

Regulatory impact assessment

Purpose of paper

The purpose of this factsheet is to introduce the concept of regulatory impact assessment, an increasingly widely used technique to assess the potential impact on business of proposed new regulations. It draws on materials originally written by the UK Government Cabinet Office and the OECD.

Regulatory impact assessment

A Regulatory Impact Assessment (RIA) is simply an analytical process intended to inform policy decisions. Generally, RIAs are prepared by Government as part of their rationale for proceeding with a new regulation but, in the absence of a Government prepared RIA, there is nothing to stop a business membership organisation preparing one itself. An RIA is simply an assessment of the impact of policy options in terms of the costs, benefits and risks. An RIA cannot substitute for clear thinking of whether a regulation is required or in the preparation of the regulation in the first place. The RIA process is a continuous process intended to help policy makers and regulators to:

- think through and understand the potential impact of proposals;
- identify and assess options for achieving the desired behavioural change;
- ensure consultation is meaningful and reaches the widest possible range of stakeholders;
- consider whether the benefits justify the costs, recognising that often the costs accrue to business but the benefits accrue to society as a whole.

Preparing an RIA in advance of, and at the end of, a consultation process will help those with an interest understand and, if appropriate, challenge:

- why the Government is proposing to intervene;
- the extent to which new policies may impact on them (not least since this provides an opportunity for stakeholders to identify consequences that may not have been apparent to the policy makers or regulators); and
- the estimated costs and benefits of the measures.

Government will decide for themselves what measures they believe require an RIA. Ideally, any proposal that imposes costs on business should have an RIA.

Assessing impact in easy stages

Policy development

► Policy objectives

The starting point should be to provide a clear statement of the issue and policy objectives. This will include explaining the problem and level of harm caused, the current legislative framework in place and the intended effect of the new policy. This will require the utilisation of existing evidence to support the case, though more may need to be gathered, together with the rationale for Government intervention. This may relate to 'market failure' – where it is considered that the market has not delivered appropriate outcomes for citizens, consumers and producers – or where there are considered to be distributional, equity or other

social requirements. There is always a danger that a regulation may impact in ways that were not intended, so regulators need to look for the unintended consequences from the start of the process.

► **Options**

Government intervention is not always the best way of addressing a policy issue, there should be early considering of whether there is likely to be a need to regulate or whether the policy objectives can be achieved through a non-regulatory option, such as self-regulation or voluntary codes.

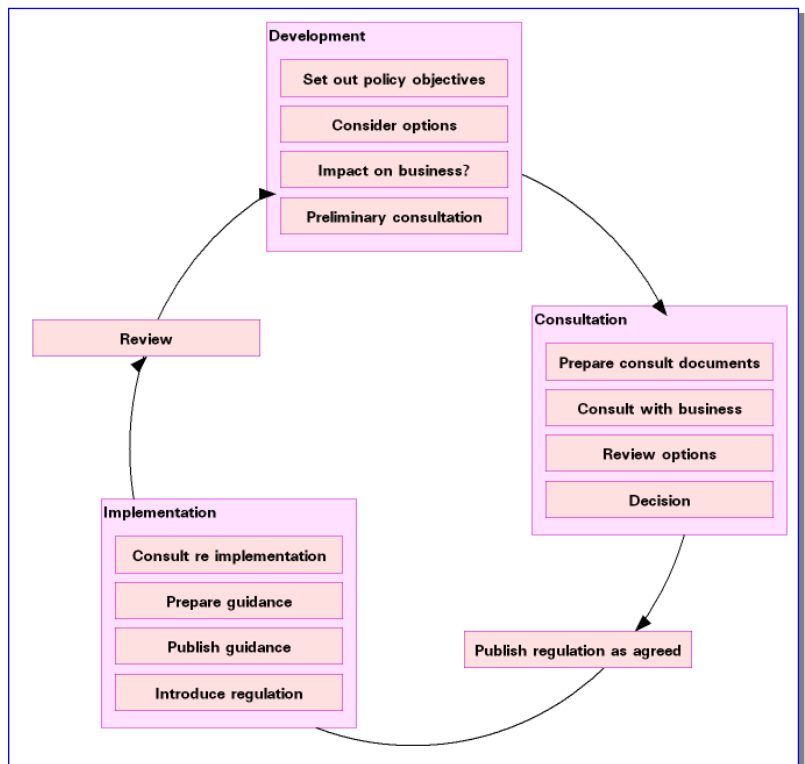
► **Consideration of impact**

There may be no or an insignificant impact on business, in which case there is not a problem, at least as far as business is concerned. If there is likely to be an impact, or if it is not known whether there might be an impact, then it is important to undertake a preliminary consultation and to gather some evidence.

► **Preliminary consultation**

There may already experience, research and evidence available on which to base a decision. If not, it may be sensible for the policy maker to commission some research. This can provide the basis for a preliminary, or initial, regulatory impact assessment which can then be used to gather further data during an informal or preliminary consultation.

In addition, it is important to have early informal discussions with business, trade associations and other stakeholders. They will be able to identify potential impact, for example, on the number, type and size of businesses likely to be affected and the potential costs and benefits. They may be able to suggest ways of solving the problem.



If regulation is ruled out, then there may be no need to progress further round the cycle. However, if there is still a chance that the issue will be addressed through regulation, and if there is a chance that the cost will be above the threshold then it is sensible to progress to formal consultation.

Consultation

► **Prepare consultation documents**

The formal process requires the dissemination of consultation documents which set out the problem and proposed solution in some detail. It should identify all the options and the potential of each to achieve the objective. The 'do nothing' option should be included, not only because the implications of not acting should be clear but also because it acts as a baseline for the other options. Include non-regulatory approaches such as codes of practice and financial incentives. Options could include

delaying implementation, exempting small firms, reducing the scope of the proposal or different ways of enforcing the proposed requirements. Flag up risks associated with each option, the likelihood of the risks occurring and ways that these risks could be mitigated. Think about unintended consequences. By regulating in one area, you may unintentionally create problems elsewhere. Consider the impact on businesses of all sizes and, particularly, on small businesses.

The most important consultation document will be the regulatory impact assessment, though it is recognised that it may still only be partial at this stage. Nevertheless, it should summarise the proposal together with the costs and benefits.

In addition, there will need to be a request to people and organisations who might respond explaining what is expected of them, listing specific questions, and providing a deadline for responses.

▶ **Consult with business and other stakeholders**

Stakeholders and businesses then need to be invited to respond. To be effective, the consultation documents needs to be made widely available, so the invitation should be promulgated through Chambers of Commerce, trade associations, etc as well as being made public through the media and the internet. Businesses need to be given a reasonable period in which to respond, ideally at least three months. The consultation exercise will provide an opportunity to refine the proposal.

▶ **Decision**

Ministers and officials will need to review the feedback carefully and come to a decision on the best way forward. The responses require careful consideration and may lead to a decision not to pursue regulation as the means of implementing the policy objective. Almost certainly, they will lead to a modification of the original proposal. Ultimately there has to be a decision whether to proceed with a regulation. A summary of the key material from the consultation document can then be pulled into a final regulatory impact assessment which can be published with the regulation. If the final decision is to introduce a new regulation, then the Government will wish to publish the policy and regulation, and the date on which the regulation will become enforceable, so that businesses can begin to plan.

Implementation

▶ **Consultation**

As noted above, it is often the administrative burden of regulations that are the real problem for business. It is important to consult on implementation as well. Even if business is unhappy with the policy objective, it is in everyone's interest to minimise the administrative burden on business. It is likely that there will have been some discussions about this during the consultation, but once the final format of the regulation has been agreed, it makes sense to involve the private sector again on how the regulation is to be implemented and what is to be required of business to demonstrate compliance whilst minimising the burden.

▶ **Prepare guidance**

The government, or the relevant business associations, can then prepare guidance for use by businesses as they strive to implement the regulation. Businesses need to have time to prepare for the implementation of new regulation and, if necessary, put in place processes and procedures to demonstrate compliance. There needs to be time to prepare the guidance and, ideally, there should be at least three months between publication of the guidance and implementation of the regulation to give businesses a chance to understand what is required of them and, if necessary, to in place appropriate procedures.

Review

The last step in the total cycle is review. The document should include a description of how the effectiveness of the legislation will be measured. Major new regulations should be reviewed within three years of coming into force.

It may be that regulations outlive their usefulness and can be abolished. It may also be that the costs turn out to be far higher than anticipated and so there is a desire to modify the regulation. Alternatively, it may be that the regulation is ineffective in achieving the policy objective and the government concludes that there is a need to toughen up the regulation.

Preparing the Regulatory Impact Assessment

The components of a Regulatory Impact Assessment

An RIA will need to summarise, though it may not be possible to address all of these in the initial or partial RIA:

- A clear statement of the issue, including:
 - Explanation of who is affected, including business sectors; and
 - A description, and ideally quantification, of the risk (that is, the problem to be addressed);
- The case for public intervention and the intended effects of the policy;
- The options, including non-regulatory options, and for each option:
 - A brief description of the pros and cons and the fit with existing regulatory requirements,
 - A cost benefit analysis, including a split between policy and administrative costs,
 - A consideration of potential competition issues, and
 - Identification of distributional impacts;
- The justification for the preferred option;
- Consideration of how to secure compliance; and
- Explanation of how and when policy will be monitored and impact will be evaluated.
- The evidence, covering all the options, will need to be included, either in the main text, or possibly as an appendix.

As the process continues round the cycle, and more data becomes available, it will be possible to refine and improve the RIA.

It is good practice to review the impact of policy change after three years, so the final RIA should include the intended date of review.

A good RIA will:

- include the best information available at the time;
 - be clear, concise and proportionate to the issue it is addressing;
 - be a stand-alone document, explaining the issue clearly, setting out the options, without the need to refer to other documents;
 - use plain language; and
 - avoid technical terms that are unintelligible to the lay person.
- **Costs and benefits**

An assessment of the benefits and costs of a proposal is the central analytical component of the RIA. It is the anticipated stream of benefits that flow from regulation or other policy measures that may justify the costs that are imposed on business or other sectors of the economy and society. The purpose of the analysis

of benefits and costs is to determine whether these costs are proportionate to the expected benefits. A proper analysis of benefits and costs is also essential to deliver on the Government's commitment to sustainable development. This requires policy to be appraised against its anticipated economic, environmental and social impacts. In many cases, the policy proposal will have direct economic, environmental and/or social impacts, which may be either benefits or costs.

Describe what firms will need to do to comply. Quantify the activities and calculate how much they will cost each year. Where there is uncertainty, use estimates and ranges. The analysis should reflect the split between policy and implementation costs, and should take account of environmental and social costs, public sector and distributional impacts. Policy costs arise from prescribed changes to achieve policy goals (eg buying hard hats to reduce injuries on building sites). Implementation costs arise from inspection and monitoring arrangements, from staff having to learn about a new requirement and from internal administrative changes made to facilitate or prove compliance (eg the administrative cost of compliance, training costs, or licence fees).

► **The evidence**

The evidence may need to include narrative, analysis and research. It is important to explain how costs and benefits have been calculated, by clear and transparent disaggregation of figures. The balance of economic, social and environmental costs and benefits should be clearly described and it must stand up to external scrutiny. In other words, it should be easily understood by all stakeholders and they must be able to contest the data.

► **Enforcement**

The RIA should describe:

- Which organisation(s) will enforce the policy; and
- The total annual cost of enforcement for these organisations

Consider from the outset whether the proposals are enforceable. How will those affected comply? What are current levels of compliance? It can be tempting to resolve current compliance problems by proposing more regulation. So regulators should look carefully at reasons for current non-compliance and aim to improvement rather than introducing more regulation.

Assess the likely impact of different means of enforcement, the likely costs and likely compliance rates. Achieving full compliance is rarely possible though it is difficult to define an acceptable level of non-compliance. However, the nature of the risk should give some indication.

Levels of scrutiny can be varied according to the risk associated with non-compliance. Self-assessment, where possible, is usually a good option, since there is no need for inspectors to check whether businesses are complying; instead, individuals are given the right to challenge a business if they believe it is not complying.

If active enforcement is required, involve the potential enforcement authorities at an early stage to agree procedures and estimate resource implications. Where enforcement responsibilities overlap, there is a need for co-ordination to ensure consistency.

When considering enforcement, regulators should also consider the use of sanctions for non-compliance. Sanctions should be fair and proportionate. Consider:

- administrative methods of preventative control, such as licensing, registration and enforcement approaches including improvement notices, suspension notices and prohibition notices;
- using civil penalties or statutory fines as a means of providing redress or as a deterrent; and

- if really necessary, criminal sanctions (but only for serious breaches such as negligence, persistent offenders and those who may cause serious harm).

Where sanctions are administrative, businesses should be provided with a fair, independent, speedy and inexpensive appeals process for resolving disputes.

Undertaking a consultation

For consultation to be effective, there needs to be an RIA which summarises all the known information, but recognising that it is still a 'work in progress' together with a clear and succinct consultation document which seeks views on:

- Whether the benefits and costs look reasonable, stressing that evidence will be required by respondents to support their assertions;
- Whether the assessment of competition effects looks reasonable;
- Enforcement and compliance issues; and
- Possible unintended consequences.
- In addition to written responses, regulators may find it helpful to utilise:
 - Meetings with stakeholders;
 - Web forums;
 - Public surveys; and
 - Focus groups.

Guidance

The RIA should include details of how the proposals are to be explained. The guidance should enable those affected by the regulation to understand easily what they have to do to comply. Good guidance will:

- Be short, succinct and clear, using plain language and avoiding jargon;
- Include a brief summary of what the regulation means;
- Utilise question and answer format; and
- Be tested with users before it is widely issued.

Further information

See <http://www.berr.gov.uk/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/page44077.html/> for guidance on how impact assessment is undertaken in the UK