in ranges, in line with guidance.

One large institution provided a cost estimate well outside the usual range. Although the Department considered this to be a unique outlier, it reflected this additional uncertainty by stating that "two or three institutions may have commensurately larger costs of several times [the amounts in the cost ranges]". It did not state explicitly the figure or the organisation in order to protect the commercial confidentiality requested by the respondent. This is a reasonable way of presenting cost outliers, whilst providing a central range of estimates.

2.22 In carrying out their competition assessment Departments should make use of an initial competition filter to identify where the regulation may have a potential impact (Appendix 5). Where a potential impact on competition is identified departments must carry out a detailed assessment using a model developed by the Office of Fair Trading (OFT).²² The OFT also provides expert advice and training for departments to aid in their preparation of competition assessments and departments had made good use of this technical assistance. The OFT told us that it considers the better competition assessments are prepared when departmental economists have been involved from an early stage in their preparation.

2.23 All departments included a competition assessment in the sample RIAs, and all had submitted the assessments to the OFT. Some of the RIAs would have benefited from clearer descriptions of how the departments undertook their competition assessments, setting out how and when they used the OFT’s expert input. For example, the RIA for the National Care Standards Commission Fees and Frequencies of Inspection 2003-04 concluded that despite barriers to entry being raised slightly there would be little effect on competition. It also concluded that fees would remain low as a proportion of turnover and so the effect on competition would be minimal. However, the Department did not include sufficient detail within its RIA to support this conclusion. In this case a statement outlining the OFT’s involvement and their support for the Department’s assessment would have aided the transparency of the process.

2.24 The competition assessments carried out in some RIAs suggest that the markets being analysed are simple and homogeneous. However, markets can be more complex than the analysis suggests and this can lead to weak competition assessments being performed (**Case Study 11**).

CASE STUDY 11

The Recovery of NHS Treatment Costs

This RIA stated that the Department was unable to identify any markets in which increased insurance costs would have a significant effect on competition, and this suggested that further detailed assessment was not required. However, some consultation responses noted that higher accident rates occurred in specific areas, such as manufacturing, suggesting the proposals may have different impacts on different markets. The RIA would have benefited from further detailed analysis of the impact on competition in the different markets, rather than treating all markets as homogeneous.

E The analysis of compliance

A department’s analysis of likely compliance should inform its choice of policy option, and the regime by which the regulation will be enforced. Departments should consider the level and pattern of compliance.

2.25 Compliance with regulations by the targeted bodies or individuals is crucial to the achievement of the regulating Department’s objectives. Departments must, therefore, consider this as part of the policy making process. A department’s analysis of likely compliance should inform its choice of policy option, and the regime by which the regulation will be enforced. Departments should consider the level and pattern of compliance. Patterns of compliance concern the areas of the population at which the proposals are targeted - for example, the individuals or organisations causing the problem the proposals aim to address. If a regulation is poorly targeted, it may not change their behaviour and so may not achieve the Department’s objectives. It may, however, still impose unnecessary burdens on areas of the population who were not initially causing the problem.

2.26 In our sample departments did not present their consideration of different levels or patterns of compliance. As with our evaluation of RIAs in 2003-04, all assumed 100 per cent compliance with the proposals. During the policy development departments need to be realistic and consider the impacts of lower levels of compliance. Departments may be concerned that stating in a Final RIA that less than 100 per cent compliance is expected may suggest they expect the proposals to fail. It may however be appropriate to present 100 per cent compliance as a main estimate, and the results of sensitivity tests examining the impact of lower levels of compliance, linked to analysis of the appropriate enforcement strategy. Departments should not see this as an admission that the regulation will fail to achieve its objectives, but a further recognition of inherent uncertainty.

22 Office of Fair Trading, Guidelines for Competition Assessment, OFT355.

F Taking account of small businesses

Departments must pay particular attention to the potential impact of their proposed regulations on small businesses.

2.27 Small businesses are important to the UK economy: there are around 3.8 million in the UK, of which 1.6 million are sole traders; they account for 99 per cent of the number of UK firms; they generate more than half the total UK turnover; and they employ 56 per cent of the private sector workforce. Regulations can have a disproportionately large impact on small businesses because they usually do not employ regulatory specialists and the costs of, for example, employment regulation are absorbed across fewer employees. Departments must therefore pay particular attention to the potential impact of their proposed regulations on small businesses (**Case Study 12**).

2.28 In preparing RIAs, departments should consult with the Department of Trade and Industry's Small Business Service (SBS), where they expect an impact on small businesses. The SBS is entitled to issue a statement in the RIA if it disagrees with a Department's assessment. Departments consulted with the SBS on eight out of ten RIAs in our sample (**Case study 13**).²³

CASE STUDY 12

The Recovery of NHS Treatment Costs

A major cost falling on businesses as a result of the legislation is likely to be an increase in insurance premiums to cover the payment of treatment costs. The Department estimated a figure for the increased premiums but did not include it within the RIA. The Department of Health identified that the main impact of its Recovery of NHS Treatment Costs regulations would be an increase in insurance premiums for businesses. However, the Department made no attempt while preparing the RIA to calculate the increase in premium for an 'average' small business, or to assess whether they will be disproportionately affected.

2.29 The SBS was generally content that its views were listened to and the RIAs amended to reflect them. However, it considered that in four of the eight cases it had not been given sufficient time to provide a considered response. The Anti-Social Behaviour Bill RIA was not amended to reflect SBS concerns, but it included a statement outlining them. The SBS told us that the Department of Health did not enter into negotiation and asked the SBS not to provide comments for the RIA for the National Care Standards Commission Fees and Frequencies of Inspection 2003-04.

2.30 All of the Departments in our sample considered the impact on small businesses of their proposed regulations. Departments used a variety of techniques to obtain the views of small businesses, such as focus groups and consulting with professional bodies (**Case Study 14**).

CASE STUDY 13

The Replacement of the Welfare Foods Scheme

The Department of Health worked with the Small Business Service to organise three focus groups to discuss measures to reduce the impact of proposals in the RIA for the Reform of the Welfare Foods Scheme.

CASE STUDY 14

The Transposition of the EU Savings Directive

Inland Revenue spoke to the Institute of Chartered Accountants in England and Wales, the Association of Chartered Certified Accountants, the Law Society, and the equivalent representative bodies in the Devolved Administrations, amongst other organisations, during preparation of the RIA for transposing the EU Savings Directive. It believed these bodies represent the majority of small businesses that could potentially be affected disproportionately by the Directive.

²³ The nature of the RIAs for the expected impacts for the High Hedges and The Financial System and Major Operational Disruption Proposals meant that consultation with the SBS was not appropriate, and the SBS agreed with this.

G Monitoring and evaluation

RIAs should include an outline of how the regulation and its impacts are to be measured and monitored to assess the level of compliance.

2.31 Monitoring and evaluation are important parts of any effective policy making framework, and they can inform future policy development. RIAs should include an outline of how the regulation and its impacts are to be measured and monitored to assess the level of compliance. The discussion of the procedures need not be lengthy. But the discussions will allow departments to demonstrate that the procedures are planned or are in place.

2.32 The transparency of regulations will be increased if RIAs discuss future reviews and evaluations. The timing of reviews of regulation is important, allowing enough time for the regulation to take effect, whilst being soon enough for the department to identify whether there are problems which need to be addressed.

2.33 There was not a great deal of information in the RIAs on monitoring and evaluation. Four out of the ten provided a reasonable description of the procedures in place, such as when reviews would take place. Six did not give any details of monitoring or evaluation procedures.

Regulatory Impacts Assessments as a communication tool

Consultation

2.34 Departments are expected to undertake formal consultations as part of the process. This is an important way of obtaining the views of affected stakeholders on the proposals, such as providing different cost estimates or identifying unintended consequences of the proposals. Partial RIAs must be included as part of the formal consultation documents. They should communicate the department’s estimates of the policy’s impacts expected at the time the Partial RIA is produced. The consultation document should draw attention to the Partial RIA and ask for consultees’ comments on the estimates in it. For example, consultees should be asked whether the estimates of costs and benefits seem reasonable. The responses can then be used to inform the decision on which policy option to choose, and can inform the Final RIA. In addition to

formal consultations, departments can maintain ongoing discussions with affected stakeholders throughout the RIA process. For example, through regular focus groups or panels of businesses in the affected industries.

2.35 Consultation was generally done well in our sample. Nine of the ten RIAs in the sample undertook formal consultations.²⁴ The Partial RIAs and consultation documents in our sample were fairly clear and explained well the relevant department’s expectations of impacts. The consultation documents asked for comments on the Partial RIAs, which ensured that respondents’ attention was drawn to the estimated impacts of the proposals. There were some clear examples where results of consultation were used to inform the department’s estimates and were included in the Final RIA (**Case Study 15**).

2.36 Several departments in our sample held ongoing discussions with stakeholders throughout the process. Consultation was particularly effective in these cases.

Clarity of RIAs

2.37 Cabinet Office guidance states that RIAs should act as stand alone documents, which should contain sufficient information to explain a department’s justification for choosing the preferred policy option to achieve its policy objectives. The RIAs in the sample generally set out the proposed regulations clearly. Although some were started relatively late in the process, after the policy decision had been announced, they communicated the expected impacts of the policy well.

CASE STUDY 15

The Transposition of elements of the European End of Life Vehicles Directive

The EU Directive aims to reduce the amount of waste from vehicles. The RIA deals with the transposition of the parts of the Directive that require member States to ensure that ELVs can only be scrapped (“treated”) by authorised dismantlers or shredders, who must meet tightened environmental standards from 2002.

A response to the consultation for the End of Life Vehicles RIA queried the Department’s estimate of labour costs. To recognise this, the Department included both its own estimates of labour costs and those of a stakeholder, the British Vehicle Salvage Federation. This is an excellent way of illustrating the uncertainty of cost estimates, and demonstrating that the Department has taken account of consultation responses.

²⁴ The RIA for the National Care Standards Commission Fees and Frequencies of Inspection 2003-04 did not consult, as it merely updated elements of existing legislation. Legal advice had confirmed that consultation was not necessary.

PART THREE

Approaches to Regulatory Impact Assessments and their influence



This Part considers the influence of RIAs on policy making as a whole. It identifies three different approaches to RIAs, and describes the circumstances in which Departments are likely to achieve greatest benefit from using RIAs.

Three approaches to Regulatory Impact Assessment

3.1 RIAs should be used to inform and challenge policy. They should test whether departments have identified the best way to achieve a given policy objective through a thorough analysis of policy options. In this way, RIAs can inform and influence policy-making.

3.2 On the basis of our experience of evaluating RIAs,²⁵ we have identified three broad approaches to preparing RIAs. These range from RIAs that have minimal influence on policy to those that are fully integrated into the policy-making process. The latter fulfils the two main roles of RIAs: informing the decision-making process; and communicating justification for, and expected impacts of, the decision. Appendix 2 discusses these approaches further.

Pro-Forma RIAs

3.3 These RIAs have no impact on policy and are produced merely because there is an obligation on departments to do so. These may be started after important decisions have been made. This can lead to poor RIAs as they may be inadequately resourced and produced too quickly. However, even though the resulting RIAs vary in quality, the requirement for RIAs at least ensures that departments present the reasons for their decisions and their expected impacts in a consistent way.

Informative RIAs

3.4 These have only a limited impact on policy as they are not fully integrated into the process. For example, they may be produced fairly late in the policy-making process. Even where this is the case, the RIA can still be of high quality and clearly outline expected impacts in a technically sound way. These RIAs can fulfil the communication role and help increase the transparency of the regulation.

Integrated RIAs

3.5 These RIAs inform and challenge policy-making. They are started early and properly resourced. This allows better opportunities for gathering and analysing evidence. These RIAs can achieve a high technical quality, inform the policy-making process, and communicate the reasons for the department's decision to regulate in the chosen way. Final RIAs which have followed this approach should summarise how a department has analysed options and narrowed down the choice to the preferred option. However, such RIAs can also challenge the assumption that a regulatory approach is required and this can result in a decision to use non-regulatory approaches to achieving policy objectives. As experience of producing RIAs increases across Government, we expect more RIAs to follow this approach.

The influence of Regulatory Impact Assessments in our sample

3.6 Of the RIAs in our sample where departments told us that the process had had an impact, the key characteristics were similar to those we identified in our 2001 Report.²⁶ They were generally started early in the process; involved good consultation processes; and produced good assessments of the impacts of the policy proposals. RIAs have the greatest added value in these cases.

3.7 In our sample, four of the ten RIAs led to changes in some aspects of the policy. These ranged from minor refinements to the department deciding not to regulate at all. The outcome of the consultation on the Financial System and Major Operational Disruption proposals helped determine the policy-making process. In one of the European cases, the Implementation of the EU Savings Directive, the RIA process had led to minor changes in the policy, despite the prescriptive nature of the Directive. In cases where the influence of the RIA was limited the RIA was still a useful way of communicating the Government's decisions.

²⁵ The C&AG has published two reports which examined RIAs: Better Regulation: Making Good Use of Regulatory Impact Assessments (HC 329 Session 2001-02); and Evaluation of Regulatory Impact Assessments Compendium Report 2003-04 (HC 358 Session 2003-04).

²⁶ Better Regulation: Making Good Use of Regulatory Impact Assessments, HC 329, Session 2001-02.

3.8 Where an effective RIA process is followed, it may identify that the proposed regulation is not the best option. The preparation of a Partial RIA, and a good consultation process with key stakeholders, may lead to an alternative approach to regulation being adopted. The results of consultation may inform this as they may point out unintended consequences that the department had not previously considered. In the case of the Treasury's Partial RIA for The Financial System and Major Operational Disruption, the Department decided not to proceed with regulation following consultation. This provides an excellent example of the RIA being used effectively to identify that an immediate regulatory response was not required (**Case Study 16**).

Factors limiting the influence of RIAs on policy

3.9 We identified three factors that limit the impact of RIAs on policy:

- Policy measures have already been announced, important aspects of the policy had been determined in advance, or the RIA was started too late. In these circumstances, the RIA was confined to communicating policy;
- The RIA covers implementation of a European policy decision; or
- The RIA updates details of an existing policy.

Nevertheless the departments found preparing the RIA a useful way of communicating the expected outcomes of the policies. In some cases they also found the RIA process helped develop elements of the policy itself (**Case Study 17**).

3.10 Where the decision has already been taken, the RIA will not fulfil its objective of informing the policy decision. Producing RIAs in this situation can still be useful, as it can encourage the department to undertake a risk assessment and the RIAs themselves can be useful communication tools explaining the expected impacts of policies.

3.11 Some policies have developed over an extended period of time, and much of the decision making may have taken place outside the RIA process. For example, it may be that policy options have been considered before producing RIAs became part of the formal policy process. Even in some of these cases, however, a well-founded policy may exhibit characteristics now associated with good RIA practice. The department may have informed the policy process by undertaking risk analysis; setting clear objectives; option appraisal; and extensive consultation (**Case Study 18**).

CASE STUDY 16

The Partial RIA for The Financial System and Major Operational Disruption Proposals

This Partial RIA asked if new statutory powers should be sought to assist in promoting order in the financial system in extreme circumstances of operational disruption. The Consultation accompanying the Partial RIA sought views on whether the nature and scale of the threat justified such legislation. It also sought comments about additional ways in which the financial authorities could usefully assist the private sector's work in making financial markets more resilient. This subject was brought to the fore when the attacks in the United States of 11 September 2001 showed the problems that physical disruption on such a scale brings to the financial system. Apart from terrorism, major operational disruption might also result from a wide range of scenarios, including natural disasters and information technology problems.

The Department published an extensive consultation paper²⁷ alongside its Partial RIA setting out a series of questions to assess the need for regulation. The main concerns of stakeholders were: insufficient time to consider fully the statutory powers proposed by this consultation; the unintended consequences of introducing and exercising new legislative powers; and the usefulness of domestic legislation in an international context. As a result the Treasury decided not to proceed with regulation.

The Partial RIA process undertaken by the Treasury identified the need to build on its understanding of the financial system and its existing responses to major operational disruption. The Department established a Bank of England Task Force to examine whether there was a case for new legislative responses.

The Bank of England Task Force concluded that no new statutory powers would be needed and acknowledged the importance of the existing focus on non-regulatory approaches: using contractual methods, such as force majeure, to deal with emergencies; relying on market infrastructure rules; and creating an environment where there is a co-ordinated approach to contingency planning. The Bank of England Task Force put forward eight non-regulatory recommendations to help improve further the resilience of UK financial markets.

CASE STUDY 17

The Courts Bill: Proposals to improve fine enforcement

The Courts Bill was introduced, amongst other things, to overcome the poor rate of fines collection. It provides powers to pilot several sanctions to establish which, if any, are effective in improving the collection rates of fines imposed by magistrates.

This RIA dealt with a policy that had already been announced. Although this restricted the Department from following the full RIA process because elements such as policy options had been decided, the Department produced a RIA that communicated well the expected impacts of the policy.

²⁷ HM Treasury, the Financial System and Major Operational Disruption, Cm 5751, February 2003.

3.12 Departments are obliged to produce RIAs for the transposition of EU Directives which are expected to have an impact on business, or the voluntary sector. In these cases, the regulation has been decided and the UK and other Member States are obliged to implement it.²⁸ This reduces the scope for considering policy options but EU Directives usually allow some flexibility in implementation so departments can examine options for implementation. The sample included two RIAs dealing with the implementation of European Directives, The Implementation of the European Union Savings Directive and the EU End of Life Vehicles Directive. In these cases the Departments analysed the regulatory impacts of different implementation options.

3.13 RIAs may be produced to update certain aspects of an existing policy. The original policy may have been subject to a full RIA process but it may not be necessary to do this for the update. In such cases, departments should seek advice to ensure that it is appropriate not to follow the whole process. Producing a revised RIA for the update is a useful way of communicating the expected impacts of the revised elements of the policy (**Case Study 19**).

3.14 As noted in Cabinet Office's 2003 guidance, producing RIAs may lead to disproportionate costs to a department where a policy is expected to have a minimal impact on business and the voluntary sector and so they are inappropriate.²⁹ RIAs may also be inappropriate where the proposed regulation concerns an annual increase in fees and charges by a public body, or where emergency measures are concerned which do not allow sufficient time to follow the process.

3.15 Regardless of their impact on policy making, RIAs fulfil a vital communication role. We asked departments for examples of the use of RIAs as communication tools. Departments told us that RIAs had been used as reference documents and summaries of the expected impacts of policies by individual Members of Parliament and Select Committees. They had also been used as a source of costs and benefits by lobby groups, and as reference documents in specialist publications. This illustrates the usefulness of the role of RIAs in gathering evidence and information.

CASE STUDY 18

The Reform of the Welfare Foods Scheme

The Reform of Welfare Foods Scheme (Department of Health) RIA was prepared alongside changes in legislation to be introduced in the Health and Social Care Act 2003. The NHS Plan in 2000 set out a commitment to reform the scheme to ensure that children in poverty have access to a healthy diet and to provide increased support for breastfeeding and parenting. The existing scheme has been relatively unchanged since the 1940s, but a review began after the 1998 Spending Review.

The Department of Health had only allowed seven weeks for responses to its consultation during the formal RIA process. But this was mitigated by extensive consultation and scientific and economic reviews of the existing scheme that had already been undertaken outside the RIA process.

CASE STUDY 19

The National Care Standards Commission Regulatory Fees: Fees and Frequencies of Inspection 2003-04

This RIA was produced in March 2003 to evaluate a new Statutory Instrument (SI), which replaced an earlier SI from 2001. The RIA process had been carried out for the initial legislation, so this RIA was an update. The proposals concerned the fee increase for 2003-04 only. A similar RIA was published for the increase in fees for 2004-05.

The RIA for the existing regulation had explained that an annual update would take place on these elements. The full RIA process was not followed, as the Department did not carry out a public consultation. Legal advice confirmed that consultation was not obligatory, but the Department had proposed to undertake a review of the policy of moving towards full cost recovery by annual fee increases. If this review resulted in changes to the policy or the fee structure, the Department would then consult on these changes. Given that the Department had undertaken the full RIA process, including consultation, for the original SI, and this RIA concerned only a change that had been announced in the original SI, this was reasonable.

²⁸ In the case of European Directives, the UK will have been involved in the negotiations and consideration of policy options that took place before the Directive was passed. These discussions may also have been the subject of Impact Assessments. In our work for this report, we have not looked at the negotiations that informed the passing of the Directives, or at any Impact Assessments that may have been carried out at that time.

²⁹ Cabinet Office has told us that this guidance is being updated to include additionally consideration of public sector impacts.

APPENDIX 1

Methodology

1 To evaluate the quality and thoroughness of a sample of ten Regulatory Impact Assessments and draw learning points we used the following sources of evidence.

2 We constructed a framework of questions to guide our fieldwork, based on the findings of our 2001 report *Better Regulation: Making Good Use of Regulatory Impact Assessments* (HC329, Session 2001-02). Our framework was also informed by our experience in evaluating ten RIAs in 2003-04 for our report: *Evaluation of Regulatory Impact Assessments Compendium Report 2003-04* (HC 358, Session 2003-04). The questions covered six main areas of the RIA process from Initial RIA through to the Final RIA signed off by the Minister and we derived a series of sub-questions as outlined below. From these six main areas we identified seven technical aspects on which our evaluation focused, as discussed in Parts Two and Three. These seven aspects included sub-issues from the following framework which we felt were worth highlighting for particular learning points.

Sample Selection

3 We compiled and examined a list of about 175 RIAs that were laid before Parliament in 2003. These were reported in its Weekly Information Bulletin. We took account of the suggestions in the Task Force's Annual Report: *The Challenge of Culture Change: Raising the Stakes, June 2004*.

Framework of Questions

1 Was the RIA process well planned?

Did the department have clear objectives for the regulation?

Did the department allow a realistic timetable for the RIA process?

Did the department consider the risks?

Did the RIA consider a range of options?

Were alternatives to regulation considered?

Were alternative regulatory tools considered?

2 Was consultation effective?

Was effective consultation started early in the process?

Did the department use appropriate consultation techniques?

Did the department explain clearly the impact of the regulation?

Did the department consult all interested groups of stakeholders?

Did the department consider the impact on small businesses?

Were the results of the consultation used well in formulating the regulation?

3 Did the RIA assess costs and benefits both thoroughly and realistically?

Were the implementation and policy costs on all affected taken into account?

Did the department identify all parties on whom costs and benefits would fall?

Did the department consider the costs and benefits to small businesses?

Did the department identify all likely realistic and relevant costs and benefits?

Did the department assess the costs and benefits of all options?

Was the methodology for quantifying/scoring the costs and benefits robust?

4 Did the RIA realistically assess compliance?

Was possible non-compliance factored into the analysis?

Did the department assess the existing level of compliance?

Were ways of increasing compliance considered?

5 Will the regulation be effectively monitored and evaluated?

Did the RIA contain procedures for monitoring and evaluating the extent to which the regulation meets its objectives?

6 Did the RIA consider the impact of the regulation on competition?

Did the RIA include a Competition Assessment?

Did the Competition Assessment report the results of the OFT's competition filter test?

Did the department undertake a more detailed assessment of competition?

Were the department's conclusions on the impact of the regulation on competition well-founded and presented?

File Review

7 We examined all files in the relevant departments and agencies concerning the RIA process and undertook interviews, based on our findings, with the key staff involved in the whole RIA process.

Structured Interviews

8 We undertook structured interviews with key staff. The aim of these structured interviews was to obtain a broader picture of the RIA process, including how well departments felt the process worked, and to assess policy makers' views as to their impact on the proposal.

Stakeholders

9 We discussed the study with key bodies concerned with the regulatory process: The Better Regulation Task Force; the Cabinet Office Regulatory Impact Unit; the Small Business Service; and the Office of Fair Trading.

Expert Panel

10 We set up an Expert Panel with whom we consulted at key stages of the study. They provided us with informed comment on the scope of the study and the framework methodology, the findings of our detailed evaluations, and the draft of the Compendium Report. The panel had the following members:

Professor Robert Baldwin

Professor of Law at the London School of Economics and Political Science. Author of "Better Regulation: Developments in UK Approaches", 2000, and "A Risk Framework for Regulatory Accountability", 2001. Co-Author of "Understanding Regulation" with Martin Cave, 1999.

Fiammetta Gordon and Alberto Pompermaier

Senior economist and economic adviser at the Health and Safety Executive respectively.

John Howell

Director, JH & Co Ltd. Independent Consultant specialising in regulatory compliance issues.

Professor Claudio M. Radaelli

The Anniversary Chair in the Department of Politics at the University of Exeter. Author of several works on European regulatory issues, including: "The diffusion of regulatory impact analysis in OECD countries: best practices and lesson-drawing?", *European Journal of Political Research* 43(5), 2004; and the special issue of *Journal of Public Policy* on "Markets and regulatory competition in Europe" 24(1), 2004. Director of the European Commission's project on Indicators of Regulatory Quality funded by DG Enterprise (http://www.europa.eu.int/comm/enterprise/regulation/better_regulation/).

Michael Spackman

Special Adviser at NERA Economic Consulting, and Visiting Fellow of the Centre for Analysis of Risk and Regulation, London School of Economics and Political Science.

APPENDIX 2

Approaches to Regulatory Impact Assessment

1 During our experience of evaluating RIAs over the last two years we have identified three main approaches to the preparation of RIAs. These range from the Pro-Forma approach, where the RIA has no impact and the RIAs are prepared chiefly because they are mandatory, to the Integrated approach, where they fulfil their two main roles, which are 1) to be a communication tool, and 2) to assist and inform policy decision making. Over time and as departments' experience of producing RIAs grows, we would expect a higher proportion of RIAs to follow the integrated approach and have a major impact in informing and challenging policy-making.

Pro-Forma RIAs

2 This approach involves RIAs that are produced because they are mandatory, often after the Minister has announced the policy decision, rather than to inform the policy decision making process. Sometimes these are produced quickly or at the last minute, which means they may be of poor quality as they may not be properly resourced and do not go through the full process. However, even in these circumstances producing a RIA may provide some consistency in presenting the policy decision in a structured format, and can be a useful tool for risk analysis and to communicate the expected impacts of the proposals.

Informative RIAs

3 These RIAs are not fully integrated into the policy process, for example they may be started fairly late. However, with planning and proper resourcing, they may be of high quality, although they may have only a limited impact on policy-making. We have seen some good quality RIAs in this year's sample, which were produced at short notice. Though they may be too late to inform the policy process, they follow two of the Principles of Better Regulation: Transparency and Accountability.

4 This approach occurs as departments' experience of producing RIAs grows, and the process itself becomes more established. The experience enables departments to produce good quality RIAs that can clearly communicate the Government's reasons for decisions and the expected impacts of the policy. Although these may be produced late in the process, they can still be useful and can provide a clear summary of the policy proposals.

Integrated RIAs

5 In a well developed process the RIA fulfils both its main roles, as a tool to inform and challenge policy decisions, and as a communication tool. It is likely that RIAs which follow this approach will add the most value to the process and departments will get a greater level of benefit from them.

6 From our experience, it is likely that RIAs which have an impact are begun early in the process. It is also likely that they will be properly resourced and planned, and used to identify and assess various policy options. Consultations including the Partial RIA will have informed the process, allowing the department to eliminate options and to choose the preferred option, which can be to refrain from the introduction of regulation. If the regulatory option is chosen the Final RIA will then explain this process, how Government reached the decision to choose the preferred option, include consideration of implementation or delivery, and the expected impacts of the option.

7 This is the ideal approach and follows the guidance and principles of Better Regulation. However, there will probably always be a small number for which the whole process cannot be followed, in particular where policies have been announced by the Government before the RIA is produced. There are of course some circumstances where the scope for policy impact is very limited, such as measures introduced in response to emergency situations. It is important that the process is used flexibly to ensure each RIA is fit for purpose for the policy proposals for which it is prepared.

APPENDIX 3

Findings in 2003-04

This Appendix summarises the key findings from the 2003-04 pilot year's evaluation of RIAs from our report: *Evaluation of Regulatory Impact Assessments: Compendium Report 2003-04* (HC358 Session 2003-04). These cover each of the key areas examined: planning; consultation; costs and benefits; compliance; and monitoring and evaluation. In each case, the first paragraph outlines the good practice points for each key area. The second paragraph then summarises our findings from last year's sample.

The Planning Process

Good practice

RIAs should be started early in the policy process and should have clearly stated objectives at the outset, allowing the Department to consider a choice of possible options, including a Do Nothing and alternatives to regulation where appropriate. They should include an assessment of the problem the policy aims to address.

Findings

Some of the RIAs were started after the policy decision had been taken so did not inform the decision making process. Half of the sample had clearly stated objectives, of which only one could be considered SMART.³⁰ Only two considered a range of options, including alternatives to regulation, and six did not include a discussion of the Do Nothing option. Whilst all but one had a risk assessment section, none included a description of the counterfactual, and the assessments tended to be vague and unquantified.

The consultation process

Good practice

Consultation is more likely to add value if a Department starts early; makes documents accessible; uses appropriate techniques; allows at least 12 weeks response time; makes full use of the results; and publishes the Department's response to the results.

Findings

We found that consultation was generally the strongest element of the process. Thorough, clear and highly accessible public consultations had been undertaken in most cases with good packages which explained well the regulation and its expected impacts. However, we found that the use made or perceived to have been made of the responses varied considerably.

The analysis of costs and benefits

Good practice

Final RIAs are signed off 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.

Findings

Nine of the sample included quantified cost estimates and only three included monetised or quantified estimates of benefits. Information deficiencies were well reflected in the RIAs. However, they tended not to be reflected in quantified estimates of costs or benefits, which were largely represented by single point estimates rather than ranges. Only one presented the results of sensitivity testing on key assumptions.

The analysis of compliance

Good practice

Regulations are often introduced to encourage changes in behaviour, so RIAs should consider how the regulations will be complied with and enforced, and the sanctions that will apply in the event of non-compliance.

Findings

All of the RIAs in our sample assumed 100 per cent compliance, which may have been unrealistic. Only half discussed enforcement and sanctions at all and only one provided estimates of the likely costs of enforcement.

30 Specific, Measurable, Achievable, Realistic and Time Dependent.

Monitoring and evaluation

Good practice

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. Furthermore, an explanation of how information from monitoring and evaluation will be used to inform future policy making improves the transparency of the process.

Findings

Nine out of ten RIAs in last year's sample discussed monitoring and evaluation but these discussions were often very brief and vague. Complex monitoring procedures were sometimes in place, but these were not reflected in the RIAs. Doing so would have increased transparency of the process and helped communicate the extent of the Department's work in this area.

Competition Assessment

No Competition Assessment was required for any of the RIAs in last year's sample, so there were no findings in this area.

APPENDIX 4

Learning points from Evaluations

We evaluated ten RIAs against the questions in our framework (outlined in Appendix 1). These evaluations resulted in our identifying a number of good and bad learning points, which we discussed with departments. This Appendix provides a brief summary of the main learning points under the six headings in our framework.

Planning

Departments should state their policy objectives in such a way that allows a full range of policy options to be explored during the development of the RIA, including those options outside an existing framework.

Departments should make use of economists and statisticians early in the policy making process in order to identify potential costs and benefits. This will allow initial quantitative estimates to be refined as more information becomes available.

Where a Department produces a RIA as a follow-up or “top-up” to an earlier, broader RIA the Department should ensure that all elements are amended to ensure they are relevant to the particular changes proposed by the RIA.

Departments should only include realistic policy options and make some attempt to analyse them in sufficient detail to demonstrate that the preferred option is the most suitable. The inclusion of unrealistic options gives the impression that a Department has already closed off alternative policy options.

Consultation

Departments should make good use of the consultation responses in developing the policy and RIA, and the Final RIA should communicate the use made of the responses.

The RIA should outline the views of respondents when they demonstrate a strong opposition to the proposed legislation or the Department should publish a summary of consultation responses and how it has taken the responses into account in developing the regulations, and the RIA should refer to that.

These measures increase transparency in the RIA and Consultation processes and increase public confidence.

Departments should, where appropriate, consider undertaking a joint consultation. Undertaking a joint consultation for related regulations helps reduce the risk of consultation fatigue among respondents. To be effective this depends on the consultation being clear to avoid the risk of confusion.

Costs and Benefits

Departments should explain clearly in RIAs where there are particular costs or benefits which cannot be quantified or where they are unobtainable.

Compliance

The RIA should discuss clearly the existing level of compliance and how this is expected to change under the new regulations. This communicates the Department’s estimates of the likely impacts to the reader and improves the transparency of the process.

Monitoring and evaluation

One Department used pilots as a way of introducing the measures because it was uncertain about the likely effectiveness of the proposals. The Department should have indicated how it intends to monitor and evaluate its pilots so that they can be designed more effectively. Monitoring and evaluation methodologies should be considered at an early stage to ensure the appropriate information is collected so the outcomes of pilots are verifiable. This can then be used to inform the full introduction of the regulations.

Competition

Departments should conduct competition assessments and provide a clear and comprehensive summary of the results in the RIA. Where it appears that there may be a competition impact, they should involve the Office of Fair Trading at an early stage to ensure that there is sufficient time to consider them.

RIAs would have benefited from outlining whether the OFT had been involved in the competition assessment, as this would have improved the transparency of the process.

APPENDIX 5

Competition Filter Test

1 This Appendix outlines the Office of Fair Trading’s Competition Filter Test. This should be completed by departments as a first stage in assessing the potential impact of the proposals on the relevant market. In order to apply the competition filter correctly, departments must first identify the markets that will be affected. Where regulations impact on a very wide range of markets departments should try to identify two or three markets where competition effects are most likely. The Competition Filter has nine questions about the markets that are likely to be affected.

2 Each ‘yes’ answer indicates a possible competition concern. If the answer to more than half of the questions is ‘yes’ then there is some risk that the regulation may have a significant effect on competition and a **detailed assessment** is necessary. If the answer to more than half the questions is ‘no’, this suggests that the regulation is unlikely to have a significant detrimental effect on competition and a **simple assessment** is all that is required.

Question	Answer yes/no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10 per cent market share?	
Q2: In the market(s) affected by the new regulation, does any firm have more than 20 per cent market share?	
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50 per cent market share?	
Q4: Would the costs of regulation affect some firms substantially more than others?	
Q5: Is the regulation likely to affect the market structure, changing the number and size of firms?	
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	
Q8: Is the sector characterised by rapid technological change?	
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	

Source: Office of Fair Trading, Guidelines for Competition Assessment, OFT355.

Printed in the UK for the Stationery Office Limited
on behalf of the Controller of her Majesty's Stationery Office
177587 03/05 65536