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IMPROVING THE QUALITY OF REGULATORY IMPACT ASSESSMENTS IN THE UK

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Improving the Quality of Regulatory Impact Assessments in the UK

Dr Colin Jacobs

INTRODUCTION

This paper builds on a growing body of literature which documents the UK experience of Regulatory Impact Assessment (RIA). These chart its history and current situation which has put the UK in the vanguard of countries working effectively with the concept. Overall very high rates of compliance (96 per cent, Cabinet Office website, December, 2004) are currently enjoyed meaning that all bills are accompanied by RIA's signed-off by Ministers before they reach Parliament. However, whilst awareness is growing there remain high variations in quality and effectiveness in terms of the actual use of the RIA.

RIA is a systematic method for assessing the impact (positive and negative) of existing regulations (ex-post) as well as the potential impact of proposed new regulatory measures ex-ante). Its purpose is to "explain the objectives of the (regulatory) proposal, the risks to be addressed and the options for delivering the objectives. In doing so it should make transparent the expected costs and benefits of the options for the different bodies involved, such as other parts of Government and small businesses, and how compliance with regulatory options would be secured and enforced (NAO, 2002, p.1). The appraisal should be multi-disciplinary and consider the economic, environmental, social and distributional consequences of a regulatory measure, so far as is possible.

The rationale for RIA's is thus a mixture of wanting to be sure that a regulation truly contributes to strategic policy goals (internal logic) and ensuring that policy is sufficiently based on consultation with stakeholders and that costs and benefits of options are transparent (external logic). RIA can therefore both oil the wheels of the internal machinery of government and also contribute to better governance and strengthen democracy. It can help reduce inappropriate or ill-informed regulation which might create unnecessary bureaucracy, inhibit competition, create barriers and generally disadvantage small organisations. Importantly, RIA's should also prevent policies which are unenforceable being introduced.

In March 1995, the Organisation for Economic Co-operation and Development (OECD) provided a checklist of ten questions[1] against which all regulations can be assessed. In many respects this stands as a useful yardstick against which different governments and countries have elaborated their own national systems.

This paper has three objectives. Firstly, it will assess the current situation for RIA's based on a brief historical review of its roots in the UK. Secondly, it focuses in particular on the issue of quality and considers what is currently being done to improve matters. Thirdly, the paper tries to predict the future of RIA in the UK: in which direction is it likely to develop, how well prepared is the UK Government and what are the benefits and costs of a strongly centralised model?

The research is based on a twelve month assignment working with the Cabinet Office's Regulatory Impact Unit which involved extensive interviewing of a range of stakeholders, mainly at the departmental level. Structured face to face interviews led to the elaboration of an improvement framework that was the basis for a further round of interviews which sought to establish trend (over the last 6-12 months) and identify good practice for wider dissemination.

HISTORY AND STAKEHOLDERS IN THE UK

In the 1980's, governments in the UK and US attempted 'deregulation' which was later refined into a less ideological concern with 'regulatory quality' by the mid-1990's. At the same time RIA's evolved from a simple concern with cost compliance assessment to attempts to measure benefits and take risks into account. The main emphasis was on reducing the burden of regulation on small business which accounts for over 95 per cent of business stock in the UK and employs some 12.5 million people. In 1992 responsibility for overall co-ordination on regulation was moved from the Department for Trade and Industry (DTI) to the Cabinet Office which seeks to balance impact on business with the voluntary sector and, more recently, public services. RIA's were officially introduced in 1998 and approximately 200 are undertaken each year. The focus remains predominantly on removing red-tape and bureaucracy for business. However moving the leadership of RIA centre-stage has given the process a higher profile and the Prime Minister is enthusiastic about its value and the need to roll-out the approach across government. Further political support is ensured through the requirement that Minister's sign a declaration at the end of each RIA

that the relevant Department has evaluated the proposed policy and that benefits justify the costs.

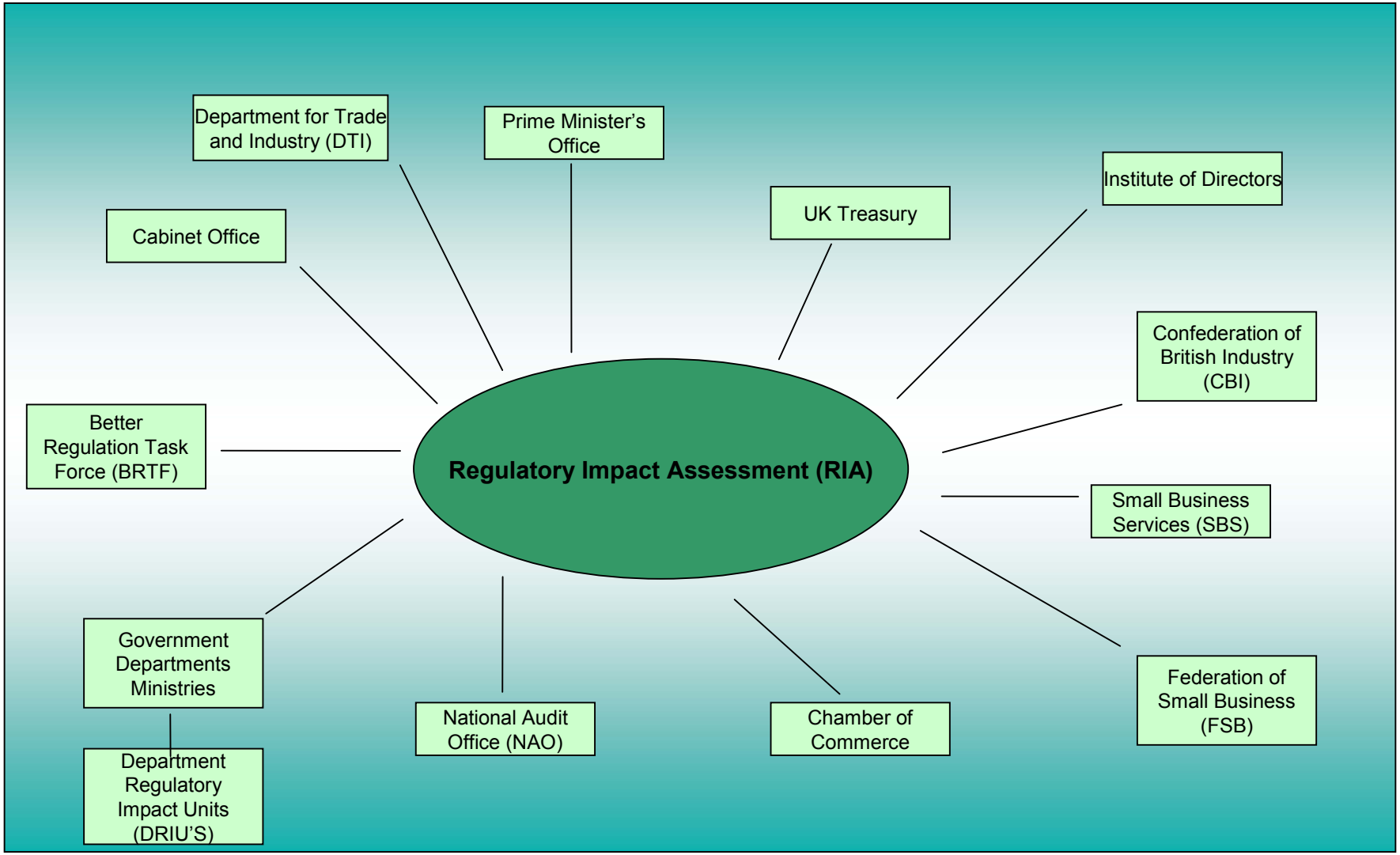
In 1997 with the change of government, the methodology of RIA also changed with an explicit consideration of benefits in what was called "Regulatory Appraisal" and a Regulatory Impact Unit (RIU) was set up within the Cabinet Office. This is well resourced with around 80 staff organised around thematic areas such as scrutiny, Europe, public sector, etc. Their work is split between scrutinising new proposals and reforming the existing body of regulation. They cover both public and private sectors. In addition, each ministry or department has an RIU (DRIU) which provides guidance and support to policy officials drafting RIA's. The units can consist of just one or two staff in a department with little regulation to around 8 staff in a major regulatory department such as the DTI or DEFRA The DRIU's are the key players at the base of the pyramid and were the main source of first hand information for this research. A Quality Committee made up of RIU staff and DRIU officers, undertakes an ex-post evaluation of RIA's by reviewing a random selection on a quarterly basis.

Other players represented in Fig. 1 below showing the various stakeholders, include the National Audit Office (NAO) who review a sample of RIA's each year and provide suggestions for improvements. In 2001 they examined Better Regulation across government in the belief that regulation imposes costs, foreseen or unintended on businesses, charities and voluntary organisations (NAO, 2001). The report asserts that RIA's can ensure that policy decisions are well informed and do not lead to disproportionate or counterproductive impacts. Their review of RIA's highlighted the need to start at a sufficiently early stage; consult effectively with those affected by the proposal; and analyse appropriately the likely costs and benefits.

In 2002 the Public Accounts Committee recommended the NAO should evaluate a sample of RIA's each year. In 2003 the NAO reviewed 10 final RIA's (i.e. approved by the relevant Minister) considered to represent examples where quality needed to be improved. The sample was largely made up of RIA's identified by the Better Regulation Task Force (BRTF). The main findings were that the RIA is now embedded within government as part of the policy-making system but that insufficient attention was drawn to consideration of alternatives to regulation and the 'do nothing' option (Humpherson, 2004). Consultation was again found to be a strong positive attribute of many RIA's but quantifying costs and

benefits remained a methodological challenge with insufficient attention to information gaps and sources. Perhaps most importantly, the RIA's did not always consider enforcement issues, or the best means to monitor and evaluate impact. This gap is confirmed by the author's own observations and highlights a gap which is more fully discussed in a later section of the paper.

RIA Stakeholders



A striking feature of the British scene is the way in which other agencies and organisations have developed a formal interest in the RIA process. These could be considered as internal stakeholders who enjoy some degree of independence and are there to check integrity, for example NAO and the BRTF. BRTF was set up in 1997 and has independent powers to review areas of government action in which its members (business and the voluntary sector) are interested and Government must respond within 60 days. Recent reviews include one on independent regulators and the role of the so called "arms length bodies" in the Department of Health. They have proven responsive to criticism (see below) from business in publishing the report "Imaginative Thinking for Better Regulation" in 2003 which looks for incentives to reduce tendencies to over regulate on the part of government.

The BRTF mission remains one of helping to ratchet up quality and spread awareness. They have developed five principles of good regulation: proportionality, accountability, consistency, transparency and targeting. Proportionality to ensure that the right balance of costs and benefits is achieved. Accountability so that Minister's decisions are accountable to government, parliament and the people. Consistency so that regulation is equally applied. Transparency in showing that regulation is based on consultation. Targeting to ensure that interventions are focused and do not have unintended consequences (CORIU website).

BRTF have also contributed to the NAO sample of RIA reviews in 2003 and 2004. One official commented that "RIA's were initially rather sketchy and of poor quality but have improved enormously". Some of the reasons for this improvement are noted below.

The Small Business Service was set up in April 2000 with the role of inter-facing between UK government departments and industry. With 14 staff on regulation issues their role is advisory as well as servicing the Small Businesses Council consisting of entrepreneurs appointed by the Secretary of State. The SBS has a wide remit so far as RIA's are concerned and a brief to review those which are likely to have an impact on small businesses. A key contribution is the development of a Small Firms Impact Test (formerly "litmus test") which must be part of the RIA where the impact is judged to be significant. The SBS monitors compliance by comparing the statutory instruments (SI's) published every 6 months against the RIA's. However, it is in their relationship building and awareness raising role that the SBS, is most valued. Through a database of some 1400 names, they can recommend companies who are keen to be engaged in consultation which can be by questionnaire or face to face. They are increasingly aiming to become involved at an early stage rather than

in a 'tick-box' fashion and claim that businesses for the first time have noted that they feel listened to and are engaged.

On the opposite side there are a range of business interests such as the British Chamber of Commerce (BCC), Confederation of British Industry (CBI) and Federation of Small Business (FSB) whose role is explicitly to lobby for the private sector. As such, they act as a counter-balance to the government machinery and regularly publish complaints about excessive red-tape and bureaucracy. Whilst admitting that in theory RIA's should lead to benefits being greater than costs, their view is that too often the cumulative burden is discounted and that the dynamic effect on competitiveness and benefits claimed to justify the regulations are seldom quantified (David Frost, Director General, British Chamber of Commerce, 2003 in foreword to Ambler et al, 2003). Nor are they adverse to challenging government figures and from a sample of 200 RIA's (28 per cent of all produced and 40 per cent of those available) found that although 84 per cent claimed that consultation had taken place but only 38 per cent noted with whom these discussions took place. In only 6 per cent of cases did they reckon that net benefits for consumers were adequately considered. Moreover the option of not regulating was only considered in 11 per cent of RIA's and less than half (44 per cent) quantify all options. The remainder provided cost/benefit analysis for the preferred option only (31 per cent) or no quantification at all (24 per cent). In the BCC words "this makes the decision to adopt, amend or reject a regulation biased and greatly reduces the usefulness of the system".

Failings are ascribed to the civil service culture where civil servants are minded to follow the wish of the Minister and there are no incentives (career, financial or otherwise) in them being seen to delay, challenge or block their political master's policies (Ambler et al, 2003 and 2004). In conclusion they note that "overall business is dissatisfied and unconvinced by the RIA process in practice". The BCC are also disappointed in the lack of internal monitoring although this has since been strengthened by the NAO role in annually reviewing RIA's. Currently there is no way of knowing what proportion of policies is abandoned or a non legislative solution is found, before they move from the initial stage of the RIA to a partial or full RIA. Proper tracking and records of the number of withdrawals would lend greater confidence.

Whilst the debates might be described in terms of "well they would say that wouldn't they" and trade bodies may exaggerate in order to justify costs for subscribers, the presence of

lobbies does at least provide an element of counter-argument to strong government machinery. An adversarial model has advantages and in this case has identified weaknesses which the Cabinet Office does not deny but notes that the examples are out of date and procedures have been tightened up. There are questions though about the extent to which it is wise to follow the United States where trade associations can challenge new regulations in the courts. This tends to fuel a litigious society and increases public costs whilst attempting to reduce private costs.

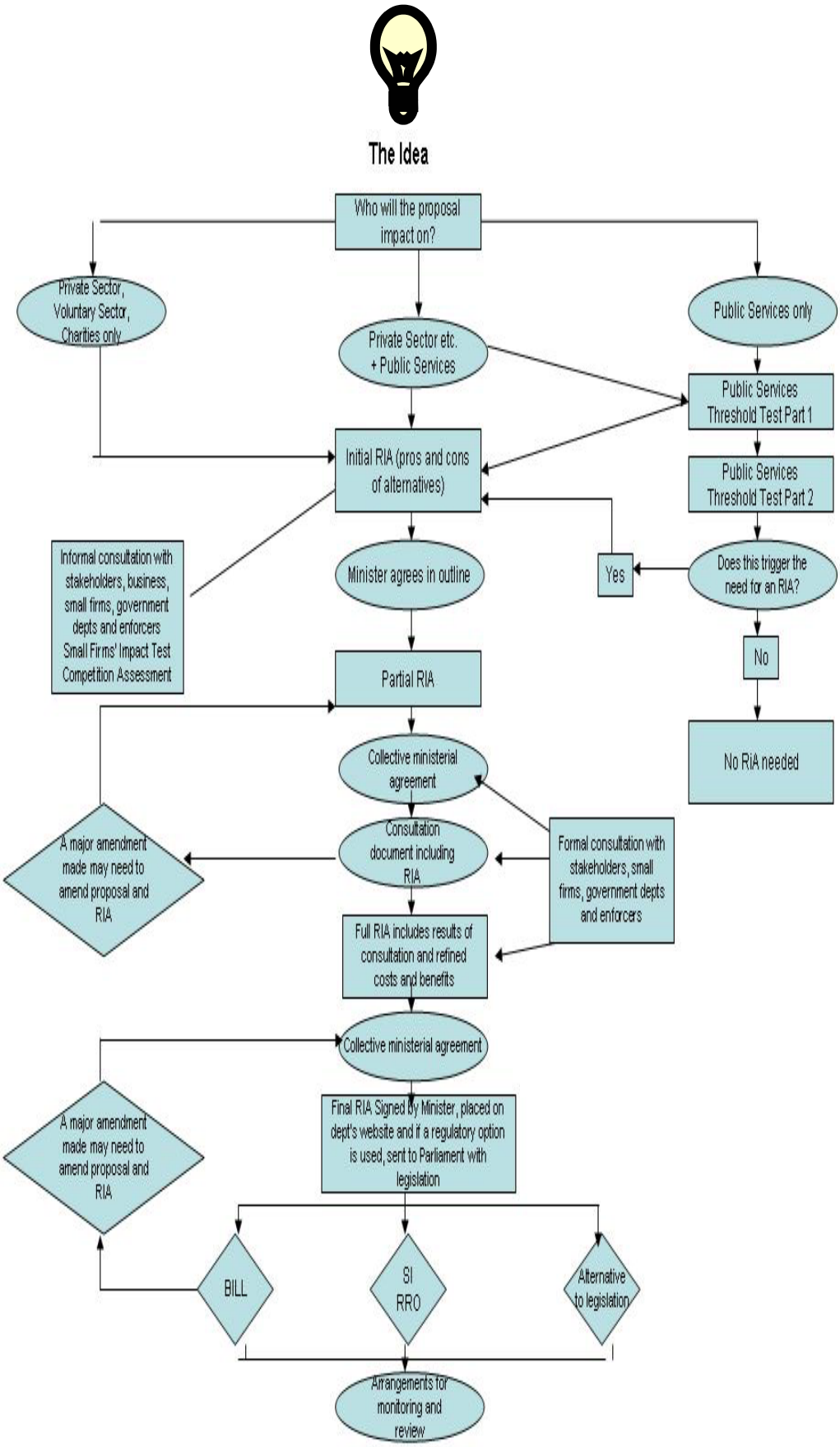
The different logics and values behind RIA's are classified by Radaelli (2004) who sees civil servants seeking conformity to rules and standards. In this scenario RIA's are a valued ritual within the government apparatus. By contrast the private sector will look to minimise costs and maximise profits. However, these polarities are simplistic in the same way that a simple count of new burdens as against those removed, fails to understand the way in which policy works. The impact of different policies is highly variable and their effect can be quite out of proportion to their number. For example, numerous attempts to drive up standards of hygiene and safety through self-regulation may ultimately be unsuccessful if there are non-compliant companies trying to cut costs and who will only respond to a change in the law. Even then there will be questions over the practicality of enforcing the law. In any case, the value of a range of stakeholders should not be under-estimated and is the source of creative tension which at the minimum serves to keep the government on its toes.

It should also be remembered that the UK administration is not based on a legalistic model unlike many countries in continental Europe. The Cabinet office has no legal authority to require ministries or agencies to conduct an RIA. A more subtle form of persuasion and/or coercion ("carrot and stick") is required in these circumstances. The strong central messaging combined with support from a dedicated government unit is key to the success of this model.

INTERNAL PROCESSES

The flow chart below from the Cabinet Office guidance (2004) illustrates the process through which policy follows from its initial steps to a full parliamentary bill or act. RIA's will track the process and be prepared at "initial", "partial" and "full" stages. An initial RIA should be prepared as soon as a policy idea is generated; a partial RIA which builds upon this, is produced prior to the consultation exercise (a minimum period of 12 weeks) and must accompany the consultation document; and the full RIA is prepared for the post-

consultation collective agreement and a final RIA is signed by the Minister to confirm that benefits justify costs. This is referred to Parliament where appropriate, and is also published on the department's website. The guidance goes on to say that the RIA should be proportionate to the likely impact of the proposal and can be quite short if the costs and benefits are likely to be small. Where the impact is likely to be substantial, more data and analysis is required although the final RIA should be a succinct report using annexes if necessary. The length of time between an initial RIA and the final RIA ending in the signing off of the document by the relevant Minister, can vary significantly with major areas of legislation taking several years and minor changes less than 12 months.



Source: Cabinet Office Guidelines 2004

Each RIA should contain at least the following elements:

- A clear statement of the objective of the proposal
- A statement of the background to the measure and the current legislative or regulatory framework
- Risk assessment: i.e. an assessment of the scale of the problem to be addressed by the proposed measure
- Identification of options, including a "do nothing" option as well as alternative means to achieving the objective without recourse to regulation or legislation
- Cost benefit analysis: identification of sectors affected and where possible benefits and costs should be quantified. Costs should include compliance costs as well as environmental and social costs
- Impact on small firms and/or voluntary sector
- Impact of each alternative on competition
- Enforcement
- Equity and fairness
- Monitoring: how is the impact of the measure to monitored? Major new regulations have to be reviewed within 3 years of coming into force.

THE CHALLENGE OF RAISING QUALITY – TOP-DOWN INITIATIVES

The RIA system has developed strongly over the last 5 years or so and is now well supported centrally with endorsement by both the Prime Minister and Chancellor and through networks across government. This includes each department having a minister with responsibility for Regulatory Reform and a senior official who acts as a board level "champion" for better regulation. In addition, Budget 2004 announced that "In future, any regulatory proposal likely to impose a major new burden on business will require clearance from the Panel for Regulatory Accountability (PRA), chaired by the Prime Minister, based on a thorough impact assessment of the proposal agreed by the Cabinet Office Regulatory Impact Unit, before the proposal is put to wider Ministerial approval. The Panel will consider all such proposals in the context of the Department's previous regulatory performance and the overall burden of regulation across key business sectors".

As a result of the Panel's work, the Department for Trade and Industry (DTI) has undertaken to set out deregulatory measures across its regulatory remit to reduce costs to business by more than £1 billion over five years. In addition, DTI has agreed that there will

be no extension of the coverage of the Operating and Financial Review regulations beyond quoted companies and as promised to look at simplifying existing regulation in the consumer area to take account of the duty not to trade unfairly, which will be introduced through the Unfair Commercial Practices Directive. It is early days but the PRA is said to have made officials at all levels more aware of the importance of better regulation as well as working as a further bottleneck through which policy must pass. The added value of robust scrutiny in the lead up to a general election should also not be under-estimated.

BOTTOM-UP INITIATIVES

There are a variety of bottom-up initiatives which are designed to drive up quality. For example:

- The day-to-day scrutiny of RIAs and capacity building work of the RIU Scrutiny Team and Economists;
- The work which RIU does with the Departmental Regulatory Impact Unit (DRIU) network, policy officials and others, including training, sharing of best practice, workshops, etc;
- The current review and revision of the RIA Guidance – a new web-based version will be published shortly to make it more user-friendly;
- Work within departments, for example the DTI where several workshops and pilot demonstrations have been held;
- The NAO annual review of a sample of RIAs and its published reports;
- The work of the BRTF to identify good and bad practice and to seek ways to further embed and improve the RIA process.

A FRAMEWORK FOR MONITORING FURTHER IMPROVEMENTS – RESULTS OF RECENT RESEARCH

Quality Framework

It is against this background that the author conducted interviews with a range of DRIU's. This began by classifying existing quality problems into 5 categories based on the 'rule of five' that five well chosen leading indicators will cover 90 per cent plus of the problem. These were based on interviews and perceived problems in each area and were checked at one of the DRIU quarterly meetings where there was agreement that these constituted the main challenges remaining. An improvement plan (see below) was drawn up on this basis.

The results of 10 face to face interviews[2] where interviewees were asked to record changes over the last 6-12 months on a scale of 1=significant deterioration to 5=much better showed that all departments were optimistic about the direction of change and on average recorded no less than 3 (no change) and three department awarded 5's (well above expectation) for aspects of the RIA. The average score was 3.6 and eight of the ten cases gave 4's (slightly better) in some aspects – see below for full results.

Several points should be borne in mind when interpreting this data. Obviously it is a small sample and the direction of change is more important than the raw score. It is also a piece of self evaluation which should be triangulated by objective observers. Future NAO reviews are the most likely source for this. However, it should be borne in mind that similar evaluations based on peer review among DRIU's have shown them to be more critical than external evaluators. There is a strong motivation to be impartial, practical and realistic; all traditional attributes of the British civil service.

Feedback to RIA Improvement Plan 2004/5

Component (Problem)	Key Issues	Performance Indicators	Sources of Information	Score for performance over last 6-12 months (1=significant deterioration; 2=slightly worse; 3=no change; 4=slightly better; 5=much improved;)	Remarks
Unclear objectives	Lack focus Poor risk assessment	Objectives clearly stated on RIA report	Data from RIA reports Feedback from DRIU's Evidence from NAO reports		
Lack of evidence to support case	Assumptions not explicit or backed by information Little or no cost/benefit analysis of other options Bias toward preferred option	All options considered in RIA report Final choice of policy in an RIA should be clearly linked to evidence base	Data from RIA reports DRIU feedback		
Failure to consider alternatives to regulation.	Better consideration & analysis of alternatives e.g. self-regulation, COP, tax & market mechanisms, education/ directives, etc. Incentives for civil servants to promote alternatives	Clear reference to alternatives in reports	Quality Committee, BRTF, assessment of PM's PRA and NAO work DRIU feedback		
Weak consideration of monitoring/ Review needs	No links between RIA – ex ante and M & E	Clear procedures to do monitoring incl. timing and persons responsible	RIA's Other policy studies		
RIA needs to be introduced earlier in the policy cycle	In some cases still seen as 'bolt on' holding up process rather than adding quality Separation from design stage limits effectiveness	Evidence that situation is improving e.g. policy teams use initial RIA as planning tool and work closely with economists, scrutiny team, etc	DRIU feedback RIA reports Quality committees and discussions Work for PM's PRA.		

Interviewee Responses – Oct-Dec 2004

Question		DEFRA	Treasury	Health	Customs & Excise	Inland Revenue	Works & Pensions	Health & Safety	Home Office	Dep. PM Office	DTI	Total	Ave
1	Unclear objectives	3.5	5	4.5	3*	4	3.5	3	4	4	3	37.5	3.75
2	Lack of evidence	3.5	4	3.5	4	3.5	3	4	4	3	3	35.5	3.55
3	Failure to consider alternatives	4	3	5	3	3	3	4	3	3	3*	35	3.5
4	Weak M & E	3	3	4	5	3	3	3	3	3	3	33	3.3
5	Early introduction of RIA	3	4	5	4	5	3	4	3.5	4	3.5	39.5	3.95
Total		17	19	22	19	18.5	15.5	18	17.5	17	15.5	177.5	17.75
Ave		3.5	3.9	4.4	3.9	3.7	3.1	3.7	3.5	3.4	3.1	36.2	3.62

* In both of these cases the respondent believed that their Department had very little influence and therefore did not wish to award a mark. Rather than skew the averages, these responses were awarded a score of 3 = no change.

Areas where there was a marked improvement were: in setting clear objectives; providing evidence to support a case; and considering alternatives to regulation. In the area which traditionally has remained most stubborn – introducing RIA earlier in the cycle – DRIU's reported the highest level of improvement overall (average 3.9). Conducting RIA's at the beginning of the policy cycle has a knock on effect in terms of improving the overall quality of the RIA. The area most often neglected is monitoring and evaluation but again there were exceptions and interesting pilot work is being done both at Customs and Excise and the Inland Revenue. A discussion of the main findings against each category now follows:

Setting Clear Objectives

This is the crucial area which frames the policy argument, clarifies its purpose and states why regulation is necessary and the need for a careful scrutiny of its impact. Needless to say a poorly formulated policy which is unclear about its objectives at the outset, will adversely affect the quality of the overall RIA. That said civil servants may have to translate political concepts or intentions that have been ambiguously expressed (sometimes deliberately) by Ministers who want to "test the water". In some cases this may then be written up by a civil servant who is unaware of the full background and has to translate a general intention into a specific objective. There may at times be a mismatch with policy designed towards establishing a general preference or area whereas the RIA seeks to establish specifics which can be measured and are time bound.

In some departments such as Customs and Excise and Inland Revenue, there is less scope for ambiguity as the objectives are driven by tax measures. Or, in the case of the Health and Safety Executive or the Food Standards Agency, 60-70 per cent of policy is derived from the European Commission. In this case the departments' goal are to influence policy in Brussels through their Ministers and MEP's being involved at the drafting stage.

It is therefore not surprising to see practitioners rate this is an area which has shown only modest improvement (average mark of 3.5) although there are two departments – Health and Treasury which have recorded scores of 5 and 4.5 respectively. At the Treasury the DRIU reported that the quality of RIA's had improved a great deal since they took over the post in March 2004 and the subsequent post holder confirmed that the improvement had continued into 2005. With the help of the RIU, policy leads have taken on board the message that the aim of the intervention must be fully explained, and must make sense to readers without financial services knowledge". A similar sense of improvement is evident at

the Home Office where a "no nonsense approach" and sense of purpose at ministerial level was mirrored by clear objectives within the RIA's.

Lack of Evidence to Support Case

RIA's are required to consider a number of options including the "null hypothesis" i.e. doing nothing. A poor RIA will fail to state the assumptions behind its choice of options. Or, the assumptions may be speculative. For example, the RIA for Sewerage Undertakers (pollution inventory) direction 2001 states that the provision of data per se will result in improved knowledge of emissions from sewage treatment works and better public access to information on the environment. Raised awareness of what flows through a sewage treatment works and its origin, including domestic sources, should both assist public understanding and help address the challenge of polluting emissions". (RIA, 2001). This assertion without a clear causal link based on research or evidence seems questionable.

This may be due in part to a professional weakness. One DRIU commented that "Policy people are fearful of making assumptions whereas economists are more experienced in stating these openly as part of risk assessment". In this respect the move toward integrating or embedding economists and statisticians within policy streams in some departments is proving extremely valuable and allows a more balanced approach. As a result departments such as the Inland Revenue report an increasing analytical capability to assemble the basic data and provide competent analyses.

Measuring alternative options remains, however, an inexact science and whereas it is more straightforward to estimate costs, there are conceptual difficulties to measuring benefits. Much depends on who is expected to benefit and what weighting should be given. In some areas there is a compelling case. For example, the Tobacco Advertising and Promotion Regulations 2003 seeks to limit the impact of tobacco advertising in sport and notes the findings of one survey which showed that teenage boys who are fans of motor-sport are twice as likely to smoke as those who are not. However despite strong evidence of this kind, it is notable that a final full RIA was only produced in 2004 after the intention was made in a 1998 White Paper, 'Smoking Kills', to follow the EC directive by ending sponsorship by 2003. The RIA considers 3 options: first, to not allow a transitional period for those with existing tobacco sponsorship agreements; second, to give all those in receipt of tobacco sponsorship the same transitional period to end their arrangements; and third to impose a deadline of 30 July 2003 for existing sponsorship agreements but allow exceptional global events longer,

subject to clear demonstration of year on year reduction in the amount of sponsorship and of visible advertising.

The report goes on to justify option 3 not on the basis of objective evidence but argues that it is line with policy steers provided through the White Paper and subsequent pronouncements on the need to protect business on the basis of fairness and equity. No quantitative measurement is made of options 1 and 2 and the report reads like a post-hoc justification for the preferred option 3. The benefits are understandably inexact but expressed as percentage reduction in smoking, cost to the NHS and impact on productivity at work. The costs of a delay in reducing smoking as proposed under option 3 is calculated as around £25m (range: £12.5m-£37.5m) in lost productivity alone. Despite longwinded discussions and evidence of wide consultation, these sizeable impacts seem to be over-ridden by the policy arguments.

The difficulty of using a cost-benefit analysis on its own to justify a preferred option, is well understood. Benefits are not easily quantified although there is doubtless an increased awareness of their importance. Equally there may be resource and time constraints to giving a serious consideration to options outside of the Minister's objectives. Even if they were costed there is a view that they would not be runners so could not justify the nugatory expense. Equally there are cases where the Minister will go straight to consultation (required under a partial or full RIA) and skip the initial phase as they are determined to make strong political statements about, for example, tackling crime or anti-social behaviour. In other cases the rigidity of the Budget and Finance Bill timetable constrains a full consideration of all options.

Some issues seem to lend themselves well to the RIA methodology and consultation has allowed a fuller assessment of costs with implications. Consultation is considered one of the big success areas both by the Cabinet office and the NAO in recent years and there is evidence that when properly carried out in can lead to good results[3]. For example, the New Chemicals (Hazard Information and Packaging for Supply) Regulations (CHIP 3) produced a comprehensive costing in 2004 following in-depth formal consultation. A minimum of 12 weeks is stated under a code of good practice for consultations and only reduced where there are urgent national concerns – for example, recent anti-terrorism legislation. This is monitored through a forward look programme issues every 6 months which identifies those consultations below the minimum standard.

In the case of CHIP 3 consultation showed that around 3,800 firms, representing 267,000 employees – for the most part from small firms with nine or fewer employees – would be adversely affected. Re-labelling or disposing of products already on the market would incur costs in the order of £200 million or around 4 per cent of the paint industry's turnover alone. Additional costs would be attributed to soap, pharmaceutical, agricultural, explosive and cement manufacturers and to costs of upgrading equipment, training and administration. In all cases assumptions have been carefully recorded.

The safety benefits although difficult to disentangle from the role played by other CHIP in mitigating or preventing incidents, have also been estimated using the Department for the Environment, Transport and the Regions (DETR) approach to valuing the reduction in risk associated with road traffic fatalities. Other health benefits, the reduced disruption to work, and damage to the environment through an increase in public information are considered impossible to calculate. Nevertheless assuming costs on 'best-case' assumptions are £200 million for a 12 month transition, £400 million for a 6 month transition and around £700 million for a 3 month transition; and there are potential safety benefits of around £200 million and unquantified health benefits of probably the same order based on previous work by HSE on costs of accidents, then the importance of providing an adequate transition period is in limiting costs to industry. The effect of shortening the transition period from 12 to 6 months results in costs that would outweigh the potential safety and health benefits of the entire CHIP classification regime for a period of around 5-10 years – even given the best case assumptions. Whilst the calculations are not full proof the evidence gathering and attention in recording the basis of all estimates is commendable.

Failure to Consider Alternatives

An explicit goal of the RIA is to encourage the use of alternatives to legislation. These can be in the form of codes of practice, directives, and guidance, self-regulation and tax and market mechanisms. The BRTF publication on "Imaginative Thinking for Better Regulation" in 2003 is explicitly issued with this in mind. It calls for a culture change in which policy makers look for alternative approaches to implementation as well as considering the unintended consequences of interventions. At present the report recognises it is often a good career move for civil servants to work on a Bill Team and that the system tends to reward those who further the Minister's view rather than ask awkward questions or delay implementation through bureaucratic procedures such as the RIA. A variety of instruments are changing the situation such as increased awareness through training courses, use of

annual reports to document good examples and wider promotion in Parliament and the House of Lords. Perhaps the best advertisement is where leading Ministers, for example at the DTI, have used an RIA as a source of information in parliamentary debate.

The BRTF report identifies faults with "classic" regulation, mainly in the form of unintended consequences such as additional maternity rights which can cause small firm employers to avoid hiring women of childbearing age. Or, for example, the Animal By-Products Regulations which are designed to deal with the treatment of raw meat and blood but have caused a number of small corner shops to stop selling these products, increase their prices or even close because they cannot fulfil the new requirements. A series of incentives are considered including creating competitive markets, price caps, targets and tax credits, subsidies and awards, as well as the possibilities of self regulation and co-regulation.

The fact remains, however, that alternatives to regulation are heavily circumscribed by the nature of the sector. For example, in areas such as tax there may be few alternatives assuming that few will willingly police themselves more closely in this area. For departments, such as the Inland Revenue, there may be little gain in doing nugatory work on options when there is a short window to prepare for legislation between September and the following March budget and consultation can only take place post budget. In these circumstances the RIA is used as much as an information and education tool rather than devoting scarce resources to costing unrealistic options.

The survey of DRIU's recorded an average mark of 3.5 in this area showing only a slight improvement. Nevertheless some departments such as Health showed a marked improvement (5) and reported more creative brainstorming around options. Health and Safety Executive were also committed to finding alternatives such that "legislation is almost the last resort". This push was reported as being more driven from the top than as a result of written advice or guidance. A good example, was in the area of work-related stress. HSE decided on the basis of the available evidence that legislation was inappropriate as it is difficult to prescribe ready made solutions to stress. Instead, it developed a suite of standards of good management practice to enable employers and employees to work in partnership to address work-related stress at an organisational level. Launched on 3 November 2004, these Standards help simplify the risk assessment process for stress, and provide the yardstick by which organisations can gauge their performance in tackling the key causes of stress.

Weak Monitoring and Evaluation

There was a surprising low level of thinking in the area of M&E despite the textbook need to review policy and then feed back results into a re-design or new policy. This was both lacking in terms of revisiting the estimates of impact within the RIA to see if these turned out to be accurate. And, in terms of the ultimate success of policy choices. Had regulations, acts and bills achieved what they actually set out to do? Was their demonstrable evidence of achieving targets? In practice the reverse appeared the norm and there was often a complete break between evaluation as an ex-ante (formative) activity and an ex-post (summative) activity with very limited comment on monitoring arrangements let alone enforcement or implementation. In some cases periodic review was recommended but without reference as to how information would be collected, by whom and with what purpose.

This was surprising as there are instances where the process has obviously paid dividends in the past. A standard VFM (Value for Money) study by the NAO of the pension system at the Occupational Pensions Regulatory Authority (OPRA) in 2002 identified that in considering personal regulations for pensions, OPRA had estimated that the public would want 13-30,000 reports. Through monitoring the situation carefully, they found after one year that the demand at around 250,000 was in fact much larger and a much more accurate risk assessment of the potential number of cases and therefore the likely resources could be made.

The gap between design and M&E was explained in several ways. Firstly, the people involved in policy design – the "Bill Team" come together for a period of about 6 months but then disband and have no real interest in following up their work. A second reason is that there are few if any incentives to learn what actually happens when a different group of people will write the legislation and finally enact the bill, act or directive. Politicians (and therefore civil servants) are rarely interested in results which may be several years down the line. This short-term and narrow thinking is compounded by the third reason which is that there are many intervening variables which make it difficult to prove that change is in fact the result of a specific policy or set of policies. The "attribution problem" is well known to evaluation practitioners but not in itself an adequate excuse for lack of follow-up. The results – as one astute respondent – put it is that the UK is very good at policy creation but has an inherent bias toward novelty at the expense of consistency and careful monitoring of results.

However even in this area there were departments prepared to do more. The survey shows that the "enlightened" few were high performers elsewhere. They were the Inland Revenue and Customs and Excise (soon to be merged) and the Department of Health who now have an evaluation committee chaired by the Director General which is committed to make people start looking at counter-factual information. Did the intervention in fact make any difference? A more concerted effort to monitor is made by requiring clear proof under the spending review that past interventions have recorded successes. This is combined with increasing awareness and a move toward a series of strategic programmes to improve health standards across several indicators.

At Customs and Excise there has been a strong commitment to monitor specific areas of legislation since 2003 such as the simplified schemes for VAT accounting – the Flat Rate Scheme, Annual Accounting and Cash Accounting. The impact of changes are measured through interviewing small businesses, reviewing take-up through internal records and telephone interviews. 84 per cent of respondents felt that the return was easier to make, paying a little often put less strain on cash flow and there were time savings of around four hours in each quarter of the year. Overall take-up has increased considerably. The estimated financial savings to an average company were initially estimated at £1000 but had since been revised down to £600. For the Flat Rate Scheme, savings were estimated at £90 per business per year.

The same department has reported success in other areas. For example, in tackling spirit fraud where compliance costs were expected to be high due to the need to set up new systems. In January 2005, the Chancellor announced the adoption of key industry proposals to keep compliance costs to a minimum and significantly reduce the estimated costs which meant a reduction in start up costs from £23 million to £7 million and in ongoing costs from £54 million to £5 million. This is a good example of the way in which continuing consultation with industry can pay significant dividends.

At the Inland Revenue there is a similar enthusiasm to measure impact, particularly where there is a large amount of administrative data available, for example on family tax credits. All RIA's since 2001 have been ordered for review with 2005 considered as a design year. The methodological problems, however, have only begun to be appreciated and there is little evidence base in many areas. For example, there is a concerted effort under the aegis of a Select Committee to look at the Administrative Costs of Tax Compliance with a view to

meeting a public service agreement (PSA) target to reduce compliance costs. This will require regular monitoring deemed "policy maintenance" to check actual costs of compliance against estimates every two years. An initial step will be to agree core elements of compliance costs before surveys of small businesses can be conducted. A particular challenge will be introduce this level of monitoring without extra funding.

Outside of the major regulatory ministries there seems little likelihood of rapid progress. Change will come more slowly as a result of increased awareness but is unlikely to be widely embraced without a bigger push from the Cabinet Office. In departments facing major down-sizing such as the Department of Works and Pensions (approximately one third of the total workforce) there are likely to be more pressing demands on finite resources despite evidence (see the examples, above) that sensible monitoring can in fact achieve savings and recover any initial start-up costs.

Early Introduction of RIA's

The early introduction of RIA's is in many ways a first principal by which it is widely agreed quality improvements can be achieved. If the RIA can be written at an early point – within the first 6 months – then it is much easier for its value to be accepted as the critical instrument in policy design. This requires departmental regulatory units to be involved from the beginning. Ideally this will happen as a result of policy advisors involving them at the outset or coming to them for advice. Less satisfactorily they will need to impose themselves or at least monitor forthcoming policies.

A typical regulatory department such as DEFRA note that despite a lot of encouragement and numerous directives around policy innovation, very few have initial assessment and partial RIAs are often only done when staff needs to go to consultation. At another major regulatory department, it was reckoned that in around 50 per cent of cases RIA's were still an after-thought bolted on to policy designs. There is recognition among most players that the key to success is raising the profile of RIA's and that this is best tackled through a multi-pronged strategy including training, websites, guidance and making an initial RIA compulsory in some cases, for example, where there are competing bids for primary legislation. On its own there may be a danger that officers will be overwhelmed by the amount of information and face-to-face awareness raising through seminars is both more popular and successful in bringing about converts. Winning hearts and minds will not come

from exhortation alone and there is a need to maintain a sense of proportionality and common sense. A valid initiative in the attempt to popularise regulation is the inclusion of a Better Regulation Award (funded by industry) in the Public Servants of the Year Awards for the most creative solution to a policy objective.

A further piece of best practice which will improve matters is for financial, economic and legal practitioners to be more closely involved with policy workers in future. Traditional barriers which create a policy elite are being gradually broken down in an attempt to improve the current government's service delivery agenda. However, this is by nature a medium to long term process and it is notable that one DRIU from a major financial department, still commented that there are cases where draft RIA's are only being received a few days before the Ministerial submission is required. It is likely, however, that this problem is limited to less important policy as the iterative nature of the RIA process means that DRIU's in a major department such as the DTI will see an RIA several times before it has final Ministerial approval.

Rolling out the Methodology

Since early 2004 the RIA methodology is being extended to public sector policy initiatives and various approaches brought together in a process of rationalisation and simplification. This process is supported by the Scrutiny Team in the Regulatory Impact Unit, which is responsible for working with departments to embed use of the RIA process and improve the quality of RIAs. The view is that there should be one assessment tool for both private and public sector measures and a more holistic approach should be taken to reducing bureaucracy and red tape. This in practise has meant the integration of the existing Policy Effects Framework (PEF) within the RIA process. RIA's are being promoted as a flexible tool for analysis of economic, social and environmental impacts with strong existing branding which can easily be extended to proposals from the public sector. It is also a useful communication tool and forms a good basis for consultation with stakeholders. There is a threshold test to differentiate between 'high' and 'low' impact measures with only the high impact measures requiring an RIA.

It is premature to judge the success of this process but there are early indications of good take-up. Other departments such as DEFRA who have well developed environmental impact assessments, have been prepared to place these under the RIA umbrella which is sufficiently flexible to allow sector specific instruments within its broad categories. Despite a strong

tradition of scientific independence which might have been expected to resist the imposition of a standard methodology, resistance has been limited. This can be put down to the power of a centralising agenda led by Reform Ministers with representatives in each department but also the basic common sense of the argument, particularly for DEFRA where over 50 per cent of policy is derived from the EC who have already brought into the RIA concept. Work is also underway to integrate the RIA with so-called "Gateway Programmes" which exist within departments to reduce bureaucracy and encourage policy makers to think about the implications of new policy proposals at the outset and in working up implementation arrangements.

The result is that an extraordinary range of RIA's are now available covering issues as diverse as: anti-social behaviour and the sale of spray paints to persons aged under 18 in an attempt to limit graffiti; legislation to allow local authorities to intervene in neighbour pursuits over high hedges; and, the modernisation of the General Medical Services Contract to provide greater flexibility for medical practitioners and primary care trusts to integrate non-medical staff within their services and thereby improve patient choice. The fact that the issues vary so widely from the original RIA raison d'etre of reducing costs for small businesses, does not seem to have hampered the analysis. There is no evidence to suggest that RIA's dealing with the public sector are any better or worse in their quality than those with a private sector focus.

Doubts however have been expressed about the way in which the integration is taking place although not with the logic of one management tool and one database. The difficulty is that the two systems were developed completely separately and the immediate pushing of responsibility on to individual departments for the integrated system will result in variable results. The original PEF was developed about 3 years ago and was never mandatory with the result that it was poorly understood and only applied to obvious areas such as schools and hospitals where front line services were most obviously affected by excessive bureaucracy. Gateways have therefore been developed in some departments such as Health and Education and Skills (DfES) and to a lesser extent elsewhere, for example, in the Department of Transport where there is a small gateway to consider transport demands on local authorities. Future expansion of the RIA process to Works and Pension and Inland Revenue will require much more work in the face of stringent economies.

The danger of over complicated support systems is nowhere better illustrated than in the proliferation of websites on the subject of policy making. Although there is some cross referencing, for example, between the Cabinet Office's RIA website and the pre existing Policy Making Hub, the two have been written at different times for very different purposes. The result is an excessive amount of information which cannot be easily or quickly accessed by users. Similar gaps in the provision of training on RIA's are evident between the CO RIU and CMPS (Centre for Management and Policy Studies – formerly the civil service college) courses on Better Policy Making. Whilst these anomalies are being addressed they require time and resources which too often are sacrificed when a new and more urgent initiative presents itself.

CONCLUSIONS

RIA has enjoyed remarkable success in its seven or so years of existence (in its current form) in the UK. High rates of compliance, the backing of the Prime Minister and senior Ministers, Cabinet Office support, and the fostering of closer consultation with the business sector, are all achievements. The overall quality of RIAs has also undoubtedly improved in the view of practitioners who have experienced almost a decade of major improvement. A combination of "hard" and "soft" incentives have shaped its development.

Soft measures include copious guidance in the form of instructions, websites, workshops and training as well as a network of reform ministers and champions to support the work of departmental units. Further technical support has been given by the 80 or so staff within the Cabinet Office including economists, policy makers and administrators. Hard measures include rulings that demand RIA's be signed off by the relevant Minister and the annual review of a sample of RIA's by the NAO each year. Also the recent Prime Minister's Panel for Regulatory Accountability which are normally chaired by the PM or the Chancellor of the Exchequer require a higher level of scrutiny for policies above a threshold value or considered politically sensitive. It is hard to imagine another methodology having the expressed backing and ear of the two most powerful government leaders in the country today.

Despite these successes, there are weaknesses in the UK model which may prove critical to its long term survival, at least in its current form. First, there remain stakeholders, particularly in business that remain sceptical. The RIA for them is simply a set of statistics which can be skewed to fit the Government's arguments and rarely has sufficient

independence. The damage to companies and their market competitiveness of excessive regulation is under-estimated. For this set of critics, regulation in whatever form is often unwelcome and the demand for further integration with EU law and standards is an infringement.

A closer analysis however shows that an RIA has in some cases been extremely valuable in highlighting innovative solutions to regulation which would have major negative impacts on British manufacturers. For example, the 140 or so small firms manufacturing chocolate in the UK would have been unable to trade their products in the EC as they failed to meet the minimum cocoa content requirements outlined in the Cocoa and Chocolate Products Regulation 1973. The recent update of 2003 however allows traditional British milk chocolate which contains more milk and less cocoa than commonly eaten on the continent, to be sold under the label of "family milk chocolate". The RIA estimates that the one-off cost relating to labelling and packaging will be £2.5 million representing just 0.1 per cent of producers' revenue. On this basis the option to re-label chocolate in line with EU regulations was not only legally required but had considerable economic benefit to British manufacturers in reaching the wider European market.

Conversion to the RIA methodology among civil servants has been relatively straightforward on the surface and has been in line with prevailing government attitudes to regulation. However scratch the surface and there is a sense that progress is patchy. The current model is heavily resourced from the centre with a large Cabinet Office unit and additional organisational support from government funded agencies such as the BRTF and Small Business Services. Leadership has been predominantly "top-down" and the author's surveys revealed that whilst the Cabinet Office plays a largely positive role, it sometimes lacks real understanding of the limitations of departments struggling without sufficient resources to implement over-ambitious and sometimes contradictory government plans. There is an understandable concern among smaller departments that an over-emphasis on the large regulatory departments will be to their detriment. RIAs in these departments can be few but with a disproportionate importance and without the resources to provide a great deal of attention.

Here there is an interesting comparison with New Zealand where the general discipline of RIA is applied across all policy initiatives, not just regulatory ones, with an equivalent of an RIA required as an accompaniment to all submissions. In the view of one respondent this

makes for a greater focus on evidence based policy, greater ease with the use of problem definition, options analysis and quantification of all benefits and costs. A systemic approach of this nature may obviate the need for a special RIA unit or at least reduce the heavily centralised, top-down model adopted by the UK.

At any rate it is clear that increasingly efforts need to be made to re-direct energies to supporting (and rewarding) bottom-up activities in which initiatives are taken by departments and they are able to achieve quality improvements through their own policing and peer networks. In this way a more sustainable model can be achieved. The Cabinet Office recognises this and is eager that departments take ownership of the agenda.

A second concern is that the roll-out to public sector areas is too fast and too under-resourced. A methodology which was developed to safeguard against over-regulation of the business and voluntary sectors cannot switch overnight to the much broader social and political issues embraced by the public sector. Increasingly the RIA process has been asked to encapsulate other forms of impact assessment, including environmental, health, rural proofing (safeguarding rural assets against urban bias) and race equality. Questions should be asked about the flexibility of the system to embrace such widely different issues. Business and economic related policies have comparatively less difficulty in identifying visible target groups.

Moreover extra resourcing is required to support the plethora of approaches. The nightmare of a government creating further bureaucracy in their attempts to limit red tape should not be too easily dismissed. Already more is spent by the Government in the UK on regulating its own services (from £700m to around £1 billion) than in regulating the privatised utilities (Hood et al, 1999). This may be a legitimate use of tax payer's money but the burden must be continuously reviewed.

A fair counterpoint to this argument is that RIAs have in fact allowed a certain amount of economy through the integration of a plethora of wide ranging tools and guidance that exist in priority areas such as health, sustainable development, delivery of public services and race equality. This simplifies and classifies information available to policy makers under priority areas while strengthening the RIA brand and reducing the chances of a myriad of competing assessment tools. As RIAs are increasingly used throughout the EU, there is value in having a common frame of reference (Jacobs, 2005)

It should also be recognised that RIA is at heart a logical methodology which does not fit perfectly with the reality of policy making which is largely achieved through argumentation. As Solesbury (2004) notes this can be a public process but often takes place behind closed doors. Ministers and civil servants are likely to be continually reshaping polices and practices based on events, lobbying, political imperatives, and media campaigns; all of which cannot easily be predicted. In these circumstances there will not be a perfect fit and RIA can best act as a check and break on unnecessary regulation but cannot replace the democratic process.

At the same time the UK experience of RIA is internationally at the cutting edge. As such, much can be learnt from its impact in making information more widely available and the democratisation value of the wide use of consultation and publication of RIA's on the internet. The limits to the model are still being tested but by and large the picture remains both dynamic and positive. The system that has evolved in the UK with its focus on multiple stakeholders is well tailored to a free market governed by common law. In this setting characterised by pragmatic, albeit centralised policy making, the RIA methodology can be stretched to new limits.

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Notes

[1] The ten questions are:

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

[2] Representatives (usually from the DRIU) were interviewed at: Department of Trade and Industry (DTI); UK Treasury; Department of Food and Rural Affairs (DEFRA); Department of Health (DoH); Customs and Excise; Works and Pension (DWP); Health and Safety Executive (HSE); Home Office; Deputy Prime Minister's Office; and Inland Revenue.

[3] See the Cabinet Office publications on codes of practice on consultation published in 2000 and 2004 for details of the approved methodologies.