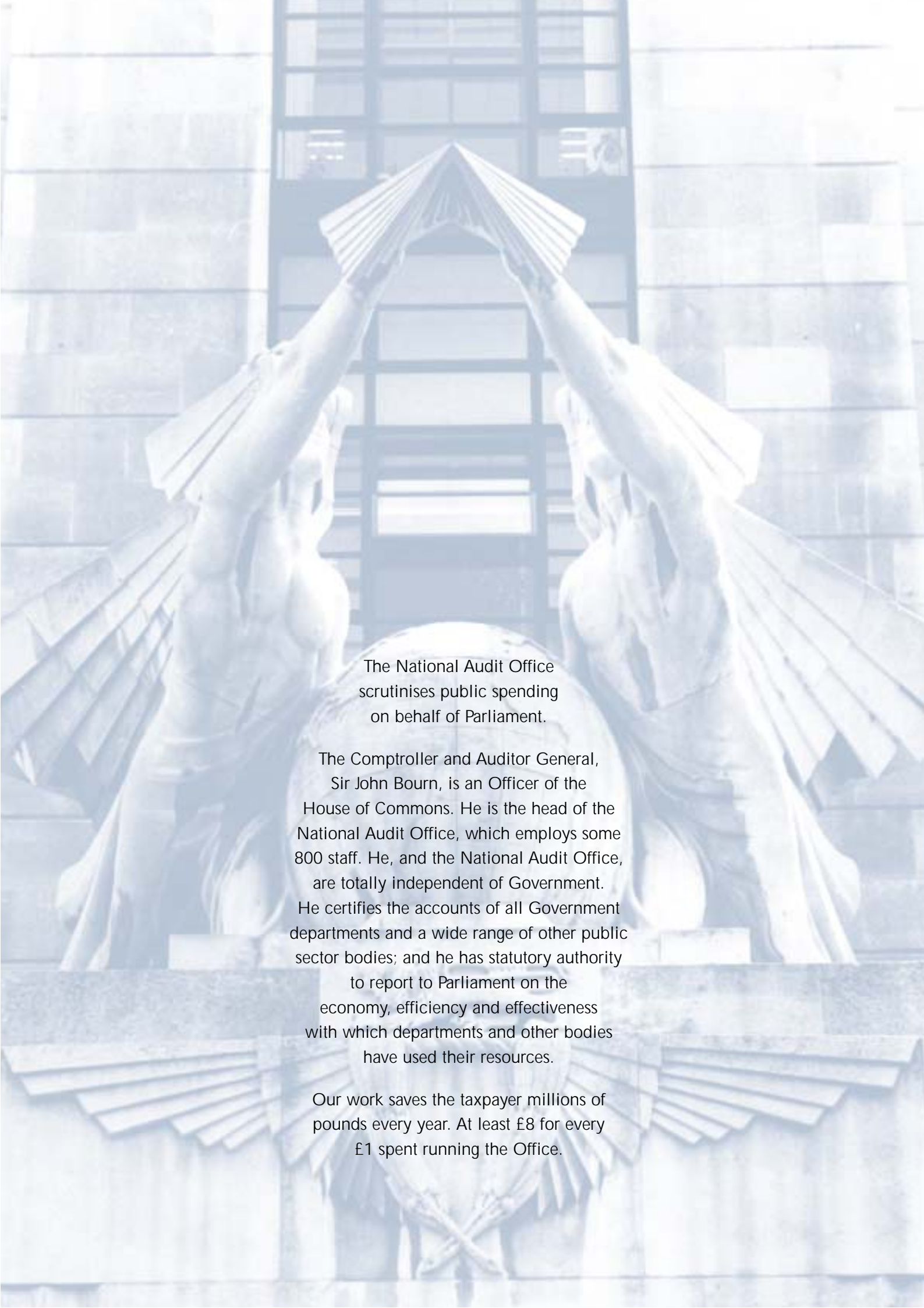


Evaluation of Regulatory Impact Assessments Compendium Report 2003-04

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL
HC 358 Session 2003-2004: 4 March 2004





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This report has been prepared under Section 6 of the National Audit Act 1983 for presentation to the House of Commons in accordance with Section 9 of the Act.

John Bourn
Comptroller and Auditor General

National Audit Office
26 February 2004

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EXECUTIVE SUMMARY

- 1 The NAO's report: *Better Regulation: Making Good Use of Regulatory Impact Assessments* (HC329 Session 2001-02), published in November 2001 defined regulation as "any government measure or intervention that seeks to change the behaviour of individuals or groups, by promoting the rights and liberties of citizens and restricting what they do", and added: "along with taxation and direct expenditure, regulation is one of the three principal instruments available to governments to achieve their objectives."
- 2 The report examined how government departments assessed the likely outcomes of regulating in order to try to achieve the right balance between under-regulating, which may fail to protect the public, and over-regulating, which may create excessive bureaucracy. Since 1998, the Government has used a process known as Regulatory Impact Assessments (RIAs) to assess likely outcomes. RIAs identify the costs and benefits of a policy proposal and the risks of not acting. They are intended to inform the policy decision making process and communicate clearly the objectives, options, costs, benefits and risks of proposals to the public to increase the transparency of the process.
- 3 The Government produces over 200 RIAs a year and our 2001 report reviewed a sample of 23 to identify good practice and how to make the process effective within departments. It found three main factors which characterised effective RIAs:
 - starting the process early;
 - consulting effectively with those affected by the proposal; and,
 - analysing appropriately the likely costs and benefits of the proposal.
- 4 The Cabinet Office has updated its guidance on preparing RIAs, taking on board factors identified in our 2001 report. Following a hearing of the Committee of Public Accounts (PAC) on that report, in December 2002 the Cabinet Secretary invited the Comptroller and Auditor General to undertake a new ongoing role of evaluating the quality and thoroughness of a sample of RIAs each year, with the aim of identifying positive and negative learning points, and this report is the result of the first year's evaluation of a sample of ten.

Main Findings

Influence of Regulatory Impact Assessments on policy making

- 5 Regulation, whether formal legislation or other means of government intervention, may impact on businesses, charities and voluntary organisations. This may be in the form of imposing costs, foreseen or unintended, which are generally then passed on to the consumer, or providing benefits, for example through administrative simplifications. It is important that government departments consider all potential impacts throughout the policy making process in order to ensure that policy decisions are well informed and do not have disproportionate or counterproductive effects. A rigorous approach, rigorously applied in policy making and analysis, maximises the chance of obtaining a good outcome.
- 6 Since the 1980s the Government has been developing procedures to ensure that departments consider the likely impacts of new regulations on those affected with the aim of improving the regulatory process, and introduced the Regulatory Impact Assessment (RIA) in 1998 for any proposal that is expected to have an effect on business, charities or voluntary bodies. Cabinet Office guidance states:

"A Regulatory Impact Assessment (RIA) is a tool which informs policy decisions. It is an assessment of the impact of policy options in terms of the costs, benefits and risks of a proposal."
- 7 The purpose is to inform all stages of the policy making process from the initial rationale through to preparing the procedures for monitoring and evaluation prior to implementation of a regulation. All stakeholders of the regulations - government, business, individuals and the voluntary sector - must see the RIA process as credible.

NAO examination of a sample of RIAs

- 8 In April 2002, the Committee of Public Accounts (PAC) considered the report on Better Regulation¹ and recommended that the NAO should evaluate a selection of RIAs. The Cabinet Secretary responded in December 2002 inviting the Comptroller and Auditor General to evaluate a sample of RIAs each year. For this pilot year we examined the thoroughness and quality of a sample of ten from over 200 RIAs which had been approved by the departmental Minister. The sample reflected suggestions in the Better Regulation Task Force's Annual Report², and our own criteria (Appendix 2). We are grateful to the Task Force for providing an excellent sample of RIAs containing many useful examples of good practice and also learning points where the process might have been better. We look forward to receiving further recommendations in the Task Force's next Annual report.

¹ *Better Regulation: Making Good Use of Regulatory Impact Assessments* (HC329 Session 2001-02).

² *The Government established the Better Regulation Task Force (the Task Force) in 1997. Its terms of reference are now: "to advise the Government on action to ensure that regulation and its enforcement are proportionate, accountable, consistent, transparent and targeted." The RIA suggestions were included in the Task Force's 2001/02 Annual Report: Champions of Better Regulation.*

- 9 Neither the suggestions by the Task Force nor our final sample were intended to be representative of the 200 or so RIAs undertaken across Government, nor were they selected at random. Ten out of the eleven suggestions by the Task Force were RIAs it considered to be of poor quality, and we chose six of these plus the Task Force's suggestion of a good quality RIA. We chose the other three in our sample according to our criteria (Appendix 2) with no prior expectations as to their quality or thoroughness. Four of the ten cases concerned European regulations which the UK was legally obliged to implement. For these cases we evaluated the RIA produced by the UK department but not the earlier role of the UK in negotiating the European regulations.
- 10 The Cabinet Office Regulatory Impact Unit has achieved significant progress in raising the profile of RIAs, ensuring that all new regulations are subject to the process and increasing the quality of the RIAs produced. We consider that it is important that civil servants continue to see RIAs as an important part of the regulatory process and our evaluation aims to help highlight this. Our evaluation also seeks to encourage a culture of scrutinising regulatory proposals within the policy making process by drawing out a series of learning points for the preparation of RIAs.
- 11 The quality and thoroughness of the RIA process within departments varied greatly across our sample, and it was clear that the RIA process needs to be properly resourced to be effective. All RIAs examined contained elements of good practice but there was often room for improvement, as illustrated by the case studies in Part Two of this report. Some departments had expressed doubts as to whether the RIA process was appropriate in some cases, but they had nevertheless prepared full RIAs and had found that the process had provided a good framework for analysing likely impacts of the regulation. Our findings are only drawn from our sample of ten RIAs. We have only looked at these ten RIAs so are unable to comment on the quality or thoroughness of the other RIAs in the 200 or so being undertaken each year. Nevertheless we consider that our recommendations should be seen as good practice points for all RIAs.

Results of evaluation

- 12 We examined six main areas of the RIA process (**Figure 1**) to evaluate the quality and thoroughness of the whole RIA process in each case, including the Initial, Partial and Final RIAs. The remainder of this summary outlines the results which are discussed in more detail in Part Two of this report. Overall, it was clear that departments could gain most from the RIA process if it was properly planned and resourced, and started early enough to form a genuine part of the decision making process. Good project planning can feed through to all elements of the RIA process, such as ensuring that sufficient time is planned for public consultation. This can enable the process to be undertaken properly whilst achieving objectives and policy deadlines. A project planning approach to introducing legislation is in line with a recent Task Force recommendation, which has been agreed by Government, though this was not in place at the time the RIAs in our sample were being prepared³.

³ *The Better Regulation Task Force July 2003 report: "Environmental Regulation: Getting the Message Across" included the recommendation: "The Government should adopt a project planning approach to introducing new legislation, drawing on advice from the Office of Government Commerce's 'Programme and Project Management Centres of Excellence' within Departments. Project plans should be published so that stakeholders know what will happen and when in implementing new legislation."*

1 Main questions in NAO evaluation framework

1. Was the RIA process started early enough?
2. Was consultation effective?
3. Did the RIA assess costs thoroughly?
4. Did the RIA assess benefits realistically?
5. Did the RIA realistically assess compliance?
6. Will the regulation be effectively monitored and evaluated?

Appendix 1 outlines the full range of questions and sub-questions in the framework

Policy objectives

- 13 Clear objectives at the outset derive from what a department's policy aims to achieve and allow the department to consider a choice of possible options. A clear statement of objectives at the outset is an important feature of a good quality RIA.
- 14 Only half of our sample included a reasonably clear statement of objectives. Where objectives were poorly defined the lack of clarity fed through to the rest of the RIA, affecting factors such as the consideration of options.

Options considered

- 15 Departments are expected to consider a range of options to achieve their policy objectives, as there is often more than one way to deliver these objectives. A good quality RIA will include a "Do Nothing" option and alternative regulatory methods where appropriate, and will consider the appropriate enforcement regime for each of the different options. Considering a range of options allows departments to demonstrate clearly the reason for their choice of preferred option.
- 16 Only two RIAs in our sample discussed a range of options, and both included alternatives to regulation⁴. Another presented a single option, plus a "Do Nothing". The remaining seven cases presented only the relevant department's preferred option and did not explicitly discuss a "Do Nothing", which made it difficult to assess and present the net benefits of the regulation. Although these included four RIAs concerning European regulations which the UK was obliged to implement, a discussion of the existing situation would have enabled clearer judgement of the net benefits of the regulation.

⁴ The RIAs for the Enterprise Bill and the Copyright etc and Trade Marks Bill.

Analysis of problem

- 17 Cabinet Office guidance is that RIAs should include an assessment of the risks. "Risks" in this context refers to the problems the regulation aims to address. All but one of the RIAs in our sample included a risk assessment but some of them were vague. None of the risk assessments in our sample included a clear statement of what the department expected to happen in the absence of the regulation, known as the counterfactual. Only two RIAs in the sample provided quantified assessments of the problem the regulation aimed to address.
- 18 Some RIAs presented the problems that wider policy aimed to address in the area relevant to the regulation. Whilst this can usefully put the regulation concerned in context, an assessment focusing on the regulation itself and the specific problem it is aimed at allows the net benefits of the regulation to be judged more clearly.

Consultation

- 19 Consultation is more likely to add value if a department: starts early; makes documents accessible; uses appropriate techniques; allows at least twelve weeks' response time in line with guidance; makes full use of the results; and publishes the department's response to the results.
- 20 Consultation was consistently the strongest element of the RIA process in our sample; in all except one of these the department had undertaken at least one thorough and wide ranging formal public consultation. The remaining one had nevertheless consulted widely with a range of internal and external key stakeholders. In addition to written consultation, departments had used pro-active techniques such as focus groups, meetings with key stakeholders and "tours" across the country to obtain stakeholders' views. The extent to which departments had recorded how they had used responses in altering their policy proposals as a result of consultation varied, however, and in some cases risked the perception that responses had been ignored. Although consultation was generally done well in the sample, this did not always lead to a good quality RIA.

Comparisons of costs and benefits

- 21 Final RIAs are approved by the relevant Minister who states that the benefits of the regulation justify the costs. RIAs therefore need to demonstrate this, using quantitative and qualitative techniques, and reflecting uncertainties as appropriate.
- 22 All but one of the RIAs in the sample contained some form of quantified estimate of costs and all acknowledged a level of uncertainty about the data used for the estimates. But the uncertainties were not always reflected in the costs and benefits, which presented single point estimates rather than ranges. Only one gave the results of sensitivity tests showing the consequences of changes in key assumptions. All considered the costs to small businesses and concluded that there would be none or that they would not be disproportionate.

Difficulty of estimating benefits

- 23 Of the nine RIAs that presented quantified estimates for at least some of the expected costs, only three included quantified estimates of benefits. The expected benefits of many regulations are changes or outputs for which no market exists, making quantification difficult. However, it is usually possible to include some form of order of magnitude estimate or qualitative statement about the type of benefit expected, even if full quantification is not possible. Departmental experts, such as economists, can often provide advice on methodologies to estimate benefits, reflecting uncertainties as appropriate.
- 24 As benefits were difficult to estimate most RIAs did not include a quantified comparison of the expected costs and benefits, which could be used to demonstrate that the benefits of the regulation justified the costs. All RIAs provided a discussion of the expected costs and benefits, though the clarity and detail of these discussions varied. One RIA did have summary tables of the expected costs and benefits in quantitative and qualitative terms, allowing the reader to compare the options.

Enforcement and sanctions

- 25 Regulations are often introduced to achieve the government's policy objectives by encouraging changes in behaviour. RIAs therefore need to consider how the regulations will be enforced, whether different policy options require different enforcement regimes, how different enforcement regimes would affect compliance and costs, how patterns of compliance affect costs and benefits, and the sanctions that would apply in the event of non-compliance.
- 26 Only half of the RIAs in the sample considered enforcement and sanctions, and only one provided estimates of the costs of enforcement of all the options. Six RIAs in the sample included a section entitled "Enforcement, Sanctions, Monitoring and Review", but only three of these discussed enforcement in that section. "Enforcement and Sanctions" and "Monitoring and Evaluation" involve different issues and RIAs would benefit from separate discussions of the two areas.

Monitoring and evaluation procedures

- 27 Good quality RIAs will outline how the regulation and its effects are to be measured and monitored, and describe the reviews and evaluations which will be used to judge how far the regulation is achieving defined objectives. An explanation of how information from monitoring and evaluation will be used to inform future policy making improves the transparency of the process.
- 28 All but one of the RIAs described how the regulation was to be monitored, but often in a very brief and vague way, and only four stated that there would be a formal review to evaluate the success of the regulation. In cases where departments had developed detailed plans, the RIAs would have benefited from including more information on these procedures.

RECOMMENDATIONS

- 1 RIAs should be undertaken early in the policy making process for any measure which may impact on businesses, charities and voluntary organisations and should evolve throughout the process. As part of this process it is essential that policy makers plan as early as possible the timetable for the RIA process and for implementation of the policy, for example ensuring that sufficient time is allowed for public consultation and that any necessary guidance on the policy is produced at the appropriate time to improve compliance.
- 2 The RIA process is often crucial to good policy making and departments should ensure that the process is properly resourced and that appropriate training is given.
- 3 Where possible, departments should draw on previous experience of producing RIAs, thus encouraging a culture of thorough scrutiny of regulatory proposals within the policy making process.
- 4 RIAs should include a clear statement of the objectives for the regulation to demonstrate that the department knows exactly what the regulation is trying to achieve, and the objectives should properly inform the consideration of policy options, including alternatives to regulation.
- 5 Departments should consider a range of options to achieve their policy objectives, and present these in the RIA. These should include a "Do Nothing" option and alternative regulatory methods where appropriate, and consider the appropriate enforcement regime for each of the different options.
- 6 The RIA should include a detailed risk assessment of the problem or risk which the policy is trying to address. This should include the consequences of not regulating, to help identify and analyse the net benefits of the regulation. Where practicable the risk assessment should present evidence-based estimates to illustrate the scale of the issue or market failure the regulation aims to address.
- 7 Departments should undertake a full public consultation to obtain the views of key stakeholders and any other interested parties. They should ensure that the planned timetable for the RIA process allows at least twelve weeks' response period in line with guidance.
- 8 RIAs should be realistic and have regard to the uncertainties, for example by presenting ranges of costs and benefits where appropriate, rather than single point figures. They should normally include the effect of changes in key assumptions by undertaking and presenting sensitivity tests.
- 9 Departments should, wherever practicable, present quantified estimates of the costs and benefits of the regulation, including any wider costs and benefits. They should also draw on advice from in-house experts such as economists to ensure methodologies are robust.
- 10 Departments should consider the consequences of achieving less than 100 per cent compliance with the regulation. Whilst it is reasonable to present the expected impacts of the regulation if there is full compliance, RIAs should also show the impacts of lower levels of compliance so that this can inform the decision making process. Departments should also consider patterns of compliance in their assessments.
- 11 Departments should outline in the RIA how the regulation and its effects are to be measured and monitored, and describe the reviews and evaluations which will be used to judge how far the regulation is achieving defined objectives. They should also explain how information from monitoring and evaluation will be used to inform future policy making.



This part of the report discusses the importance of rigorous policy assessment to policy decision making, and the development of the Regulatory Impact Assessment process. It also discusses the background to the National Audit Office's new ongoing role in evaluating a sample of ten RIAs a year, for which this year is the pilot.

- 1.1 The NAO's report: Better Regulation: Making Good Use of Regulatory Impact Assessments (HC329 Session 2001-02), published in November 2001, defined regulation as "any government measure or intervention that seeks to change the behaviour of individuals or groups, by promoting the rights and liberties of citizens and restricting what they do", and stated: "along with taxation and direct expenditure, regulation is one of the three principal instruments available to governments to achieve their objectives."
- 1.2 Regulation imposes costs, foreseen or unintended, on businesses, charities and voluntary organisations, which may then be passed on to the consumer. It is, therefore, important that government departments consider these costs and other effects during the policy making process in order to ensure that their policy decisions are well informed and do not lead to disproportionate or counterproductive impacts. Following a rigorous framework for policy making and analysis should help to ensure policy decisions are as soundly based as possible⁵. In the case of regulations, such a framework should help ensure that policy makers consider intended and unintended impacts of regulating or not regulating. An example of such a framework is the ROAMEF framework, recommended in the Treasury's Green Book and outlined in [Figure 2](#).

2 The ROAMEF policy framework

This provides a series of well defined stages covering the whole policy making process. It requires:

- the policy maker to identify the **Rationale** for the policy;
 - well defined **Objectives** for what the Government aims to achieve through intervention;
 - that the government department **Appraises** the likely impacts of the policy;
 - rigorous **Monitoring** and **Evaluation** of the success of the policy in achieving the Government's objectives;
 - results of the monitoring and evaluation to be used as **Feedback** to inform future policy making.
-

The RIA process

- 1.3 Since the 1980s the Government has been developing procedures to ensure that departments consider the likely impacts of new regulations on those affected with the aim of improving the regulatory process. During the 1990s departments undertook Compliance Cost Assessments, analysing which parties were likely to be affected and describing the estimated costs to them of complying with the new regulation.

⁵ *The NAO report: Modern Policy-Making: Ensuring Policies Deliver Value For Money (HC289, Session 2001-02) discusses good practice for departments to improve the way they implement, maintain and evaluate their policies, including the use of RIAs to assess impacts and risks.*

1.4 The Government decided that the Compliance Cost Assessment was not comprehensive enough and that departments should consider other costs, such as policy costs, and that they should ensure that the parties likely to be affected are consulted. The assessments were therefore extended to become Regulatory Impact Assessments (RIAs), introduced in 1998. The Government announced that no regulatory proposal which had an expected effect on business, charities or voluntary bodies should be considered by Ministers without an RIA being carried out. Since then the Cabinet Office has issued revised guidance in 2000 and 2003 to ensure that departments understand why RIAs are important and how to undertake them. The guidance states:

"A Regulatory Impact Assessment (RIA) is a tool which informs policy decisions. It is an assessment of the impact of policy options in terms of the costs and benefits of a proposal."

1.5 The purpose is to inform all stages of the policy making process from the initial rationale through to preparing the procedures for monitoring and evaluation prior to implementation of a regulation. There are three main stages to the RIA process: Initial, Partial and Final, each of which builds on the previous stage to include more detail as the regulation develops. The Final RIA should:

- inform departments' decision making processes by presenting the objectives, options, costs, benefits and risks of the regulations, and the process should ensure that the regulation does not lead to unintended consequences;
- clearly communicate to affected parties and the public the arguments for the departments' choices of options; and
- demonstrate that the benefits of the policy proposal justify the costs.

1.6 **Figure 3** outlines the main points that RIAs should cover and illustrates why it is an important document to inform the policy making process.

1.7 The process is now generally applied. The Cabinet Office Regulatory Impact Unit (CORIU) has a Public Service Agreement target to achieve full compliance with the RIA process by departments and agencies for every regulatory proposal that may impact on business, charities or voluntary organisations. Full compliance does not necessarily mean that RIAs should be produced in every single case as there will always be legitimate exceptions, such as emergency measures. The quantitative target for full compliance at the consultation stage was therefore set at 95 per cent. Given that the compliance rate has improved, CORIU is now focusing on working with departments to improve the quality of RIAs.

Support for the RIA process

1.8 A systematic approach to regulatory impacts is considered important by a number of organisations within and outside the United Kingdom. For example, in 1995 the Organisation for Economic Co-operation and Development (OECD) published a checklist of ten questions for Regulatory Decision Makers to consider as part of the regulatory process (**Figure 4**). These OECD questions informed the development of RIAs in the UK. Many countries including the USA, Netherlands and Australia have introduced arrangements similar to RIAs.

3 What a Final RIA should cover

Purpose and intended effect	Identifies the objectives of the regulatory proposal
Problem	Assesses the problems that the proposed regulations are addressing
Benefits	Identifies the benefits of each option including the "Do Nothing" option
Costs	Looks at all costs including indirect costs
Securing compliance	Identifies options for action to maximise compliance with new regulation.
Impact on small businesses	Using advice from the Small Business Service
Competition assessment	Identifies the impact on competition within UK markets. Analyses the impacts of a proposed regulation on UK firms in the relevant market(s) and on importers into the UK.
Public consultation	Takes the views of those affected, and is clear about assumptions and options for discussion
Monitoring and evaluation	Establishes criteria for monitoring and evaluation
Recommendation	Summarises and makes recommendations to Ministers, having regard to the views expressed at public consultation

Source: Updated table based on our report Better Regulation: Making good use of regulatory impact assessments (HC329 Session 2001-02)

4 OECD reference checklist for regulatory decision-making

1. Is the problem correctly defined?
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 of government for this action?
6. Do the benefits of the 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 the interested parties had the opportunity to present their views?
10. How will compliance be achieved?

- 1.9 The European Commission (EC) is currently the source of about 40 per cent of regulation which must then be implemented by Member States, including the UK, and this proportion is increasing. In 2001 the Mandelkern Group, commissioned by the EC, published a report which supported adopting a process for assessing the impacts of regulations on similar lines to the UK model. It stated that:

"Regulatory Impact Assessment can play a significant role in improving the regulatory environment. It can be an effective tool for modern, evidence based policy making. It provides a structured framework for informing the

consideration of the range of options available for handling policy problems and the advantages and disadvantages of each. It also provides an opportunity for working with external bodies, interest groups, representatives of businesses and Non-Government Organisations, to consider how the policy might best be designed."

1.10 The EC published a Better Regulation Action Plan in June 2002, committing to a systematic approach whereby all new proposals will be subject to a preliminary assessment and some will be subject to extended impact assessments. The OECD and EC endorse well-prepared RIAs and stress the importance of considering a range of options, including alternatives to regulation, as part of the policy decision process.

NAO examination of a sample of RIAs

1.11 The RIA approach provides a good framework to inform policy decisions. All stakeholders of the regulations - government, business, individuals and the voluntary sector - must see the RIA process as credible.

1.12 Our 2001 report on Better Regulation found that the quality of a selection of RIAs was variable, with much good practice but also room for improvement. The 2001 Labour Party Manifesto included a proposal that an external body, possibly the NAO, should take on an ongoing role in evaluating RIAs. In April 2002, the Committee of Public Accounts (PAC) recommended that the NAO should evaluate a sample of RIAs each year. This followed a hearing on our 2001 report on Better Regulation.

1.13 In response, the Cabinet Office held discussions with the NAO and in December 2002 the Cabinet Secretary formally invited the Comptroller and Auditor General to evaluate a sample of RIAs each year. For the pilot year we examined the thoroughness and quality of a sample of ten Final RIAs.⁶ We saw this as a large enough number to allow us to identify learning points whilst being manageable enough to allow us to examine the thoroughness and quality of the whole RIA process in sufficient depth.

1.14 In deciding which ten RIAs to examine we bore in mind the suggestions in the Better Regulation Task Force's (the Task Force) Annual Report. The Task Force drew our attention to ten RIAs which it thought fell short of the standards it would expect plus one RIA which it considered to be an example of good practice, the Department of Trade and Industry's Enterprise Bill, 2002. Our final sample, which we selected according to a range of criteria (Appendix 2) included seven of the Task Force's suggestions: six out of the ten the Task Force felt were not to standard plus the good practice example. We selected the remainder from the Cabinet Office Regulatory Impact Unit's website, based on our criteria, but with no prior opinion on the standard of the RIAs. It is important to note that our sample was not intended to be random or representative of RIAs as a whole, given that at least six that we chose were considered by the Task Force to be of poor quality. Out of the total sample, four were regulations implementing EC regulations (Figure 5).

⁶ Final RIAs are those which have been approved by the relevant Minister.

5 The pilot year sample of 10 RIAs

RIA Title	Department/Agency	Task Force recommended	EC Regulation
The Enterprise Bill, 2002	Department of Trade and Industry ¹	Yes	No
Regulations for all Care Homes (including older people) and national minimum standards for care homes and adult placements, 2001	Department of Health	Yes	No
The Copyright etc. and Trade Marks (offences and enforcements) Bill, 2001	Department of Trade and Industry/ Patent Office	Yes	No
Internet Filing of Tax Information, 2001	Inland Revenue	Yes	No
Proceeds of Crime Bill, 2001	Home Office	Yes	No
Passenger Car (Fuel Consumption and CO2 Emissions Information) Regulations, 2001	Department for Transport	Yes	Yes, 99/94/EC
The Second Daughter Directive on limit values for benzene and carbon monoxide in ambient air, 2002	Department of the Environment, Food and Rural Affairs	Yes	Yes, 2000/69/EC
Railways (Interoperability) (High Speed) Regulations, 2002	Department for Transport	No	Yes, 96/48/EC
Meat (Hazard Analysis and Critical Control Points) (England) Regulations, 2002	Food Standards Agency	No	Yes, 2001/471/EC
The Renewables Obligation Order, 2002	Department of Trade and Industry	No	No

NOTE

- 1 The Enterprise Bill RIA comprises three separate Final RIAs on: Insolvency Provisions; Competition; and Consumer Protection Reforms; and one summary document. We examined all three separate RIA but not the summary document, which summarised information in the three separate documents but was not intended to provide separate analysis.

Quality and thoroughness of the RIAs in our sample

Some of the RIAs did not follow a good process

- 1.15 We found that the quality and thoroughness of the RIA process varied greatly in our sample. All RIAs examined contained elements of good practice, but we also found that there was often room for improvement. Overall, public consultation was a strong area of the process. However, some of the sample

would not have achieved the aim of informing policy effectively as the departments had not followed a good process in preparing them. For example, some failed to set clear objectives, which reduced the options considered; some did not make best use of expert advice such as economists, leading to inadequate analysis of impacts; and some failed to make best use of information provided in consultation.

1.16 Part Two of this report details our findings and learning points from our examination of the pilot sample of ten RIAs.

RIAs should always be prepared for new regulations

1.17 The RIA process is designed for situations in which regulation is expected to have impacts on businesses, charities or voluntary organisations. It is important that RIAs are started early in the policy making process. We found in three of the RIAs in our sample that the departments concerned had expressed doubts as to whether the RIA process had been appropriate in those cases for three main reasons:

- two of the RIAs, for the Internet Filing of Tax Information and the Renewables Obligation Order, were produced for policies for which decisions had already been made and announced at a time when RIAs had not been required as a formal part of the policy decision making process, so the RIAs did not inform decisions. However, they did allow the departments to identify expected impacts, which increases the transparency of the policy making process;
- one RIA, for the Internet Filing of Tax Information, concerned a regulation which changed the law to allow a new service to be introduced on a purely voluntary basis. The voluntary nature of this regulation meant that it imposed no obligations or costs on businesses, charities or voluntary organisations. However, the RIA allowed the Department to communicate expected benefits to businesses; and
- one RIA, the Copyright etc. and Trade Marks (Offences and Enforcements) Bill, was for a regulation which should only impose impacts on those businesses engaging in criminal activity.

1.18 We welcome the fact that these departments prepared full RIAs for each case to examine the expected impacts of these policies. Although some points usually covered by RIAs may have been less relevant in these cases, following the process enabled the departments to follow a structured approach to considering possible impacts of regulation. Indeed, Cabinet Office guidance states that if the effects of policy proposals are likely to be negligible it is still good practice to produce initial RIAs, since it is not always clear when a proposal is being formulated whether there will be any impact on business, charities or the voluntary sector and how large such impacts might be. This will help decide whether a full RIA should be prepared. The Cabinet Office Regulatory Impact Unit has told us that there is scope for flexibility in applying the RIA process to ensure it is as effective as possible. Departments should contact their Departmental Regulatory Impact Unit or the Cabinet Office Regulatory Impact Unit to discuss how to undertake the RIA process.

This part of the report discusses the findings from our evaluation of ten RIAs. It outlines six main areas of the RIA process that we considered in our evaluations: objectives and options; consultation; costs; benefits; compliance; and monitoring and evaluation. It discusses what should be included in a good RIA in each of these main areas, and then gives evidence of the extent to which our sample demonstrated these points, illustrating our key findings with short case studies.⁷

Policy objectives

- 2.1 Clear objectives at the outset derive from what a department's policy aims to achieve and allow the department to consider a choice of possible options. Departments then assess the likely impacts of those options before reaching decisions on the preferred option. Clear objectives also make for more effective monitoring to assess the success of policy in achieving a department's aims, and informing future policy making decisions. Treasury guidance, such as Appraisal and Evaluation in Central Government (the "Green Book") states that objectives should be stated clearly as this allows the identification of the full range of alternative options which government may adopt. One way to enhance clarity of objectives is to aim to make them as Specific, Measurable, Achievable, Realistic and Time dependent, or SMART, as possible.
- 2.2 A clear statement of objectives at the outset is therefore an important feature of a good quality RIA. It enables the reader to judge how far the risk assessment is relevant and how far the options considered address the objectives.

The clarity of objectives in our sample varied

- 2.3 Only half of our sample contained a reasonably clear statement of objectives and only one fulfilled SMART criteria (**Case Study 1**). SMART criteria may not always be appropriate, but objectives should nevertheless be clear. Where they

CASE STUDY 1

Objectives - Renewables Obligation Order

The Renewables Obligation Order aims to encourage the uptake of renewable power generation sources by the electricity supply industry by developing the market for electricity from renewable sources.

The stated objective in the RIA for the Renewables Obligation Order 2002 virtually fulfilled the SMART criteria and put the regulation in the context of overall policy objectives in the area of addressing climate change.

"The UK Climate Change Programme proposes a package of policies and measures that will deliver the UK's legally binding target from Kyoto to cut greenhouse gas emissions and move towards its

domestic goal. Stimulating new, more efficient and lower carbon sources of power generation is an important part of the package. *The main means of stimulating an increase in the proportion of electricity supplied from renewable energy sources will be the obligation on electricity suppliers to procure sufficient supplies from such sources, consistent with a total supply of renewables of 10% by 2010, subject to the cost to consumers being acceptable.*" (NAO emphasis).

The objective of this regulation is specific, in the context of the wider objectives. It is measurable and potentially achievable. The Department assessed it as realistic, and the 2010 target date makes it time dependent. This clarity means that the Department can monitor the extent to which the policy achieves these objectives.

were poorly defined, the lack of clarity fed through to other areas of the RIA such as the consideration of options. They also gave the reader little clear idea of what the Government aimed to achieve by introducing the regulation or which parts of the problem were dealt with in part or wholly by other regulations. Indeed one RIA contained no statement of objectives at all. Others stated vague wider Government policy objectives without clearly informing the reader of the specific objectives of the regulation with which the RIA was concerned.

2.4 Two of the RIAs mixed policy objectives with the measures proposed to achieve them. In these cases the confusion also then fed through into the rest of the RIA process resulting in limited analysis of policy options and likely impacts (including [Case Study 2](#)).

Options considered

2.5 Departments are expected to consider a range of options to achieve their policy objectives, as there is often more than one way to deliver these objectives. A good quality RIA will include a "Do Nothing" option and alternative regulatory methods where appropriate, and will consider the appropriate enforcement regime for each of the different options. Considering a range of options allows departments to demonstrate clearly the reason for their choice of preferred option.

CASE STUDY 2

Objectives - Care Homes National Minimum Standards

The RIA assessed new regulations and standards to replace existing regulations covering care homes with a revised and more consistent national framework.

The objectives for this RIA stated:

"Introducing the new regulatory procedure is intended to:

- implement government policy as set out in the Care Standards Act 2000, and introduce a single system for registration operated by the National Care Standards Commission;
- ensure that people wishing to run establishments are fit to do so and that services provide a reasonable standard;
- promote consistency of regulation of all sectors of care and health;

- phase in the new standards to minimise burdens on providers; and
- manage the transition to ensure a sufficient supply of new provision continues to be available.

This list does not make for clarity. The first point is a partial description of the Government's intended regulatory instrument. The second two points allude to the objectives of introducing a national registration scheme to ensure consistency of standards. However, the final two points describe one of the options to achieve the objectives, which is phased transition, whilst alluding to the fact that the Department aims to ensure sufficient care homes remain in operation.

Including the final two points in the list reduced the options available to the Department. The confusion about whether the RIA was about improving standards, improving enforcement or making standards mandatory was evident elsewhere. This resulted in the RIA failing to explore the tension between raising standards of service provision in care homes and ensuring a sufficient number remained in operation.

- 2.6 By presenting in RIAs summaries of the options considered and assessments of the expected impacts of each option, departments can demonstrate clearly the reasons for their preferred options, and why other options have been rejected.
- 2.7 Many RIAs examine the impacts on the UK of implementing EC Directives, which are legally binding, but often allow a degree of flexibility to Member States in deciding how best to implement them. Where this is the case there are often still options available to departments to decide how to implement the Directive in order to demonstrate the reasons for the chosen option.

The number of options considered varied within the sample

- 2.8 Only two of our sample discussed a range of options, and both of these included alternatives to regulation (**Case Study 3**). Another presented a single option, plus a "Do Nothing".

CASE STUDY 3

Options - Enterprise Bill, Insolvency Provisions

The RIA considers the likely impacts of a number of options in four areas of insolvency reform: individual insolvency; company insolvency; removal of Crown Preference; and the Financial Regime. The objective is to modernise the framework for **individual** and **company** insolvency to encourage those who have failed honestly to try again while providing a robust and effective remedy against the small minority who abuse their creditors. The regulations aim to facilitate the rescue of viable companies, and provide certainty and fairness to creditors and other stakeholders by reforming Crown Preference and the financial regime.

INDIVIDUAL

Option 1: Continue to rely on the provisions of the Insolvency Act 1986 (the "Do Nothing").

Option 2: Change attitudes to the stigma of bankruptcy by education rather than legislation (alternative to regulation).

Option 3: (Preferred Option) Legislate to reduce the stigma of bankruptcy by removing unnecessary restrictions allowing for an earlier discharge for the majority of bankrupts whilst at the same time providing a tougher regime for culpable bankrupts. Also to undertake a raft of other changes (specified in the RIA) to individual insolvency proceedings to ensure a fairer deal for creditors and introduce time limits.

COMPANY

Option 1: Rely on the existing legislation (the "Do Nothing")

Option 2: Introduce a voluntary code of practice for floating charge-holders to allow a company to put together a rescue proposal, before enforcing their security (alternative to regulation).

Option 3: (Preferred Option) Legislate to streamline administration in certain areas (specified in RIA).

CROWN PREFERENCE

Option 1: The Crown will retain preferential status (the "Do Nothing").

Option 2: (Preferred Option) Abolish Crown Preference, and ensure unsecured creditors benefit.

FINANCIAL REGIME

Option 1: Retain the existing system (the "Do Nothing").

Option 2: (Preferred Option) Introduce new legislation to reform the financial regime of the Insolvency Service to provide certainty and fairness to creditors and other stakeholders.

The options are clearly outlined for each of the four areas and they show that the Department (Insolvency Service) examined different ways to achieve its objectives, including alternatives to regulation in some areas. The RIA later presents an assessment of the costs and benefits of each of the options to demonstrate why the preferred options were chosen.

- 2.9 The remainder - which included the four regulations implementing EC regulations - presented only the relevant department's preferred option and did not discuss a "Do Nothing" (for example [Case Study 4](#)), which made it difficult to assess and present the net benefits of the regulation. In each of these cases, the RIA discussed regulations which had been decided and publicly announced before preparation of RIAs became part of the formal policy process, so these RIAs were concerned with assessing the impacts of the chosen option, rather than comparing impacts of different options to inform the decision making process.
- 2.10 Despite the fact that policy decisions had been taken in these cases, discussion of a "Do Nothing" option would demonstrate better the net benefits of the proposals. Further, in some cases the departments had considered and discarded options earlier in the process, but the RIA did not discuss these options. In such cases RIAs would benefit from a brief discussion of options discarded earlier to illustrate better the department's processes.
- 2.11 None of the four RIAs for EC regulations discussed a "Do Nothing" because the UK is obliged to implement these regulations. We did not examine the UK's role in negotiating the EC Directives from which the UK regulations derived.
- 2.12 Two of the four RIAs for EC regulations discussed different options for implementation, which indicated that the departments were aware of and used the flexibility the EC allows to Member States. Although options had been considered and discarded at an earlier stage for one of the others, these were not discussed in the RIA. The remaining one did not appear to consider any options for implementation.

CASE STUDY 4

Options - Renewables Obligation Order

This RIA did not consider any options to achieve the Department's objective of 10 per cent renewable electricity by 2010. Indeed, the RIA did not discuss a "do nothing" option, stating that "the Government believes that doing nothing is not an option". This was because the decision to introduce the Renewables Obligation had been taken before producing RIAs was part of the formal policy making process and the Department therefore prepared the RIA after the Government had announced its commitment to the policy. The purpose of the RIA here was to assess the likely impacts of the policy, rather than to inform the decision.

Nevertheless, a description of the expected outcomes of doing nothing would allow the reader better to judge the net impacts of the regulation. The Department had considered other options to encourage increased take up of renewable energy sources before deciding on the Renewables Obligation and the RIA would have benefited from a brief discussion of these options and the reasons they had been discarded. This would have illustrated better the Department's decision processes and helped to offset the risk that the process followed could be perceived as too narrow.

Risk assessment

- 2.13 Cabinet Office guidance states that RIAs should include a risk assessment discussing the risks the regulations aim to address. We found that all but one of the RIAs in our sample included a risk assessment section, though the assessments that were produced were sometimes vague. None of the risk assessments in our sample included a clear statement of what the department expected to happen in the absence of the regulation, known as the counterfactual. This would have enabled clearer identification and assessment of the net benefits of the regulation. Where cases provided a clear assessment of the "Do Nothing" option this came closer to presenting a counterfactual. However, RIAs would benefit from making the counterfactual clearer in the future.
- 2.14 Only two RIAs in the sample provided quantified assessments of the problem the regulation aimed to address (one example is in [Case Study 5](#)). Well supported quantification of the risks illustrates the scale of the problem, and we welcome the inclusion of these evidence based assessments. Quantification is not always appropriate due to the nature of the risks or the costs of providing a quantified assessment, but departments should consider whether they can provide some indication of scale, such as an order of magnitude assessment.
- 2.15 Two RIAs presented the risks of wider policy, rather than the specific risk the regulation aimed to address, which made judging net benefits of the regulation more difficult for the department and the reader. For example, the Renewables Obligation Order RIA presented wider possible costs of climate change. Whilst it is useful to explain how the regulation concerned fits in the context of wider government policy in the relevant area, the risk assessment in the RIA would be clearer if it focused specifically on the net problems or risks addressed by the regulation itself; in this case, the risk that there would not be sufficient take up of renewable energy.

CASE STUDY 5

Risk assessment - Meat HACCP

This RIA discusses UK implementation of an EC Decision to require the mandatory use of Hazard Analysis and Critical Control Points (HACCP) principles in licensed red meat and poultry plants in England and sets out standard procedures for carrying out certain microbiological tests. The HACCP principles form an internationally recognised management system that offers consumers the best guarantee of safe production of food.

The risk assessment in the RIA sets out the scale of the problem the RIA aims to address using evidence on the number of cases of Indigenous Foodborne Disease in 2000 and the proportion of those who visited a doctor as a result. It also quantifies the number of laboratory-confirmed individual cases attributable to the most common bacterial pathogens and the proportions attributable to poultry and red meat.

The calculation illustrates the scale of the problem this RIA aims to address.

Consultation

2.16 Cabinet Office guidance on RIAs⁸ indicates that departments should undertake a formal public consultation for regulatory proposals, and that RIAs should accompany these public consultations. Although knowledgeable in their field, policy makers are not necessarily expert on the implications for business, charities and the voluntary sector. Departments need to be sure that their proposals are workable and proportionate, that there are no significant omissions in their work and that they understand the implications for those being regulated on a day to day basis at working level. This type of information can often only be provided by those affected by the proposals. Consultation, and acting appropriately on the responses, is therefore key to successful policy making.

2.17 Consultation is more likely to add value if a department:

- starts early with clear objectives. Consultation can help policy makers identify options, improve the analysis in the RIA, for example by testing the practicality of options. Starting early and having clear objectives allows more time to explore alternative regulatory methods;
- makes documents as accessible as possible. The guidance states that documents should always be available free of charge on a website from the moment of publication, but paper copies should also be available, and paper responses accepted so people are not be excluded because they are not Internet users;
- asks specifically for comments on the RIA itself. By placing the RIA in a prominent part of the consultation and asking specifically for comments, departments will ensure that consultees are aware of the estimated impacts of the proposals;
- uses appropriate consultation techniques. Our 2001 report on Better Regulation found that: "There is more to consultation than issuing a formal consultation document. It also requires careful thought about matching the most appropriate method of consultation with the information needed, for example, face to face interviews, focus groups, and surveys"⁹; and
- makes consultation responses and/or summaries available, preferably through publication and websites. The RIA should also summarise responses and briefly explain how proposals have been amended in the light of these responses. It should also refer to the published summaries and responses to increase transparency of the process.

Consultation was generally the strongest element of the process in our sample

2.18 All the RIAs except one in our sample had undertaken at least one thorough and wide ranging formal public consultation. Indeed, this was consistently the strongest element of the RIA process across our sample.

⁸ *Better Policy Making: A Guide to Regulatory Impact Assessment, 2003. This replaces previous guidance which would have been extant at the time many of the RIAs in the NAO sample were being prepared. This earlier guidance also recommended formal public consultations as part of the process.*

⁹ *Better Regulation: Making Good Use of Regulatory Impact Assessments (HC 329, 2001-02), Paragraph 2.13.*

2.19 The one RIA that did not undertake a formal consultation, the Inland Revenue's Internet Filing of Tax Information, nevertheless consulted within the Department and with other appropriate government departments, such as Customs and Excise. The Revenue also consulted a range of bodies representing external stakeholders including the Confederation of British Industry, the Federation of Small Businesses, the Consumers' Association, as well as various external specialists, and it published a consultation paper on its website. The Department told us that the decision to implement the regulation had already been taken and announced previously in March 2000, therefore a formal consultation would not have been a good use of resources. The Department also commissioned research into public attitudes to examine how a sample of businesses might react to the regulation.

There is established consultation guidance and codes of practice

2.20 Public consultation is an area in which there is established guidance from the Cabinet Office. This includes the Code of practice on written consultation, which applied to all consultation documents issued after 1st January 2001¹⁰. Although a number of consultations in our sample pre-dated that guidance, they generally followed earlier guidance. In addition to written consultation we found evidence of more pro-active approaches in many RIAs, such as focus groups, meetings with key stakeholders and "tours" across the country to obtain stakeholders' views. These types of approach are recommended by guidance under appropriate circumstances.

Only half of the consultations allowed the recommended time though departments considered responses after early deadlines

2.21 The guidance states that inadequate time is the single greatest cause for complaint over consultation by government and makes clear the importance of allowing sufficient time in the RIA process for effective consultations. It recommends a standard minimum consultation period of twelve weeks, though it recognises that circumstances may make a reduced period unavoidable.

2.22 Five of the nine RIAs for which a full, formal public consultation was undertaken allowed at least the twelve week minimum period in line with guidance, suggesting these departments had built sufficient time into their RIA timetables for this part of the process. All four cases of shortened consultation were unavoidable because of tight external deadlines. Three of these were to meet deadlines for the relevant Bill's slot in Parliament, so allowing the RIA to inform the progress of the Bill through Parliament. The fourth was to reduce further delay on a regulation, which was already late in implementing European legislation. In this case the Department had received a Reasoned Opinion letter from the EC advising that further delay would incur infraction proceedings. Although the shortened periods were unavoidable in these cases, the likelihood of having to shorten consultation periods can be reduced by ensuring the RIA process is properly planned and resourced at an early stage. The plan can then allow sufficient time for all elements such as the minimum period for public consultation whilst enabling objectives and deadlines to be met.

2.23 In all of the cases of shortened consultation the departments accepted some late responses. In addition, in three of the four cases the written consultation was only one element of the departments' consultations. The departments were also involved in ongoing dialogue with key stakeholders in designing policy throughout the period. These measures reduce the likelihood that stakeholders' views will be missed.

2.24 In one case the department allowed the recommended time although the timetable had slipped due to the decision to consult jointly on two related regulations to reduce the risk of consultation fatigue. We welcome the decision to use a joint consultation approach for two similar regulations (**Case Study 6**).

CASE STUDY 6

Consultation period - Second Daughter Directive on the implementation in England of EC Directive 2000/69/EC on limit values for benzene and carbon monoxide in ambient air

The Second Daughter Directive RIA concerned the transposition of one of a series of EC Air Quality Directives limiting values of pollutants in ambient air. These Directives followed from the overarching EC Air Quality Framework Directive (96/62/EC) to be implemented by 13th December 2002.

The Department's timetable slipped by some two months during 2002, because it decided to consult jointly on the Second and Third Daughter Directives (the latter concerned levels of ozone). Despite the slippage and the need to meet the EC deadline the

Department resisted the temptation to shorten the consultation period and allowed the minimum recommended twelve weeks.

Undertaking a joint consultation on related regulations can reduce the risk of consultation fatigue amongst key stakeholders. Responding to consultations is complex and time consuming and fatigue amongst stakeholders is a risk to the effectiveness of future consultations.

Departments should consider joint consultations for related regulations, though they must balance the advantages against the risk of causing confusion amongst consultees.

Interested stakeholders were generally consulted

2.25 Key stakeholders were usually consulted in the sample of RIAs we evaluated. Mitigating measures such as accepting responses after deadlines and using techniques in addition to written consultation help to reduce the risk of missing responses. However, it is possible that some stakeholders would have been deterred by short consultation periods but did not discuss this with the departments, so there would be no evidence that responses were missed on the departments' files.

Consultation packages were generally good

2.26 The consultation packages in our sample were generally clear and comprehensive and largely followed the Cabinet Office's guidance (**Case Study 7**). The consultation documents included the partial RIAs to explain the expected costs and benefits to consultees, though not all specifically drew attention to or asked for comments on the RIAs. Consultation packages would benefit from drawing more attention to the RIAs included and specifically requesting comments on them, as this would ensure that consultees were aware of the department's estimates of the regulation's impacts and would be more likely to offer their views.

CASE STUDY 7

Consultation package - Renewables Obligation Order

The Department undertook several consultations for the Renewables Obligation Order as the policy developed. The Government was already committed to the Renewables Obligation by the time of the final Statutory Consultation so the partial RIA included did not present any options, but aimed to assess the likely impacts of the policy.

The Renewables Obligation involves complex changes to the electricity market in order to encourage the supply of energy from renewable sources and contribute towards achieving the Government's targets for reducing CO2 emissions. We found that the Statutory Consultation document explained the proposed measures and market mechanisms clearly. It also explained the

Government's other measures to encourage take up of renewable energy in order to put the Renewables Obligation Order in the context of overall renewables policy. The subject matter is very complex and technical and we found that the Department's explanations were generally in clear terms.

Although the Statutory Consultation document was necessarily fairly lengthy, it contained a short, clear Executive Summary explaining the key points in line with guidance.

The Statutory Consultation also contained references to earlier consultations so that the interested reader could follow the process by which the Department reached the decision to implement the Renewables Obligation Order.

Consultations were highly accessible and a number of techniques were used

2.27 All nine of the RIAs for which a formal public consultation was undertaken employed a variety of techniques in addition to written consultation, and some used a combination of these techniques (**Case Study 8**). For example:

- announcing the consultation in trade papers;
- maintaining an ongoing dialogue with key industry stakeholders;
- using focus groups; and
- using pilot studies.

CASE STUDY 8

Consultation techniques - Care Homes National Minimum Standards

The Department undertook wide ranging and thorough consultations on the proposed new minimum standards for care homes over a period of some three years, starting with publication of "Fit for the future" as consultation for older people's homes in Autumn 1999. Consultation documents were developed for different types of care home, and the final consultation started in July 2001. This was issued to a wide range of key stakeholders, including Local Authorities, individual providers and their representative organisations, and service users.

The Department undertook broad consultation over several months on the regulations and standards. The Department used the following consultation methods in addition to a series of lengthy and clear written consultations, which included specific questions on the draft RIA:

- focus groups for service users and providers;
- a reference group of representative organisations covering the whole spectrum of care for adults;

- a series of questions to stakeholders that complemented the draft RIA in the consultation document;
- a series of seminars;
- consultation with the Small Business Service which jointly organised a series of focus groups with elderly people;
- a series of one day "surgeries" to explain the needs and service requirements of different groups of service users; and
- testing standards at feedback events before they were released for the draft RIA stage.

By using this variety of techniques the Department was able to obtain a wide range of responses to its proposals from the parties most likely to be affected. In a case such as this it is unlikely that a written consultation alone would have elicited as many responses. For example, affected groups such as service users of older people's homes were more likely to respond through the focus groups jointly organised by the Small Business Service, than to written consultation documents.

2.28 We welcome these pro-active approaches to consultation where appropriate. Using appropriate techniques is likely to lead to broader responses than would be received using written consultation alone.

2.29 It is important that departments consider the most appropriate techniques to use to ensure consultation is as effective as possible and that they obtain the best responses from affected groups. Departments should also bear in mind the likely scale of impacts in deciding how to consult to ensure that they do not incur disproportionate consultation costs.

Understanding of small business, charities and voluntary organisations was still developing

2.30 Business representatives and others have expressed concerns about regulation imposing unnecessary or disproportionate costs on small businesses, charities and voluntary organisations. For this reason departments are expected to consider these impacts during the RIA process, and include a section outlining these impacts. They are expected to consult with the Small Business Service

(SBS), which is entitled to issue a statement in the RIA at the initial RIA stage if it disagrees with the department's assessment. If the SBS disagrees at a later stage in the process it can produce a Regulatory Impact Statement (RIS), which is separate to the RIA and forms part of the Cabinet Office clearance process.

2.31 All RIAs in our sample had statements concerning the impacts on small businesses, though just over half had formally consulted with the SBS. Of the four that did not, two were deemed to have no disproportionate impact on small businesses:

- The Copyright etc. and Trade Marks (Offences and Enforcements) Bill introduced measures that would only affect businesses engaging in criminal activity; and
- The Passenger Car (Fuel Consumption and CO₂ Emissions Information) Regulations, 2001 are not expected to have a disproportionate impact as low volume production cars are outside the scope of the regulations.

2.32 Of the two remaining RIAs, the RIA for the Meat (Hazard Analysis and Critical Control Points) (England) Regulations, 2002 did not state explicitly that the Small Business Service had been consulted, but the Department made good use of information from a slightly earlier study on burdens of similar regulations on small businesses. It also adopted a broad definition of small businesses and this reduced the risk that it would fail to take disproportionate impacts into account. The Renewables Obligation Order, 2002 final RIA did not state explicitly whether the SBS had been consulted but did include a discussion of possible impacts on small businesses. It was noted that in the preliminary consultation in 2000 that no specific concerns had been expressed by small businesses.

2.33 Although the expected impacts of regulations on small business were fairly well covered, there was little consideration of impacts of regulation on charities or voluntary organisations. These may have trading arms that may be affected by regulations and it was not clear from the RIAs whether these had been considered as small businesses or ignored altogether. Only three RIAs directly mentioned possible impacts of the regulations on charities and voluntary organisations. RIAs would benefit from more explicit consideration of likely impacts on these bodies.

The use of consultation responses varied

Consultation responses were used to improve policy in some cases

2.34 A consultation process is only effective to the extent that departments make good use of the responses. It is unlikely to be practical or reasonable to accommodate all respondents' views, but departments should not appear dismissive of responses and should aim to explain the reasons why widely held views or views of significant stakeholders have not been incorporated. The RIA is an opportunity to provide a brief explanation.

2.35 Evidence suggested that some departments had genuinely considered and made use of the responses they received from consultation in our sample. Some departments had used responses to the consultation document and partial RIA to alter aspects of the policy proposals and to inform their assessments of impacts in the final RIA (**Case Study 9**). By incorporating respondents' views where reasonable, departments can reduce disproportionate impacts, and reduce the risk of unintended consequences on businesses, charities or voluntary organisations. This is likely to increase compliance and contribute towards the achievement of the departments' objectives.

CASE STUDY 9

Use of consultation responses - Care Homes National Minimum Standards

The Department undertook wide ranging and thorough consultations on the proposed new minimum standards for care homes over a period of some three years. There were many responses containing thousands of comments, including a large number on the draft RIA itself. As a result of consultation the Department introduced a number of changes in areas where no national standards existed.

In early consultation, the Department had proposed increasing the minimum size of rooms to 12 square metres per person. During consultation, however, it became clear that this would impose very large compliance costs on a large number of service providers as it was a much bigger area than

recommended by guidelines under some local authorities. As a result, the Department reduced the required minimum area to 10 square metres. During further consultation, this was reduced slightly again to 9.3 square metres or 100 square feet in order to reduce the impact on care homes that had followed local authority guidance using imperial measurements. These changes were reasonable direct responses to the consultation.

The Department also increased the transition time allowed for existing providers to comply with the new accommodation standards to five years, so existing homes were given longer to meet the new minimum physical standards. Changes such as these which take account of likely costs, particularly to small businesses, increase likely compliance.

Some departments risked appearing to ignore some responses

2.36 Departments often had information deficiencies, in particular leading to uncertainties in their assessments of the likely costs of their proposals to businesses. Consultation presented a good opportunity to use responses to inform these areas. Some departments decided not to use respondents' cost estimates despite a lack of their own robust information and failed to explain why in the RIA, other than expressing concerns about the accuracy of the consultees' cost estimates (**Case Study 10**). This is not to say that the departments actually did ignore the responses, but in failing to explain why the responses had not been used, departments risk appearing to ignore them.

CASE STUDY 10

Use of consultation responses - Care Homes National Minimum Standards

Owing to a lack of centrally held data on the costs of care provision for different sizes of care homes, the Department did not have robust estimates of how much meeting the proposed new minimum standards of care would cost businesses, and the RIA quite rightly acknowledged this information deficiency.

In response to the consultation, some small business care providers expressed concern that the additional costs of improving their standard of care would drive them out of business; for example, the costs of accommodation improvements and providing additional staff training. Some respondents provided their estimates of these additional costs to back up their views.

The Department did not accept respondents' estimates of additional costs as it felt they were anecdotal and were not sufficiently robust to replace the Department's own estimates. We accept that departments must exercise caution in using consultation responses in the absence of their own data, but we found in this case that such estimates could have been used to inform ranges of possible costs in order to reflect the uncertainty in the figures.

The RIA did not include reasoned arguments against these concerns or why the Department chose to reject the respondents' estimated costs. As a result the reader of the RIA could conclude that the Department had dismissed these cost estimates, rather than investigating them further and examining their implications for costs overall. It could then appear that, despite undertaking an extensive and well executed consultation process, the Department had ignored the concerns of small businesses, which represent around a fifth of adult care homes, which may deter future responses.

Most RIAs included a summary of consultation responses

- 2.37 Good use of the responses helps ensure that consultation is genuine and is perceived to be genuine. If this is not the case and consultees feel that their views have been unreasonably ignored, they may not respond to future consultations. Seven of the nine RIAs where a formal public consultation was undertaken included a summary of the themes arising from consultation. Of these, two specifically referred to published documents containing the responses and the departments' amendments in the light of these responses (including **Case Study 11**). These RIAs also referred to web pages containing this information, and the electronic versions of both included hyperlinks to the responses summaries and earlier consultations to allow readers to follow the departments' processes further. This approach increases the transparency of the departments' processes.
- 2.38 Departments had prepared summaries of the responses for the two remaining RIAs, but the RIA did not include a summary or mention whether the departments had published the responses elsewhere.

CASE STUDY 11

Publication of responses - Renewables Obligation Order

The Statutory Consultation document for the Renewables Obligation informed respondents that their responses would be placed on the Department's website unless they requested otherwise.

The Department published all responses that did not request confidentiality, and a clear summary of these responses, on its website. The electronic version of the final RIA included hyperlinks to these documents as well as to the earlier consultations and summaries of their responses. This increases transparency of the process.

Comparison of costs and benefits

- 2.39 RIAs can add value by helping policy makers to compare costs, including implementation costs, with benefits. They can also help determine whether particular sectors, such as small businesses, are likely to be disproportionately affected and make choices between options. RIAs are finalised with a statement that the relevant Minister is satisfied that the benefits of the regulation justify the costs. Final RIAs are, therefore, expected to demonstrate this clearly by presenting costs and benefits, quantified where possible, but also using qualitative techniques, to highlight to the reader the types of additional benefits departments expect but are unable to quantify.
- 2.40 Where there is uncertainty in data or assumptions, presenting these in the RIA will allow the reader to judge the robustness of any calculations of costs or benefits. For example, a department can present ranges of possible values, perhaps informed by consultation responses, to illustrate cost uncertainty. It can also use sensitivity tests to examine the impact of changes in uncertain assumptions. Where costs and benefits are expected to be minor, too many ranges may be confusing and it may be reasonable to present a single figure, whilst stating that it is approximate. Various techniques are available to estimate costs and benefits of policy options, though it may not always be possible or practical to provide monetary estimates.
- 2.41 Where estimation is undertaken by individuals with little or no experience, they can miss opportunities to improve the quality of the figures and hence any comparison made in the RIA. Departmental specialists, such as economists, can advise on methodologies for preparing estimates of costs and benefits, and departments can make use of guidance such as the Treasury's Green Book.

RIAs often suffered from a lack of reliable data and generally made this clear

It was not always appropriate or practicable for departments to obtain more data

2.42 All but one of the RIAs contained some form of quantified estimate of costs and benefits, and all acknowledged a level of uncertainty about the data used to calculate the estimates.¹¹ Acknowledging information deficiencies gives the reader an idea of the uncertainties underlying any calculations.

2.43 Where departments lack reliable cost information at the Partial RIA stage they may be able to use the results of consultation to inform the Final RIA. As stated in paragraphs 2.35 and 2.36 above, some departments used information from consultation responses to inform their calculations, though this was not always the case.

2.44 Departments may also wish to consider commissioning research if they do not have sufficient data to inform the preparation of the RIA. If departments decide to do this, they should ensure that the research is clearly designed and targeted to inform the policy making process sufficiently to warrant the costs and time required, in line with the proportionality principle (**Case Study 12**).

CASE STUDY 12

Use of research - Internet Filing of tax information

This regulation changed tax law to allow submission of tax information by electronic means, where previously the law required a signature on paper. It also introduced a one off discount of £50 to encourage use of the new electronic service. This was a purely voluntary regulation, since there is currently no obligation to use the internet service; individual taxpayers and businesses can still submit tax information on paper if they choose.

The Department did not include quantified estimates of likely benefits of this regulation in the RIA because of the difficulty of estimating take up of a voluntary service. Nevertheless the Department commissioned qualitative research to try to assess likely take up, and

this informed calculations of possible costs to the Department in providing discounts and processing the expected take up.

It seems unlikely that further research to try to estimate quantified benefits would have justified the cost, given that using the service is voluntary and that the decision to allow internet tax filing had already been taken when the RIA was produced. As a result, such research would not have added to the policy decision making process.

¹¹ The Patent Office did not try to estimate monetary costs or benefits for the Copyright etc and Trade Marks Bill as it acknowledged that there were insufficient data on which to base such estimates, though it did present an industry figure for the level of annual Intellectual Property crime to illustrate industry's view of the scale of the problem.

Acknowledged uncertainties tended not to be reflected in figures for costs and benefits

- 2.45 All RIAs aim to assess the impacts of new regulations on the behaviour of those affected. As a result, all assessments are subject to uncertainty, particularly if there are deficiencies in the information available to departments. Treasury and Cabinet Office Guidance states clearly that departments should examine the impact of uncertainty on their quantifications of costs and benefits by presenting ranges of costs and benefits, rather than single point estimates¹². Departments should also examine the impacts of changes in key calculation assumptions by undertaking sensitivity tests.
- 2.46 Nine RIAs included quantified estimates of costs and/or benefits, and all presented single point estimates - such as "£52.5 million" - for all or some of the quantified estimates, rather than ranges to reflect uncertainty - such as "between £50 and £55 million", despite having rightly acknowledged deficiencies in their information. Presenting single point estimates does not follow available guidance and could be seen as an example of spurious accuracy (Case Study 13).

CASE STUDY 13

Use of cost ranges - Railways (Interoperability) (High Speed) RIA

The regulation aims to transpose EC Directive 96/48/EC, which proposes that Member States develop their high speed rail networks in a way that allows the operation of trains across different networks.

The RIA acknowledged that there were great uncertainties in estimating likely costs and benefits of the regulations to the UK. Despite this the RIA presented the costs and benefits of the regulation as single point estimates, rather than ranges and there was no evidence of any sensitivity tests. The Department used figures from a model which was

being used to inform estimates across the European Union in order that UK Ministers would be presented with the same figures that were being presented to the rest of Europe.

Other cost information was available to the Department so it could have presented alternatives to illustrate uncertainties in costs of implementation to the UK. For example, the Strategic Rail Authority (SRA) had been critical of the cost estimates in the draft RIA in its response to consultation. Given that the SRA is one of the bodies that will be responsible for implementing the regulations, more use could have been made of its response in presenting possible costs, but the Department chose not to pursue this.

¹² *Appraisal and Evaluation in Central Government (The Green Book), HM Treasury: Better Policy Making: A Guide to Regulatory Impact Assessment, Cabinet Office.*

2.47 Three of the nine presented ranges for elements of their cost estimates in areas of particular uncertainty, but this could imply more certainty in the other figures which were presented as single points than the information and calculations can support (including [Case Study 14](#)).

2.48 Further, only two departments undertook sensitivity tests on key assumptions, and only one of those presented the results in the Final RIA, the Meat HACCP Regulations ([Case Study 15](#)).

Costs and benefits were not always estimated for a typical or small business

2.49 Seven of the ten RIAs provided quantified estimates of costs to a typical business. All discussed the costs to small businesses but concluded that there would be no disproportionate costs or no costs at all to small businesses. Of the three that did not calculate costs to typical businesses two were expected to impose no obligations on legitimate businesses. The third included estimated costs to the industry as a whole, but concluded it was inappropriate to estimate costs for a typical or small business.

2.50 Only three RIAs included quantified estimates of benefits at all and only one of these estimated benefits to business. One other estimated benefits to government in terms of reduced costs and the other estimated benefits to the UK as a whole.

CASE STUDY 14

Use of cost ranges - Proceeds of Crime Bill

The RIA proposed a total of 11 measures to improve the rate of recovery of illegally obtained assets, including new obligations on business to disclose on possible money laundering.

The Department estimated compliance costs for typical businesses of each of the 11 measures using reasonable methodologies, largely based on evidence from existing experience in the area, gained through consultation with appropriate bodies.

The Department presented a range of possible compliance costs for the extension of the reporting requirements for money laundering, based on an assumption that the extension may increase the annual number of reports by 25 per cent to 50 per cent.

This range fed through the cost calculations to give an estimated total compliance cost for this proposal of between £937,500 and £1,875,000 a year. This range was added on to the single point estimates for the other proposals to give a total range of costs between £53,346,250 to £54,283,750.

The range illustrates the uncertainty over the increase in the number of reports. That said, the RIA would have benefited from:

- providing ranges of costs for the other proposals; and
- rounding the numbers presented to avoid spurious accuracy. For example the range could have been rounded to "between £53 and £54 million" to illustrate further that the estimates were uncertain.

CASE STUDY 15

Sensitivity tests - Meat HACCP

The Food Standards Agency understood that the likely impact on the future number of cases of food poisoning due to the introduction of the regulations was highly uncertain. It had chosen to estimate potential benefits of a fall in cases by estimating the reduction in total costs. It used a monetised estimate of the costs of each case of Indigenous Foodborne Disease (IFD) including the costs of sickness absence from work, and the costs of pain, grief and suffering from illness and death.

By using information on the existing number of cases the Agency calculated an estimate of the total costs of these cases. The Agency then estimated the impact on these costs of reductions in the numbers of cases of IFD caused by the introduction of the new measures.

In order to reflect uncertainty, the Agency estimated the benefits (fall in total costs) of 10, 5, 1, 0.75 and 0.5 per cent reductions in the number of cases. These different figures illustrated the sensitivity of the cost estimates to changes in the key variable of the number of IFD cases.

The Agency then compared these estimated "savings" to the estimated costs of introducing the regulations to see at what level the quantified benefits ceased to justify the costs.

Difficulty of estimating benefits

- 2.51 Although seven of the ten RIAs presented quantified cost estimates for at least some of the expected impacts, only three presented monetary estimates of benefits, and these were the only RIAs that contained any quantified benefit estimates. As the guidance recognises, benefits of regulation are often more difficult to quantify than costs, particularly in monetary terms, and are often highly subjective.
- 2.52 The expected benefits of many regulations provide changes or outputs for which no market exists, and this makes quantification difficult. Many costs tend to be easier to estimate in money terms; for example, a business will know how much certain activities cost, so will have an idea how much these costs may change as a result of changes due to new regulations.
- 2.53 A number of methodologies exist for estimating benefits for which there is no market. Some departments may not have made best use of embedded knowledge within the department to address information deficiencies and attempt to estimate benefits for the RIA. Departments should consult experts, such as economists, who may be able to provide a methodology to provide estimates of benefits. Such estimates should, of course, reflect appropriate uncertainties. This could be in the form of ranges or sensitivity tests.
- 2.54 The Food Standards Agency consulted its economist in preparing the Meat HACCP RIA. The resulting RIA presented estimated benefits in terms of reduced costs of food poisoning cases, as outlined in Case Study 15 above. The estimates reflected uncertainties by including results of a number of sensitivity tests. These benefits were then compared to the estimated costs to see how

much of a reduction in food poisoning cases was required to justify the costs. This was the only example in our sample of a quantified estimate of non-marketed benefits which reflected underlying uncertainties.

2.55 Difficulties in estimating benefits meant that most RIAs did not include a comparison of the expected costs and benefits. Such a comparison can be used to demonstrate that the benefits of the regulation justify the costs. Quantification is not always practical and it is important that departments present descriptions of the type of benefit expected in order that decision makers and other readers can compare wider, qualitative costs and benefits. All RIAs in the sample provided a discussion of the expected costs and benefits, though the clarity and detail of these discussions varied. The reader should be better able to judge the relative costs and benefits if the RIA presents these as clearly as possible.

2.56 One RIA, the Enterprise Bill, had very clear summary tables of the expected costs and benefits, both in quantitative and qualitative terms, and where it expected the impacts to fall. This RIA also discussed a range of options and we found that presenting the costs and benefits of all options in the table greatly increased transparency of the Department's decision making process by enabling the reader to make comparisons. **Case Study 16** shows an excerpt from the summary tables for the Enterprise Bill RIA for Competition Reforms.

Few RIAs discussed the risks to the regulation itself

2.57 There are project planning or administrative risks to the implementation of the regulation that departments should consider as part of the project planning process, though the guidance does not require this in the RIA. An example of this type of risk applies to regulations implementing EC regulations, of which there were four in our sample, where there is a risk that the UK regulation may fail to implement the EC regulation by the required date, which could lead to infraction proceedings against the UK.

Departments only examined 100 per cent compliance

2.58 No department assessed the impacts of non-compliance with the regulations. This means they did not assess the impacts of different levels or patterns of compliance. If compliance is less than 100 per cent, which is likely, the department's assessment of costs and benefits in the RIA will be wrong, which may mean that the benefits of the regulation no longer justify the costs. If the department does not consider different patterns of compliance in targeting a regulation then it may have no impact.

2.59 Only one RIA included an assumption of non-compliance, though this was only for the first year of the regulations, after which it assumed full compliance. We understand that assessing less than 100 per cent compliance may be seen as implying that a department expects the regulation to fail to achieve objectives. Nevertheless, departments should assess the impacts of different levels of compliance through sensitivity testing and include a summary of the results in the RIA.

CASE STUDY 16

Presentation of costs and benefits summary - Excerpt from Enterprise Bill, Competition Reforms RIA

The Enterprise Competition Reforms aim to improve the competition regime in the UK by introducing reforms in five areas: Merger policy; Market investigations; Criminal sanctions; Disqualification of directors; and Claims for damages. The RIA examined the costs and benefits of a number of options for each area. At the end of the discussion, the RIA presented a useful summary table of the costs and benefits of each option. The table below shows an excerpt, outlining the costs and benefits of the options examined in the area of Market investigations.

Market investigations

Option	Costs	Benefits
1 (Do Nothing)	<p>Costs for business and Government remain the same.</p> <p>Lack of competition focus leading to potentially less open and less competitive markets.</p> <p>Uncertainty for business due to public interest test and Ministerial role.</p>	<p>Tried and tested monopoly regime which is generally effective.</p> <p>No additional monetary benefits to the public or business.</p>
2 (Remove monopoly regime)	<p>Inability to address the non-collusive parallel behaviour or structural problems leading to uncompetitive markets.</p> <p>Less open and less competitive markets leading to significant damage to the economy.</p>	<p>Businesses save the costs associated with a monopoly investigation (average cost for a company of £1 million)</p> <p>Government saves the costs of monopoly control (average of £1,500,000).</p>
3(a) (New markets regime - decisions by independent competition authorities)	<p>Broadly cost neutral for companies. Increased costs for OFT (approximately £100,000 per annum).</p> <p>Increased costs for CC arising from their enhanced role in determining remedies and more open and transparent procedures (approximately £700,000 per inquiry).</p>	<p>Reduction in uncertainty for business through removal of Ministerial involvement and increase in transparency of competition authorities' procedures.</p> <p>Reduction in DTI costs through removal of Ministerial involvement (approximately £400,000 per annum).</p>
3(b) (New markets regime - competition test rather than public interest test)	<p>Some increased costs for law firms, although these are expected to be small.</p>	<p>More competition focused regime will ensure the maintenance of open and competitive markets which act as a stimulus for innovation, efficiency, wider choice and lower prices for consumers.</p>
3(c) (New markets regime - decisions by independent competition authorities and competition test rather than public interest test)	<p>Broadly cost neutral for companies. Increased costs for OFT (approximately £100,000 per annum).</p> <p>Increased costs for CC arising from their enhanced role in determining remedies and more open and transparent procedures (approximately £700,000 per inquiry).</p>	<p>Reduction in uncertainty for business through removal of Ministerial involvement and increase in transparency of competition authorities' procedures.</p> <p>Reduction in DTI costs through removal of Ministerial involvement (approximately £400,000 per annum).</p>

- 2.60 Some departments aimed to increase compliance by publishing guidance after the regulations had been introduced, though this was often not discussed in the RIA. Making clear guidance available to those affected by a regulation is a good way to reduce the likelihood of unintentional non-compliance. This is particularly important where regulations leave some scope for interpretation (for example [Case Study 17](#)). The Better Regulation Task Force recommended in 2000 that explanatory guidance should be issued a minimum of three months before regulations are due to come into force, and this was agreed by government¹³. Wherever possible, departments should plan to follow this as it will allow businesses and others to plan for the proposed changes and reduce unintentional non-compliance.

CASE STUDY 17

Increasing compliance through guidance - Passenger Car (Fuel Consumption and CO2 Emissions Information) RIA

This regulation implemented an EC Directive requiring the availability of information on Carbon Dioxide (CO2) emissions from new passenger cars to be improved. This involved displaying labels on each new car, a poster listing CO2 emissions at point of sale, including CO2 information in promotional literature, and producing a guide to CO2 emissions on sale in the UK.

Responses to consultation expressed some uncertainty over the meaning of certain aspects of the regulations - for example, the relative prominence that would be required for CO2 information, compared with other information such as manufacturer's name.

As a result, following implementation of the regulations, the Department issued guidance clarifying the terms of the regulation to help ensure that manufacturers and vehicle sellers did not breach the requirements and incur sanctions.

Enforcement and sanctions

- 2.61 Regulations are often introduced to encourage changes in behaviour to achieve the Government's policy objectives and where this is the case departments should consider how the regulation will be enforced to ensure compliance. RIAs allow departments to present how they have considered different enforcement regimes and outline the sanctions that would apply in the event of non-compliance.
- 2.62 Different policy options may require different enforcement regimes. These regimes in turn may have different cost implications to be taken into account when departments are comparing options. For example, an option involving a voluntary industry code of conduct may be enforced by an industry body with no costs to the public sector, whereas introducing legislation may involve public sector costs through local authorities enforcing the regulation, including the costs of taking non-compliant organisations through the courts system to face appropriate sanctions. It may be expected though that the legislation option would yield higher compliance than the voluntary code of conduct, but government imposed regulation may also impose unintended costs or unnecessarily intrusive enforcement. The department must therefore consider a series of trade-offs.

¹³ Better Regulation Task Force report: "Helping Small Firms Cope With Regulation - Exemptions and Other Approaches", April 2000.

Only half of the RIAs discussed enforcement and sanctions at all

- 2.63 Only half of the RIAs in the sample discussed enforcement and sanctions at all, and only one, the Enterprise Bill, provided estimates of the likely costs of enforcement of all options considered. Other discussions of enforcement tended to be fairly cursory and treated in isolation, rather than relating back to the issue of compliance, costs and consideration of options. In some cases this was because departments had not considered a range of options, as discussed earlier.
- 2.64 Six RIAs in the sample included a section entitled "Enforcement, Sanctions, Monitoring and Review", but only three of these discussed enforcement in that section. "Enforcement and Sanctions" and "Monitoring and Evaluation" involve different issues and RIAs would benefit from separate discussions of each of the two areas. This would enable departments to outline in clearer terms their procedures under each section and better identify the costs associated with each.

Monitoring and evaluation procedures

- 2.65 Monitoring and evaluation are important parts of any effective policy making framework. RIAs benefit from a brief outline of how the regulation and its impacts are to be measured and monitored to assess the level of compliance. In addition, transparency will be increased if RIAs discuss future reviews and evaluations to judge the extent to which the regulation is achieving its clearly defined objectives, and how and when information from monitoring and evaluation will be used to inform future policy making. The timing of reviews of regulations is important, allowing enough time for the regulation to take effect, whilst being soon enough for the department to identify whether there are problems which need to be addressed to achieve its objectives.
- 2.66 The discussions of the procedures need not be lengthy, as it may be the case that the details have not been fully worked out at the time the RIA is prepared. But the discussions will allow departments to demonstrate that the procedures are planned or are in place.

RIAs did not contain much information on how regulations were to be monitored and evaluated

- 2.67 All but one of the RIAs included a discussion of how the regulation was to be monitored, but these discussions were often very brief and vague. Of the nine RIAs which discussed monitoring, eight stated that monitoring would be undertaken by a different organisation. These RIAs would have benefited from providing some information on these organisations, such as a brief description and reference to where the reader could find out more information about them.
- 2.68 Only four RIAs in the sample stated that there would be a formal review to evaluate the success of the regulation, and only two of these specified timeframes for when reviews would be undertaken. Other RIAs would have benefited from more explicit statements about formal evaluations and reviews. Although the details may not have been worked out at the time the RIA was prepared, departments should still have in place the mechanism or plans for evaluation and the process would be more transparent if the RIAs were clearer on this. [Case Study 18](#) gives the Department for Transport's monitoring and evaluation statement for the Railways (Interoperability) (High Speed) RIA.

CASE STUDY 18

Monitoring and evaluation - Railways (Interoperability) (High Speed) RIA

This RIA had a brief, clear statement about Monitoring and Evaluation arrangements:

"Once in place, compliance with the legislation will be monitored by the Health and Safety Executive.

These Regulations will be reviewed in conjunction with other stakeholders when Regulations to implement Directive 2001/16/EC on the interoperability of the conventional trans-European rail system are prepared. Any revision would need to be consistent with continued full implementation of

this Directive. The lessons learnt in the assessment of the impact of these regulations will inform the UK's input to the determination of Technical Specifications for Interoperability for the Directive on conventional rail services and negotiations over the further European Commission proposal."

We found that the statement makes clear the body that will be responsible for monitoring the regulation. The statement on the evaluation review is also clear. Although the statement does not specify a date for review, it makes clear that this depends on ongoing work on implementing a related regulation, and how the results would be used to inform the Department's work on further Interoperability regulations.

Complex monitoring procedures were sometimes in place but these were not reflected in the RIA

2.69 The lack of information on monitoring procedures in the RIA did not always mean that departments had not developed detailed plans. In two cases in particular it was clear that the departments and the bodies responsible for monitoring the regulations had in place very well developed procedures to ensure the regulations would be properly monitored. In these cases the RIAs would have benefited from providing some more information or clearly referring readers to where they could find information on the procedures.

2.70 For example, the Department of Trade and Industry and the Office of Gas and Electricity Markets (Ofgem) had clearly undertaken a great deal of work to put in place complex procedures to ensure that compliance with the Renewables Obligation Order, 2002 would be properly monitored. This was not reflected in the RIA which would have benefited from giving more details of where the reader could find information on the procedures, perhaps by including a hyperlink to web addresses for the relevant Ofgem webpages. This would have increased the transparency of the process and helped demonstrate to the reader that the relevant bodies had thorough procedures in place for a regulation that will affect all electricity consumers.

- 1 To evaluate the quality and thoroughness of a sample of ten Regulatory Impact Assessments and draw learning points we used the following sources of evidence.
- 2 We constructed a framework of questions to guide our fieldwork, based on the findings of our 2001 report Better Regulation: Making Good Use of Regulatory Impact Assessments (HC329, Session 2001-02). The questions covered six main areas of the RIA process from Initial RIA through to the Final RIA signed off by the Minister and we derived a series of sub-questions as outlined below.

Framework of Questions

Was the preferred regulation chosen by appropriate analysis/process?

- 1 Was the RIA process started early enough?
 - Did the department have clear objectives for the regulation?
 - Did the department allow a realistic timetable for the RIA process?
 - Did the department consider the risks?
 - Did the RIA consider a range of options?
 - Were alternatives to regulation considered?
 - Were alternative regulatory tools considered?
- 2 Was consultation effective?
 - Was effective consultation started early in the process?
 - Did the department use appropriate consultation techniques?
 - Did the department explain clearly the impact of the regulation?
 - Did the department consult all interested groups of stakeholders?
 - Did the department consider the impact on small businesses?
 - Were the results of the consultation used well in formulating the regulation?
- 3 Did the RIA assess costs thoroughly?
 - Were the implementation and policy costs on all affected taken into account?
 - Did the department identify all parties on whom costs would fall?
 - Did the department consider the costs to small businesses?
 - Did the department identify all likely costs?
 - Did the department assess the costs of all options?

- 4 Did the RIA assess benefits realistically?
 - Did the department identify all parties who would benefit?
 - Were the benefits realistic and relevant to the regulation?
 - Was the methodology for quantifying/scoring the benefits robust?
 - Did the department assess the benefits of all options?
- 5 Did the RIA realistically assess compliance?
 - Was possible non-compliance factored into the analysis?
 - Did the department assess the existing level of compliance?
 - Were ways of increasing compliance considered?
- 6 Will the regulation be effectively monitored and evaluated?
 - Did the RIA contain procedures for monitoring and evaluating the extent to which the regulation meets its objectives?
- 3 We examined all files in the relevant departments and agencies concerning the RIA process and undertook structured interviews with key staff based on our findings.
- 4 We discussed the study with key bodies concerned with the regulatory process: The Better Regulation Task Force; the Cabinet Office Regulatory Impact Unit; and the Small Business Service.
- 5 We set up an Expert Panel with whom we consulted at key stages of the study. They provided us with informed comment on the scope of the study and the framework methodology, the findings of our detailed evaluations, and the draft of the Compendium Report. The panel had the following members:

Professor Robert Baldwin

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

John Howell

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

Michael Spackman

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

Fiammetta Gordon, Moira Jones and Richard Clifton

Regulation experts at the Health and Safety Executive.

We selected our sample of ten RIAs from the total of over 200 produced in the light of suggestions in the Better Regulation Task Force 2001/2002 Annual Report and our own selection criteria.

- **Final RIA** - we only selected Final RIAs that had been signed off by the Minister. This was to ensure there was no risk of our becoming involved in the policy decision making process.
- **Timing** - We aimed for RIAs that had been signed off by the Minister following the publication of our report: Better Regulation: Making Good Use Of Regulatory Impact Assessments, November 2001, although we applied this flexibly so were able to include some of the Task Force's suggested RIAs from before this time.
- **Materiality** - We considered whether the RIA process itself had been significant in terms of departmental resources, such as expert advice or time.
- **Complexity** - We considered whether the process featured any particularly difficult methodological issues, especially in the cost-benefit analysis field.
- **Impact** - We considered whether the RIA demands examination on the basis of its impact on society (or more specifically on consumers or business).

We evaluated seven of the 11 RIAs recommended by the Task Force: their suggested good practice example, and six of the ten they suggested did not meet appropriate standards.

3

APPENDIX SUMMARY OF RIAs IN SAMPLE

Department/ Agency	RIA Title	Purpose of Regulatory Proposal
Department of Trade and Industry	The Enterprise Bill, 2002 ¹⁴	
	Insolvency Provisions	The provisions reform four areas: individual and company insolvency, the removal of Crown Preference and the insolvency financial regime. The provisions aim to modernise the framework for individual and company insolvency. They encourage sensible risk taking by encouraging those who have failed honestly to try again, while providing a robust and effective remedy against those who abuse their creditors. They aim to facilitate the rescue of viable companies and provide certainty and fairness to creditors and other stakeholders.
	Competition Reforms	The reforms aim to improve competition and contain measures to make merger and market investigations the responsibility of an independent body, rather than the Secretary of State. They introduce criminal sanctions for cartels, increase powers to disqualify directors, and provide for easier claims for compensation for harmed parties resulting from anti-competitive behaviour.
	Consumer Protection	The Government's stated objective is to reinforce a virtuous circle of strong businesses and consumers. The reforms revise elements of the Fair Trading Act 1973 to improve the enforcement regime across the consumer field. The Bill also gives powers to the Office of Fair Trading to approve voluntary codes of practice to protect consumers and remove approval if a code does not prove to be in consumers' interests.
Department of Health	Regulations for all Care Homes (including older people) and national minimum standards for care homes and adult placements, 2001	This introduced new regulations and standards to replace existing regulations covering care homes with a revised and more consistent national framework. The regulations and standards apply to all service providers, whether private or public sector or voluntary. They aim to provide the detailed legislative framework for applying new national standards for all provision and address the deficiencies of the existing system in which inconsistent application of regulations was seen to have failed to protect users adequately from poor quality care.

¹⁴ The Enterprise Bill RIA comprises three separate RIAs for Insolvency provisions; Competition reforms; and Consumer protection, plus one overarching RIA. We evaluated the three separate RIAs but not the overarching document because this simply provided a summary of the other three.

Department/ Agency	RIA Title	Purpose of Regulatory Proposal
Department of Trade and Industry/ Patent Office	The Copyright etc. and Trade Marks (Offences and Enforcements) Bill, 2001	The regulation aims to remove some discrepancies between the criminal provisions in different intellectual property laws by harmonising and rationalising laws on the basis of the best current practice, seen as the Trade Marks law. It aims to introduce more consistency and thereby improve the effectiveness of enforcement resulting from existing enforcement effort.
Inland Revenue	Internet filing of Tax Information, 2001	The regulation changes the law to allow individuals and businesses to submit income tax returns by electronic means, where previous law required a signature on paper. It also introduces a one-off discount to encourage take up of the electronic service. There is no obligation on individuals or businesses to use the service and submissions can still be made on paper if preferred.
Home Office	Proceeds of Crime Bill, 2001	The regulation introduces measures to improve the rate of recovery of illegally obtained assets, including new obligations on business to disclose on possible money laundering. The Bill aims to enable the law enforcement authorities and the proposed Assets Recovery Agency (ARA) to investigate effectively the origin of suspected criminal proceeds, and freeze assets pending criminal or civil court proceedings and eventually confiscate or recover those assets. Where criminal conduct is suspected, the ARA would ensure that tax and other Inland Revenue obligations are met.
Department for Transport	Passenger Car (Fuel Consumption and CO2 Emissions Information) Regulations, 2001	The regulation aims to provide potential purchasers of new passenger cars with the relevant information on fuel consumption and carbon dioxide (CO2) emissions in an effort to influence their choice towards more fuel efficient vehicles. This implements EC Directive 1999/94/EC which is part of the EC's strategy to reduce average CO2 emissions from new passenger cars to 120 grammes per kilometre by 2010.
Department of the Environment, Food and Rural Affairs	The Second Daughter Directive on limit values for benzene and carbon monoxide in ambient air, 2002	The regulation aims to transpose EC Directive 2000/69/EC into UK national legislation. The Directive is one of a number of air quality directives intending to achieve and maintain a high degree of protection for public health and the environment against the adverse effects of ambient air pollution.

Department Agency	RIA Title	Purpose of Regulatory Proposal
Department for Transport	Railways (Interoperability) (High Speed) Regulations, 2002	The regulation aims to transpose EC Directive 96/48/EC, which proposes that Member States develop their high speed rail networks, in terms of infrastructure, rolling stock and operationally in a way that allows the operation of trains across different networks. It only applies to high speed lines on the trans-European network (TEN) and does not affect freight vehicles. A similar Directive affecting the conventional rail networks came into force in April 2001 (2001/16/EC) and is due to be transposed in April 2003, but we only considered the RIA for the high speed interoperability proposals.
Food Standards Agency	Meat (Hazard Analysis and Critical Control Points) (England) Regulations, 2002	The legislation amends meat hygiene regulations to implement EC Decision 2001/471/EC. It requires the mandatory use of Hazard Analysis and Critical Control Points (HACCP) principles in licensed red meat and poultry meat plants in England. It sets out standard procedures for carrying out certain microbiological tests. HACCP is an internationally accepted management system that offers consumers the best guarantee of safe production of food.
Department of Trade and Industry	The Renewables Obligation Order, 2002	The regulation intends to encourage the uptake of renewable power generation sources by the electricity supply industry by developing the market for electricity from renewable sources with the aim of achieving 10 per cent by 2010. It requires all licensed electricity suppliers in England and Wales to supply a specific proportion of their electricity from renewables, and provides a number of paths to compliance. Individual suppliers will be responsible for demonstrating compliance to the Office of Gas and Electricity Market through a system of Renewables Obligation Certificates. Yearly targets have been set up to the 2010/2011 period.