

Scrutiny of Regulatory Impact Assessments

Introduction

Since August 1998, all Government departments issuing new policies or policy proposals with non-negligible effects upon the business or voluntary sectors have been required to complete a Regulatory Impact Assessment (RIA). This briefing note is intended to bring to the attention of committee staff and Members the role the Scrutiny Unit can play in the analysis and appraisal of RIAs by:

- providing a brief background to RIAs, placing them against the wider backdrop of the Government's better regulation agenda;
- drawing attention to some common failings of RIAs; and
- indicating how the Unit can help committees scrutinise them more effectively.

The Better Regulation Agenda

The Better Regulation Task Force (BRTF) estimated in its final annual report that the total cost of regulation to the UK economy in 2005 amounted to somewhere between 10 per cent and 12 per cent of GDP, or £100bn,¹ with a third of this composed of administrative costs or 'red tape'.² The Government is conscious of this regulatory burden and has, since 1997, sought to implement a better regulation agenda.

Accordingly, the BRTF was established in September 1997 to independently advise Government on reducing unnecessary regulatory and administrative burdens. It was made permanent as the Better Regulation Commission (BRC) in January 2006, gaining an extended remit and further responsibilities. Both the BRTF and the BRC have made reference to five principles which represent the 'gold standard' for judging regulation. Regulation should be:

¹ Better Regulation Task Force, *Annual Report 2004-05*: 2

² *Tide may be turning in the battle against over-regulation*, The Times, 7 December, 2005

- i. *Proportional* – regulatory intervention only when necessary, with remedies proportionate to the risk with costs identified and minimised.
- ii. *Accountable* – regulators should be able to justify decisions and they should be subject to public scrutiny.
- iii. *Consistent* – rules and standards must be implemented fairly and be joined up.
- iv. *Transparent* – regulations should be simple and user friendly.
- v. *Targeted* – regulation should be focused and minimise unintended consequences.

In parallel to the development of the BRC the Government also set up the Better Regulation Executive (BRE), located within the Cabinet Office and charged with driving through the Government's better regulation agenda.³ Additionally, there exists a Panel for Regulatory Accountability (PRA), a sub-committee of the Ministerial Committee on Regulation, Bureaucracy and Risk, which is chaired by the Prime Minister and considers all new regulatory proposals likely to have substantial burdens on business.⁴

In the 2004 Budget, the Chancellor asked Philip Hampton to lead a review into regulatory inspection and enforcement with a view to reducing the administrative cost of regulation to the minimum level consistent with maintaining required regulatory outcomes. Published in March 2005, the Hampton Review recommended a shift towards risk-based regulation.⁵ It is Government policy that regulation has a 'light touch', striking the right balance between under-regulation which potentially fails to protect the public, and over-regulation which creates excessive bureaucracy.⁶

Regulatory Impact Assessments

Impact assessments, if produced reliably, can form a critical element of the better regulation agenda. An RIA should consider:

³ <http://www.cabinetoffice.gov.uk/regulation/index.asp>

⁴ For further details see <http://www.cabinetoffice.gov.uk/secretariats/committees/>

⁵ Philip Hampton, *Reducing administrative burdens: effective inspection and enforcement*, March 2005

⁶ National Audit Office *Better Regulation: Making Good Use of Regulatory Impact Assessments*, HC 329 November 2001,

- all forms of regulation – formal legislation, statutory instruments (including fee orders), Codes of Practice, information campaigns etc.;
- the full range of potential impacts – economic, social and environmental; and
- where the impact may fall – business, the public sector, the voluntary sector or other affected groups.⁷

The Scrutiny of RIAs

The BRE scrutinises and agrees all RIAs with departments, before forwarding them to the PRA for further consideration. Parliament becomes involved at the next stage, with committees and the Scrutiny Unit considering the findings of the RIA as part of their wider consideration of the policy proposal.

The Scrutiny Unit has helped assess the quality of a number of RIAs, including support for inquiries into the Draft Mental Health Bill, the Draft Natural Environment and Rural Communities Bill and the EFRA Report on Reform of the European Union Sugar Regime. In addition, the Unit looked at the RIA produced alongside the Dentistry Fee increases statutory instrument.

The Unit has identified several common failings, with departments producing documents that either lack detail or fail to follow Cabinet Office guidance closely enough. In general we have found that the RIAs we have considered have:

- been policy driven and appear to justify decisions that have already been taken rather than providing a wider, honest evaluation of all potential options;
- been based upon inaccurate or opaque assumptions;
- lacked empirical evidence for the policy decisions; and
- failed to include comprehensive sensitivity analysis that outlines ranges rather than absolute figures.

⁷ <http://www.cabinetoffice.gov.uk/regulation/ria/overview/index.asp>

The National Audit Office (NAO) has been charged with conducting periodic reviews of the RIA process as a whole. In its most recent evaluation the NAO categorised three approaches taken by Departments:

- *Pro-forma* – RIAs that have little impact on policy and are produced only because there is an obligation to do so;
- *Informative* – RIAs that have a limited impact on policy and have probably been started late, yet are useful as a communicative tool;
- *Integrated* – RIAs, that inform and challenge decision making. The NAO notes that such effective RIAs have led to policy change and even non-regulatory measures being introduced.⁸

The NAO has further highlighted specific aspects of documents that Government departments should pay greater attention to. It argues that departments should:

- make more effort to quantify the concerns the policy proposal or statutory instrument change is attempting to redress;
- ensure the RIA considers the costs and benefits of a comprehensive range of alternatives to regulation at an early stage;
- reflect uncertainties when presenting quantified estimates;
- include an analysis of compliance targets and consider the possibility of various degrees or patterns of compliance;
- take more account of small business opinion;
- include a more comprehensive outline of how the policy will be monitored and evaluated; and
- pay more attention to the consultation process, including widening the range of consultees and taking more account of responses.⁹

⁸ National Audit Office *Evaluation of Regulatory Impact Assessments Compendium Report 2004-2005*. HC 341 Session 2004-2005 : p 3 & 25

⁹ For further details see National Audit Office *Evaluation of Regulatory Impact Assessments Compendium Report 2004-05* HC 341 2004-05