



National Audit Office

Evaluation of Regulatory Impact Assessments 2005-06

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EXECUTIVE SUMMARY



1 The Government is seeking to reduce the burden of regulation on business, charities and the voluntary and public sectors whilst maintaining the protection afforded to society. Regulatory Impact Assessments (RIAs) have a crucial role to play as they are designed to enable policy makers to assess the need for, and impact of, new regulations. RIAs can be influential in identifying the appropriate regulatory option and ensuring that the policy decision is well informed. Achieving this, however, is not straightforward, as RIAs are often complex, lengthy tasks. This Report considers what departments are doing to raise the standard of impact assessment and integrate the results into policy-making.

2 In 2005 Government departments produced around 200 'Final' RIAs covering a wide range of regulations, from the proposed increase in MOT fees to the introduction of the Gambling Bill. RIAs have been used to assess the likely economic, social and environmental impacts of the proposed regulation, and the range of options for implementing it. They have grown in scope in recent years as additional assessment criteria, such as sustainable development, have been added. The scope of RIAs is likely to change again in the future as they will be used to measure more rigorously how the introduction of new, or changes to existing, regulations affect the costs of complying with them.

3 A number of Government bodies have responsibility for delivering the Better Regulation agenda¹ (**Figure 1 overleaf**). Departments have primary responsibility for undertaking RIAs and, consequently, introducing regulations that achieve the intended objectives in the least burdensome manner. The Better Regulation Executive (BRE), which forms part of the Cabinet Office, has primary responsibility for taking forward the Government's Better Regulation agenda. As part of this, the BRE issues guidance, and provides direct support and challenge to departments. It is also responsible for overseeing departmental progress against the Government's two major initiatives aimed at reducing the burden of regulation: the Administrative Burdens Reduction exercise and 'Hampton' (Reducing administrative burdens: effective inspection and enforcement)².

¹ The phrase the "Better Regulation agenda" is commonly used to encapsulate the range of initiatives intended to deliver regulation that provides necessary protections but is implemented in a cost-effective manner. Better regulation is that which accords with the Better Regulation Commission's five principles: proportionate, accountable, consistent, transparent and targeted.

² The Administrative Burdens Reduction initiative seeks to measure and then reduce the administrative cost of complying with regulations. The Hampton Report recommends measures for improving the way that inspections and enforcement activities are undertaken. More details of these initiatives are provided at paragraphs 1.11 to 1.16.

1 The Government responsibility for Better Regulation

Delivery	Delivery/Scrutiny	Scrutiny
Government departments	Better Regulation Executive	Better Regulation Commission
Primary responsibility for challenging the need for regulation and, when necessary, delivering high quality regulation.	Issues guidance on RIAs, provides advice to departments and monitors compliance with RIA requirements. It acts a secretariat to the Panel for Regulatory Accountability, chaired by the Prime Minister. The Panel challenges the need for major pieces of new legislation and requires thorough RIAs to be presented in support of proposed policy.	Provides independent challenge to Government on overall regulatory performance. This includes challenging departments to adhere to the principles of better regulation. Other bodies, such as the Small Business Service and the Office of Fair Trading, also consider specific aspects of RIAs relevant to their areas of expertise.

Source: National Audit Office

4 The National Audit Office’s previous Reports³ have shown that departments need to improve their use of RIAs to appraise the introduction of regulatory proposals. The slow improvement in the quality of RIAs has also raised questions over the way in which policy officials more generally perceive and use impact assessment. This Report therefore evaluates the extent to which departments are embedding impact assessment into their processes and culture. Part 1 reviews the role of RIAs; Part 2 sets out the results of our examination of a sample of RIAs; and Part 3 evaluates how departments are raising awareness and promoting the use of impact assessment. This Report focuses on the use of RIAs and does not seek to review the progress being made on Government initiatives to reduce administrative burdens or simplify regulations.

5 We focused our examination on four departments – Culture, Media and Sport (DCMS); Trade and Industry; Home Office; and Transport (DfT). Our methodology included an evaluation of a sample of RIAs; identification of the principles needed to achieve culture change, and an assessment of departmental performance against these; and interviews with relevant stakeholders. We piloted our methodology on the Department of Trade and Industry (DTI), as the Better Regulation Commission believed it would yield many examples of good practice. The scope of our work and full methodology is set out in Appendix 1.

Our findings

Overall

6 RIAs are often not used in the right way. The purpose of RIAs is not always understood; there is a lack of clarity in the presentation of the analysis; and persistent weaknesses in the assessments (paragraphs 10 and 11). As a result, RIAs are only occasionally used to challenge the need for regulation and influence policy decisions – although they can still serve a valuable communications role, improving the transparency of departmental decision-making. The BRE is currently considering how to improve the effectiveness of RIAs, and is reviewing their focus, content, and the way in which key data and information is presented.

7 If used well, RIAs can offer an effective tool for assessing different options and identifying regulatory solutions that do not impose unnecessary costs on those being regulated. To achieve this, departments should seek to ensure that policy officials are technically competent in impact assessment and use the RIA as an integral part of the decision-making process. This will require departments to: offer appropriate support and advice; make best use of in-house expertise; have staff skilled in gathering data from external sources; and improve accountability for delivering good quality impact assessment. This Report highlights, however, that three of the four departments in our sample were restricted in their ability to deliver consistently on these areas. Only the DTI, one of the largest regulating departments, was already performing these roles.

³ Evaluation of Regulatory Impact Assessments Compendium Reports 2003-04 (HC 358) and 2004-05 (HC 341).

The use of RIAs

8 Departments should use impact assessment to appraise the need for Government intervention which may require regulations or legislative change. In many cases, however, RIAs have not been used to question the need for intervention⁴. Our analysis showed that the RIA process was often ineffective if started late, the policy area was politically sensitive or regulations needed to be introduced quickly. Departments should thus ensure that policy officials are aware of the circumstances in which an RIA is required but also seek to challenge the need for regulation earlier in the policy-making process. One notable example of ‘early challenge’ came from the DTI, which has established joint cross-Whitehall industry groups in five key industry sectors⁵ to provide a robust response to forthcoming policy proposals.

9 Even the best RIA is no guarantee that high quality regulation or the intended outcomes will be delivered. Departments have focused primarily on the introduction of new regulations and had largely neglected to evaluate the impact of new regulation after it is introduced. Departmental initiatives were either embryonic or isolated. The Department of Trade and Industry has examined the methodologies needed to assess ex-ante the impact of regulations within the context of consumer and competition policy, and is now considering how to undertake ex-post evaluation of regulations. The Department for Transport has commissioned research to evaluate the impact of the Traffic Management Act. We encourage departments to put more effort into evaluating the outcomes of new regulation; testing the robustness of assumptions used in the RIA; and learning lessons for future policy appraisals.

The quality of RIAs

10 The quality of RIAs in this year’s sample was mixed (**Figure 2 overleaf**). There were examples of good practice, with strong performance in consultation, and improved practices in assessing a range of regulatory options. The weakest area was the consideration of the level of compliance with the proposed regulation and only 2 of 12 RIAs showed good quality analysis in this respect. Too many RIAs either neglected any consideration of this issue or unrealistically assumed full compliance. There was also room for improvement in considering how to implement, monitor and evaluate the recommended option.

11 There was inconsistency between policy officials’ understanding of the need for RIAs, when they should be started and the level of analysis required. The RIA should be proportionate to the likely impact of the proposal, so can be quite short if costs and benefits are likely to be small; the proposals only affect a few firms; or many firms to a small degree. Some RIAs included irrelevant detail and were too discursive, which obscured the key information needed to inform decision-making. It is appropriate that RIAs vary widely in size and content, but there was a general lack of consistency in the analysis undertaken and the presentation of results. The BRE’s proposed changes to the RIA process are intended to focus policy makers’ attention on the evidence and its presentation.

12 **Figure 3 on page 5** shows that, for the RIAs that we examined, all four departments had undertaken some high quality analysis. There was, though, at least ‘room for improvement’ in nearly half of the assessments undertaken. A summary of our assessment of all RIAs in our sample is provided in Appendix 2.

13 RIAs were often seen by officials as a bureaucratic task rather than being integral to the process of policy-making. The Department for Transport’s efforts to integrate better regulation into a more generic effort to improve policy is a welcome approach. We have identified a number of wider factors that would facilitate the integration of impact assessment into the policy making process:

- make clear that the RIA is necessary and that the level of effort put in to preparing the RIA reflects its importance;
- start impact assessment early and use the RIA to project manage the decision-making process;
- make greater and earlier use of departmental expertise and, as far as possible, embed expertise into policy teams;
- ensure that policy ‘thinkers’ and policy ‘implementers’ have the skills necessary to undertake their respective roles and are not operating in separate silos; and
- consider the training requirements of policy makers who only undertake RIAs once a year or less.

⁴ Departments have not kept a record of the number of RIAs that reject the regulatory proposal or recommend the introduction of a non-regulatory option.

⁵ The five sectors are retail, automotive, bioscience, chemicals and construction.

2 National Audit Office analysis of RIAs

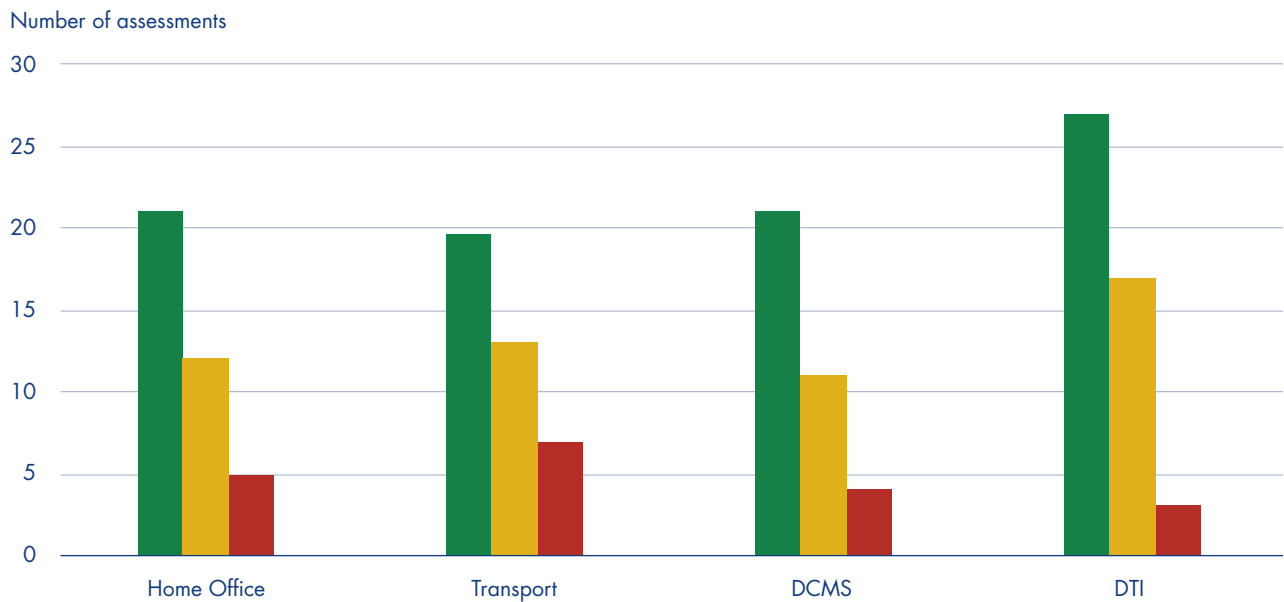
Criteria	Key tests	Findings		
Scope and purpose	State objectives clearly Analyse the do-nothing option Consider non-regulatory option	2	7	5
Consultation	Start consultation early Use appropriate techniques Include all relevant stakeholder groups	0	3	10
Costs and benefits	Quantify costs and benefits where possible Use a robust methodology Test sensitivity	3	5	6
Compliance	Consider risk of non-compliance Measure existing compliance Consider how to improve compliance	4	6	2
Implementation/ monitoring/evaluation	Prepare an implementation plan Establish procedure for monitoring and evaluating how regulation will meet its objectives	3	5	5
Competition	Complete a competition assessment Complete OFT's competition filter Consult OFT, as required	1	7	5

Source: National Audit Office

NOTES

- 1 A 'green' assessment indicates good quality analysis; 'yellow' indicates some good assessment but room for improvement; and 'red' indicates some major defects in the analysis.
- 2 The results are drawn from our in-depth analysis of a sample of 14 RIAs (see Appendix 1).
- 3 Numbers may differ as tests are not always applicable.

3 Analysis of RIA results by Department



Source: National Audit Office

NOTES

- 1 The results include our in-depth analysis of 14 RIAs and were supplemented with further assessments of an additional 14 RIAs to test whether the main sample results were representative of departmental performance.
- 2 Each RIA is assessed against six key criteria (set out in Figure 2) and this table presents the results of the total number of individual assessments against these criteria. For example, four RIAs would equal 24 assessments.

14 The quality of RIAs is likely to be improved if the policy official is aware of, and has access to, advice and guidance. The Better Regulation Executive has a responsibility to provide such support (Figure 1). Departmental views about the adequacy and timeliness of the Better Regulation Executive’s input were mixed. In particular, departments considered that advice was sometimes inconsistent or contradictory, partly due to staff turnover within BRE. The BRE also made changes to its guidance without consultation or communicating where changes have been made, which made it difficult for policy makers to keep abreast of the latest guidance. The Better Regulation Executive has undertaken a major re-organisation and is considering the nature of the advice it provides to departments. It will also re-issue its RIA guidance and develop a ‘RIA toolkit’.

Departmental attempts to embed impact assessment

15 There remains a perception, in parts of Government, that the requirement to complete RIAs is a bureaucratic task. Departments should be striving to instil impact assessment in the professional competence of their staff. The National Audit Office established a series of principles that are important in influencing staff behaviour and assessed departmental approaches against these. We found:

- **on the importance of senior management commitment:** Board Champions in each department had sought to promote the use of impact assessment. This is important because senior support for Better Regulation may act as a counterweight to assumptions in departments that making new regulations is a core activity;

- **on the need for departments to promote the use of impact assessment and challenge the work of policy officials:** challenging assumptions about policy is at the heart of Better Regulation. The ability of three Better Regulation teams to be proactive in encouraging the use of impact assessment and to offer a challenge to policy teams has been restricted over the last year, as a result of their involvement in the Administrative Burdens Reduction exercise. Our review coincided with a period of intensive effort from both the Better Regulation Executive and departments in measuring administrative burdens and formulating plans for simplification. This level of intense activity is likely to fall back. The DTI, however, has allocated additional resources into this area to ensure that the central team is capable of fulfilling its functions effectively. The Department for Transport has recently created three additional posts in its Better Regulation team to manage the increased pressures being placed on it;
- **on making optimal use of expertise:** assessing impacts requires technical expertise in the policy area, as well as a broader understanding of economics, law, risk management and enforcement activity. Departmental efforts were often hampered by poor project management of the RIA process, a low level of awareness of the availability of internal expertise and a lack of imagination in using external information sources;
- **on the need to provide appropriate and timely support:** there was scope to enhance the support to policy makers, in terms of offering timely, targeted training and making better use of intranet sites; and
- **on the importance of clarifying responsibilities:** there was a lack of accountability on policy officials for delivering good quality RIAs. This is vital if departments wish to raise the standards of RIAs.

16 All four departments have demonstrated a strong commitment to deliver better regulation and improve the quality of their impact assessment. The Department of Trade and Industry has been the most proactive in disseminating good practice and providing a robust challenge function to policy teams. The approaches of DCMS, Home Office and Transport to embedding impact assessment were, however, constrained as resources had been diverted to respond to the Cabinet Office's Administrative Burdens Reduction initiative. As a result, these Better Regulation teams have been less able to raise awareness; provide appropriate support and guidance; and oversee the quality of RIAs. A summary of our assessment

of each department is provided at Appendix 3. The role of Better Regulation teams is likely to become increasingly important as RIAs are used to measure the administrative costs of new regulations, as well as identifying the policy costs and benefits of regulatory options.

Recommendations

17 This is our third year of evaluating the quality of RIAs and overall results have been disappointing. RIAs are often done too late, with the wrong mindset and do not cover all policy interventions. They have not yet been a tool which has dramatically altered the regulatory landscape or the way Government thinks about regulation. In spite of this, we are not pessimistic about RIAs, which have the potential to improve the rigour and consistency of policy making. There are a number of actions that BRE, the BRC and departments should take to increase the effectiveness of the RIA process.

18 There are three ways the BRE should bolster RIAs. Firstly, it should re-emphasise that economics should lie at the heart of RIAs. This is not to say that RIAs are an exclusively pro-business tool, but that they should include consideration of market failure, counterfactuals, competition, and how consumers and organisations behave. Secondly, RIAs need to be supplemented by a broader toolkit that policy makers can use earlier in the life of a policy. This will allow policy makers to use the process to have an 'initial look' to identify the areas on which to concentrate resources and analysis. The process, however, must also extend beyond the RIA to include ex-post evaluation of regulatory outcomes. Thirdly, the BRE could re-emphasise the importance of the RIA process in challenging the introduction of new regulations. The BRC should also restate the sort of regulatory regime it considers ideal (for example, voluntarism, local discretion, codes of practice, doing nothing), so that RIAs can place policy proposals against this ideal.

19 Our recommendations are aimed specifically at the departments covered by our Report, but are presented under a series of generic principles that are applicable to all Government departments. The four departments have shown commitment to embracing the Better Regulation agenda and have responded positively to this examination. The challenge now is to turn words into action, by building on the good work already being carried out and spreading good practice further.

Recommendations

For Departments

1 Give greater emphasis and effort to the ex-post evaluation of regulation to ensure that it is fulfilling its original objectives.

2 Integrate RIAs into the decision-making process.

3 Consider the range of assessments necessary to appraise fully the policy options and then present analysis clearly to support the chosen policy option.

4 Ensure departments have the capability and authority to promote the use of impact assessment, and to challenge policy teams on the need for regulation and the quality of analysis.

5 Provide appropriate expertise when undertaking impact assessment.

6 Provide timely and targeted support for policy makers to strengthen their analytical and decision making skills.

Case illustration

Evaluations are not yet widespread or systematic. We support the emerging departmental efforts and encourage other departments to follow suit. DTI has conducted a review of current RIA guidance and processes, including post-implementation review, to identify ways in which it could be improved. DfT has commissioned an evaluation of one piece of legislation.

All departments should start RIAs early and use them to project manage the decision-making process. For example, the ability of the Home Office's Better Regulation Team to challenge RIAs was often hampered, as policies were already well advanced.

The BRE should provide clear guidance on the requirements of RIAs and departments should seek to promote clarity of understanding to policy makers. Better Regulation teams should engage early in the process to ensure that assessments are well targeted and then later in the process to provide advice on the robustness of evidence and presentation of results.

The revised RIA process should allow departments to take an 'early look' at the range of assessments required. For example, this would set out whether Sustainable Development issues would form a detailed part of the assessment⁶.

The DTI has been proactive in promoting impact assessment, but DCMS, Transport and Home Office should consider how to renew efforts to promote the services offered and the importance of impact assessment.

The strength of the quality control function varies. All departments should ensure that they have the capability to provide policy teams with appropriate technical support.

The DTI and DCMS have both established formal Ministerial Challenge Panels which challenge regulatory proposals at an early stage. Transport Ministers devoted a significant part of their Autumn 2005 'away-day' to discussing Better Regulation.

DTI has used its policy pool to embed additional expertise into 'standing' policy teams so that value can be added; the Home Office had economic expertise on its Better Regulation team; whilst DCMS and Transport relied more on external challenge. Departments should raise awareness of available expertise and ensure early input into impact assessment. Government intervention leads to changes in markets and departments therefore need to engage with specialists who can help to analyse these impacts. For example, the OFT can provide an insight into competition issues.

Training should be enhanced in all departments. DTI provides the most comprehensive training and is working to identify teams that need training. Transport should consider the need for more structured training; DCMS should consider how their support could be enhanced; and Home Office should adopt a more co-ordinated departmental approach. Departments should also consider sending staff to training courses offered by other departments.

Only the DTI provides a comprehensive better regulation intranet site for policy officials. Departmental intranet sites at Transport, Home Office and DCMS would be enhanced by concentrating more on providing value-added information and practical advice.

6 Regulatory Impact Assessments and Sustainable Development, Briefing for the Environmental Audit Committee, National Audit Office, May 2006.

Recommendations	Case illustration
<p>For Departments</p> <p>7 Be imaginative in providing incentives to staff.</p>	<p>Departments should consider how personal objectives might be used to promote the use of impact assessment and provide stronger accountability for the delivery of RIAs. DTI senior civil servants have been asked to incorporate better regulation into their personal objectives as part of the culture change strategy. Intranets have not been used to celebrate and disseminate good practice.</p>
<p>8 Develop an awareness of good practice within their policy teams and ensure that minimum standards are met consistently.</p>	<p>All departments should seek to improve their understanding of how the use of impact assessment varies across policy teams, and then target those teams who require specific assistance.</p>
<p>For the Better Regulation Executive</p> <p>9 Tailor support and guidance, so that it is appropriate for individual departments and easy to follow.</p>	<p>Departments consider the guidance and advice provided by BRE to be crucial, but there is no 'one size fits all' solution. Departments are presently unclear about the support BRE will provide in future. The restructuring of the BRE offers an opportunity to re-appraise the nature of its support. We also welcome the introduction of new guidance on the completion of RIAs, but the BRE should set a firm timetable for its introduction to reduce uncertainty amongst policy-makers and Better Regulation Teams.</p>
<p>10 Restate the importance of the RIAs and the need for robust evidence to underpin the policy-making process.</p>	<p>In its attempts to focus the revised RIA process on economic analysis the BRE must be careful not to lose sight of the important wider aspects which can feed into policy making, such as the impact on sustainable development. Policy officials can be encouraged to use the RIA process to have a 'first look' at the wider analysis which may be required.</p>