



National Audit Office

# Evaluation of Regulatory Impact Assessments 2005-06

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL | HC 1305 Session 2005-2006 | 28 June 2006

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National Audit Office

# Evaluation of Regulatory Impact Assessments 2005-06

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## EXECUTIVE SUMMARY



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

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

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

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

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

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

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

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

## Our findings

### Overall

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

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

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

## The use of RIAs

**8** Departments should use impact assessment to appraise the need for Government intervention which may require regulations or legislative change. In many cases, however, RIAs have not been used to question the need for intervention<sup>4</sup>. Our analysis showed that the RIA process was often ineffective if started late, the policy area was politically sensitive or regulations needed to be introduced quickly. Departments should thus ensure that policy officials are aware of the circumstances in which an RIA is required but also seek to challenge the need for regulation earlier in the policy-making process. One notable example of 'early challenge' came from the DTI, which has established joint cross-Whitehall industry groups in five key industry sectors<sup>5</sup> to provide a robust response to forthcoming policy proposals.

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

## The quality of RIAs

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

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

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

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

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

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

<sup>5</sup> The five sectors are retail, automotive, bioscience, chemicals and construction.

## 2 National Audit Office analysis of RIAs

Criteria	Key tests	Findings
Scope and purpose	State objectives clearly Analyse the do-nothing option Consider non-regulatory option	2 7 5 The omission of a 'do-nothing' option and the failure to consider non-regulatory options were the most common omissions.
Consultation	Start consultation early Use appropriate techniques Include all relevant stakeholder groups	0 3 10 Consistently a strength in RIAs. We found evidence of novel and innovative approaches.
Costs and benefits	Quantify costs and benefits where possible Use a robust methodology Test sensitivity	3 5 6 Quality of assessment was mixed. Weaker RIAs did not provide sufficient analysis or did not make appropriate use of sensitivity analysis.
Compliance	Consider risk of non-compliance Measure existing compliance Consider how to improve compliance	4 6 2 Departments too readily assumed full compliance with insufficient analysis of the implications of non-compliance.
Implementation/ monitoring/evaluation	Prepare an implementation plan Establish procedure for monitoring and evaluating how regulation will meet its objectives	3 5 5 There is a need to look beyond the implementation of the regulation. This was too often neglected or given insufficient attention.
Competition	Complete a competition assessment Complete OFT's competition filter Consult OFT, as required	1 7 5 Departments are completing the necessary test but this assessment is often cursory. There is scope for more timely liaison with OFT.

Source: National Audit Office

### NOTES

1 A 'green' assessment indicates good quality analysis; 'yellow' indicates some good assessment but room for improvement; and 'red' indicates some major defects in the analysis.

2 The results are drawn from our in-depth analysis of a sample of 14 RIAs (see Appendix 1).

3 Numbers may differ as tests are not always applicable.

### 3 Analysis of RIA results by Department

Number of assessments

30

25

20

15

10

5

0

Home Office

Transport

DCMS

DTI

Source: National Audit Office

## NOTES

1 The results include our in-depth analysis of 14 RIAs and were supplemented with further assessments of an additional 14 RIAs to test whether the main sample results were representative of departmental performance.

2 Each RIA is assessed against six key criteria (set out in Figure 2) and this table presents the results of the total number of individual assessments against these criteria. For example, four RIAs would equal 24 assessments.

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

### Departmental attempts to embed impact assessment

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

- **on the importance of senior management commitment:**

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

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

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

## Recommendations

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

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

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

Recommendations	Case illustration
For Departments	
1 Give greater emphasis and effort to the ex-post evaluation of regulation to ensure that it is fulfilling its original objectives.	Evaluations are not yet widespread or systematic. We support the emerging departmental efforts and encourage other departments to follow suit. DTI has conducted a review of current RIA guidance and processes, including post-implementation review, to identify ways in which it could be improved. DfT has commissioned an evaluation of one piece of legislation.
2 Integrate RIAs into the decision-making process.	All departments should start RIAs early and use them to project manage the decision-making process. For example, the ability of the Home Office's Better Regulation Team to challenge RIAs was often hampered, as policies were already well advanced.
3 Consider the range of assessments necessary to appraise fully the policy options and then present analysis clearly to support the chosen policy option.	The BRE should provide clear guidance on the requirements of RIAs and departments should seek to promote clarity of understanding to policy makers. Better Regulation teams should engage early in the process to ensure that assessments are well targeted and then later in the process to provide advice on the robustness of evidence and presentation of results.
4 Ensure departments have the capability and authority to promote the use of impact assessment, and to challenge policy teams on the need for regulation and the quality of analysis.	The revised RIA process should allow departments to take an 'early look' at the range of assessments required. For example, this would set out whether Sustainable Development issues would form a detailed part of the assessment <sup>6</sup> .
5 Provide appropriate expertise when undertaking impact assessment.	The DTI has been proactive in promoting impact assessment, but DCMS, Transport and Home Office should consider how to renew efforts to promote the services offered and the importance of impact assessment.
	The strength of the quality control function varies. All departments should ensure that they have the capability to provide policy teams with appropriate technical support.
	The DTI and DCMS have both established formal Ministerial Challenge Panels which challenge regulatory proposals at an early stage. Transport Ministers devoted a significant part of their Autumn 2005 'away-day' to discussing Better Regulation.
	DTI has used its policy pool to embed additional expertise into 'standing' policy teams so that value can be added; the Home Office had economic expertise on its Better Regulation team; whilst DCMS and Transport relied more on external challenge. Departments should raise awareness of available expertise and ensure early input into impact assessment. Government intervention leads to changes in markets and departments therefore need to engage with specialists who can help to analyse these impacts. For example, the OFT can provide an insight into competition issues.
6 Provide timely and targeted support for policy makers to strengthen their analytical and decision making skills.	Training should be enhanced in all departments. DTI provides the most comprehensive training and is working to identify teams that need training. Transport should consider the need for more structured training; DCMS should consider how their support could be enhanced; and Home Office should adopt a more co-ordinated departmental approach. Departments should also consider sending staff to training courses offered by other departments.
	Only the DTI provides a comprehensive better regulation intranet site for policy officials. Departmental intranet sites at Transport, Home Office and DCMS would be enhanced by concentrating more on providing value-added information and practical advice.

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

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

## PART ONE

# The evolving Better Regulation agenda

**1.1** This Part sets out the role of Regulatory Impact Assessments (RIAs) and considers the implications of the Government's aim of less and more proportionate regulation. We found that:

- RIAs have grown in scope to provide a comprehensive assessment of proposals for legislative change;
- RIAs are often ineffective if they are not approached the right way, are started late, or policy has to be introduced quickly;
- Government initiatives to reduce the burden of regulation have increased the workload of departments and expanded the role of RIAs; and
- Ex-post evaluation of new regulations is largely neglected, as departmental evaluations are either embryonic or isolated.

## The role and use of Regulatory Impact Assessments

**1.2** RIAs have been used since 1998 and around 200 are now produced each year. The Government considers RIAs to be a key tool in delivering better regulation and supporting its aim of regulating only when necessary. RIAs allow policy makers to analyse the likely impacts – economic, social and environmental – of a policy change, and the options for implementing it. Regulatory options should also meet the principles of good regulation set out by the Better Regulation Commission<sup>7</sup>.

**1.3** The Better Regulation Executive (BRE) guidance states that they must be completed for all policy changes, whether European or domestic, which could affect the public or private sectors, charities, the voluntary sector or small businesses. The RIA should be proportionate to the likely impact of the proposal. They are not required for proposals that impose no costs or savings, or negligible costs or savings on these sectors. They are also not required for increases in statutory fees by a predetermined formula such as the rate of inflation. RIAs are required for any form of regulation, including formal legislation, codes of practice or information campaigns.

## The expanding role of RIAs

**1.4** The RIA process initially consisted of a cost-benefit analysis of the regulatory proposal and a requirement to analyse the specific impacts on small business and competition. It has since expanded to include a range of other tests, for example, Health Impact Assessment, Rural Proofing and Sustainable Development ([Figure 4 overleaf](#)). The inclusion of these tests has enabled policy makers to undertake a full analysis of likely impacts – social, economic and environmental – of a policy change, and the options for implementing it.

<sup>7</sup> The five principles of good regulation are: proportionate, accountable, consistent, transparent and targeted.

**4****The expanded RIA process**

<b>Legal Aid Impact Assessment</b>	Policy makers must now consider the impact the policy objective and proposal will have on the workload of the courts or the Legal Aid Fund.
<b>Health Impact Assessment</b>	The Government White Paper <i>Choosing Health – Making Healthy Choices Easier, 2004</i> , gave a commitment that major new regulatory measures should be assessed for their impact on health.
<b>Rural Proofing</b>	The Rural White Paper 2000 set out the Government's commitment to rural areas and made 'rural proofing' a requirement of the policy development process. Policy makers must consider the impact the policy objective and proposals will have on rural areas.
<b>Race Equality Impact Assessments</b>	The Race Relations (Amendment) Act 2000 placed a duty on public authorities, including Government departments, to have arrangements in place to assess and consult on the likely impact of its proposed policies on the promotion of race equality.
<b>Sustainable Development</b>	The Government's 2005 Sustainable Development Strategy highlighted the role that RIAs can play in appraising policies for sustainable development. In April 2004 the RIA process subsumed a sustainability policy appraisal tool – the Integrated Policy Appraisal (IPA) – to allow it to take on this role. <b>The NAO has reported separately to the Environmental Audit Committee on how RIAs include Sustainable Development issues.</b>
<b>Other Key Tests</b>	Policy makers need to think about the impact on small businesses, utilising the <b>Small Firms Impact Test</b> . They are also required to assess the impact on competition using the OFT's <b>Competition Filter and Competition Assessment</b> (where the Filter indicates competition issues).

**1.5** We reviewed a sample of RIAs and, as part of this assessment, considered whether the level of analysis undertaken was proportionate to the size of the proposal. In many cases, there was no requirement to perform a detailed analysis of these additional tests but these issues were often not considered with rigour (paragraph 2.21). Our assessment of the consideration of competition issues in RIAs demonstrated the importance of a preliminary assessment which indicates the need for, and triggers, a fuller analysis.

**1.6** The BRE is changing the RIA process with the aim of focusing policy makers' attention on the key issues which need to be addressed and how they are presented. The aim is for policy officials to use the initial RIAs for an 'early look' which will allow them to identify those areas which are important. This could well lead to some of the additional criteria (in Figure 4) being given much less importance within the assessments. The NAO considers that if some of these tests are given insufficient priority there is a risk of alienating certain stakeholders, for example, the small business community. The NAO has recently reported to the Environmental Audit Committee on how well sustainable development issues have been dealt with in the RIA process. The results of this evaluation showed that few of them identified and analysed Sustainable Development to a sufficient level.<sup>8</sup>

**Limitations of the RIA process**

**1.7** RIAs help to identify the costs, benefits and the wider impact of new regulation. They should be used to evaluate all options to identify the most appropriate approach, which may be to avoid formal intervention altogether. Our previous Compendium Reports have shown, however, a number of weaknesses in RIAs that are proving difficult to overcome:

- the failure to identify and consider a full range of genuine options, including non-regulatory options;
- the omission of quantified estimates of costs and benefits;
- the reluctance to assess the likelihood of less than full compliance with the regulations, which could lead to benefits being overstated; and
- in many cases, the RIA process was not used to identify the most appropriate methods of monitoring and evaluating the proposed regulations.

**1.8** Our evaluations in the last two years have led us to identify three main types of RIA (**Figure 5**). These range from 'pro-forma' RIAs which have no impact on policy and are prepared because they are mandatory, to 'integrated' RIAs which fulfil their two main roles: a communication tool; and to inform and challenge decision-making.

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

**5**

## The National Audit Office's classification of Regulatory Impact Assessments

<b>Pro-forma</b>	These RIAs have no impact on policy development and are produced merely because there is an obligation on departments to do so. They may be started after the decision has been made. This can lead to poor quality RIAs as they may be inadequately resourced or produced at the last minute.
<b>Informative</b>	These have limited impact on policy development. They are not integrated into the policy-making process, possibly because they are started too late. Although the RIA will have only limited relevance, a department can still produce quality analysis that outlines the expected impacts, and is, therefore, a useful communication tool.
<b>Integrated</b>	These RIAs inform and challenge policy development; and communicate decisions. They will have been started early and be properly resourced, which allows better gathering of evidence and analysis. In these cases, the RIA can help shape policy decisions and communicate reasons for the decision to regulate in the chosen way.

Source: National Audit Office

**1.9** Our analysis has shown that there are a number of factors which can restrict the influence of RIAs on the policy-making process:

- policy makers sometimes see the RIA as a 'stand-alone' document that has to be produced, rather than an integral element of the decision-making process. In such cases, RIAs are often started late, leading to 'pro-forma' RIAs. If used correctly, impact assessment should inform the policy decision and the final RIA output should communicate relevant analysis;
- when regulations need to be introduced quickly, and Ministers have to make a rapid decision, it may not be possible to follow the RIA process fully. This was most likely to occur in politically sensitive areas, such as national security matters; and
- some RIAs are produced after decisions have already been made. In such cases, although the RIA cannot influence policy options, it can still serve a useful role in communicating the decision and explaining the likely effects.

**1.10** Our assessment of a sample of RIAs demonstrated that some serve, at best, an informative role and in some cases appear not to have influenced the decision at all, or may not even have been required. For example, the National Minimum Wage RIA presented a decision that had already been taken and the RIA for Motor Vehicles (Tests) (Amendment) Regulations 2004<sup>9</sup> presented a decision to increase fees in line with inflation.

## The expanding Better Regulation agenda

**1.11** In 2005, the publication of two reports, 'Less is More'<sup>10</sup> and 'The Hampton Report'<sup>11</sup> made recommendations aimed at reducing the burden of regulation. The Government responded positively and these reports are at the core of the drive to reduce the burdens placed on businesses and other organisations. This will be achieved by reducing the cost of complying with existing regulations, challenging the need for new regulations and re-assessing how regulations will be enforced. **Figure 6 overleaf** illustrates the Government initiatives to challenge the need for new regulation, using RIAs, and reduce the burden of existing regulations.

### The Administrative Burdens Reduction Initiative

**1.12** In 2005 the Better Regulation Task Force (now the Better Regulation Commission) reported to the Prime Minister recommending a new approach to reducing the regulatory burden placed on business. The 'Less is More' Report recommended that the Government introduce new procedures to measure and then reduce the administrative burdens<sup>12</sup> faced by businesses and other organisations. The approach is based on a model used in the Netherlands and Denmark. The Report also recommended a 'One in, One out' approach to regulation, to achieve a better balance between the introduction of new regulations and simplifying existing ones, including removing those that are unnecessary.

<sup>9</sup> This was part of our 'due diligence' sample – see Appendix 1.

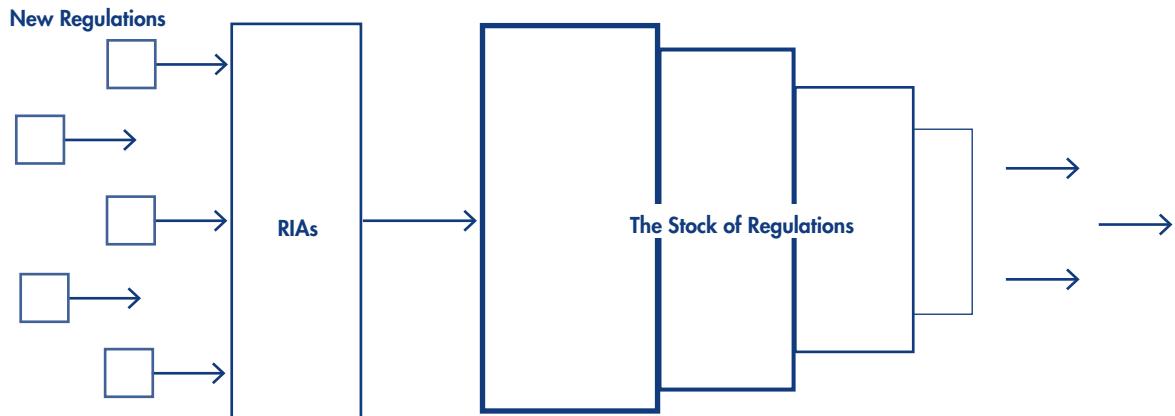
<sup>10</sup> Better Regulation Task Force: Regulation – Less is More. Reducing Burdens, Improving Outcomes. March 2005.

<sup>11</sup> Reducing Administrative Burdens: Effective Inspection and Enforcement, Philip Hampton, March 2005.

<sup>12</sup> Administrative burdens are those activities which must be undertaken in order to comply with regulation; for example, form filling or responding to information requests.

## 6 The Government's approach to reducing the burden of regulation

Restricting the flow regulations RIAs are used to challenge the need for regulation; appraise the impact of policy change and the range of options for implementing it.	Measuring the cost of regulation As part of the Administrative Burdens Reduction exercise, the Government has identified all regulations that impose an administrative burden and is measuring the cost imposed on business, charities and voluntary organisations.	Delivering reductions Departments will be required to set targets to reduce the administrative cost of regulation. To achieve the targets, each department is producing Simplification Plans to identify where reductions in regulatory burdens can be achieved. RIAs will also be used to measure changes to administrative costs as a result of the introduction of new regulation.
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Source: National Audit Office

**1.13** The Government accepted in full the recommendations of the 'Less is More' Report and work has begun to implement the recommendations. The Administrative Burden measurement exercise was started in September 2005 and is being led by the Better Regulation Executive, but it has involved most Government departments. The BRE plans to publish details of the administrative costs of private and voluntary sectors' compliance with regulation, and targets for its reduction, at the Pre-Budget Report in 2006. This exercise involved: firstly, identifying and creating a database of all regulations; secondly, calculating the administrative burden cost of meeting the requirements posed by each regulation; and thirdly, identifying scope for reductions. At the same time, departments are developing Simplification Plans which set out how a net reduction in their administrative burdens will be delivered.

### The Hampton Report

**1.14** The Government also accepted the findings of the Hampton Report on enforcement and inspection. The Report concluded that there is much good practice in UK regulation, but also that the system is complicated and good practice is not uniform. Overlaps in regulators' activities mean there are too many forms, duplicate information requests and multiple inspections imposed on businesses. The Hampton Report proposed establishing the principle of risk assessment throughout the regulatory system, so that the burden of enforcement falls on the highest-risk businesses and least on those with the best records of compliance. The Report also recommended merging 31 national regulators into seven.

## The implications of 'Less is More' and 'Hampton'

**1.15** The initiatives to reduce the burden of regulation have increased the workload faced by departments. Between June 2005 and March 2006, departments engaged in the Administrative Burdens mapping and measurement exercise. At the same time departments have also begun to develop their Simplification Plans and the aim is for these to be published before the pre-Budget Report in late 2006. The need to comply with this timetable has stretched departments' better regulation teams.

**1.16** RIAs are already an important tool in delivering better regulation and the new initiatives will lead departments to make even greater use of RIAs and impact assessment more generally to deliver administrative burdens reductions, simplification programmes and on Hampton recommendations. Policy officials will be able to use impact assessment to:

- challenge the need for regulation and identify the most appropriate regulatory changes;
- ensure that the protections offered by existing regulations are not unduly compromised by proposed simplification plans; and
- design regulations which target resources at areas of greatest risk.

The Better Regulation Executive also intends that RIAs should also be used to measure changes to the administrative costs of regulation – in addition to appraising the costs and benefits of the regulatory options. This will require departments to disseminate the central guidance on the new requirements and provide support to policy officials, in order to ensure accuracy and consistency of measurement.

## The use of ex-post evaluation

**1.17** The assessments in RIAs will represent the policy officials' 'best estimate' of the likely outcomes. Inevitably, the regulation will not always lead to the expected behaviours and/or costs and benefits. Departments have, however, predominantly focused their attention on ex-ante impact assessment, with limited efforts to evaluate the impact of legislation after it came into force. Departments do not, therefore, have sufficient oversight of whether their regulations are delivering the intended impacts and there is no systematic feedback on the robustness of the assumptions used in the RIA.

**1.18** There was wide variation between departments in the extent to which they had considered the need for, and had begun to evaluate, the impact of regulation. The DTI has undertaken the most strategic work ([Figure 7 overleaf](#)) and the level of commitment is increasing. The Department has established a 'Strategy Evaluation Group' to assess the range of its evaluation activities, to help plan and monitor major evaluation exercises, and to identify potential gaps. To date, the focus has been on programme expenditures such as business support initiatives, but this is also seeking to ensure that regulation is examined in greater depth. The Department has commissioned research to consider its approach to evaluating the impact of regulation, and plans to develop this in 2006. The Department is also taking forward the findings of the project on the role of evaluation in regulatory simplification.

**1.19** The DTI has evaluated some of its regulations. It set up the Company Law Review in 1998 which led to the publication of the 'Company Law Reform' White Paper of 2005. It also undertook a review of the Employment Relations Act which led to the Employment Relations Act 2004. The Department for Transport is also evaluating legislation for which it is responsible. For example, it has commissioned a research project to evaluate the impact of the Traffic Management Act. This is new work for the Department and it will seek to evaluate how successful the Act was in achieving its objectives.

## 7

### Ex-post evaluation of regulation – key recommendations in the Department of Trade and Industry

#### Report on Evaluating the Impact of Regulation

Ground assessments in a ROAMEF<sup>1</sup> style policy cycle.  
Key RIA concepts should be clarified – for example, a taxonomy of costs/benefits.  
Segmentation analysis using separate markets, impacted groups.  
Methodology for estimating ex-post cumulative impacts required.  
Build a knowledge base on analytical methods and evidence.

#### Project on Evaluation in Regulatory Simplification

A variety of methods should be used to evaluate the success of regulations, not necessarily just cost benefit analysis.  
Social researchers should be made available to those areas currently without access to them.  
Senior management commitment to ex-post evaluation needs to be secured if the initiative is to be successful.

#### NOTE

1 Rationale, Objectives, Appraisal, Monitoring, Evaluation, Feedback.

**1.20** The use of ex-post evaluation was much less developed in the Home Office and DCMS. The focus of ex-post evaluation within the Home Office has been on individual areas of policy, for example, assessing the success of pilot measures for reducing anti-social behaviour. The DCMS has recently taken steps to strengthen its evaluative work. It has established a Task Force, chaired by its Better Regulation Minister, to review the sectors regulated by the Department. It is looking initially at Gambling and Licensing.

## PART TWO

### The quality of impact assessments

**2.1** This Part sets out the results of our analysis of a sample of RIAs. We assessed the RIAs against our evaluative criteria and found that:

- there has not been a ‘step change’ in the quality of RIAs<sup>13</sup> and assessments were still mixed;
- the main weaknesses centred on three areas: costs and benefits; implementation, monitoring and evaluation; and compliance. Consultation was consistently the strongest element of RIAs, with evidence of novel and innovative approaches; and
- departments need to ensure that RIAs are fit for purpose; start RIAs early and integrate them into the policy process; and make greater use of expertise.

### The use of Regulatory Impact Assessments

**2.2** The NAO’s analysis of RIAs covers several aspects of the process and these are set out in greater depth in Appendix 1:

- **scope and purpose** – consideration of options, clear objectives and rationale for intervention;
- **consultation** – compliance with guidelines and use of novel/innovative techniques;
- **costs and benefits** – depth of quantitative/qualitative analysis and sensitivity testing;
- **compliance** – consideration of the impact of differing rates and the impact on regulatory outcomes;
- **implementation, monitoring and evaluation** – evidence that plans are being developed for successful implementation and thought is given to ex-post evaluation;
- **competition assessment**, including interaction with the OFT.

<sup>13</sup> When compared to assessments in our previous Compendium Reports, the first of which was in 2003-04.

**2.3** We scored each of the key areas in the RIAs using a ‘traffic light’ system (**Figure 8**). This illustrated that there was room for improvement in areas of the RIA process. In many cases, the depth to which costs and benefits, compliance issues and implementation/monitoring/evaluation was analysed was insufficient. The majority of RIAs were rated as ‘red’ or ‘yellow’ in these areas. Our analysis showed that the strongest area was consultation, with policy makers showing flexibility in how they gathered the views of stakeholders.

**2.4** Our analysis shows that there has been no ‘step-change’ in the quality of assessments, in terms of their integration into the policy making process. The majority of RIAs would be classified as ‘informative’ in nature and there is little evidence from our work to suggest that many of the RIAs were integrated into the policy making process. This is supported by the views of policy makers and Better Regulation teams who have concerns about the inconsistent use and benefits of impact assessment, but find them useful for communicating the results of the process.

**2.5** The scope of RIAs should be proportionate to the size of the regulatory proposal being analysed. A minor change in a policy, with little impact, should not require the same level of resources as a major piece of legislation. We found that the scope of the RIAs we reviewed was generally proportionate to the measures being introduced. There is, however, still a tendency for departments to make their RIA documents too lengthy through the inclusion of repetitive material – this was the case with the RIA for the Licensing Act Regulations. We have also seen evidence of departments preparing RIAs where one was not required. For example, the Department for Transport’s RIA for Motor Vehicles (Tests) (Amendment) Regulations 2004, which dealt only with an inflationary rise in fees, was not necessary. These results illustrate inconsistency between policy officials on the need for RIAs and the level of analysis required, despite the existence of BRE guidance. We consider that the RIA guidance provided by the BRE on when to prepare RIAs could be clearer in nature to prevent policy officials from undertaking unnecessary assessments.

## The quality of Regulatory Impact Assessments

### Scope and Purpose of the RIA process

**2.6** Departments can use the RIA process to assess options to achieve their objectives, including alternatives to regulation, and whether a regulatory response is required<sup>14</sup>. To maximise the effectiveness of impact assessment departments should start them early in the policy process, have clearly stated objectives and a clear understanding of the problem requiring intervention. The results of our analysis are shown in **Figure 9**.

**2.7** Our analysis demonstrated that the overall management of the RIA process could be improved. Using our traffic light assessment the majority (seven) rated as ‘yellow’, demonstrating some good practice but also room for improvement, five merited a ‘green’ rating and two RIAs were rated as ‘red’. There is evidence to suggest that some RIAs are still being started too late in the process to influence decision making, while others do not adequately justify the need for a regulatory intervention. Departments should also give more structured consideration to non-legislative solutions rather than assuming that regulation is the only answer, especially in cases involving potential or actual market failure. Departments are still continuing to omit the ‘do nothing’ option and this makes it difficult for them to demonstrate the net impact of regulation. Some examples of have been outlined in **Figure 10**.

### Consultation

**2.8** Consultation is an important area within the impact assessment process. It allows departments to gather the views of stakeholders and enables them to open up their thinking to external challenge. It can help departments to identify unforeseen problems and to increase the robustness of its costs and benefits. Consultation is more likely to add value if departments start early to allow practitioners and stakeholders sufficient time to contribute; are ‘open’ in the information they make available for challenge; use appropriate techniques; devote proportionate time to those most likely to oppose as support possible options, so as to challenge assumptions; allow at least 12 weeks response time; make full use of the results; and publish their response to the results. But when this is combined with weak analysis in other areas, the effectiveness of consultation could well be undermined. The results of our analysis are shown in **Figure 11**.

14 RIAs are still worthwhile even if there is only one likely course of action because they can be used to assess the net impact against the ‘do-nothing’ option.

## 8 Summary of traffic light scores

Scope and purpose	2	7	5
Consultation	0	3	10
Costs and benefits	3	5	6
Compliance	4	6	2
Implementation/ monitoring/evaluation	3	5	5
Competition	1	7	5

### NOTES

1 'Green' indicates a good quality analysis; 'Yellow' indicates some good elements, but with room for improvement; and 'Red' indicates some major defects in the analysis.

2 Numbers may differ as tests are not always applicable.

**2.9** Consultation is a strength in most RIAs as ten assessments rated as 'green' on the traffic light assessment and three as 'yellow'. This demonstrates that the majority of consultations were performed well. We found that departments are being flexible in how they approach consultation, particularly in cases where it may not have been possible to comply with the Cabinet Office's 12 week minimum consultation period. Several of the RIAs were informed through the use of stakeholder events and ongoing stakeholder forums. Some specific examples of RIAs and the reasons for their ratings have been outlined in **Figure 12 overleaf**.

**2.10** We found other examples of good practice in obtaining the views of stakeholders and being proactive in improving the effectiveness of stakeholder management. In 2004, the DTI commissioned a report by MORI to provide a comprehensive overview of stakeholders' opinion of the Department's Fair Markets Directorate (FMD). The Department has responded positively with a number of initiatives (**Figure 13 overleaf**).

## 9 Traffic light assessment – scope and purpose



## 10 Scope and purpose – examples from our evaluation

### Serious weaknesses in the analysis

Transport's Safety Regulation RIA (part of the overarching Railways Bill RIA) worded the objective in a way that closed off options: 'the transfer of responsibility for the regulation of health and safety on the railway from the HSE to the ORR, to establish the ORR as a combined safety and economic regulator.'

### Room for improvement

The DCMS' RIA for the Gambling Bill did not state clearly the size and the nature of the current problem, and the need for regulatory intervention is not obvious from the information presented.

Home Office's RIA for the Regulations to implement the Private Security Industry Act 2001 in respect of Door Supervisors and Vehicle Immobilisers did not include a 'do nothing' option. The omission of 'do-nothing' means that the Department was not able to demonstrate the net impact of the regulations.

### Key learning points

- Frame objectives to allow more than one option;
- State clearly the problems being addressed; and
- Always include a 'do nothing' option to demonstrate the net impact of regulations.

## 11 Traffic light assessment – consultation



## 12 Consultation – examples from our evaluation

### Room for improvement

The DCMS' RIA for Licensing Regulations did not take into consideration the impact on small business or place a copy of the RIA on its website. The Department did, however, reduce the impact of a shortened consultation period through the extensive use of industry based forums, the media and issuing regular bulletins.

### Good quality analysis

The Department for Transport conducted extensive consultation as part of the Government Rail Review 2004 and this fed directly into the Railways Bill RIA. A formal consultation was not conducted because of the need to progress the Bill quickly to reduce uncertainty in the industry. The Secretary of State, instead, announced that contributions would be welcome when the White Paper was introduced and hosted four regional seminars for stakeholders.

The Home Office took a novel approach in its consultation on the Regulations to implement the Private Security Industry Act 2001 in respect of Door Supervisors and Vehicle Immobilisers. The RIA document itself was used as the consultation document ('Con Doc'), rather than a separate one being prepared. This reduced the amount of resources needed and ensured that consultees only had to read a single document.

### Key learning points

- Ensure that the impact on small businesses is considered explicitly;
- Use of industry based forums and seminars allow policy makers to gather the views of stakeholders quickly and effectively; and
- Departments do not necessarily have to prepare separate consultation documents and should consider making greater use of the RIA itself.

## 13 Stakeholder initiatives within the Department of Trade and Industry

- Top-level business stakeholders are managed centrally in the Strategy and Communications Unit;
- The next level of key stakeholders are given a designated 'stakeholder manager' at senior level in the Department;
- Establishment of 'business relationship managers' in the Business Group; and
- Use of sector-specific groups, consisting of representatives from specific sectoral stakeholders and Government departments. The best known of these groups is the Vehicle Industry Policy and European Regulation Group (VIPER).

**2.11** The Home Office's Immigration and Nationality Directorate is developing a strategy to manage its stakeholders effectively. It is currently designing a 'Points-Based System for Migration' and, as part of this work, it has considered how it can best engage with its stakeholders. The principle objectives of its strategy are:

- move to a partnership approach with key stakeholders;
- focus on building relationships with priority stakeholders;
- pool the Directorate's expertise with that of various stakeholders, creating a shared view of the system;
- identify sub-groups using a sector based and regional segmentation approach; and
- create a unified strategy that influences stakeholder interactions.

### Costs and benefits

**2.12** Final RIAs are signed off 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. Departments should involve specialists, such as economists and statisticians, to help them in this. The impact on small businesses should also be considered. Talking to firms individually can add richness to evidence gathering. Departments seeking advice from the Small Business Service should also allow them sufficient time to consider the proposals. The results of our analysis are shown in **Figure 14**.

**2.13** The analysis of costs and benefits within the sample was mixed, with three scoring 'red' and five 'yellow'. Six, however, were considered strong enough to rate as 'green' under the traffic light system. The key areas of concern are around the unwillingness of some departments to subject their costs to external challenge and the paucity of costs often put forward within RIAs for framework legislation. Departments should ensure that framework legislation is appropriately costed, given the specialist advice which is available to policy makers and the importance of external challenge. Some specific examples of RIAs and the reasons for their ratings have been outlined in **Figure 15**.

## Compliance

**2.14** Regulations are often introduced to encourage changes in behaviour, so RIAs should consider how the regulations will be complied with and enforced, and the sanctions that will apply in the event of non-compliance. Departments should include in the RIA process the impact of different levels and patterns of compliance, the effectiveness of different enforcement strategies, and the likely costs and impacts for each type of enforcement activity. Departments should also consider using compliance, enforcement and sanctions as a starting point for policy assessment, thinking through how different regimes might impact policy design. This should help inform the choice of options and the most appropriate enforcement regime. The results of our analysis are shown in **Figure 16** overleaf.

**2.15** The contribution of compliance to the achievement of policy objectives should be discussed. We found however, that discussion of compliance continues to be one of the weakest areas of the RIA process and means that departments are missing an opportunity to discuss strategies with enforcers and stakeholders to increase compliance rates. Four of the assessments were rated as 'red', six as 'yellow' and two 'green'. Departments predominantly assume full compliance with proposed regulations and omit any uncertainty around costs and benefits which may result from differing compliance patterns. This may arise because department regard less than full compliance as an admission that the regulatory proposal may not be fully successful in changing behaviour. We consider that this mindset must change if departments are to reap the full benefits of the impact assessment process. Some specific examples of RIAs and the reasons for their ratings have been outlined in **Figure 17** overleaf.

**14**

Traffic light assessment – costs and benefits

3

5

6

**15**

Costs and benefits - examples from our evaluation

### Serious weaknesses in the analysis

Department for Transport's Railways Bill RIA did not present quantified costs and benefits. The Department considered that a sensible quantification of costs and benefits was not possible. There were, however, no qualitative descriptions where quantification may have been difficult. The transfer of safety responsibility, for example, might generate savings and the Department's decision to omit a discussion of qualitative savings has undermined the RIA, which should be used to inform debate.

### Good quality analysis

The Home Office's Leave to Remain RIA set out the financial costs of not increasing fees and the impact on the quality of services. The impact of different demand elasticities were used to estimate the costs to the UK economy of reduced numbers of students studying in the UK. The Department also made excellent use of expertise by establishing a joint working team comprising policy officials and economists from IND, the Department for Education and Skills, and the British Council.

The DTI's RIA for the Increase in Minimum Wage Rates overcame some presentational issues. Initial modelling of the uplift resulted in no beneficiaries, but the Department resolved this by making the reasonable assumption that the wages of 1.3 million workers on the minimum would not have risen in line with wage inflation. DTI made appropriate use of expertise to resolve this issue.

### Key learning points

- Costs should not be omitted on the grounds that they may lead to debate;
- Costs and benefits should be subjected to appropriate sensitivity analysis to gain a greater understanding of how they react to changes in variables; and
- The use of expertise is essential in the provision of robust analysis.

## 16 Traffic light assessment – compliance

4      6      2

## 17 Compliance – examples from our evaluation

### Serious weaknesses in the analysis

The DCMS' Gambling Bill RIA rated as 'red' because it did not set out the current level of compliance and there was no consideration of how less than full compliance would impact on costs and benefits, perhaps through an increase in illegal gambling.

### Good quality analysis

Home Office's RIA for Graffiti Removal, was notable for the level of analysis undertaken. It considered the differing levels of costs arising from local authorities having to issue notices; it estimated the existing levels of compliance and the extent to which affected parties already carry out graffiti clean-up operations; and it considered enforcement issues and how flexibility on the part of local authorities could lead to greater compliance.

### Key learning points

- Considering the impact of differing levels of compliance enables some sensitivity analysis of costs and benefits to be undertaken; and
- Considering differing levels of compliance allows departments to assess the appropriateness of enforcement strategies.

## Implementation, monitoring, evaluation

**2.16** Good quality RIAs will outline how the regulation and its effects are to be implemented, measured and monitored, and describe the reviews and evaluations which will be used to judge how far the regulation is achieving defined objectives. Further, an explanation of how information from monitoring and evaluation will be used to inform future policy making improves the transparency of the process. The results of our analysis are shown in **Figure 18**.

**2.17** Our evaluation has found that all three areas – implementation, monitoring and evaluation – are often tackled poorly. Robust monitoring and evaluation strategies will help departments to identify those regulations which are effective, those that need to be adjusted, and those which can be removed without compromising benefits. Five assessments rated as 'green', five as 'yellow' and three as 'red'. The main driver for the low scoring RIAs appears to be where the RIA relates to framework legislation<sup>15</sup>, leading to departments claiming that the details will be worked out later. We do not accept this argument, as departments should be thinking about details at an early stage to maximise the chances of successful regulatory outcomes. Some specific examples of RIAs and the reasons for their ratings have been outlined in **Figure 19**.

## Competition

**2.18** Regulations can affect competition by influencing such things as costs, availability of resources, and market entry and exit. Undertaking a competition assessment should allow departments to consider potential effects. Departments should involve specialists, such as economists, in completing competition assessments at an early stage, and should seek advice from the Office of Fair Trading's Regulatory Review Team. The results of our analysis are shown in **Figure 20**.

<sup>15</sup> Framework legislation establishes the overall objectives of the policy and how it will be delivered. Secondary legislation is subsequently developed which sets out the detailed regulations.

**18**

Traffic light assessment – implementation, monitoring and evaluation

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**19**

Implementation, monitoring and evaluation – examples from our evaluation

#### **Serious weaknesses in the analysis**

The Department for Transport's Traffic Management Act RIA contained no information because the Department told us that they would be dealt with in the RIAs for secondary measures.

#### **Good quality analysis**

DCMS' Licensing Act Regulations RIA explains that monitoring will be performed in conjunction with other Government departments: Home Office will measure levels of crime and anti-social behaviour; and the Department of Health will monitor the consumption of alcohol by minors. The RIA explains that the impact of the Act cannot be fully assessed until it has been operational for at least 12 months, but that data will be collected in the intervening period.

DTI's RIA for the Amendment of Employment Tribunal Regulations gave examples of how monitoring would be carried out, including details of a formal review of the fixed period conciliation time aspect and a longer term survey of tribunal applications. The baseline survey needed to assess this was already underway, which gives confidence that these reviews will be taken forward.

#### **Key learning points**

The RIA process should be used to start thinking about how the regulations will be implemented, monitored and evaluated from an early stage in their development. This could allow unforeseen difficulties to be identified and appropriate strategies to be developed.

**2.19** The Competition Assessment was completed for all of the RIAs in our sample. The standard was generally sound. The key omission was the reluctance of departments to consult with the Office of Fair Trading (OFT) before completing the Competition Filter<sup>16</sup>. In one case, the department did not consult the OFT's Regulatory Review Team and, in seven other cases, consultation was either too late in the process or allowed insufficient time for the OFT to make a full contribution. A specific example of a 'red' assessment is outlined in **Figure 21**.

**2.20** The OFT is able to provide departments with expert advice on the completion of the Competition Assessment, and wider consideration of competition issues. The OFT's Regulatory Review Team told us that it is amending its guidance to improve clarity of the issues that should be addressed and is seeking to engage more with departments to improve understanding of the expertise it can provide. These measures should help raise awareness of competition issues and improve understanding of the analysis that is required in each case.

**20**

Traffic light assessment – competition assessment

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**21**

Competition – example from our evaluation

#### **Serious weaknesses in the analysis**

The DCMS did not consult with the OFT's Regulatory Review Team when developing the RIA for the Licensing Act Regulations. The Regulatory Review Team told us that it would have welcomed the opportunity to comment and to provide some expert input. This is a major piece of legislation affecting thousands of businesses and, even though the 'filter' identified a limited impact on competition, it would have been prudent for the Department to have consulted with the competition authority.

#### **Key learning points**

The OFT has experts in the analysis of competition issues and departments should consult with them when undertaking their competition assessments.

16 The Competition Filter is a short set of questions designed to identify whether there are likely to be important competition issues, which means more detailed analysis is required.

## Other areas to be considered during the impact assessment process

**2.21** Departments are supposed to consider several other tests during the impact assessment process. These include 'rural proofing', 'health impact' and 'race equality impact assessment' (Figure 4) and we would expect to see an appropriate level of analysis where it is relevant. We saw little evidence of Departments undertaking these additional tests with any rigour and in most cases the bare minimum statement was included. However, none of the RIAs in our sample were marked down, because their 'fitness for purpose' was not affected. The Cabinet Office guidance does appear to have created a 'tick box' mentality which forces departments to enter a nil return, even where no value was added to the RIA.

## Integrating Regulatory Impact Assessments into the policy making process

**2.22** Good project management is at the heart of achieving 'integrated' impact assessments. It enables policy makers to identify key milestones in the project and allows the most efficient use of time and resources. Project management can identify the key tasks required to produce a high quality impact assessment and identify whether the department's timetable allows for a thorough analysis and appropriate input from stakeholders. The characteristics of a well managed project are set out in **Figure 22**.

### 22 Characteristics of well managed policy-development

- Departments should use the RIA process to project manage the assessment of options;
- Departments should define clearly the start and finish points of its impact assessment process;
- Departments should identify key milestones;
- Departments should carry out some post-implementation review to identify strengths and weaknesses in the project. These should be disseminated to ensure that future projects are run effectively; and
- Departments should ensure that their RIAs are 'fit for purpose' and good project management will help to ensure that an appropriate level of analysis is performed.

**2.23** The BRE can play an important role in helping departments to produce high quality impact assessments by challenging policy makers on the quality of their RIAs. BRE officials also have a clearer sight of the stock and flow of regulations and can offer advice on how new proposals might be received. It can advise policy makers on ways in which the principles of better regulation can be applied. It is able to offer technical advice and training to ensure that policy makers undertake rigorous analysis when conducting an impact assessment.

**2.24** Our survey found that the BRE is generally perceived as helpful, although its advice was not always timely or practical. The RIA guidance also received mixed reviews. The DCMS, for example, told us that it received inconsistent advice from BRE staff when developing the Licensing Act and thinks this could have been due to high rates of staff turnover within BRE. This was consistent with views expressed by other Departments in our sample.

**2.25** The BRE is considering how to improve the effectiveness of RIAs. It is revising existing rules and guidance in order to create shorter, sharper RIAs that are started earlier and which can be used post-implementation. As part of this approach, the BRE will shorten the RIA guidance and develop a 'toolkit'. The aim of the RIA toolkit is to provide a range of tools which policy officials can use to deliver robust data and information. The BRE is also considering the requirement for RIAs to include a one page summary sheet that quantifies the policy and administrative costs falling on business, Government, the wider public sector and individuals. The aim is to encourage greater clarity and consistency in RIAs.

## PART THREE

# Departmental responses to the challenges of the Better Regulation agenda

**3.1** This Part evaluates how departments have sought to promote the consistent use of impact assessment. We found that:

- departments need to challenge the way in which staff perceive and use impact assessment, in order to improve the chances of influencing policy decisions and delivering better outcomes;
- the Department of Trade and Industry aside, the priority given to the Administrative Burdens Reduction initiative this year has limited the ability of better regulation teams to promote the use of impact assessment and offer a robust challenge to policy teams; and
- departments need to ensure policy teams are aware of, and able to comply with, the changes to the RIA process resulting from the Government's regulatory initiatives (paragraph 1.11 to 1.15).

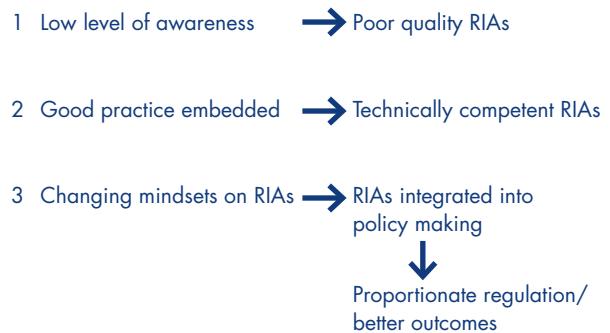
## The challenge of achieving better impact assessment

**3.2** The overriding objective of RIAs is to deliver better outcomes for society but there are a number of stages in delivering high quality impact assessment (**Figure 23**). When RIAs were first introduced, we observed a low level of awareness and a lack of competence among officials, leading to poor quality assessments. As good practice became more widespread, the quality of assessments improved, although too few RIAs challenge the need for regulatory intervention. To integrate RIAs into policy

making, and thus challenge the need for regulation and deliver better policy outcomes, departments should develop a culture that changes the way in which policy officials perceive and use impact assessment.

**3.3** Achieving behaviour change is difficult and departments are often faced with a resistance amongst staff. There is a risk of 'better regulation fatigue' amongst policy officials as they respond to the workload created by the Better Regulation Executive's cross-Government initiative to identify and measure the cost of regulation (paragraph 1.12). Government departments also face the challenge of applying impact assessment to legislation which can be politically sensitive or which deals with national security issues. We do not, however, accept this as an excuse for poor RIAs.

### 23 The stages in delivering integrated regulatory impact assessments



Source: National Audit Office

## Departmental structures for delivering Better Regulation

**3.4** The Better Regulation Executive requires departments to establish common structures to take forward the better regulation agenda. Departments have a Regulation Minister, supported by a Board Level Champion with responsibility for better regulation issues. All departments have established central teams to promote the use of RIAs and provide a quality control function. These teams usually have a responsibility for co-ordinating the Administrative Burdens Reduction initiative and departmental Simplification Plans.

**3.5** Departments have used their discretion to adapt this framework to their own circumstances:

- DTI has added to the core structure by establishing a network of Directorate Level Champions to promote impact assessment within their own areas of command. This provides an interface between the Better Regulation team and policy makers - promoting a culture of good policy making, spreading good practice and challenging where poor; and
- the DCMS has established a Better Regulation Task Group headed by the Department's Better Regulation Minister. It is responsible for the strategic co-ordination of Better Regulation work within the Department and its membership includes those from sectors affected by DCMS regulations.

**3.6** The resourcing of central teams is a matter of departmental priority and there is no straightforward measure of the appropriate level of resources. The size of teams reflects the level of involvement in regulatory issues, the workload and nature of the department (**Figure 24**). Departments were not given additional funding to respond to the increased pressures created by the Administrative Burdens work and it has been up to departments to allocate what they consider to be appropriate in this area. The DTI's team was increased from six to 12; the Home Office's team expanded from four to six; and Transport from three to six. The DCMS has established a separate Unit to take forward Administrative Burdens and Simplification work, and this works closely with its Better Regulation Team. The size of the DTI team also allows specialisation in different aspects of Better Regulation: strategic reporting; administrative burdens; simplification; EU regulation; regulatory tracking and challenge; and consultation.

## Departmental approaches to embedding impact assessment

**3.7** The NAO has established a number of principles that it believes to be important in influencing staff behaviour and evaluated departmental performance against these (**Figure 25**).

### 24 The composition of Better Regulation teams

	Size of team <sup>1</sup>	Grades	Expertise	Number of RIAs reviewed by BRU <sup>2</sup>
Trade and Industry	12 (5)	Headed by Grade 5	General <sup>3</sup>	120
Home Office	5 (2)	Headed by Grade 6	General and Economist	60
Transport	6 (3)	Headed by Grade 7	General	50
DCMS	1.2 (1)	Headed by Grade 7	General and Economist	25

Source: National Audit Office

#### NOTES

1 The figure in brackets indicates the number of staff in the Better Regulation team that are committed primarily to work on the Administrative Burdens exercise and Simplification Plans.

2 Includes RIAs seen at the three stages of development – initial, partial, full – in 2005.

3 The DTI's Better Regulation Team has had an economist in place since 30 May 2006.

## The role of Senior Management

**3.8** Senior management in each of the four departments have sought to promote the better regulation agenda and, more specifically, the use of impact assessment. Some Board Level Champions were more proactive in promoting their role, for example, by providing briefing to colleagues, speaking at departmental events and chairing internal 'challenge panels' (see examples below). Champions can play a crucial role by setting an example and highlighting departmental commitment to evidence-based policy making. The support of senior managers at divisional level is also important. For example, the director of Home Office's Immigration and Nationality Directorate was committed to the use of impact assessment and this has led to an improvement in the quality of analysis undertaken.

## The promotion of impact assessment

**3.9** Better Regulation teams play a vital role in raising awareness of the need for impact assessment, and assessing the quality of RIAs. The teams are responsible for disseminating good practice and guidance, and act as link between departments, the Better Regulation Executive and policy makers. They are under increasing pressure. The number of RIAs has increased; for example, the Home Office produced around 60 final RIAs in 2005, compared with eight in 2001. At the same time, the workload has expanded with the addition of the Administrative Burdens Reduction exercise and departmental Simplification Plans. Our review coincided with a period of intense activity from both the Better Regulation Executive and departments on these projects, and the pressures are likely to ease after the publication of simplification plans and the agreement of targets for the reduction of administrative burdens. The Better Regulation teams are also responsible for ensuring that Government-wide initiatives are understood and adopted consistently in departments. In doing so, they must understand and apply some complex technical methodologies.

**3.10** The Department of Trade and Industry aside, the ability of the Better Regulation teams to adopt a proactive role has been restricted by the requirement to respond to the Government-wide Administrative Burdens Reduction initiative. Since the summer of 2005, this work has been given Ministerial priority to ensure that Government deadlines are met. The consequence, however, is that most Better Regulation teams have been less able to promote the use of impact assessment. We found:

## 25 NAO principles for influencing staff behaviour

	Report paras
Senior management should demonstrate its commitment to impact assessment	3.8
Departments should promote the use of impact assessment	3.9–3.11
Departments should provide a robust challenge function to policy teams, and ensure minimum standards are met	3.12
Departmental specialists should be integrated and used at an early stage	3.13
Departments should provide appropriate and timely support	3.14–3.18
Departments should encourage the use of impact assessment, by either using incentives or making policy officials more accountable	3.19–3.20

## GOOD PRACTICE EXAMPLE 1

The Board Level Champion in the DTI has a high profile, demonstrating commitment to promoting the Better Regulation agenda and a clear vision for the role of impact assessment. These attributes enable the Champion to raise awareness and play an active role in challenging colleagues on the need to regulate. The Champion also chairs DTI's 'Better Regulation Programme Board', which challenges the need for regulation.

## GOOD PRACTICE EXAMPLE 2

The Department for Transport's Champion sees part of his role as influencing and enthusing other Board members. The Department used its Ministerial away day to debate better regulation test cases and Ministers gave views on the Departmental approach. The Champion also chairs a regular meeting of senior managers to 'drive through' the Better Regulation agenda.

The Champion seeks to influence European thinking on the introduction of new regulation at an early stage. This sends a message of senior management commitment across the department, with an overall aim of 'influencing first and regulating only where necessary'.

## GOOD PRACTICE EXAMPLE 3

DCMS' Board Level Champion has raised the profile of Better Regulation by inviting the BRC's Members to speak to the Board.

- the DTI's team has made considerable efforts to raise awareness of better regulation. The team has used a variety of techniques to advertise the service it offers to policy makers and the importance of RIAs. It has used a combination of the Departmental intranet, breakfast seminars and training events;
  - the Home Office's team has adopted a 'fire-fighting' role, with limited opportunities to promote the better regulation agenda. For example, it has developed a strategy for disseminating information but has not had the resources to implement it;
  - the Department for Transport's team has been hampered in its ability to actively raise awareness of the need for impact assessment or influence policy teams reduction; and
  - a lack of resources has meant that DCMS has not been able to actively promote the Better Regulation team, cascade good practice or to inform policy officials of the latest developments. The Better Regulation agenda is now being led by the Department's Economic Impact Unit in a bid to address these weaknesses.
- 3.11** Despite this, the profile of the Better Regulation agenda in some departments, notably DTI, has engendered wider acknowledgement of a change in culture towards the integrated use of RIAs. This will be a major vehicle in meeting the challenges posed by targets for reducing Administrative Burdens.
- the Home Office's team sees all RIAs and its ability to challenge is strengthened by having an economist and procedures to involve senior staff if weaknesses are not rectified. Its challenge role has become more constrained, however, due to its increasing workload and the timing of its input. RIAs were often well-advanced when submitted to the team which offered less opportunity to act on advice;
  - the DCMS' Better Regulation team offered only a limited quality control function. It advises on the content of RIAs but does not have the resource to critically evaluate their quality. The team does not see all RIAs and there is no compulsion to take on board its advice. Policy teams have tended to liaise directly with the BRE for advice on technical matters. The Department is taking steps to address these weaknesses and has established a Ministerial level challenge panel to question policy makers over the need for regulations. The panel also has representatives from external stakeholders which the department must convince of the need to regulate; and
  - the Department for Transport's team has had to reduce its normal activity of raising awareness, promoting training and influencing policy teams. Instead it has focused its attention on overseeing the work on Administrative Burden Reduction and Simplification Plans.

### The challenge provided by Better Regulation teams

**3.12** 'Challenge' should be endemic within departments. The Better Regulation teams play an important role in reviewing the technical quality of RIAs and challenging policy makers to demonstrate the need for regulation. All of the teams undertook some form of RIA review, although the extent and depth of this challenge differed markedly:

- The DTI's team reviews all major RIAs. It offers a strong quality control function, providing advice on consultation documents and suggesting improvements that could be made. The Department also has other structures to challenge the need for regulation. It has established a Ministerial Challenge Panel and a Programme Board made up of senior Departmental staff and key external stakeholders. These panels are supported by further challenge at directorate level;

### The integration of specialists

**3.13** The use of appropriate and timely intervention by experts, including economists and statisticians, can help departments improve the quality of their impact assessment and, ultimately, regulation. Departments have recognised the importance of experts and are seeking to optimise their input. There is no 'one-size-fits-all' model and departments have developed different arrangements to make the best use of their available resources. Departments have generally sought to embed expertise into policy teams undertaking RIAs (**good practice example 4**). The use of expertise is, however, sometimes hampered by poor project management of the RIA process by policy teams, a lack of awareness of the technical requirements of RIAs or insufficient knowledge of the internal expertise that is available.

## The provision of guidance and training

### Departmental training on Better Regulation

**3.14** All departments provide some form of training on better regulation although the focus and content varied widely. The training offered by the DTI was of high quality and covered a range of activities and, as a result, equipped staff with skills required to develop good quality regulation.

**3.15** The training offered in the other three departments was less structured and more ad-hoc. The Department for Transport ran a limited training programme in 2005, targeting a small number of training events on areas where the most urgent need has been identified. The Home Office recognised the need to provide training on impact assessment, but has yet to provide a specific course. It has sought to integrate the principles into wider courses on policy making, to send out a message that impact assessment is not a separate activity. There is no formal requirement for policy officials to attend training, although the Better Regulation team has identified policy areas which would benefit from training and specialist support. The lack of a consolidated course has, however, made it more difficult to disseminate information about BRE initiatives.

**3.16** The DCMS has developed a number of 'policy' training courses, which includes a module on better regulation. DCMS also ran an externally facilitated workshop on Better Regulation in May 2005 and planned to run 14 sessions for 80 delegates, which represents around 20 per cent of staff. Feedback from delegates has been positive, and most believed it to be of the right pace and content. The DCMS is now planning to involve the BRE in the delivery of its RIA training courses.

**3.17** The provision of training is not co-ordinated between departments and there appears to be much 're-inventing of the wheel'. The Better Regulation Executive offers a training programme but only provides this when asked to do so. There is potential for it to make a greater contribution to departmental training efforts, specifically to provide cross-departmental feedback on the quality of impact assessment. The National Audit Office has provided input to Defra's Better Regulation course and has presented to the Irish Government, which is introducing RIAs. There is also potential for smaller departments and agencies to send more staff to other departments for training.

### GOOD PRACTICE EXAMPLE 4

The DTI has established a 'Project Pool' to ensure its key priorities are resourced adequately. Policy makers in the Pool specialise in different aspects of policy making, including better policy making, and they are required to develop specialist knowledge. Expertise is then spread into policy project teams to fill skills gaps. This helps to ensure that a full range of specialist skills is available on the policy teams and facilitates the dissemination of skills and good practice across the Department.

### GOOD PRACTICE EXAMPLE 5

The DTI delivers its training in several formats – courses, seminars and 'master-classes'. The basic course is run four times a year, with a dedicated course for fast streamers and other courses run when the need is identified. Training is compulsory for all staff in the Policy Project Pool whose specialism is 'policy'.

### Departmental use of the intranet to influence the behaviour of policy makers

**3.18** Departmental intranets can be used to share information, guidance and advice on better regulation, highlight best practice and ensure that changes in Government policy are disseminated. Only the DTI provides a comprehensive better regulation intranet site for policy officials. The Home Office does not have a dedicated better regulation site and the Department for Transport has a site which covers better regulation and policy making, but this had not been updated for some time. As a result, it is difficult for policy officials in these departments to access up-to-date information and obtain practical advice on good practice in impact assessment, although there are links to the BRE's website. The DCMS has a dedicated site, which at the time of our review simply directed policy makers to the BRE site. It has, however, recently been updated to enhance its usefulness to policy teams, and it now includes an outward facing page which allows stakeholders to engage with the Department.

### GOOD PRACTICE EXAMPLE 6

The DTI's Better Policy Making intranet site draws on the BRE's guidance, but supplements this with examples of good and bad RIA practice. It provides tips and case studies on: the background to better policy making; RIAs; consultation; alternatives to regulation; and small firms. It also contains information on the Better Regulation agenda.

## Encouraging the use of impact assessment

**3.19** Departments can encourage staff to use RIAs more effectively by either holding them accountable for the quality of analysis or offering incentives. One possible option is the use of personal objectives, which strengthens accountability for delivering good quality impact assessment, but practices are mixed. Senior civil servants in the DTI have been asked to incorporate better regulation into their personal objectives, as part of the Department's better policy making culture change strategy; and officials in the Home Office's central team have better regulation objectives. There is no common approach in the use of personal objectives, which are hampered by inherent difficulties in appraisal due to the subjectivity of assessing the quality of impact assessment. The inclusion of better regulation objectives for senior management is thought to be particularly effective, as it focuses the minds of those at the top of an organisation who can influence departmental culture.

**3.20** Establishing incentives to encourage staff to make better use of impact assessment is also difficult, particularly as departments are constrained by the public sector reward framework, which is relatively inflexible in most cases. The DTI has begun some research to consider further how to incentivise staff as part of a wider culture change strategy for policy making. There have been relatively few attempts to use other methods, such as showcasing good practice on intranet sites or in departmental publications.

## Targeting efforts to promote impact assessment

**3.21** We found that departments have, in the main, adopted generic departmental-wide approaches to seek to embed impact assessment into their culture and processes. The exception was the Home Office, which sought to identify areas that may be more receptive to better regulation. It has focused its efforts on promoting impact assessment in these areas to showcase the advantages of adopting best practice.

**3.22** Departments should now seek to target their efforts to encourage the appropriate use of impact assessment. There is a need to identify areas of the department which may be more resistant to change, or need greater support in integrating impact assessment into policy making. This will require a greater understanding of working practices across departments. There are several possible measures which could be used to identify where departmental efforts may best be targeted (**Figure 26**). The aim is to raise consistency across departments to ensure that minimum standards are met.

### 26 Potential measures used to target Better Regulation training

Quality of RIAs	Better Regulation teams could systematically assess the quality of RIAs using the NAO's evaluative criteria to identify teams with consistent weaknesses.
Staff surveys	Departmental surveys could identify staff perceptions of the use of impact assessment and central initiatives. The NAO has developed a perception-based survey which could be modified by departments for their own use.
Proxy measures	There may be proxy measures which give an indication of the strength of impact assessment. For example, the DTI believes the quality of electronic record keeping and strength of project management in policy areas are good proxies for the likely quality of RIAs.

# APPENDIX ONE

## Scope, focus and methodology

**1** Our Compendium Reports in the last two years have demonstrated that there were common and continuing problems in the production of good quality regulatory impact assessments. These reports also questioned the extent to which RIAs were being used to evaluate policy options and influence decisions. This demonstrated that technical competence is needed to deliver good quality RIAs but, equally important, is the need to change the way in which impact assessment is perceived and used by policy officials. We therefore broadened the scope of this year's study to evaluate how departments were seeking to embed impact assessment into their processes and culture.

**2** To understand better departments' approach to RIAs, we selected four departments on which to focus our examination: Trade and Industry, Home Office, Transport and Culture Media and Sport. These offered a cross-section of departments in terms of size and involvement in regulatory activity. The selection of these departments was influenced by the Better Regulation Commission, although the final decision on those selected was ours. The DTI was chosen as the BRE suggested that there was much good practice, from which other departments could learn. The evidence for this year's Report is drawn from an evaluation of the processes and culture within the four departments (paragraphs 3 to 5 below) and an assessment of the quality of a sample of RIAs (paragraphs 6 to 9). This was supported by input from key stakeholders (paragraph 10) and advice from our expert panel (paragraph 11).

### Departmental approaches to embedding impact assessment

**3** The key strand to this part of our evaluation was the interviews we held with departmental officials. We held structured interviews with the Board Level Champions, the Better Regulation Teams, departmental specialists and officials who were taking forward particular initiatives within the departments. We also appraised the training offered by departments, and in one case attended a training session on the use of RIAs, and evaluated departmental intranet sites.

**4** To guide our examination we developed a set of key principles that were important in achieving culture change. These were drawn from experiences of other NAO teams and we then tested our approach on the DTI. This confirmed that they were important in influencing staff behaviour. We used these principles as a framework to guide our appraisal of the other three departments. The key principles are set out below:

- the Board Level Champion promotes the importance of impact assessment;
- the department has an effective Better Regulation Team that encourages the need for impact assessment;
- the department's Better Regulation Team provides guidance and support that is timely and helpful;
- the department makes appropriate use of expert input;
- policy leads know where to turn to for advice when completing RIAs;
- training on the principles of Better Regulation and/or impact assessment is of a high standard;
- there is a strategy to ensure the continuity of regulatory knowledge; and
- the principles of Better Regulation are included within staff objectives (and team objectives, where appropriate).

**5** We carried out a small survey to gain an understanding of the perceptions of staff regarding the efforts being made by their department to embed impact assessment. The questions within the survey were based on the assertions identified during the pilot and departmental officials were asked to select one of three behaviours which most closely matched the statements. We asked the policy officials who we interviewed during RIA reviews to complete the survey and also the departmental Better Regulation Teams. Our intention was to establish whether the views of those at the centre differed from those undertaking policy work. This work was intended to be developmental and to demonstrate to departments how they might evaluate the success of their initiatives to improve the use of RIAs and understanding of the Better Regulation agenda.

## RIA Evaluation

**6** We compiled a list of around 200 RIAs which were laid before Parliament in 2004 and early 2005 and took account of the suggestions in the Better Regulation Task Force's Annual Report: Better Regulation - from design to delivery. We selected a sample of fourteen RIAs from our focus departments and subjected them to a full evaluation (DCMS: 2, DTI: 4, Home Office: 5 and Transport: 3). A summary of our assessments of these RIAs is held at Appendix 2.

**7** To evaluate the quality of the RIAs in our sample we used 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 (HC 329, Session 2001-02). Our framework was also informed by our experiences in evaluating RIAs for our two earlier Compendium Reports: Evaluation of Regulatory Impact Assessments Compendium Report 2003-04 (HC 258, Session 2003-04) and Evaluation of Regulatory Impact Assessments Compendium Report (HC 341, Session 2004-05). The questions covered six main areas of the RIA process from the Initial RIA through to the Final RIA signed off by the Minister. The key questions and sub-questions are outlined in the table below.

### Framework of questions for the evaluation of RIAs

- i Was the RIA process well-managed?
- Were the objectives for the regulation clear?
- Was there a realistic timetable to allow a robust process?
- Did the department define the problem clearly?
- Did the RIA consider a range of options?
- Were alternatives to regulation considered?
- ii Was consultation effective?
- Was effective consultation started early in the process?
- Were appropriate techniques used?
- Did the department explain clearly the impact of regulation?
- Were all interested stakeholders consulted?
- Were the impacts on small businesses considered?
- Were the results of consultation used appropriately?
- iii Did the department assess costs and benefits thoroughly and realistically?
- Were the implementation and policy costs on all affected taken into account?
- Were all parties on whom costs would fall identified?
- Were the costs and benefits to small businesses identified?
- Were all likely realistic and relevant costs and benefits identified?
- Were costs and benefits quantified, and where not, was qualitative analysis provided?

- Were the costs and benefits of all options considered?
- Was the methodology for quantifying/scoring the costs and benefits robust?
- iv Did the RIA realistically assess compliance?
- Was possible non-compliance factored into the analysis?
- Was the existing level of compliance assessed?
- Were ways of increasing compliance considered?
- v Will the regulation be effectively implemented, monitored and evaluated?
- Did the RIA contain details of how the department intended to implement the regulations?
- Had the department discussed implementation with relevant enforcement bodies?
- Did the RIA contain procedures for monitoring and evaluating the extent to which the regulation meets its objectives?
- vi Did the RIA consider the impact of the regulation on competition?
- Did the department consult with the OFT?
- Did the RIA include a Competition Assessment?
- Did the Competition Assessment report the results of the OFT's competition filter test?
- Was a more detailed assessment of competition undertaken?
- Were the conclusions on the impact of competition well-founded and presented?

**8** We examined files relevant to the RIA process and undertook structured interviews, based on our findings, with key staff involved in the development of the regulation. The structured interviews also aimed to obtain a broader picture of the RIA process, including how well departments felt the process worked, and to assess policy-makers' views as to their impact on the proposal.

**9** We also selected a further fourteen RIAs at random from our focus departments on which to conduct due diligence appraisals (DCMS: 2, DTI: 4, Home Office: 4 and Transport: 4). A full list of the additional RIAs is at Appendix 2. These RIAs were subjected to appraisals using only the information contained within the RIA and we did not seek to supplement these reviews with stakeholder interviews. The intention of the due diligence testing was to confirm that the findings from the main sample were representative of departmental approaches. Taken together the two samples resulted in us reviewing some 15 per cent of final RIAs produced in 2004 and early 2005.

## Stakeholders

**10** We interviewed key bodies concerned with the regulatory process: The Better Regulation Commission; the Better Regulation Executive; the Small Business Service; and the Office of Fair Trading's Regulatory Review Team. We placed a list of our sample RIAs on the NAO web site and we were subsequently contacted by the National Joint Utilities Group. We met its representatives to discuss the Department for Transport's Traffic Management Act RIA.

## Expert Panel

**11** We continued to use our 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

Rob is Professor of Law at the London School of Economics where he teaches Regulation and is Director of the LSE Short Course on Regulation. He is the author of numerous books on regulation<sup>17</sup>. He authored two recent reports for the Federation of Small Businesses:

*Better Regulation - Is it Better for Small Businesses*, 2004, and *Inspector at the Door* 2005. He led the team that produced the scoping study for the Clementi Review of legal services regulation and co-authored (with Dr Julia Black) Defra's 2005 Report on Enforcement.

### John Howell

Director, John Howell & Co. Ltd, a risk and regulatory consultancy. John specialises in financial sector compliance (including financial crime) and the governance of regulatory bodies. Current projects include a major economic study for the National Bank of Kazakhstan (with St Antony's College, Oxford) and an EU-wide review of the FATF Special IX Recommendations.

### Professor Claudio M. Radaelli

Claudio is Anniversary Chair (Political Science) and Jean Monnet Chair in EU Policy Analysis at the University of Exeter, where he directs the Centre for Regulatory Governance. He is the co-author of *Regulatory Quality in Europe*, 2006. He has published several articles on regulatory impact assessment and regulatory competition. He is working on an ESRC funded project on *Regulatory Impact Assessment in Comparative Perspective* (2006-2008).

### Michael Spackman

Michael is a 'special advisor' at NERA Economic Consulting, and Visiting Fellow of the Centre for Analysis of Risk and Regulation, London School of Economics and Political Science.

### George Yarrow

George is Director of the Regulatory Policy Institute (RPI), Emeritus Fellow of Hertford College, Oxford and acts as an adviser to a number of regulatory agencies. His recent policy work includes projects on: evaluating the overall burden of regulation on business (Cabinet Office); ex post evaluation of regulatory impact assessments (OECD); the development of economic regulations for the European Single Sky programme (European Commission); assessment of Member State RIA methodologies (EU Directors of Better Regulation); incentive regulation in the agri-environment sector (Defra); the regulation of radioactive waste management (RPI); and Reverse eAuctions and NHS procurement (RPI).

<sup>17</sup> These included, *Understanding Regulation* (with Professor Martin Cave), 1999. His recent articles include: *The New Punitive Regulation, Modern Law Review*, 2004; and *Is Better Regulation Smarter Regulation?*, Public Law, 2005.

# APPENDIX TWO

## Evaluation of Regulatory Impact Assessments

**Key:**

DCMS Traffic Light Assessment of RIAs						
	Scope and Purpose	Consultation	Cost and Benefits	Compliance	Implementation, Monitoring and Evaluation	Competition Assessment
Licensing Act	Yellow	Yellow	Yellow	Red	Green	Red
Gambling Bill	Yellow	Green	Green	Red	Red	Green

DTI Traffic Light Assessment of RIAs						
	Scope and Purpose	Consultation	Cost and Benefits	Compliance	Implementation, Monitoring and Evaluation	Competition Assessment
Amendment to Employment Tribunal Legislation	Yellow	Green	Green	N/A	Green	Green
Employment Relations Act 2004	Green	Green	Yellow	Yellow	Yellow	Green
Increase in National Minimum Wage Rates	Yellow	N/A	Green	Yellow	Green	N/A
Operating and Financial Review	Green	Green	Green	Yellow	Yellow	Green

**Home Office Traffic Light Assessment of RIAs**

	Scope and Purpose	Consultation	Cost and Benefits	Compliance	Implementation, Monitoring and Evaluation	Competition Assessment
Promotion of Volunteering	Green	Green	Yellow	Green	N/A	Yellow
Work Permits	Red	Yellow	Red	Red	Yellow	Yellow
Graffiti Removal	Green	Green	Yellow	Green	Green	Yellow
PSA – Door Supervisors	Yellow	Green	Green	Red	Red	Green
Leave to Remain	Green	Green	Green	Yellow	Green	Yellow

**Transport Traffic Light Assessment of RIAs**

	Scope and Purpose	Consultation	Cost and Benefits	Compliance	Implementation, Monitoring and Evaluation	Competition Assessment
Railways Bill	Red	Green	Red	N/A	Yellow	Yellow
Traffic Management	Yellow	Green	Red	Yellow	Red	Yellow
Public Service Vehicles	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow

**Additional RIAs not subjected to a full evaluation**

## Home Office

- Drugs Bill
- Racial and Religious Hatred Bill
- Transport
- Road Safety Bill (Speed Enforcement)
- Motor Vehicles (Tests) (Amendment) Regulations 2004
- Implementation in the UK of the New Version of the Intergovernmental Convention on International Rail Traffic
- UK Implementation of Directive 2004/104/EC on the Radio Interference of Motor Vehicles and Motor Vehicle Parts

## Trade and Industry

- The Gas Act 1986 (Exemption) (No.2) Order 2005
- The Nuclear Industries Security (Fees) Regulations 2005
- Mutual Recognition of Pack Sizes and Deregulation of Prescribed Quantities for Chocolate and Cocoa Products
- The Supply of Relevant Veterinary Medicinal Products Order 2005

## DCMS

- Digital Switchover
- The Hague Convention (Partial RIA)
- Cultural Test for British Films (Partial RIA)
- Ecclesiastical Exemption (Partial RIA)

## DCMS

### Licensing Act 2003 – Regulations 2005

#### Introduction and background

The Licensing Act 2003 received Royal Assent on 10 July 2003 and there was a separate RIA completed for the Bill. It replaces six existing licensing regimes covering: the sale and supply of alcohol, public entertainment, theatres, cinemas, night cafes and late night refreshment. The Act does this by providing a single unified system of regulation: of the activities of the sale and supply of alcohol, the provision of regulated entertainments, and the provision of late night refreshments. Permission to carry on some or all of these licensable activities will now be contained in two licences – the personal licence and the premises licence. The RIA under review details the Regulations necessary before the Act's transitional period could begin – a further seven Orders actually brought the Act into force.

#### Titles of Proposals under review

- Personal Licences Regulations 2005
- Hearings Regulations 2005
- Premises Licences and Club Premises Certificates 2005
- Transitional Provisions Order 2005
- Licensing Authority's Register (other information) Regulations 2005

#### Summary of findings

We have identified a number of concerns from our analysis of this RIA:

- The Department repeated the compliance costs from the original RIA. The role of the RIA document, however, is to provide details of the net impact of particular regulations. The Department should, therefore, have restricted its analysis to the marginal costs associated with the Regulations, even if these were immaterial in nature.
- The Department did not undertake appropriate consultation with the OFT before completing the competition filter.
- The RIA, however, did demonstrate the use of a wide range of consultation techniques.

## Gambling Bill

### Introduction and background

The Gambling Bill was introduced into Parliament in October 2004 and received Royal Assent in April 2005, becoming the Gambling Act 2005. The target for full implementation of the Act is 1 September 2007. When implemented, the Gambling Act 2005 will replace three Acts of Parliament and subordinate legislation governing the conduct of gambling in Great Britain: the Betting Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976. The aim of the Act is to put in place an improved, more comprehensive structure of gambling regulation, and create a new independent regulatory body, the Gambling Commission, whilst giving the local authorities greater say in the issue of Gambling licensees.

#### Summary of findings

The RIA is necessarily vague, as the legislation allows the Department to react appropriately to technical advances in Gambling. The Act provides a framework for legislation of the Gambling Industry. The summary is well presented and the recommendation is clear. The Department presented a range of quantified costs and some qualitative analysis. However, the RIA is extremely long, with much repetition, which makes the RIA difficult to follow.

## DTI

### Evaluation of the Employment Relations Act (2004)

#### Introduction and background

The overall objective of the Employment Relations Act is to make existing legislation work better. The RIA covers four separate areas: implementing the findings of the review of the Employment Relations Act 1999; protection for employees in respect of jury service; information and consultation in the workplace; and enforcement of the National Minimum Wage.

## Limitations on our review

This RIA was used to implement a variety of legislative measures. A decision was made to de-scope several elements of the RIA so that we could focus our attention on the key elements. The following Sections of the RIA were not subject to a full review:

- Section 40, Jury Service Protection: This part of the RIA is only one page long and deals with the insertion of wording into the Employment Rights Act 1996;
- Sections 42 and 43, Information and Consultation Directive: The Act was used an opportunity to enact provisions which allow the Secretary of State to make regulations. This Directive was the subject of a separate RIA;
- Sections 44 to 47, Enforcement of the National Minimum Wage: The proposed changes are very minor and designed to improve enforcement of the NMW. It was just over one page long and did not warrant full review;
- Section 55, Establishment of the UMF: This was enabling legislation only and the detailed rules and procedures were subject to a separate RIA.

## Summary of findings

This was a good RIA covering a range of regulatory proposals. Its main strengths were:

- wide consultation with the affected sectors and appropriate use of responses; and
- a reasonable balance of quantified and qualitative data.

## Amendment of Employment Tribunal Regulations

### Introduction and background

The existing Employment Tribunal procedures were perceived to result in a number of inefficiencies, and in some cases they were subject to potential legal uncertainties and unnecessary delays. The amendments were intended to render the Employment Tribunal System more efficient and to streamline procedures, in particular with a view to:

- Implement the Tribunal reform provisions of the Employment Act 2002;
- Address some of the recommendations of the Employment Tribunal Systems Taskforce (report: July 2002);
- Incorporate other amendments, at the suggestion of the Employment Tribunal Presidents;
- Recast the Rules in plain English to improve clarity.

## Summary of findings

This Regulatory Impact Assessment was primarily concerned with providing a cost-benefit analysis of the regulatory approaches that were to be adopted. It did not seek to provide similar analysis of any non-regulatory options or of the 'do nothing' option, and so the reader is left with little information with which to draw comparisons.

One of the concerns mentioned in the Regulatory Impact Assessment is that the changes to regulation it attempts to assess may have the unintended consequence of altering the behaviour of affected parties. The restrictions on time for conciliation could lead to fewer settlements and more hearings, potentially increasing the cost to employers and the Exchequer. It was recognised that this aspect of the regulation would need careful monitoring, but the uncertainty surrounding the net costs and benefits as a result were not reflected in the summary table. This leaves the reader with the impression that there is no chance of noticeable costs arising to employers, which is misleading given the concerns noted by the Department.

Notwithstanding the above, the Regulatory Impact Assessment can be commended on:

- The user-friendly presentation of the costs and benefits table;
- The clarity with which individual cost calculations were presented;
- Demonstrating that the department had considered processes by which monitoring and evaluation could be carried out.

## National Minimum Wage RIA Increasing adult and youth rates in October 2005 and 2006

### Introduction and background

This RIA considers the impact of proposals to increase the adult and development rates of the National Minimum Wage (NMW) in 2005 and 2006. The Low Pay Commission recommends a level for the NMW which the Government usually accepts and the RIA is produced to assess the impact of the new levels.

### Summary of findings

This is a somewhat unusual RIA because the issue of uprating the NMWs is a standardised procedure of an initiative that is an accepted part of industry legislation. The Government usually accepts the recommendations of the Low Pay Commission, so in this case there is no other option to be pursued in the RIA. The RIA is a reasonable attempt to communicate the impact of an increase in the NMW, but is not intended to influence the chosen option.

We would, however, question the appropriateness of the Department preparing a RIA for the amendment to NMW rates. The role of the RIA process is to challenge the need for regulation, whereas as this one was intended as a communication document.

## Evaluation of the RIA for Operating and Financial Review and Directors' Report Regulations

### Introduction and background

The regulations introduce a statutory Operating and Financial (OFR) for quoted companies under section 257 of the Companies Act 1985 and extend the fair review of the company's business required in the Directors' report under Directive 2003/51/EC. The regulations also establish an auditor's review for the OFR, adjust the existing audit requirement for the Directors' Report, and establish a criminal and administrative enforcement regime for the OFR and Directors' Report. The Chancellor has recently announced that the OFR is to be reconsidered, although this does not impact on our assessment of the RIA.

### Summary of findings

This is a strong RIA which presents the need for UK legislation to exceed that required by the EC Directive. It clearly sets out the problems and presents multiple options to overcome them. The option recommended

was added after consultation, which demonstrates that the Department was willing to address the concerns of stakeholders.

## Promotion of Volunteering

### Introduction and background

This regulation relates to a Private Members Bill and its aim is to limit litigation and claims against volunteers by lowering the obligations placed on the voluntary sector. It also establishes a Statement of Inherent Risk, for participants to sign to say that they understand the risks involved in a hazardous activity. The RIA provided information that the Department used to oppose the Bill, in particular, the potential for increased costs and bureaucracy for organisations using volunteers.

### Summary of findings

The RIA set out the problem and defined the objectives clearly. The Department made good use of informal consultation in the limited time available to it. It provided a robust analysis of costs and benefits, although it could have discussed the impact on small businesses in more detail. The Department's analysis of compliance issues was good, allowing it to explore alternative solutions to increase levels of compliance.

## Home Office

### Proposals to review the fee for consideration of Work Permit/Sector Based Scheme Applications in the UK

### Introduction and background

In April 2004 the Government announced a review of the Immigration system to identify and tackle areas of abuse and maximise the benefits which controlled migration brings to the UK. At the same time, the Department has been reviewing the charges for applications for several immigration services, including, Work Permits/Sector Based Schemes.

The current fees are charged at a level which covers the full administrative costs of providing the service up to the point of conveying a decision. The RIA seeks to explain the rationale for revised fees from 1 April 2005.

## Summary of findings

This was a weak RIA with many areas that the Department could have covered in more detail. The objectives of the regulation were not clearly stated and a 'Do Nothing' option was not included. The 'global' analysis of consultation responses resulted in the strong dissenting views of a number of key stakeholders being somewhat lost. The RIA presented a limited discussion of costs and benefits, with some potential costs being omitted. For example, the costs associated with skill shortages were not discussed. The consideration of compliance was also weak, with the Department unrealistically assuming compliance rates of 100 per cent.

## Pilot Powers Allowing Local Authorities to Issue 'Graffiti Removal Notices' and their Extension to England

### Introduction and background

This RIA has the objective of establishing whether or not to commence the legislative powers under the Anti-Social Behaviour Act 2003 s.48-52, following its pilot operation in twelve local authorities. The legislation had already been finalised, but the financial implications had not been fully addressed. The RIA was intended to address this, largely informed by the evidence gathered during the pilot exercise.

### Summary of findings

This was a good RIA. The Department set out clear objectives which did not limit the options being considered. The Department consulted widely on its proposals, although it may have missed an opportunity to gather the views of the educational sector. The Department considered a range of costs and demonstrated their uncertainty, but it could perhaps have included a wider range of qualitative costs to help inform the decision making process. The discussion around compliance was sound and demonstrated good practice.

## Regulations to implement the Private Security Industry Act 2001 in respect of Door Supervisors and Vehicle Immobilisers

### Introduction and background

The Private Security Industry Act 2001 provided for the regulation of a number of sectors in the private security industry. The Act provides a framework of controls, including the licensing of all individuals engaging in licensable activity, in six industry sectors, including, door supervisors and vehicle immobilisers. The Act also provides for the establishment of the Security Industry Authority (SIA), as a non-departmental public body, to be the regulating authority. It was decided that the first two sectors to be regulated would be door supervisors and vehicle immobilisers, as these are the two sectors which have given rise to the most public and Ministerial concern about criminality and low standards of professionalism.

The proposed regulations will require all those who provide door supervision services or vehicle immobilisation services on private land against a release fee to hold a licence issued by the SIA.

### Summary of findings

This RIA is rather mixed, with some strong elements, but also with areas which the Department could have prepared more thoroughly. The Department's wide consultation and its consideration of both quantitative and qualitative costs were done well. The use of the RIA as the Consultation Document was novel in its approach and meant that the Department did not have to create a separate document. Its appraisal of the compliance was not so strong and did not give the user of the RIA any information about how the Department would tackle less than full compliance. The Department should also ensure that it always includes a 'Do Nothing' option so that a clear counter-factual can demonstrate the net impact of the proposed regulations.

## Increasing Leave to Remain application fees for international students

### Introduction and background

During the course of 2003 and 2004 the Department introduced charges for a range of immigration applications. The first full phase of full recovery charging sought to ensure that those who use and benefit from the UK's immigration system met the costs of delivering the administrative service provided. During 2004 the Department undertook a review of its fees: to ensure that the fees for 2005-06 reflect accurately the full costs of running the services provided; and to extend the principle of full cost recovery charging functions associated with the delivery of immigration services. The review included the consideration of charges for leave to remain applications.

### Summary of findings

Overall, this is a good RIA which provided a robust analysis of costs and benefits. The potential effects of reduced student numbers were well thought through with use made of demand elasticity to model uncertainty. This is good practice and demonstrates a level of economic analysis we have not come across often in our reviews. There are, however, some areas where the Department could have provided more information, such as, a consideration of less than full compliance.

## Department for Transport

### Railways Bill

### Introduction and background

The Railways Bill was accompanied by an overarching assessment and a further ten sub-RIAs which assessed the impact of the proposals. The overall aim of the Railways Bill is to address key structural weaknesses within the rail industry.

### Summary of findings

We have assessed the overall RIA and two of the sub-RIAs, Abolition of the SRA and Safety Regulation. The quality of the overall RIA and its sub-elements is poor, with the Department failing to include quantified costs and benefits, although it considers that these could not have been sensibly produced. The Department could have strengthened the RIA by providing a robust qualitative analysis of costs and benefits, where quantification was not possible. The overall problem was reasonably well defined but could have been strengthened by inclusion of a description of how the Health and Safety Executive and the Strategic Rail Authority contributed to these weaknesses. The Department also failed to include a 'Do Nothing' option for the transfer of safety regulation to the Office of the Rail Regulator, which meant that a counter-factual was not available to gauge the net impact of the proposals. The one area of relative strength was the Department's methods of consultation in a shortened timeframe, which allowed them to overcome the lack of a formal consultation.

## The Public Service Vehicles (Traffic Regulation Conditions) (England and Wales) Regulations 2004

### Introduction and background

This RIA sets out Government proposals to reduce the environmental impact of local bus services, in terms of noise and air pollution, in areas where the local authority can demonstrate they are causing a particular problem that cannot be effectively tackled by other means. Under Section 7 of the Transport Act 1985, a local authority outside London with responsibility for traffic may ask the Traffic Commissioner to attach Traffic Regulation Conditions (TRC) to an operator's Public Service Vehicle Operator's Licence. The Transport Act 2000 provided the Commissioner with the power to take into account and address the environmental impact of bus operators. The Act, however, did not extend the subject matter that can be contained in TRCs. This regulatory change will provide the Traffic Commissioner with wide discretion over the content of a TRC, including the imposition of practical measures to reduce vehicle emissions, for instance, requiring more frequent emissions tests on vehicles used in certain areas.

### Summary of findings

This RIA was not particularly strong in any area, but there were also no areas of particular weakness. We would, however, like to draw attention to the lack of a 'Do Nothing' option, which meant that a counter-factual was not available to gauge the net impact of the proposals. The Department could perhaps have made greater efforts to quantify some costs and benefits, although we accept the Department's explanation that it is difficult to estimate how often Traffic Commissioners will exercise their new powers.

## Traffic Management Act

### Introduction and background

The RIA accompanying the Traffic Management Bill contained four main parts: Traffic Management on Trunk Roads; Network Management by Local Authorities; Measures Relating to Street and Highway Works; and Traffic and Parking Enforcement. Separate RIAs have been produced for each part, with an overarching RIA for the Bill. The Department considered that it was not possible to complete some of the RIAs at this stage because the detailed arrangements for the regulatory regime for Street Works and for Civil Enforcement of Parking and Moving Traffic Offences will be set out in secondary legislation.

The nature of the RIA resulted in us reviewing the overarching document and the part relating to Street and Highway Works.

### Summary of findings

The quality of the RIA is mixed with two areas of particular concern: costs and benefits; and monitoring and evaluation. The Department seemed to be somewhat confused over the 'Do Nothing' option, treating this as though it represented the position with no current legislation in place. The second option actually described more accurately the 'Do Nothing' position. The Department's consultation represented the strongest element within the RIA process and the use of an industry forum represents good practice. In our view, the Department failed to present sufficient quantification of costs and benefits, in part because they were difficult to derive, but also because the detail would be provided in RIAs for secondary legislation. This approach is not best practice because it does not allow the Department to demonstrate the need for framework legislation. The Department considers that it followed the BRE guidance and the advice it received. The RIA could also have included some initial thinking on implementation, monitoring and evaluation, but this was not included, again because it related to framework legislation.

# APPENDIX THREE

## Summary of Departmental evaluations

### DCMS

#### Summary of Findings

The Department is demonstrating its commitment to the principles of Better Regulation by seeking to establish a framework to promote the use of impact assessment. This includes: the appointment of a Board Level Champion; establishment of a Better Regulation Unit which is keen to help policy makers; a range of courses which cover project management, policy making and RIAs; and wide-ranging consultation with key stakeholders. It has also set up a Task Force and an Economic Impact Unit.

The challenge for the Department will be to use this framework effectively to integrate impact assessment – and the use of RIAs – into its work. At present, there is still room for improvement. The demands placed on the BRU mean that its staff are constantly ‘fire-fighting’ and have not been proactive in seeking to raise awareness or disseminate best practice. It also means that the BRU is unable to provide a robust quality control/challenge function for policy teams.

#### Key areas on which the Department could focus its efforts

The Department should focus its efforts on maximising the effectiveness of the resources which it has allocated to Better Regulation. On the basis of our cross-departmental examination, we suggest the Department should consider:

- Making greater use of the roles of the Board Level Champion and the Better Regulation Unit to raise awareness of the benefits and principles of the Better Regulation agenda. The Champion is in a strong position to demonstrate senior level commitment to the agenda and this can be used to encourage others to change their behaviours;

- Increasing the level of ‘challenge’ across the Department. The BRU should be able to provide a robust quality control function which challenges policy makers at all stages during the development of policy; and
- Encouraging consistent use of the principles of impact assessment. This could be achieved in several ways: improving the training available to policy makers; ensuring that good project management practice is used to ensure that expertise is used at appropriate times in the development of policy; and encouraging teams to integrate the principles of Better Regulation into their everyday thinking, so that it is not seen as yet another initiative and burden.

### DTI

#### Summary of Findings

The Department has established an extensive framework to support the Better Regulation agenda, which has allowed a proactive approach to raising awareness and understanding. The Department has taken steps to instil a culture which promotes Better Regulation and to develop a range of appropriate skills. Owing to the nature of the regulations, and the emphasis on business, the Department’s RIAs tend to present robust evaluations of economic impact. The Department’s use of consultation and cost benefit analysis are particular strengths in the RIA process, and these clearly inform and influence the regulations.

## Key areas on which the Department could focus its efforts

The Department's response to the challenges of the Better Regulation agenda has been proactive and innovative. The next steps for the Department should be to ensure that successful measures are adopted consistently and that minimum standards are achieved right across the Department, so that these have a positive impact on regulatory outcomes. The quality of RIAs, and their full integration into the policy process, may be a proxy measure for the success of the Department's efforts. We would also encourage the Department to develop its post-implementation review process so as to judge whether the objectives of its regulations are being met. The Department should also seek other methods to measure the success of its central initiatives, for example, surveys of staff to establish levels of awareness. The extent to which good practice has been disseminated and a culture supporting Better Regulation has been put in place could be measured, perhaps through the use of a survey, and the results used to target further efforts.

## Home Office

### Summary of Findings

The Department is taking steps to seek to embed impact assessment into the way it develops legislation. At present, the results of these efforts appear mixed. It is apparent that there are inconsistencies in the awareness and adoption of the principles of impact assessment, with some areas rising to the challenge more than others. For example, IND recognised its weakness in using the RIA process and actively sought training to improve the quality of its analysis. This inconsistency is reflected in a 'mixed bag' of RIAs in our sample.

The size of the Home Office and the nature of its legislation present the BRU with a number of challenges in promoting the Better Regulation Agenda. The BRU has also faced additional pressures in responding to the Administrative Burdens and Simplification initiatives. The combination of these factors has presented the BRU with a tough challenge, and restricted the impact it can make. We have seen that the BRU has been limited in the extent to which it has been able to proactively promote the integration of impact assessment into everyday working practices.

Nevertheless, the BRU is effective in many ways and, in particular, offers a robust challenge function for policy teams. The presence of an economist on the BRU strengthens its capability to challenge. The Department has

demonstrated good progress in making use of economic analysis and has sought to embed economists within policy teams. This will help facilitate the use of their skills earlier in the development of policy. The BRU's ability to challenge is, however, constrained in the following ways:

- there may be limited opportunity for policy teams to respond to BRU's challenge, or for the BRU to ensure its advice is acted upon, if the RIA is already well-advanced before being referred. We would encourage the Department to promote the importance of project management specifically: starting the RIA early; using this as an integral part of the process; and seeking expert input as early as possible; and
- there may be a tendency to use the sensitive and/or political nature of legislation to negate the need for a full impact assessment. This is a factor, but many departments could point to their uniqueness. We would encourage the Department to promote the appropriate use of impact assessment.

## Key areas on which the Department could focus its efforts

The Home Office's response to adopting the principles of the Better Regulation agenda has been positive, but there remain inconsistencies across the Department. The Department should focus on encouraging a more consistent application of impact assessment principles so that minimum standards are achieved. Senior management and the BRU have a key role to play in raising awareness and promoting good practice. The Department may also want to consider how staff can be incentivised to adopt the principles of impact assessment by, for example, considering the use of objectives; the use of its intranet; and ensuring the requirements of RIAs are understood.

The Department should seek to measure the success of its central initiatives. The extent to which good practice has been disseminated and a culture supporting Better Regulation has been put in place could be measured, perhaps through the use of a survey. The results could be used to target further efforts. The quality of RIAs, and their full integration into the policy process, may also be used as a proxy measure for the success of the Department's efforts. We would encourage the BRU to adopt a 'traffic light' system to measure the quality of RIAs.

We would also encourage the Department to develop its post-implementation review process to judge whether the objectives of its regulations are being met.

## Department for Transport

### Summary of Key Findings

The BRU has been stretched over the last year due to the need to comply with the Administrative Burden Reduction initiative and establish Simplification Plans. As a result, it has spent less time on the core tasks of advising on and challenging policy work and RIAs. The BRU has been constrained in its ability to be proactive in promoting the use of impact assessment, and has not provided a robust challenge function to policy teams. Our assessment of a sample of RIAs showed mixed results which suggest inconsistency across the Department. The lack of effective central support means that it is difficult for the Department to ensure consistency and disseminate good practice in impact assessment, and RIAs.

We also noted examples of good practice, for example:

- the Department has begun to evaluate the impact of some of its legislation; and
- the Board Level Champion is proactive in seeking to influence – both internally, to raise awareness amongst peers – and externally, for example in Europe to promote informed discussion on the need for regulation.

The Department has sought to integrate better regulation into a more generic effort to improve policy making. This is an approach which we welcome, as it helps to mitigate the risk of fatigue with the Better Regulation agenda and sends out the message that impact assessment is not a separate activity to policy making.

### Key areas on which the Department could focus its efforts

The role of RIAs will expand further with the BRE proposal to use the RIA tool to measure changes in the cost of regulation under the Administrative Burden Reduction initiative. The format of RIAs is also likely to change. All departments will need to ensure that they have the capability to disseminate requirements and support policy teams, if cross-Government consistency is to be achieved. The BRU will have a central role to play. We would encourage the Department to ensure that the BRU is proactive in promoting impact assessment and Government initiatives, and supporting policy teams. This would encourage the effective dissemination of good practice and help improve consistency.

## APPENDIX FOUR

### Publications on Better Regulation Issues

Robert Baldwin and Martin Cave: *Understanding regulation: theory, strategy and practice*, 1999.

Robert Baldwin: *Coordination and consistency in better regulation*, 2005.

Robert Baldwin: *Is Better Regulation Smarter Regulation?* 2005 Public Law 485.

The British Chambers of Commerce: *Burdens Barometer 2006*, Francis Chittenden; Kapil Ahuja; Tim Ambler.

Corporation on London: *Reducing the regulatory burden: the arrival of meaningful regulatory impact assessment*, July 2004.

Corporation of London: *An absence of regulatory design? Recent European directives and the market for corporate bonds*, December 2004.

Corporation of London: *Rebalancing UK and European Legislation*, April 2005.

M Crew and D Parker (eds.): *International handbook of economic regulation*.

Bridget Hutter: *The role of non-state actors in regulation*, LSE Centre for Analysis of Risk and Regulation, Discussion Paper No.37, April 2006.

Colin Kilpatrick, David Parker and Yin Fang Zhang: *Regulatory impact assessment in developing and transition economies: a survey of current practice*, Public Money and Management, October 2004.

N Lee and C Kilpatrick: *Evidence-based policy-making in Europe: an evaluation of European Commission integrated impact assessments*, *Impact Assessment and Project Appraisal*, Volume 24(1).

Ragnar Lofstedt: *The swing of the regulatory pendulum in Europe: from precautionary principle to (regulatory) impact analysis*, Journal of Risk and Uncertainty, May 2004.

David Miers: *Regulatory Reform Orders: a new weapon in the armoury of law reform*, Public Money and Management, 2001 (7-9).

Claudio Radaelli: *The diffusion of regulatory impact analysis – best practice or lesson drawing?* European Journal of Political Research, Volume 43, August 2004.

Claudio Radaelli: *Diffusion without convergence: how political context shapes the adoption of regulatory impact assessment*, Journal of European Public Policy, Volume 12, Number 5, October 2005.