

**NAO Briefing Paper for House of Lords Merits of Statutory  
Instruments Committee**

**Post Implementation Review of Statutory Instruments: Analysis of  
the extent of review by Government departments**

**October 2009**

## Summary and Key Findings

On 24 June the House of Lords Merits of Statutory Instruments Committee announced that it was conducting a study to assess the degree to which Government departments check whether legislation is actually working as anticipated. To assist the Committee, the National Audit Office has conducted an analysis of the extent to which departments report they have carried out post implementation reviews in relation to Regulatory Impact Assessments supporting Statutory Instruments. This analysis has included a survey requesting departments to provide information about all Regulatory Impact Assessments published in 2005 relating to Statutory Instruments. In addition, we carried out follow up interviews in relation to 12 cases agreed with Committee.

Since 2001 the National Audit Office has reported to Parliament regularly on the Regulatory Impact Assessments (since 2007, Impact Assessments) carried out by departments. Several of these reports have pointed to deficiencies in departments' plans for post implementation review. But we have not previously examined the extent to which post implementation review has been carried out on such a large number of Regulatory Impact Assessments. This analysis for the House of Lords Merits of Statutory Instruments Committee therefore breaks new ground in showing how far departments are evaluating the effect of new measures in action, and the Committee's inquiry will be a valuable guide to improvements in this area.

This paper sets out the results of our research, based on the information provided by departments and our follow up interviews. We found that for the sample year of 2005 departments reported that:

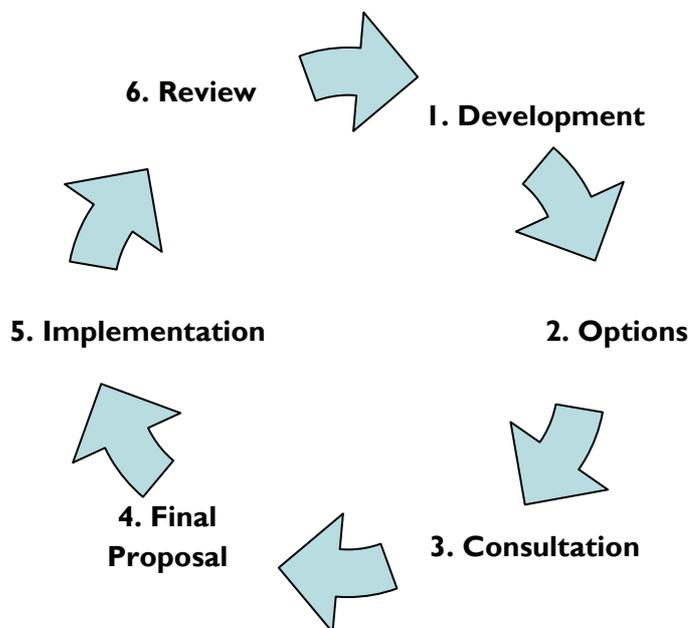
- 45 per cent of Regulatory Impact Assessments included a commitment to conduct post implementation evaluation or review.
- To date post implementation evaluation or review has been done in only half of those cases in which there was a commitment to carry it out. In a further five per cent of Regulatory Impact Assessments, post implementation evaluation or review has been carried out even though no commitment had been made to do so.
- Altogether, departments had carried out post implementation evaluation or reviews for 29 per cent of all Regulatory Impact Assessments in the survey.
- Other evaluation work had been carried out in 44 per cent of cases, including some cases in which post implementation review had also been carried out. Altogether, some form of evaluation had been carried out in 54 per cent of cases.
- Where reviews had been carried out there were often wider triggers for doing so such as European Union policy reviews.
- We found no clear link between whether the cost of the Statutory Instrument had been stated and whether a post implementation review had been carried out. However, departments reported a range of factors that could alter the timings of review, including reviews initiated at European Union level, and broader policy reviews.

- The interviews with departments found instances of these factors affecting the timing of reviews. There were also cases of post implementation review having been felt to be unnecessary because of the limited impact of the Statutory Instrument.
- New Impact Assessment guidance introduced during 2007 is intended to increase the number of post implementation reviews undertaken. The new guidance requires a commitment to post implementation review to be made, and our survey found that reviews were carried out in 53 per cent of cases where a commitment had been made, compared with 29 per cent of cases overall.

## Introduction

1. Post implementation reviews play a key role in the policy formulation process. Successful formulation of new policy cannot be undertaken without adherence to a policy formulation cycle (Figure 1). The review aspect of this cycle includes a thorough understanding of the effectiveness of existing policy.

Figure 1: The Policy Formulation Cycle



2. Post implementation review is important for several reasons:
  - to identify whether the policy change is achieving the desired results, and that costs and benefits are in line with expectation;
  - to inform future policy development; and
  - to inform future use and development of the techniques used to assess the likely impact of policy changes.
3. The importance of post implementation reviews has been increasingly reflected in the literature on policy formulation. Cabinet Office guidance issued in 2003 on completing Regulatory Impact Assessments stressed the importance of post implementation reviews, but did not oblige Departments to commit to one. New guidance issued in 2007 by the Better Regulation Executive<sup>1</sup> replaced Regulatory Impact Assessments with Impact Assessments, and since then has required all Impact Assessments to include a statement of when the proposed change would be reviewed, to establish its actual costs and benefits and whether it is achieving its desired effects. The Better Regulation Executive guidance comments that it is

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<sup>1</sup> At the time of the new guidance the Better Regulation Executive was part of the Cabinet Office but from June 2007 became part of what is now the Department for Business, Innovation and Skills.

often a good idea to review a policy change after three years, but that timing would depend on the policy and that for European Union-derived legislation, the date of the post-implementation review should tie in with the timetable of the European Commission's own review of the legislation.

#### Scope and Rationale of National Audit Office work

4. The House of Lords Merits of Statutory Instruments Committee (the Committee) was established in 2003 and began work in April 2004. Its task is to examine each Statutory Instrument presented to the House and to draw attention to any which deal with matters of significant public policy interest or show defects in certain areas. The Committee's Reports are intended to inform the scrutiny process of the House of Lords, without seeking to determine what view the House will finally take of individual instruments.
5. The Committee has several times emphasised the importance of post implementation review. In 2008 the Committee welcomed the new format for Impact Assessments introduced by the Better Regulation Executive and commented that “every significant instrument (or its explanatory memorandum) should clearly express its policy objective, preferably in measurable terms, indicating how and when its success is to be measured and evaluated.”<sup>2</sup>
6. On 24 June the Committee announced a study to assess the degree to which Government departments checked whether legislation was working as anticipated.<sup>3</sup> To assist the Committee, the National Audit Office undertook to conduct research into the extent of post implementation review. The work consisted of two elements:
  - **A survey of Departments:** A survey of departments to establish the action promised, and taken, for all relevant Regulatory Impact Assessments supporting Statutory Instruments published in 2005. We agreed with the Committee to focus the survey on 2005 to allow time for departments to have carried out reviews. We drew the sample for the survey from the two Government Command Papers listing Regulatory Impact Assessments publications in 2005<sup>4</sup>, limiting our examination to those Regulatory Impact Assessments that supported proposed Statutory Instruments. The resulting sample size was 233.
  - **Follow up examination of selected Impact Assessments:** We followed up the survey with interviews covering 12 Regulatory Impact Assessments agreed with the Committee. The interviews explored the factors that had influenced whether post implementation review had been carried out and how any such reviews had been undertaken.

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<sup>2</sup> The House of Lords Merits of Statutory Instruments Committee, 13th Report of Session 2007-08 “*The Management of Secondary Legislation: follow-up*”, section 3, summary

<sup>3</sup> [http://www.parliament.uk/parliamentary\\_committees/merits/pn240609.cfm](http://www.parliament.uk/parliamentary_committees/merits/pn240609.cfm)

<sup>4</sup> The Command papers are: *Regulatory Impact Assessments: 1st January to 30th June 2005 (CM6685)* and *Regulatory Impact Assessments: 1st July to 31st December 2005 (CM6987)*. Links are at: <http://www.berr.gov.uk/files/file45054.pdf> and <http://www.berr.gov.uk/files/file45055.pdf>

7. This briefing is structured as follows:

- **Part 1** summarises the information reported by departments for the Regulatory Impact Assessments in our survey. Owing to the number of Regulatory Impact Assessments, we have not independently verified the information provided by departments, but departments have been given the opportunity to comment on our findings.
- **Part 2** summarises the findings of our follow up interviews.

## PART ONE: Quantitative analysis of 233 Statutory Instruments

8. Our sample comprised all 233 Regulatory Impact Assessments published in 2005 in supporting proposed Statutory Instruments. The 233 Regulatory Impact Assessments in our sample had been produced by 17 departments and non-departmental public bodies, with the majority having been produced by just four departments. In total we received 229 responses, a response rate of 98 per cent (Figure 2).

**Figure 2: Departments currently responsible for Regulatory Impact Assessments supporting Statutory Instruments in 2005**

Department	Number of Regulatory Impact Assessments
Department for Environment, Food and Rural Affairs	51
Department for Transport	32
Department of Health	24
Department for Business, Innovation and Skills	20
Food Standards Agency	18
Her Majesty's Revenue and Customs	14
Department for Children, Schools and Families	12
Department of Energy and Climate Change	12
Department for Communities and Local Government	9
Health and Safety Executive	9
Department for Culture, Media and Sport	9
Department for Work and Pensions	7
Her Majesty's Treasury	4
Cabinet Office	3
Home Office	3
Ministry of Justice	1
Ministry Of Defence	1

Source: National Audit Office survey, 2009

Note: Numbers shown are for the 229 responses received from departments

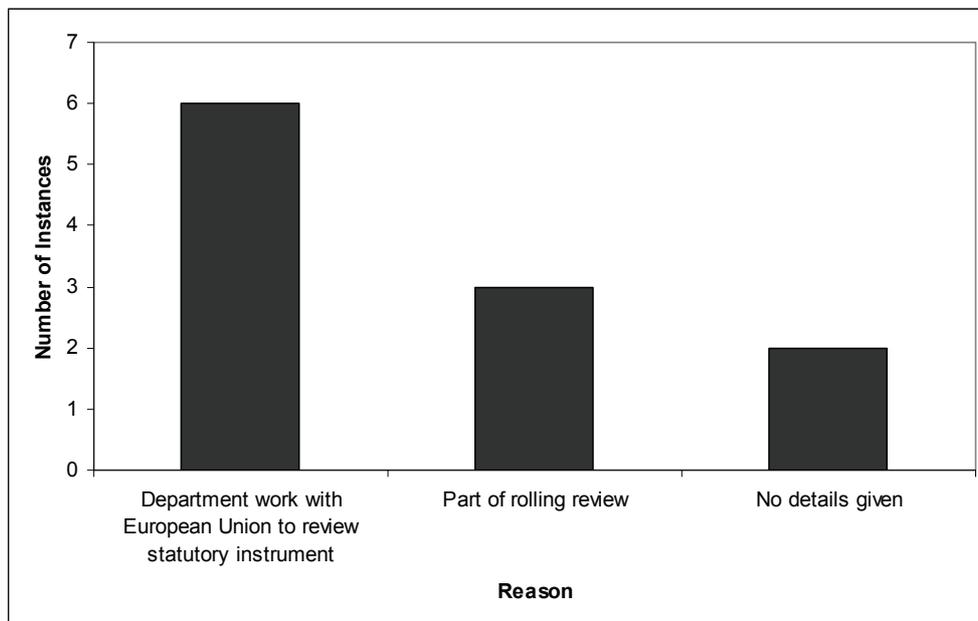
9. For each Regulatory Impact Assessment in our survey we asked departments whether post implementation review had been promised in the Regulatory Impact Assessment, whether it had been carried out and whether, if carried out, it had been published. We also asked about the estimated costs and benefits of the policy set out in the Regulatory Impact

Assessment and whether other work to assess or monitor its success had been undertaken. The full questionnaire used is reproduced in Appendix A. The remainder of this Part analyses the answers to these questions provided in the 229 responses we received from departments.

**Did the Impact Assessment commit to carrying out post implementation evaluation or review?**

10. To evaluate the effectiveness of a Statutory Instrument requires clear policy objectives and success criteria. Our survey showed that in 85 per cent of cases departments reported that they had set out policy objectives and success criteria.
11. Post implementation review is an important part of the policy making cycle, but was only made mandatory during 2007. It was therefore not mandatory for the Regulatory Impact Assessments in our sample. Of 229 survey responses we received, departments reported that the Regulatory Impact Assessment committed to carrying out post implementation evaluation or review in 103 cases (45 per cent). In a further 11 cases post implementation review had been undertaken even though there had not been a commitment to do so in the Regulatory Impact Assessment. The most common reason given for doing so in these 11 cases was to contribute towards a European Union review of the policy (Figure 3). Altogether, therefore, we found that in 114 cases (103 plus 11, some 50 per cent of responses) post implementation review had been considered appropriate at either the time of the Regulatory Impact Assessment or later.

**Figure 3: Reasons for completing a post implementation review when no commitment was made**



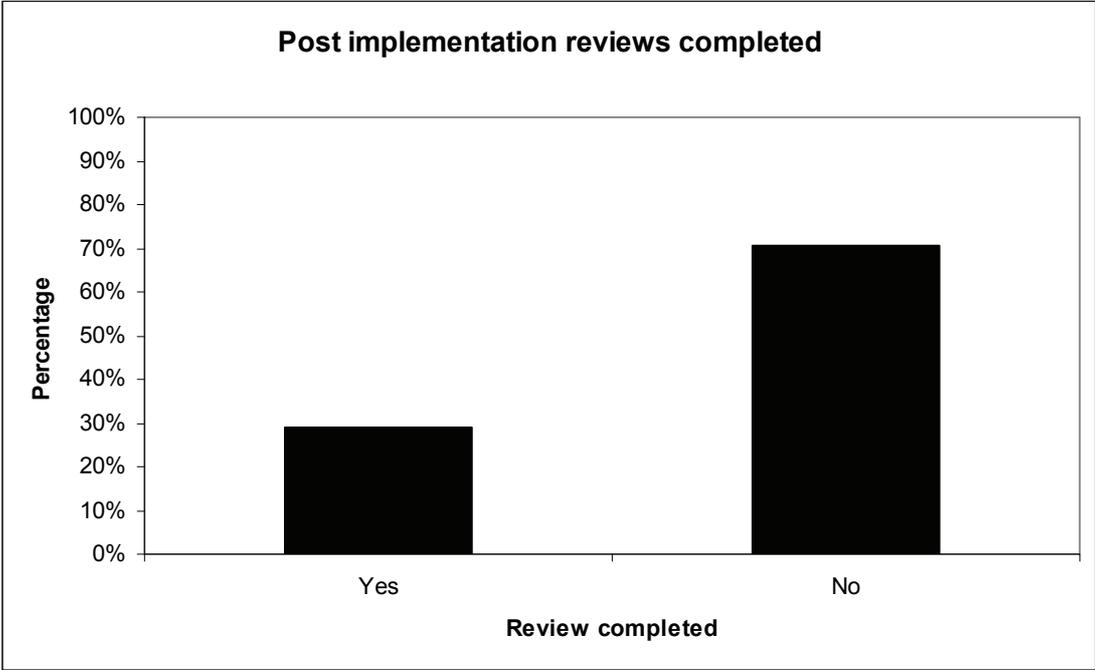
*Base: 11 responses where post implementation review carried out but no initial commitment made*

*Source: National Audit Office survey, 2009*

**Has post implementation evaluation or review been carried out?**

12. Altogether, departments reported that they had completed a post implementation review in 66 cases - 29 per cent of responses (Figure 4). This total included the 11 instances where post implementation review had been undertaken even though there had not been a commitment to do so in the Regulatory Impact Assessment.

**Figure 4: Total percentage of Post Implementation Reviews completed**

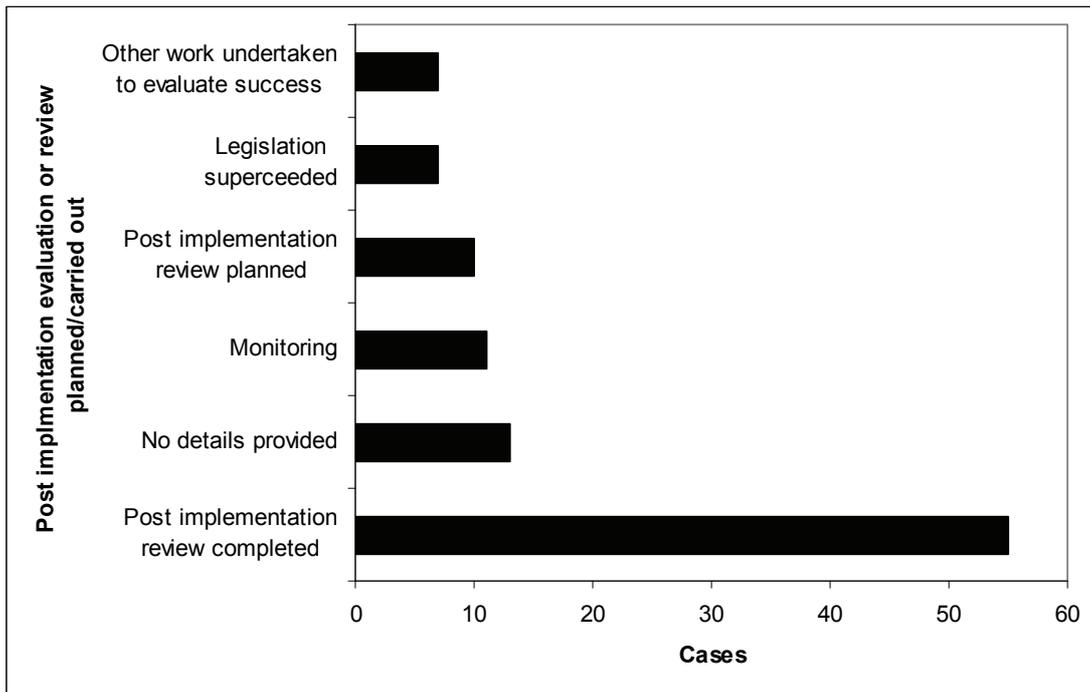


*Base: 229 Statutory Instruments where information provided by departments*

*Source: National Audit Office survey, 2009*

13. Overall post implementation evaluation or review had been undertaken in 55 of the 103 instances in which there had been a commitment in the Regulatory Impact Assessment to do so - 53 per cent of such cases. In the majority of cases in which post implementation review had promised but not carried out departments reported either that the legislation had been superseded or that they still planned to carry out post implementation review or other work to evaluate success (Figure 5).

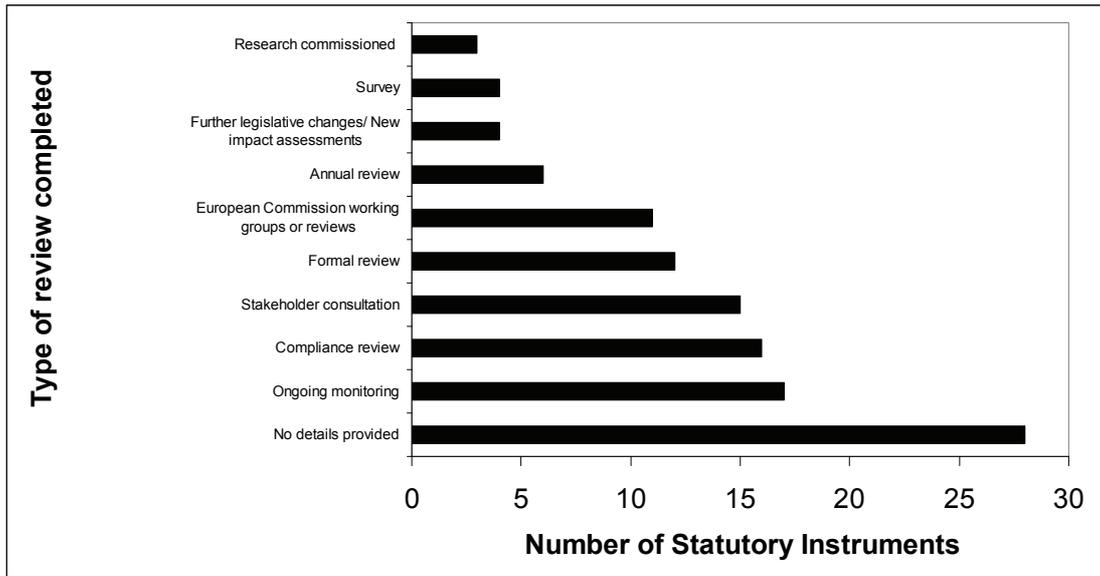
**Figure 5: Outcome where a commitment was made to post implementation review**



*Base: 103 Statutory Instruments where Department committed to Post Implementation Review*  
*Source: National Audit Office survey, 2009*

14. Altogether, departments reported that they had done other work to assess or monitor the success of policies in 99 cases (43 per cent of these responses where this question was answered); including 41 cases where such other work was carried out as well as the post implementation evaluation or review. The additional work reported included a wide range of activities. The three most common types were compliance reviews, ongoing internal monitoring, and stakeholder consultation (Figure 6).
15. Our analysis of responses found a significant difference in the type of work performed for these other outputs, highlighting the differing definitions by departments of additional work. An example is formal reviews which often were of the whole legislation and went wider than a post implementation review, whereas, in other cases ongoing monitoring was limited to gathering statistics.
16. Departments carried out some form of review in 54 per cent of cases. There is some overlap as 19 per cent of cases had both post implementation review and some other work performed.

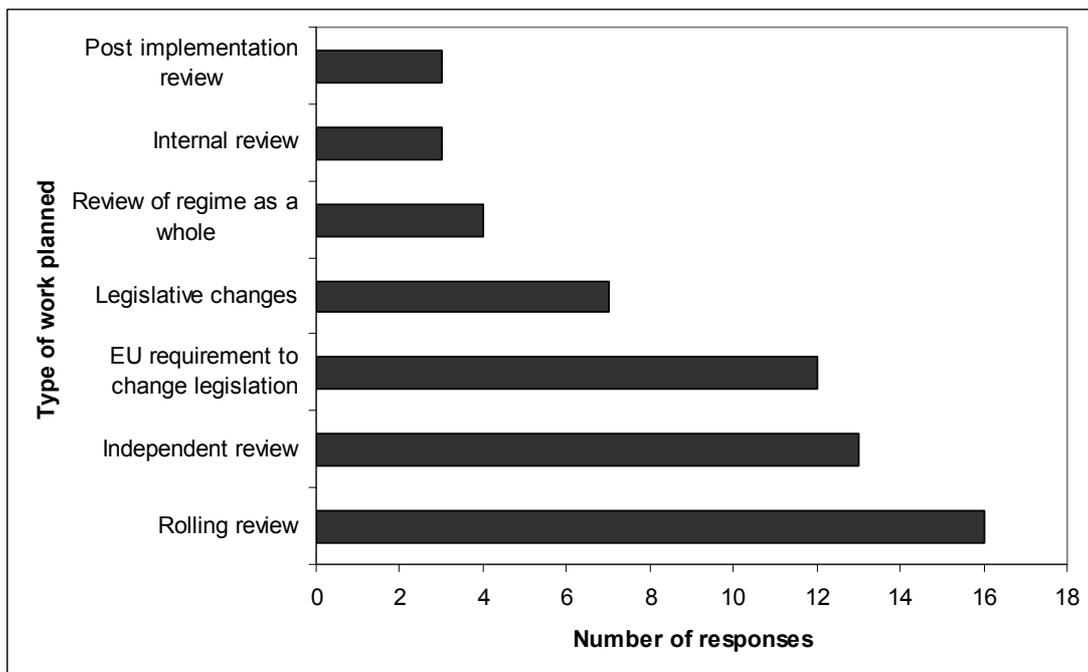
**Figure 6: Alternative types of review carried out**



*Base: 99 Statutory Instruments where additional work was carried out and details provided*  
*Source: National Audit Office survey, 2009*

17. Departments also reported that further work was planned to evaluate some Statutory Instruments in 37 per cent of cases (some 85 of 229 responses). Departments had not been asked what sort of further work was planned, but 58 responses volunteered details. Of these, 16 had a rolling review process in place and 12 reported that a review was required as part of European Union changes. (Figure 7)

**Figure 7: Type of future reviews planned**



*Base: 58 responses which gave details of their intention to carry out further review*  
*Source: National Audit Office survey, 2009*

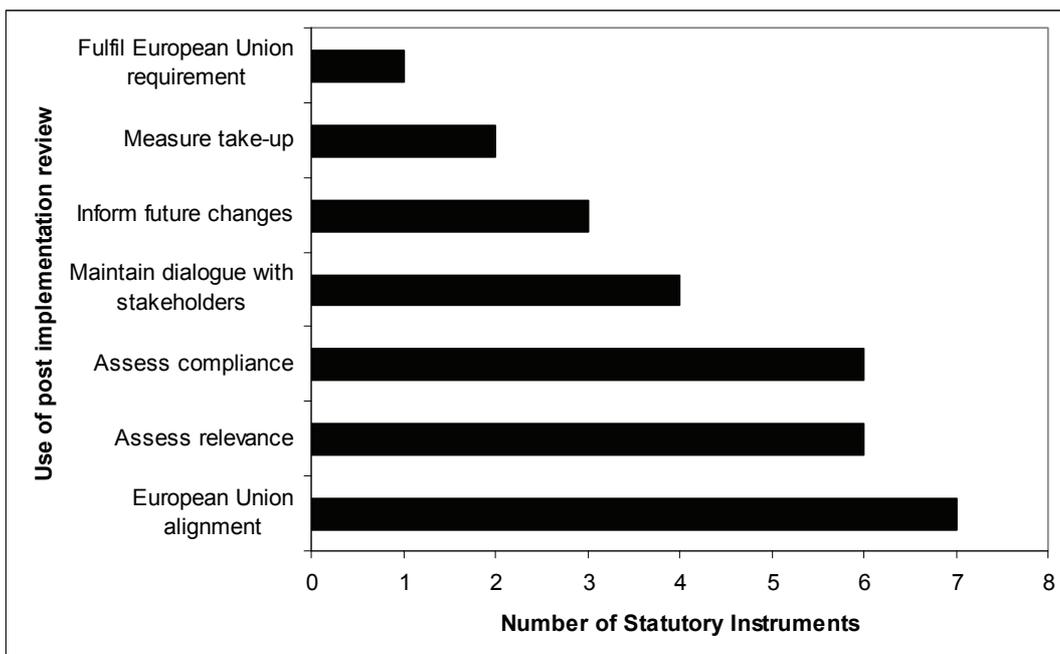
18. There is some variation between departments in their approach to post implementation review. Of the four departments with over 20 responses received, the Department for the Environment, Food and Rural Affairs reported the highest proportion of formal post implementation reviews completed, with 33 per cent of Statutory Instruments reviewed. At the Department of Health, fewer formal post implementation reviews had been carried out (13 per cent), but some kind of review was reported to have already taken place for 63 per cent of Department of Health Statutory Instruments.

**Has any post implementation evaluation or review been published?**

19. Of the 66 cases in which departments reported that a post implementation evaluation or review had been undertaken, departments reported that it had been published in 34 cases (51 per cent of reviews undertaken). Departments reported that other reviews were not published but were discussed in Departmental Board meetings, or fed into wider review of the policy area.

20. When a Department does undertake a post implementation review it often finds the results useful. In addition to answering our question about whether a review had been undertaken several departments provided additional information about why they had carried out post implementation reviews. Of those respondents that had completed a post implementation review and gave a reason for doing so, six said they used the results to assess compliance, with another six assessing whether the instrument remains relevant, three to inform future decisions, and four said they had performed one to align with European Legislation and future directives (Figure 8).

**Figure 8: How results from post implementation reviews have been used**



*Base: 29 Impact assessments where post implementation reviews have been carried out and additional explanation provided of reason for doing so*

*Source: National Audit Office survey, 2009*

### Are there any factors which make post implementation reviews more likely?

21. In the majority of Regulatory Impact Assessments, departments reported that either costs or benefits, or both, had not been quantified. Where they had been quantified, the reported expected costs ranged from nil to £5.7 billion, while the expected benefits ranged from nil to £2.9 billion. The total value of benefits, where quantified, was £10.4 billion; the corresponding total of costs being £23.5 billion, but because some departments reported cost and benefits on an annual basis and others as a single sum, both figures should be interpreted with caution.
22. We tried to establish whether it was more likely that a post implementation review would be carried out if the costs and benefits had been quantified. Our analysis found that the likelihood of carrying out a post implementation review did not appear to be affected by whether costs were quantified in the Regulatory Impact Assessment or not.
23. Our findings have indicated that quantification of costs is far more likely than the benefits. There was quantification of the costs in 66 per cent of cases as opposed to 42 per cent for the benefits. The research we conducted did not investigate the reasoning surrounding the quantification of costs and benefits and the challenges involved therefore, we cannot comment on this trend currently.
24. There are some external pressures for reviewing Statutory Instruments such as European Union led reviews, as shown above (Figure 7). Internal processes are also placing more emphasis on post implementation reviews. The new Impact Assessment format introduced during 2007 requires a commitment to post implementation review. Our data shows that while post implementation reviews were not mandatory in 2005, 53 per cent of respondents performed a post implementation review once a commitment had been made, compared with 29 per cent of respondents overall completing one, suggesting the new guidance can be expected to encourage a greater number of post implementation reviews in the future.
25. In our 2007 evaluation of regulatory impact assessments<sup>5</sup>, we recommended that Departments should strengthen processes for the development of high quality Regulatory Impact Assessments by, amongst other things, making much more systematic use of post-implementation reviews and evaluations to improve the process of impact assessment. Our January 2009 report<sup>6</sup> found that, whereas in 2006 only 29 per cent of IAs stated when post implementation review was to be performed, in 2008 the proportion of IAs providing this information had increased to 82 per cent, concluding that the new IA process, and departments' steps to strengthen scrutiny arrangements, have improved planning for post implementation review.

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<sup>5</sup> Evaluation of regulatory impact assessments 2006-07, HC 606, 2006-07, [http://www.nao.org.uk/publications/0607/regulatory\\_impact\\_assessments.aspx](http://www.nao.org.uk/publications/0607/regulatory_impact_assessments.aspx)

<sup>6</sup> Delivering High Quality Impact Assessments, HC 128, 2008-09, [http://www.nao.org.uk/publications/0809/high\\_quality\\_impact\\_assessment.aspx](http://www.nao.org.uk/publications/0809/high_quality_impact_assessment.aspx)

## PART TWO: Results of Department Interviews for Selected Instruments

26. This section of the paper summarises the results of the interviews carried out for the 12 statutory instruments selected. The questions asked developed further the survey questions listed in Appendix A and focused on establishing what the departments concerned consider the impact of the particular SIs to be in each case, and to explore what factors influence whether, and how well, post implementation review has been carried out.

27. Our main findings from the interviews are as follows:

- In all three cases where a post implementation review had been promised, it had been carried out.
- In the other nine cases a post implementation review had not been carried out. The main reasons for no review being performed were one or more of the following:
  - the department already had in place alternative monitoring processes over the function addressed by the instrument, and continued to use these;
  - the instrument had limited impact, in either financial or sensitivity terms, and departments did not feel the review was necessary; or
  - there had been subsequent legislation, or the wider framework is under review within the UK or by EU, and the Department delayed review until the outcome of these was known.
- Complete reviews had been used in several ways:
  - to establish outcomes from the regulation, some of which have been unexpected;
  - to update guidance to improve enforcement; and
  - to help in making amendments to the existing legislation.

The interviews were normally with the departmental official leading on the policy concerned. Summaries of the interviews are included in Appendix B.

## Appendix A: Survey Questionnaire

1. What was the estimated cost of the policy set out in the Regulatory Impact Assessment?
2. What was the estimated benefit of the policy set out in the Regulatory Impact Assessment?
3. Did the Regulatory Impact Assessment set out policy objective and success criteria? Yes / No
4. a) Did the Regulatory Impact Assessment commit to carrying out a post implementation evaluation or review? Yes / No  
  
b) Has post implementation review been undertaken? Yes / No
5. If a post implementation review has been carried out, has it been published? Yes / No  
  
If yes, please provide a link to the published report. If no, please provide a copy of the review
6. Has any other work been undertaken to assess or monitor the success of the policy? Yes / No  
  
➤ If “yes”, please outline how you have evaluated the policy
7. Is further work to assess the impact of the policy planned? Yes / No
8. Has further legislation been implemented in this area since these regulations were brought into force? Yes / No

If yes, please provide the title.

## Appendix B: Summaries of Interviews

### **Department of Health: The Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations 2004 (SI 2004/1511)**

The Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations 2004 were introduced in the UK on 1 July 2004.

The main objectives of the regulations were to:

- Give donor-conceived people right of access to their genetic origins.
- Enable donor-conceived people to have access to information about their genetic origins at age 18 as held on the national register.
- Specifically this was achieved by requiring the Human Fertilisation and Embryology Authority to provide donor-conceived people conceived with donations given from 1 April 2005 to receive identifying information about their donor(s) when they are age 18 or older, if they request that information.
- The Authority was also required to provide non-identifying information about a donor on request by donor-conceived people aged 18 or over and born since 1991.
- The regulations introduced a standardised list of non-identifying and identifying information to be collected in the future.

The introduction of the new Regulations providing identifying and non-identifying information about future donors for donor-conceived people aged 18 and over was considered to be needed to respond to the culture of more openness in donor-assisted conception.

The Regulatory Impact Assessment did not commit to a formal post implementation review and none was conducted. The Department commented that this topic is frequently discussed by Parliament and the public and the Department of Health is often asked by Parliament and through correspondence with Members to provide information on these regulations. Other monitoring is also undertaken by the Human Fertilisation and Embryology Authority. The Department felt that the resources used on ongoing work, such as donor recruitment campaigns and support for the National Gamete Donation Trust were sufficient for monitoring and that a more formal review was unnecessary at this time.

The Department's view is that the disclosure of donor's information has not had an impact on the number of volunteers, although this is difficult to measure as many factors are considered.

## **Health and Safety Executive: Work at Height Regulations (SI 2005/735)**

The Work at Height regulations are intended to ensure that where work at height is necessary it is carried out as safely as possible, falls being one of the most common causes of fatalities and injuries at work.

The impact assessment committed to carrying out a post implementation review which is usually done 3 years after a regulation has been implemented. However, the Health and Safety Commission decided to undertake the review after just one year, in 2006.

System Concepts Limited conducted the review in two stages. The first stage (Stage 1) was conducted in early 2005 to establish a baseline for the state of safety in work at height before the Work at Height Regulations came into force. Stage 2 evaluated the impact of the Work at Height Regulations one year after they were introduced.

The review is considered to have been useful in assessing the effects of the SI. These have included some unexpected outcomes such as a fall in ladder sales but an increase in the sales of other access equipment.

The post implementation review has been published and is at: <http://www.hse.gov.uk/research/rrhtm/RR521.htm>. The review did not comment on whether the Regulations had reduced the number of falls from height and the most recent statistics included in the review pre-dated the implementation of the regulations.

The review was an analysis of how well the risks of working at heights were managed by industry before and after the legislation came into force. There is currently additional work planned in 2010/11 to build on this more extensively and to contribute towards an EU directive review.

## **Department for Environment, Food and Rural Affairs: Horse Passports (England) Regulations 2004 (SI 2004/1397)**

The Horse Passports Scheme sets out to protect the use of certain veterinary medicines on horses, the UK's horse meat industry and the quality of meat entering the human food chain. This SI revoked and replaced the Horse Passport (England) Regulations 2003. The impact assessment for this SI did not commit to a post implementation review.

This specific Instrument clarifies part of the original Regulation by setting out the format of the passport, issuing authority, other requirements and offences/enforcement. Within the explanatory memorandum it states that criticisms of the original legislation, made by the Joint Committee of Statutory Instruments, are dealt with by this amendment.

The Department did not carry out a post implementation review as the European Commission were putting into place their own piece of legislation. The European Commission legislation was delayed by eighteen months and during this time the Department refrained from performing a review whilst consultation continued within the Commission.

The adaptation of the EU directive has led to reissuing of the Regulations in 2009. A review was performed by the department at this time to ensure that the best parts of the legislation were maintained in the 2009 Regulations.

The Department monitored the success of the original intervention through dialogue with key stakeholders which included industry and enforcement body involvement. In addition, the intervention was originally designed to be self monitoring by industry.

It is seen as a successful policy by the Department and the use of these veterinary drugs is still legal and there have been no sanctions on the UK horse meat industry.

**Department of Work and Pensions: Social Security (Habitual Residence) Amendment Regulations 2004 (SI 2004/1232)**

The Social Security (Habitual Residence) Amendment Regulations 2004/1232 were introduced to amend the Income-related benefit regulations with effect that no person shall be treated as habitually resident for the purposes of entitlement to income support, income related jobseeker's allowance, housing benefit, council tax benefit and state pension credit unless they have a right to reside in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland.

The amendments to the regulations were intended to protect the UK benefits system from exploitation by people coming to the UK not to work but to claim benefits. The measures put into UK social security law the principle that European Union citizens who move around the European Economic Area must, in accordance with EU law, and subject to a number of exceptions, generally be able to support themselves. The changes to the regulations coincided with ten countries acceding to the European Union

A full impact assessment was not carried out for these regulations as they had no impact on the costs of business. However, prior to the introduction of the regulations the Department prepared an Explanatory Memorandum together with the draft regulations which were submitted to the Social Security Advisory Committee (SSAC). The committee carried out a public consultation to assess the impact of the regulations on the benefit system and the labour market, then approved the regulations, and subsequently prepared a report for submission to the Secretary of State (Cm. 6181).

Review after introduction of regulation has been by way of monitoring by the Department, and published in the Home Office's UK Borders Agency quarterly "Accession Monitoring Reports". From the 27 August 2009, the quarterly reports are now published in the "Control of Immigration: Quarterly Statistical Summary, United Kingdom"

In 2006 an EC Directive required changes to rights of residence and DWP needed to lay further regulations, which had an impact on EU nationals' access to benefits. An Explanatory Memorandum and draft regulations were again submitted to the Social Security Advisory Committee who on this occasion did not refer the regulations for public consultation. DWP consider the original legislation achieved its objectives and took effect as expected.

## **Department for Business Innovation and Skills: Education Student Loans (Repayment) (Amendment) Regulations 2004 (SI 2004/1175)**

The Education Student Loans (Repayment) (Amendment) Regulations 2004 were introduced to support Her Majesty's Revenue and Customs (HMRC), then Inland Revenue, in introducing an additional facility to alert employers to start making student loan deductions from earnings. The facility was introduced as part of a more general update to the HMRC P46 form. (The P46 is a form that is completed by employees who start a new job without having a P45 from a previous employer. It allows the employee to provide information for the employer to be able to start deducting tax and national insurance contributions from their earnings). The new facility introduced for student loans was a tick box to be completed by employees repaying a student loan.

As part of the P46 update, HMRC consulted with other departments surrounding whether any additional information existed that would be useful to capture on the P46. BIS believed that it would be beneficial to add a question asking if the individual had an outstanding student loan liability.

The sole aim of this addition was to minimise any delays in employers starting collection so as to reduce former students paying more interest. The amendment is only of benefit to those borrowers and minimal cost is incurred for the departments in delivery, as an existing form is being used to provide the new notification process. Therefore, it is thought that the costs of undertaking a Post implementation Review would outweigh the benefits gained from the information gathered.

BIS have confirmed with HMRC that no formal review has been undertaken on the effectiveness of this particular facility being provided on the form P46. A facility to capture statistics on the uptake rates was part of the original plans but was de scoped due to the cost and delivery schedules that would have been involved. However, the department believe that it has achieved its objective of increasing how quickly employers start deducting student loan repayments from earnings where an employee who is repaying a student loan is able to tick the box on the P46 to alert the employer to start making student loan deductions from earnings.

## Home Office: The Private Security Industry Act Designated Activities (Revocation) (SI 2005/361)

The Private Security Industry Act 2001 created several offences concerned with engaging in designated licensable activities in the private security industry without the correct Security Industry Authority licence and deploying an unlicensed person to carry out licensable activities.

SI 2005/234 (made on 7 February 2005) would have implemented the part of the 2001 Act which made it an offence with effect from 28 February 2005 to engage in wheel-clamping, blocking in and towing away of vehicles (against a release fee) without a licence to do so, as required under the Act, or to employ someone in any of these capacities without a licence.

SI 2005/361 revoked the earlier SI 2005/234 before it came into force. This was done to give training providers and the certified awarding body sufficient time to issue the appropriate qualifications prior to an application being made to the SIA for a licence. The SIA issued a news release explaining the position on 15 February 2005.

The step of postponing the offence date was taken when it emerged that the independent body responsible for awarding the new Level 2 qualification had identified an issue regarding the late submission of paperwork for marking from some training centres. This would have resulted in some applicants being unable to apply for and receive their licence in time.

If the regulation had been brought in at the original date, individuals would not have had adequate time to comply with the legal requirement for a licence.

SI 2005/361 explanatory memorandum stated "The activities of wheel clamping and blocking in and towing away vehicles will be designated at a future date by a separate designation order". These activities were made an offence in 2005/1104 which brought into effect the vehicle licensing aspects of the Act with effect from 3 May 2005.

In the impact assessment the Security Industry Authority Board committed to annual reporting to the Home Secretary on the operation of the legislation and the performance of the authority in meeting its aims but no formal commitment to post implementation review was made.

The Security Industry Authority states that they have an on-going programme of industry consultation, which includes the Vehicle Immobilisation industry. The area of Vehicle Immobilisation is very small and other ongoing reviews are carried out on the wider Act. Therefore the department considers a separate review is not necessary.

## **Department for Culture Media and Sport: Licensing Act 2003 (Transitional provisions) SI 2005/40**

The Transitional provisions instrument sets out the process whereby premises licensed under a range of different acts convert to the Licensing Act 2003. This instrument also clarifies the details that must be provided with the License for the premises.

The transitional provisions order was part of the wider roll out of changes to the Act. The Department found it difficult to separate the costs of each instrument from the compliance costs associated with the Licensing Act 2003.

The impact assessment did not commit to a formal post implementation review on this particular SI as the cost and benefits could not be measured in isolation from the whole Act itself, but did commit to monitoring the impact of licensing reform overall, including the transitional arrangements. The Licensing Act has been covered in several other reviews covering administration burdens and simplification of regulation. In particular:

- Scrutiny Council initiative brought in to monitor the implementation and how well the processes worked in the first six months.
- Review of fees levels by an independent panel.
- Department reviewed the guidance in the early stages.
- On-going statistics collection on the number of licenses processed.
- Full evaluation of the 2003 Act was published in March 2008, published on website [http://www.culture.gov.uk/reference\\_library/publications/3574.aspx](http://www.culture.gov.uk/reference_library/publications/3574.aspx)

The first three bullets relate to early reviews of aspects of the regime and, to a certain degree, would have looked at how the transition arrangements covered by this SI worked. In broad terms, the department's consensus was that the transitional period had been a difficult one, but that all licences were in place by the start of the new regime and that arrangements had settled down well.

The overall conclusion from the main evaluation of the 2003 Act did not relate to aspects of process (such as those covered by the transitional arrangements) but found that Act did not lead to the problems that some people had anticipated, but also that the full powers of the Act were not always being used to tackle alcohol related crime and disorder.

## **Department for Transport: Railways (Penalty Fares) (Amendment) Regulations SI (2005/1095)**

The aim of the particular amendment made to the Railways (Penalty Fares) was to increase the penalty fare from £10 to £20. The main reason was that the fine had remained at £10 for 12 years and the deterrent effect had reduced in real terms.

Commitment was not made to carry out a post implementation review and it has not been performed. Due to the small change the regulations made, it is thought that the costs of undertaking a post implementation review would outweigh the benefits gained from the information gathered.

There has been no other formal review work performed on the effect of this amendment. The Penalty Fares team does review the revenue received to ensure that operators are not using the fare to "catch passengers out". Work is ongoing with the appeals body to ensure that penalties are used fairly, but no monitoring is done on the effectiveness of the amount.

Additional changes proposed to the penalty fares system are currently at consultation. The proposed adaptations do not refer to the effectiveness of the current level of penalty but on bringing the system into alignment across all operators and regions.

## Department for Transport: The Road Transport (Working Time) Regulations SI 2005/639

The Road Transport (Working Time) Regulations 2005, introduced in Great Britain on 4 April 2005, implement the provisions of Council Directive 2002/15/EC concerning the working time of persons performing mobile road transport activities.

The Regulations prescribe the maximum weekly working time and maximum average weekly working time of mobile workers whose work involves drive or travel in vehicles covered by the EU drivers hours rules (Regulation (EC) No 561/2006).

The structure of the implementation by DfT was:

- The European Directive 2002/15/EC was published.
- Consultation by DfT -
  - Stage 1 involved obtaining views of the stakeholder on how the Government should implement the EC Directive into UK law;
  - Stage 2 involved obtaining views of the stakeholders on specific proposals for implementation.
- The Road Transport (Working Time) Regulations) 2005 (SI 2005 No. 639) came into force.
- Post implementation review announced in November 2006 was started in 2007. A working group was set up by the DfT to assist the process of gathering and validating data. This working group consisted of trade associations, unions and the devolved administrations. The review was completed and the results published on 19<sup>th</sup> February 2008.

The impact assessment did not specifically commit to a post implementation review but review of the enforcement regime for the new regulation was promised by Ministers at the time of implementation. In the event the review started much earlier than the usual 3 year period after implementation.

Essentially the review found little fundamentally wrong with the implementing Regulations, although DfT report that as a result of the review they took forward some actions namely;

- the associated guidance was amended to provide further clarity particularly in relation to: the existing interpretation of POA, the treatment of annual leave; and the administrative burdens placed on industry;
- DfT determined additional ways to disseminate its guidance and to raise awareness and understanding of the Regulations, through existing channels and new initiatives;
- VOSA implemented a revised working time enforcement strategy; whilst enforcement remains primarily in response to complaints received, there is awareness raising and checks on the existence of working time records through operator visits for other enforcement reasons, and a move to formal action being taken against serious and/or persistent offenders.

**Department for Business, Innovation and Skill: Communications Act 2003  
(Maximum Penalty for Persistent Misuse of Network or Service) Order SI  
2006/1032**

These regulations raised the maximum penalty from £5,000 to £50,000 that the Office of Communications (Ofcom) can impose under section 130 of the Act in respect of persistent misuse of an electronic communications network or electronic communications services.

The impact assessment for the regulations was delivered jointly between BIS and the enforcement body Ofcom. The enforcement body noting that there were a number of cases where the fine hadn't been a significant deterrent to repeat offending drove the changes in the penalty. In a number of cases there have been fines made to large firms that then went on to repeat the offence.

Commitment to a post implementation review was not made and there has been no review performed. However, Ofcom has an ongoing monitoring and enforcement programme for silent and abandoned calls, which is one type of persistent misuse. Ofcom's research shows that between 2005 and 2009, since the maximum penalty was raised, the number of people who have experienced silent calls halved, while in the same period there was a reduction in the number of silent calls that people receive per month.

There were no barriers to a review but it was seen that for a minor and quite narrow change it would not be the best use of resources. The nuisance calls legislation as a whole is monitored by BIS centrally as part of its legislative burdens work, which ensures that the issue is kept under review.

## **Department for Business, Innovation and Skills: Waste Electrical and Electronic Equipment Regulations SI (2006/3315)**

The Waste Electrical and Electronic (WEEE) Directive aims to minimise the impact of electrical and electronic equipment (EEE) on the environment by introducing producer responsibility for the financing the collection, treatment and recycling/recovery of the equipment when it reaches its end of life.

The process was handled by BIS in the following sequence:

- Directive 2002/96 and 2003/108 were adopted on 13 August 2003 with planned transposition by August 2005;
- The UK conducted 5 consultation exercises into the implementation of the Directive in the UK which resulted in final transposition and the introduction of UK Regulations in 2007;
- The regulations required producers, distributors and treatment facilities to undertake appropriate administrative tasks including joining compliance scheme or seeking waste management permits in the early part of 2007 with full producer responsibility being introduced on the 1 July 2007;
- The first compliance period under the regulations ran from 1 July to 31 December 2007 - i.e. six months - with all subsequent compliance periods running from 1 January - 31 December each year;
- The 2007 Regulations were amended following JCSI review in December 2007;
- A review of the Regulations and supporting infrastructure was conducted in 2008, resulting in a public consultation exercise between December 2008 and April 2009.
- Further amending regulations, as a result of the outcomes of the consultation are planned for October 2009 which will come into effect from 1 January 2010;

The post implementation review commitment was carried out after the first compliance period to assess not only the effectiveness and impact of the regulations but also the developing infrastructure.

The major barrier to the review was the lack of information offered by stakeholders to assess the actual burdens on business, both administrative and financial. This is partly as a result of the commercial nature of the information requested.

The department believes the review has been useful in understanding the administrative burdens placed on business by the regulations. The amending Regulations to be introduced in October 2009 aim to streamline some of the requirements.

## Department for the Environment, Farming and Rural Affairs: Waste (Household Waste Duty of Care) 2005/2900

EU Directive 75/442/EEC on waste (The Waste Framework Directive) requires member states to ensure that any holder of waste has it handled by someone authorised to take responsibility for waste collection and disposal. It imposes a duty of care on waste holders to take reasonable measures to ensure secure transfer of their waste to an authorised person.

The UK originally exempted an occupier of a domestic property from the requirement to pass waste only to an authorised person. However, an EU Court of Justice ruling in 2004 determined that UK domestic legislation improperly excluded domestic occupiers from this duty of care obligation. This ruling meant that the EU might impose heavy fines on the UK. Therefore an amendment was required.

The implementation was carried out in the following sequence:

- Article 8 of the Council Directive 745/442/EEC;
- In 2004 EU Court of Justice ruling determined that UK's domestic legislation excluded domestic occupier from the duty of care obligations;
- Impact Assessment of the Waste (Household Duty of Care) on 17 October 2005; and
- Statutory Instrument 2004 No 2900 on 21 November 2005.

No commitment was made to post implementation review and none has been undertaken. However, a review of a package of measures in the Clean Neighbourhood and Environment Act (CNEA) 2005 is planned. It is proposed that a review of the Household Duty of Care aspect be covered in this process.

Keep Britain Tidy has worked with local authorities on their flytipping strategies, which has included duty of care issues and the Environment Agency has undertaken various campaigns (including in the North East in 2007-08) which covered the household Duty of Care.

DEFRA also monitor figures received from Ministry of Justice which indicate that there have been some prosecutions for Duty of Care offences, although it is not possible to determine how many were against householders.