

## Regulatory Impact Analysis: Lessons from the Pilot Exercise



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31

## Regulatory Impact Analysis: Lessons from the Pilot Exercise

Richard Boyle



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57-61 Lansdowne Road  
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## Foreword

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This paper is the thirty-first in a series undertaken by the Committee for Public Management Research. The Committee is developing a comprehensive programme of research designed to serve the needs of the future developments of the Irish public service. Committee members come from the following eight departments: Finance; Environment, Heritage and Local Government; Health and Children; Taoiseach; Transport; Communications, Marine and Natural Resources; Social and Family Affairs; Office of the Revenue Commissioners and also from Trinity College Dublin, University College Dublin and the Institute of Public Administration.

This series aims to prompt discussion and debate on topical issues of particular interest or concern. The papers may outline experience, both national and international, in dealing with a particular issue. Or they may be more conceptual in nature, prompting the development of new ideas on public management issues. They are not intended to set out any official position on the topic under scrutiny. Rather, the intention is to identify current thinking and best practice.

We would very much welcome comments on this paper and on public management research more generally. To ensure that the discussion papers and wider research programme of the Committee for Public Management Research are relevant to managers and staff, we need to hear from you. What do you think of the issues being raised? Are there other topics you would like to see researched?

Research into the problems, solutions and successes of public management processes and the way organisations can best adapt in a changing environment has much to contribute to good management, and is a vital element in the public service

renewal process. The Committee for Public Management Research intends to provide a service to people working in public organisations by enhancing the knowledge base on public management issues.

*Jim Duffy*, Chair  
Committee for Public Management Research  
Department of Finance

*For further information or to pass on any comments please contact:*

*Pat Hickson*  
Secretary  
Committee for Public Management Research  
Department of Finance  
Lansdowne House  
Lansdowne Road  
Dublin 4

Phone: (+353) 1 676 7571; Fax: (+353) 1 668 2182  
E-mail: [hicksonp@cmod.finance.irlgov.ie](mailto:hicksonp@cmod.finance.irlgov.ie)

General information on the activities of the Committee for Public Management Research, including this paper and others in the series, can be found on its website: [www.cpmr.gov.ie](http://www.cpmr.gov.ie); information on Institute of Public Administration research in progress can be found at [www.ipa.ie](http://www.ipa.ie).



## Executive Summary

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Regulation affects all areas of public life. Economic regulations may impact on competitiveness. Other regulations may impact on health and social well-being. Government policy is for regulation to be more rigorously evaluated to ensure that it is needed and that regulation does not become over bureaucratic. Regulatory Impact Analysis (RIA) is a tool for assessing the likely impact of regulatory proposals. RIA is increasingly being used in many OECD countries to enable more informed judgements to be made about the consequences and impacts of regulation.

This paper examines the pilot testing of the application of RIA in five government departments and offices in Ireland. A model for the application of RIA was developed and tested as part of the pilot process. Lessons learned from the pilot exercise will inform the mainstreaming of RIA across all government departments and offices.

The pilot exercise was overseen by a steering group comprising representatives of the five participating departments and offices and chaired by the Department of the Taoiseach, which has overall responsibility for regulatory reform policy. The five departments and offices (the Department of Enterprise, Trade and Employment; the Department of Health and Children; the Department of Justice, Equality and Law Reform; the Office of the Revenue Commissioners; and the Department of Environment, Heritage and Local Government) all undertook or oversaw the production of a RIA. In addition, a RIA undertaken by Forfás, while not part of the pilot exercise, was presented to the steering group and informed thinking at steering group meetings. Consequently, lessons learned from this RIA are also

included in this research study. A brief description of each of these RIAs is given in section 2.2 of the report.

### ***Is RIA worthwhile?***

The evidence from the pilot exercise and the international literature examined as part of this study is that there are significant benefits to be achieved from carrying out a RIA (section 3.2). RIAs can contribute to more effective policy making, reduce the risk of poor quality regulation, and may lead to savings for both the regulated and the regulators in some circumstances. Savings are not the only incentive, however, and the greater clarification of benefits arising from RIA may show that regulatory options are beneficial even when they impose new costs. The main point is that RIA can lead to better quality regulation. This process is not automatic however. Limitations to the RIA process exist. But the focus should be on overcoming these limitations rather than saying that RIA is unnecessary. The RIA process clearly has important benefits associated with it.

### ***When is the best time to do a RIA?***

The broad conclusion from this analysis of the pilot exercise and international developments is that RIA should ideally be undertaken early in the policy making process, before policy options to achieve policy outcomes have been closed off (section 3.3). In the case of European legislation, RIA should be undertaken in time to inform the Irish negotiation stance before the legislation is finalised.

There may, however, be occasions where RIA is conducted later in the policy process. This can still be a worthwhile exercise, as it can help identify flexibilities to implement regulation in the least burdensome or most effective way, even if the policy direction has been set.

### ***What is involved in doing a RIA?***

The model proposed for RIA suggests a two-part approach: a screening RIA applying to all regulatory proposals and a full RIA that would only apply to certain significant proposals.

Experience from the pilot exercise suggests that the screening RIA should be the standard analysis undertaken and requires a systematic yet relatively light-touch approach to RIA, with a short document being the desired product. The intention is to produce a rigorous analysis, yet one that is not too demanding of staff time. A full RIA, which will apply in a relatively small number of cases each year, should be a more rigorous analysis, including more sophisticated methodologies and deeper analysis of potential options and impacts. Tables 4.1 and 4.2 in the report outline potential content areas for screening and full RIAs.

In terms of the main elements involved in carrying out a RIA, this review of the pilot exercise highlights a number of issues where guidance on the application of RIA should be further developed (section 4.3). Among the key points emerging from this analysis are:

*Evaluation of options (assessment of costs and benefits)*

This element of the proposed model is central to the whole process of RIA. When done well, the estimation process may identify costs and benefits that would not otherwise have come to light or been fully considered. This is the case whether or not the estimates are fully quantified. In further developing the guidance associated with applying this element of the model, a number of lessons can be learned from the pilot exercise and international experience:

- The assumptions behind cost and benefit estimations should be made explicit, and sensitivity tests carried out where there is a high degree of uncertainty, giving a range of possible figures rather than a single figure.
- The guidance should clearly indicate that cost benefit analysis (CBA) refers to the quantification of costs and benefits in such a way that all costs and benefits have a monetary value attached to them, and is only likely to be applicable in a relatively small number of RIAs.
- Multi-criteria analysis is a helpful way of structuring the qualitative assessment of benefits, and its use should be promoted.

- In full RIAs, more rigorous methodologies need to be applied to the evaluation of options. Cost benefit analysis (CBA) and cost effectiveness analysis (CEA) are the most common methodologies applicable for full RIAs, where there are extensive third party costs and/or benefits.

#### *Consultation*

Consultation with parties potentially affected by the regulations, and other interested parties, is another extremely important and useful element of the RIA process. In terms of the development of guidance on RIA, the analysis and international experience indicates that consultation is an important issue to be maintained in both the screening and the full RIA process, with a more thorough and formal consultation process expected as part of the full RIA. To be done well, the consultation process needs to give particular attention to the audience(s) to be involved, the objectives of the consultation and the methods used to consult. Dangers of regulatory capture by interest groups should be avoided. In reporting on the results of the consultation, reference should be made to who was consulted, the outcomes of the consultation, and the response to the consultation findings.

#### *Enforcement and compliance*

Enforcement and compliance costs should be considered for all options, not just the recommended option. Indeed, the inclusion of enforcement and compliance costs may be a determining factor in the choice of whether to regulate or not, and if so which regulatory approach to take. Sensitivity testing of enforcement and compliance costing should take place, with uncertainties identified and included in the analysis where appropriate, giving ranges of costs rather than a single figure. Estimates should be made of the level of compliance likely with each option.

#### *Review*

There are clear benefits to including review in the RIA model. The guidance should indicate that each RIA should set out how

the proposal will be monitored and evaluated after implementation, by whom, and with a summary of the type of data to be collected and how the data should be collected.

***What are the management and resourcing implications of RIA?***

*Managing the RIA process in departments and offices*

In terms of departmental resourcing, while RIA is a time consuming exercise, essentially it puts a structure and provides a framework for what should be happening anyway as part of the policy making process (section 6.1.1). With regard to mainstreaming RIA, the lesson from the pilot exercise would seem to be that for most screening RIAs that would be undertaken, officials within the relevant sections should be able to deal with this as part of their normal duties. For full RIAs or screening RIAs where methodologies such as multi-criteria analysis are needed or where complex European legislation is involved (or where particular consultative approaches such as focus group surveys are required), external supports or consultancy may be needed to facilitate the process.

Departments and offices will need to examine their support structures for RIA. It may be useful to appoint a specific member of staff with responsibility for being the main departmental/office point of contact with regard to RIA. A key point, however, is that responsibility for undertaking RIA should rest with the staff of the section(s) affected. Any supports should be seen as supports and not as the location for RIA. It is important that the RIA process permeates departmental and office thinking and practice (section 5.2.2).

Where the RIA is likely to involve the examination of issues that go beyond the remit of an individual department, the establishment of a steering group with representatives from other affected departments and agencies, and with appropriate academic expertise, should be considered. Even where issues remain within a department, it may be worthwhile establishing an internal steering group, partly as a means of tapping in to relevant expertise within the department (section 5.2.2).

RIA reports produced by departments and offices should be published. It should only be in exceptional circumstances, in clearly defined cases, that RIA reports are not published (section 5.2.3).

*Implications for the centre of managing the RIA process*

In terms of guidance provided by the centre, the main element of guidance is the RIA model and associated guidelines. As experience with RIA progresses, there will be a need to keep this guidance continually updated. To further develop guidance and advice supports, the Better Regulation Unit should give consideration to developing a central listing of RIAs and the identification and dissemination of good practice case studies (section 5.3.1).

Much training, education and development for the conduct of RIA can be dealt with at departmental/office level. But in terms of ensuring a cohesive approach, and for cross-departmental learning, some degree of central involvement is needed. One particular need highlighted by the pilot exercise is for some type of cross-departmental networking supports for departmental staff involved in RIA. The expenditure reviewers network, overseen by the expenditure review secretariat in the Department of Finance, offers a useful model that could be replicated in the case of RIA (section 5.3.2).

For the pilot exercise, the Department of the Taoiseach appointed economic consultants to support the work of departmental/office staff (section 5.2.2). Participants in the pilot exercise saw this as beneficial, and hence particularly in the early days of mainstreaming, external economic consultancy support available to departments may be a useful option to consider to facilitate the process. As expertise develops within departments and offices, the need for such support should diminish. This economic consultancy support may be particularly helpful to smaller departments and offices that do not have the resources available to develop internal central supports.

Compliance and quality assurance are important issues for the centre to address with regard to managing the RIA process

(section 5.3.3). A number of points emerge in relation to compliance and quality assurance from the pilot exercise:

- In terms of timeliness of individual RIA production, the Government Secretariat within the Department of the Taoiseach, which is responsible for overseeing and circulating all memoranda to government, has a key role in overseeing developments.
- With regard to compliance overall, there may be a role for the centre in reporting on compliance with RIA requirements. Such a reporting process could also have a quality dimension, commenting on the adequacy of the RIAs produced, from a quality perspective. The annual report produced by the Australian Productivity Commission (Productivity Commission, 2004) provides a good example of how such a reporting procedure might operate.
- With regard to checking on the quality of the assessment of costs and benefits, particularly with regard to full RIAs involving cost benefit analysis or cost effectiveness analysis, *Regulating Better* (2004) suggests that a unit based in the public expenditure division of the Department of Finance should undertake this role. There will need to be close liaison between this unit and the Better Regulation Unit to ensure a common voice is heard from the centre.

Finally, with regard to evaluation of the long-term impact of RIA, the centre is well placed to periodically report giving an overview on the RIA process. The first formal report on the expenditure review initiative (Department of Finance, 2004) provides a good illustrative example of how such a reporting process might work. There may also be a role for the Comptroller and Auditor General in periodically assessing a sample of RIAs and commenting from a value for money perspective on the RIA process (section 5.3.4).

# 1

## Introduction

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### 1.1 Focus of the paper

The government white paper *Regulating Better* (2004) refers to regulatory impact analysis (RIA) as:

... an evidence-based decision tool, which has four main facets:

- quantification of impacts;
- structured consultation with stakeholders;
- evaluation of alternatives to regulation and alternative types of regulation; and
- full consideration of downstream compliance and enforcement issues.

This paper provides an overview of the piloting of regulatory impact analysis (RIA) in a small number of government departments and agencies. Lessons learned from the pilot RIA exercise are drawn for line and central departments involved in mainstreaming RIA following on from the pilot exercise.

### 1.2 Background and terms of reference for the study

Regulatory reform is one of the elements of public service modernisation highlighted in *Delivering Better Government* (1996), a programme of change for the Irish civil service. Improving the quality of regulations is identified as an integral



part of any strategy to foster growth, competitiveness and employment.

In 1999 the government invited the OECD to carry out a review of progress in regulatory reform in Ireland. This review was undertaken in 2000, and a report produced by the OECD in 2001 (OECD, 2001). In terms of the government's capacity to assure high quality regulation, the OECD review notes steady progress, recognising that Irish regulatory reform policy includes most of the OECD's recommended regulatory quality tools. However, they found that implementation was still weak. In particular, the review notes that the use of RIA is in its infancy in Ireland and that '... Ireland has not yet incorporated into its policy making process a well-functioning RIA process' (OECD, 2001).

As a follow up to the OECD review of regulatory practice, the government established a high level group on regulatory reform to oversee an agenda of change with regard to regulatory reform generally. This high level group in turn set up a working group to develop a preliminary model of RIA that could be applied in practice for the assessment of regulations. In 2004, with the publication of the white paper *Regulating Better*, the government committed itself to the use of RIA when making regulations, and stated that it would pilot a system of RIA in a number of government departments (action 2.1.1 in *Regulating Better* (2004)). The model produced by the RIA working group forms the basis for this pilot exercise (Department of the Taoiseach, 2002a).

The intention of the pilot exercise is to assess the merit of the RIA model and gain insights from practical issues arising from its use. Following the pilot phase, *Regulating Better* proposes that the RIA model will be refined and mainstreamed across all departments and offices. Consequently, the terms of reference for this study are:

- a) reviewing and documenting the experiences and lessons from the piloting of RIA
- b) preparing a report on the pilot phase

- c) providing a support for the subsequent mainstreaming of RIA.

### **1.3 Study approach and focus**

RIA is being piloted so as to (a) refine the RIA model, based on practical experience on actual pieces of legislation being progressed within departments, and (b) allow lessons to be learned from the practical application of the RIA model in terms of the management of the RIA process.

With these points in mind, the Department of the Taoiseach, which has central responsibility for overseeing the regulatory reform agenda, contacted all government departments and relevant offices to ask them to participate in the pilot RIA exercise. Resulting from this process, a small steering group was established with representatives from five government departments and offices that agreed to participate in the pilot: the Department of Enterprise, Trade and Employment; the Department of Health and Children; the Department of Justice, Equality and Law Reform; the Office of the Revenue Commissioners; and the Department of Environment, Heritage and Local Government.

The researcher worked closely with the steering group and individual departments and offices in the course of the study. Interviews, documentary review, observation and participation in the process were all methodologies used to draw out the lessons learned from the pilot exercise. Where relevant, international literature on practice was also accessed to provide further information.

### **1.4 Report structure**

Following this introductory chapter, Chapter 2 sets out a brief description of each of the pilot RIAs and the central supports provided for the exercise. Chapter 3 examines the issue of the benefits of doing a RIA and when in the policy process RIA is most useful. In Chapter 4, an assessment is made of the main elements of the draft RIA model. Chapter 5 looks at the management of the RIA process, both at departmental/office

level and at the centre of government. Finally, in Chapter 6, conclusions and recommendations based on the analysis in the previous chapters are set out with a view to informing the process of mainstreaming RIA in government departments and offices.

## 2

# Brief description of the pilot RIA exercise

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### 2.1 Introduction

In this chapter, a brief description is given of each of the RIAs carried out as part of the pilot exercise. The role of central supports in the pilot exercise is also described.

### 2.2 The pilot RIAs

The five departments and offices mentioned in Chapter 1 which participated in the RIA pilot process steering group (the Department of Enterprise, Trade and Employment; the Department of Health and Children; the Department of Justice, Equality and Law Reform; the Office of the Revenue Commissioners; and the Department of Environment, Heritage and Local Government) all undertook or oversaw the production of a RIA. In addition, a RIA undertaken by Forfás, while not part of the pilot exercise, was presented to the steering group and informed thinking at steering group meetings. Consequently, lessons learned from this RIA are also included in this research study. A brief description of each of these RIAs is given below.

#### *Export Control Bill RIA*

The Department of Enterprise, Trade and Employment (DETE) undertook this RIA. Its focus is the Irish export licensing system in the area of military and dual-use goods (dual-use goods are goods which have both a civilian and military end use). The proposed legislation subject to the RIA is intended to

(a) update existing legislative controls in the area of military goods and (b) meet the EU requirement to include new controls on brokering and technical assistance in national legislation.

#### *Medical Practitioners Bill RIA*

The Department of Health and Children (DHC) undertook this RIA. Its focus is the regulation of medical practitioners. The proposed legislation subject to the RIA is an updating of the Medical Practitioners Act 1978. Two elements of the proposed legislation form the basis for the main work of the RIA: the introduction of competence assurance and the revision of fitness to practice structures. The primary objective of the regulatory proposals is the protection of the public. Ensuring quality and safety, while encouraging acceptable competitive activity and promoting accountable self-regulation, are also priorities.

#### *Coroners Bill RIA*

The Department of Justice, Equality and Law Reform undertook this RIA. Its focus is the structure and organisation needed to facilitate the work of the Coroner service. The proposed legislation subject to the RIA is an updating of the Coroners Act 1962. The main elements of the legislation subject to the RIA refer to the structural, administrative and resource issues, with a view to assisting the decision-making process in relation to the choice between alternative organisational models for the Coroner service.

#### *Betting Duty RIA*

The Office of the Revenue Commissioners undertook this RIA. Its focus is the administrative burden on the bookmaking industry arising from procedures in the collection of betting duty. The RIA covers secondary legislation in this case. Section 70 of the Finance Act 2002 gives the Revenue Commissioners discretion to alter the frequency with which betting duty returns are made. The main objectives of the proposed regulatory changes are to reduce the compliance

burden on bookmakers while minimising risks to the Exchequer.

#### *Groundwater Directive RIA*

The Department of the Environment, Heritage and Local Government reported on this RIA to the RIA pilot steering group. A cross-departmental group chaired by the Environmental Protection Agency oversaw this RIA. It is Ireland's contribution to an EU benchmarking exercise, aimed at allowing a comparison of the approaches to RIA adopted among member states using a common case study, to further the development of an EU-wide RIA methodology. The objective of the proposed Groundwater Directive is to prevent and control groundwater pollution. The Groundwater Directive arises from a Water Framework Directive that provides a framework for the protection of surface waters and groundwater. The RIA addresses those items of the Groundwater Directive that are in addition to, or different from, the requirements of the Water Framework Directive.

#### *REACH Directive RIA*

As mentioned, this RIA was not part of the pilot exercise, but some useful lessons emerge from its conduct. Forfás undertook this RIA. Its focus is the EU REACH (Registration Evaluation and Authorisation of Chemicals) Directive. The proposed directive deals with issues of pre-registration, registration, evaluation, authorisation and restriction of chemicals used by companies. The objective of the directive is to protect human health and the environment by ensuring that anyone who uses chemicals for industrial purposes registers each chemical and its properties. The RIA is intended to evaluate the main impacts of the REACH proposals on Irish industry and guide Ireland's national negotiation position on finalisation of the REACH Directive proposals.

### **2.3 Central supports for the pilot RIA exercise**

In order to coordinate and support the pilot RIA exercise, the Department of the Taoiseach took a number of initiatives:

1. The department chaired and provided the secretariat for the RIA pilot steering group, enabling participants to exchange information and providing a focus for the project.
2. The department provided an assistant principal officer completing the second year of the IPA Masters of Economic Science in Policy Analysis who was available to provide a contact point between departments and the steering group, respond to queries or issues arising during the piloting process, and liaise between departments and the economic consultants (see below).
3. The department selected economic consultants, on the basis of a competitive tender, to provide advice and guidance to departments and offices participating in the pilot in relation to elements of conducting a RIA such as data analysis and appropriate methodologies. The consultants were not made available to departments to carry out the RIA, but to offer advice and guidance and, if appropriate, contribute to particular elements of the RIA process.

These central supports were intended to facilitate the pilot exercise and enhance the quality of the RIAs produced.

## 3

# Why and when to do RIA?

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### 3.1 Introduction

In this chapter, the justification for undertaking RIA is examined. So too is the issue of when in the policy process to undertake a RIA.

### 3.2 Why do a RIA?

At the time of writing, the Cabinet had not been presented with the revised legislation and associated RIA in any of the pilot cases. It is not possible therefore to overview the completed process. It is nevertheless possible to identify significant issues concerning the benefits of participating in the RIA process. The experience of the pilot exercise highlights a number of benefits of the RIA process:

- Undertaking a RIA is seen as enhancing the policy-making process. The process of producing a RIA helps in the clarification of policy issues, putting a useful structure on the investigation and assessment of the issue at hand. All of the producers of the pilot RIA reports noted this benefit.
- RIA helps highlight key sectors/stakeholders that will be affected by the proposed regulations and the key cost drivers. For example, the Groundwater Directive RIA raised the issue of the impact of the directive on the mining sector, and Ireland's ability to attract new mining investment if the directive were to proceed in its original form. The RIA also pointed out potential significant cost implications for road construction and maintenance.



- Carrying out a RIA may lead to financial savings and more effective use of resources. For example, the Betting Duty RIA on the proposal to reduce the returns from bookmakers from a monthly to a quarterly interval estimated annual savings to the industry of €413,000. The RIA also noted savings to the Office of the Revenue Commissioners in the form of more effective deployment of six staff formerly engaged in processing returns, the annual pay bill for these staff being €208,000.
- RIA can lead to more focus being given at an early stage to compliance, enforcement and review issues than might be the case otherwise. The respondents from both the Medical Practitioners Bill RIA and the Export Control Bill RIA noted this benefit.
- Undertaking the RIA may help clarify the options and choices to be made between possible alternative organisational arrangements and structures needed to support the proposed regulation. The Coroners Bill RIA, for example, focused on the administrative arrangements needed to most effectively regulate the Coroner service.
- The RIA process itself may help raise industry/stakeholder awareness of the proposed regulations, particularly through the consultation arrangements. For example, consultation on the REACH Directive RIA was found helpful in explaining the implications of the directive, which is very complex in nature, to industry representatives potentially affected by the directive.
- With regard to EU-sponsored regulations, undertaking a RIA can allow Ireland to participate more effectively in the debate at EU level about proposed regulations and their impact. Both the Groundwater Directive RIA and the REACH Directive RIA informed the Irish stance on negotiations on the proposed directives.

These benefits are broadly in line with international experience. The OECD (2002) notes that the benefits of the RIA process include providing a systematic, consistent and

transparent framework to assess the impacts of government regulatory action. RIAs help clarify information about impacts for decision makers and help make economic, social, environmental and other trade-offs explicit. Hahn (1998), in an analysis of the impacts and outcomes of the use of RIAs by OECD countries, concludes that RIAs have helped reduce the number of unnecessary and burdensome regulations.

Australian experience is that the RIA process assists government prepare better quality regulations. RIAs have sometimes led to draft options and recommendations being revised and modified before the decision-making stage. In 2003/04, the preferred regulatory option at the start of the process changed in about 10 per cent of cases where RIAs were prepared (Productivity Commission, 2004). Similarly, a study of ten RIAs by the National Audit Office (NAO) in the UK found that four of the ten had led to some change in policy, ranging from minor refinements to the department deciding not to regulate at all in one case (National Audit Office, 2005). The NAO study also found that in the other six cases departments found benefits from producing RIAs, largely around improving the policy-making process, through more effective consultation, gathering evidence and information, and making the process more transparent.

In all, the evidence from the pilot exercise and the international literature is that there are significant benefits to be achieved from carrying out a RIA. RIAs can contribute to more effective policy making, reduce the risk of poor quality regulation, and may lead to savings for both the regulated and the regulators in some circumstances. Savings are not the only incentive, however, and the greater clarification of benefits arising from RIA may show that regulatory options are beneficial even when they impose new costs. The main point is that RIA can lead to better quality regulation. This process is not automatic however. Limitations of the RIA process are highlighted where necessary in the remainder of this report. But the focus should be on overcoming these limitations rather

than saying that RIA is unnecessary. The RIA process clearly has important benefits associated with it.

### **3.3 When to do a RIA?**

The pilot exercise raises some important issues as to when to carry out a RIA so as to maximise the beneficial effects on the policy-making process. Due in part to the nature of the exercise, with departments and offices being asked to volunteer topics for piloting RIA, most of the projects selected were already some way into the policy process when the RIA was conducted. In the case of the Coroner service, a review of the Coroner service had been conducted in 2004 and a report produced before the RIA exercise was started. The RIA subsequently focused on the structural and organisational arrangements needed to support the Coroner service rather than examine wider issues around the provisions of the proposed Coroners Bill. Similarly, in the case of the Medical Practitioners Bill RIA, the policy process was well advanced, with the heads of a bill already established when the RIA was undertaken. The Betting Duty and Export Control Bill cases were also well advanced at the time the RIA was undertaken.

The view of most respondents was that the earlier in the policy process the RIA is carried out the better from the point of view of the RIA being able to make a comprehensive contribution to informed decision making. The best time to undertake a RIA is when there is a clear idea of what direction a particular policy might take, but when the policy process is not too far advanced. There are still benefits to be gained from carrying out a RIA later in the policy process, as the pilot cases illustrate, but the earlier in the policy process the broader the potential scope of the RIA will be.

In the cases dealing with European legislation – the Groundwater Directive and REACH Directive RIAs – the issue of the timing of the RIA was also seen as crucial to their impact. RIA needs to be completed in such cases in time to help tease out the issues that should be the priority for negotiations with the European Commission before the legislation is finalised.

This point about getting RIAs underway early in the policy process is supported by international practice and literature. Jacobs (2004) identifies, as one of the best practices for getting the most out of RIA, the need to integrate RIA with the policy-making process, beginning as early as possible: ‘Regulators should see RIA insights as integral to policy decisions, rather than as an “add-on” requirement for external consumption’. The Productivity Commission (2004) in Australia points out that when RIAs are prepared late in the policy-making process it diminishes the capacity of the RIA to aid decision making. The Commission notes that this lateness can be the result of poor internal management and planning, or underestimation of the complexity of impacts of a regulatory proposal and the time needed to collect and analyse information.

The National Audit Office (NAO) in the UK is a strong advocate of undertaking RIA early in the policy process. In a report produced in 2001, the NAO states that:

RIAs are more likely to add value if they are prepared while policy makers are still considering options for achieving their policy objectives, so that the analysis in the RIA informs the design and choice of the options ... Our examination showed that starting early contributed to proposals for new regulation being substantially modified, or more frequently, to less intrusive options for regulation. (National Audit Office, 2001, p.10)

The broad conclusion from this analysis of the pilot exercise and international developments is that RIA should ideally be undertaken early in the policy-making process, before policy options to achieve policy outcomes have been closed off. In the case of European legislation, RIA should be undertaken in time to inform the Irish negotiation stance before the legislation is finalised. These findings confirm the guidance issued in the draft report of the RIA working group on the RIA model (Department of the Taoiseach, 2002a) that:

To obtain maximum benefit from the RIA process, the RIA should be prepared by officials once an administrative decision is made that regulation may be necessary, but

before a decision is made by Government that regulation is actually necessary.

There may, however, be occasions where RIA is conducted later in the policy process. This can still be a worthwhile exercise, as it can help identify flexibilities to implement regulation in a less burdensome or most effective way, even if the policy direction has been set.

## 4

# Applying the RIA model

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### 4.1 Introduction

The draft report of the RIA working group (Department of the Taoiseach, 2002a) establishes a model for applying RIA. The outline structure of the model is set out in Figure 4.1. The model proposes a two-part approach, involving an initial screening RIA, applying to all regulatory proposals, and a full RIA, which would only apply to certain significant proposals on the basis of defined thresholds. The RIA working group recommend that a full RIA would be required if:

- a) The cost of the regulation/legislation exceeds €2.5 million. Costs should include the total of costs to industry, the consumer and government, and capture recurring as well as once-off costs.
- b) The proposal falls beneath the cost threshold but has implications for certain very specific policy areas, which have been identified by government as of particular importance.

The model proposes that the screening RIA would incorporate the following elements:

- statement of the case, identifying the issue under scrutiny and establishing if there is a need for action by the state
- generation of options, outlining proposed alternative regulatory responses
- evaluation of the options, examining the costs and benefits of the proposed options

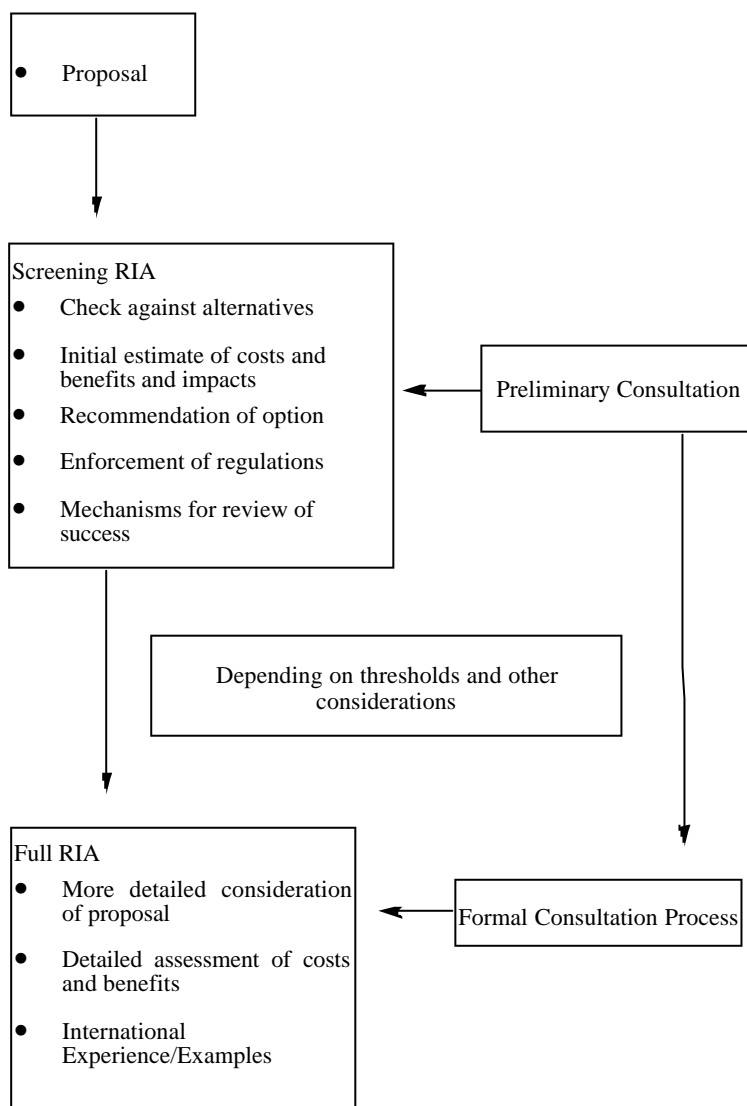
- impact analysis, identifying the significant policy impacts of the proposal
- consultation, identifying the parties affected and outlining the initial consultation
- recommendation, setting out the chosen option and the reasons for the choice
- enforcement and compliance elements, determining the details of the mechanisms needed to ensure compliance
- review mechanism, detailing procedures for reviewing the impact of the regulation in practice

A full RIA should essentially address the same elements, the main differences being that it would address the elements in greater detail, and may involve more formal methodologies for assessing costs and benefits. The full RIA is also expected to examine how the issue has been addressed internationally, if appropriate, and to contain a more formalised and extensive public consultation process.

#### **4.2 Screening and full RIA**

Only one of the pilot RIAs – the Medical Practitioners Bill RIA – progressed through the screening and full RIA stages. The other pilot RIAs all concluded with a screening RIA. But despite this limited experience with the two-stage approach in application, the pilot process identified a number of problems with the suggested approach.

For many of the participants in the pilot exercise, the screening RIA is seen to cover most of the issues that would be addressed in a full RIA, and the question of where to draw the line and stop a screening RIA and do a full RIA is seen to be problematic. Some respondents also noted that it would be natural that there be a tendency within departments and offices to conclude that a screening RIA is sufficient, rather than embark on a full RIA process that may require more extensive use of resources, and that the ambiguity between the boundaries of a screening and full RIA as things stand could facilitate this process. The relatively low level of the financial threshold

**Figure 4.1: Diagram of RIA Processes**

Source: Department of the Taoiseach, 2002a



proposed (€2.5 million) and some ambiguity about what costs should be included means that the threshold is not seen as a particularly helpful demarcation.

European Commission experience, which was influential in shaping the two-stage approach in the Irish pilot exercise, is also questioning the value of a two-stage approach to RIA. The Commission's preliminary RIAs (the equivalent of a screening RIA) are to be replaced by 'roadmaps', that will be presented at the early stages of proposals and be much 'lighter' in nature, involving initial impact assessment and the planning of further work, providing the basis for assessing the level of analysis needed (European Commission, 2004).

Both the pilot exercise and the European Commission experience would suggest that the practice should be changed with regard to screening and full RIAs. The screening RIA should be the standard analysis undertaken and should require a systematic yet relatively light-touch approach to RIA, with a short document being the desired product. Potential elements of such a screening RIA have been identified (Department of the Taoiseach, 2005) and are outlined in Table 4.1. The full RIA would be a more rigorous analysis, including more sophisticated methodologies and deeper analysis of potential options and impacts. The Department of the Taoiseach (2005) has identified the potential elements of such a full RIA and these are outlined in Table 4.2.

As mentioned above, the threshold criteria proposed for the pilot RIA exercise as to when to move to a full RIA were not found to be particularly helpful in practice. While it was felt that there are always likely to be problems with defining thresholds, and that the criteria should not attempt to be too delimiting or prescriptive, respondents were generally of the view that the financial limit should be raised significantly, and that the presence of significant third party costs or other significant costs should be one of the key deciding factors as to when to conduct a full RIA.

**Table 4.1: Screening RIA**

<p>A Screening RIA should be included as part of any Memorandum for Government seeking permission to regulate where regulatory proposals do not meet the criteria for a full RIA. It should contain the following:</p> <p><b>1. Description of policy context, objectives and options (for example different forms of regulation):</b></p> <p>i. A brief description of the policy context</p> <p>ii. An explicit statement of the objectives that are being pursued</p> <p>iii. An identification of the various policy options or choices which are under consideration</p> <p><b>2. Identification of costs, benefits and other impacts of any options which are being considered</b></p> <p>i. Identification of likely costs, an estimation of their magnitude and to whom they fall</p> <p>ii. A description of expected benefits and where these will fall</p> <p>iii. Verification that there will not be disproportionately negative impacts on</p> <p style="padding-left: 20px;">a) National competitiveness</p> <p style="padding-left: 20px;">b) The socially excluded or vulnerable groups</p> <p style="padding-left: 20px;">c) The environment</p> <p>And that regulations do not</p> <p style="padding-left: 20px;">d) Involve a significant policy change in an economic market</p> <p style="padding-left: 20px;">e) Impinge on the rights of citizens</p> <p style="padding-left: 20px;">f) Impose a disproportionate compliance burden on third parties</p> <p style="padding-left: 20px;">g) Other criteria to be decided from time to time by government</p> <p>iv. Summary of costs, benefits and impacts of each option identified in 1, identifying preferred option where appropriate</p> <p><b>3. Consultation</b></p> <p>Summary of the views of any key stakeholders consulted which must include any relevant consumer interests and other Government Departments</p> <p><b>4. Enforcement and compliance</b></p> <p>Brief description of how enforcement and compliance will be achieved</p> <p><b>5. Review</b></p> <p>Identify mechanisms for review and specify indicators which would demonstrate the success of the policy proposal</p>
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Source: Department of the Taoiseach, 2005

**Table 4.2: Full RIA**

<b>1.</b>	<b>Statement of policy problem</b>
	Description of background to the issue and identification of policy problem to be addressed
<b>2.</b>	<b>Identification and description of options</b>
	To include no action where relevant and at least one approach which is either a non-regulatory approach or an alternative form of regulation to command-and-control (e.g. self-regulation, co-regulation etc.)
<b>3.</b>	<b>Impact analysis including costs and benefits of each option</b>
	i. Tangible cost should be quantified as far as is possible including compliance costs. Effects on national competitiveness should be identified and where possible estimated. Any negative social and environmental impacts should be identified and where possible quantified
	ii. Where costs are extremely significant, formal cost-benefit analysis to be conducted to include competitiveness, social and environmental impacts
<b>4.</b>	<b>Consultation</b>
	A formal consultation process to be held with a minimum of 6 weeks for responses. Views expressed during this process to be summarised and addressed
<b>5.</b>	<b>Enforcement and compliance for each option</b>
	A detailed description of how enforcement is going to be achieved, an outline of any particular compliance issues and how these are to be addressed
<b>6.</b>	<b>Review</b>
	i. A description of how each policy approach would be reviewed
	ii. Identification of performance indicators for measuring the success of each option
<b>7.</b>	Summary of the performance of each option and identification of recommended option where appropriate

*Source:* Department of the Taoiseach, 2005

### **4.3 Applying the elements of the model**

In this section, comment is made on the application of the elements of the RIA model as applied in practice in the pilot exercise.

#### *4.3.1 Statement of the case*

The statement of the case is intended to set out the issue under scrutiny and explain why there is a need for state regulation (Department of the Taoiseach, 2002a). In many of the pilot RIAs, the statement of the case tended to provide a fairly lengthy narrative description of the proposed situation. At times, the basic objectives behind the proposed regulation were not particularly clear.

International experience highlights the importance of being clear about the policy objectives behind the proposed regulation. A UK National Audit Office (2004) study notes that:

Clear objectives at the outset derive from what a department's policy aims to achieve and allow the department to consider a choice of possible options ... A clear statement of objectives at the outset is therefore an important feature of a good quality RIA. It enables the reader to judge how far the risk assessment is relevant and how far the options considered address the objectives.

New Zealand guidance stresses the importance of having clearly articulated policy objectives indicating what is being sought by government action. The outcomes of the proposed government action should be reflected in the policy objective statement (Ministry of Economic Development, 1999).

In the light of this experience, it is suggested that the RIA model guidance be altered so as to give more explicit prominence to the need for clear policy objectives to be articulated in the statement of the case. These objectives will facilitate the identification and analysis of options and of their relevant costs and benefits.

#### *4.3.2 Generation of options*

The draft RIA model indicates that the RIA should indicate what alternatives to regulation have been identified, and if regulation is chosen, what possible approaches are available to resolve the situation (Department of the Taoiseach, 2002a). The Office of Management and Budget in the USA outlines a broad range of alternative regulatory approaches that may be considered: different choices defined by statute; different compliance dates; different enforcement methods; different degrees of stringency; different requirements for different sized firms; different requirements for different geographic regions; performance standards rather than design standards; market-oriented approaches rather than direct controls; and informational measures (Office of Management and Budget, 2003).

In practice, the generation of options in the pilot exercise tended to be quite limited. Given the stage of the process at which the RIAs were undertaken, as discussed in section 3.3, alternatives to regulation were not considered. In terms of alternative regulatory approaches, most of the RIAs included a 'do nothing' or status quo option, which was normally not a realistic option in terms of implementation, but which acted as a useful baseline against which to assess alternative options. One or two other options were then outlined. In the Groundwater Directive RIA, alternative options were not considered, as EU legislation was seen to have delimited any alternative choices in this case.

This limitation on alternative options is not uncommon internationally. The UK National Audit Office (2004) study of RIAs found that most did not include a range of options.

Another issue raised in the pilot process is the extent to which options should be selected that are in line with ministerial preferences, or whether a broad spectrum of options, including some that may or may not find favour with the minister, should be included. This is an area where very specific guidance is unlikely to be helpful, and reflects the political realities of the policy process. Nevertheless, as a

general rule, in the spirit in which RIA is proposed, where practicable alternative options are available, these should be presented to ministers, alongside the assessment of costs and benefits, and ministers may then make the final political decision as to the appropriate course of action, taking into account the political as well as the administrative implications.

In terms of the future development of guidance on RIA, in light of experience to date, there are implications for the generation of options from this analysis. In a screening RIA, as outlined in Table 4.1, a statement should be made as to why regulation is considered the most suitable approach, but a detailed study of alternative options may not be required. This does not rule out the consideration of possible alternatives, but reflects the administrative reality that often choices are relatively restricted in practice. For a full RIA, however, options would need to be considered as a specific step in the process, including the do nothing/status quo option and some alternative regulatory approaches.

#### *4.3.3 Evaluation of options*

This is the stage at which the costs and benefits of the alternative regulatory approaches proposed are assessed. The identification of the parties on whom the costs and benefits fall is important, particularly if some parties are affected disproportionately (Department of the Taoiseach, 2002a).

An important terminological issue arose in the pilot exercise. In everyday practice, many civil servants refer to cost benefit analysis when they mean a qualitative outlining of costs and benefits associated with a proposal. But cost benefit analysis (CBA) in the sense it is formally used refers to the methodology whereby costs and benefits are expressed in monetary terms, allowing a common measure to be used for the assessment of different regulatory options. In several RIAs, people referred to undertaking a cost benefit analysis, whereas in fact they undertook a largely qualitative assessment of costs and benefits.

In practice, the identification of costs and benefits was seen as a significantly challenging but worthwhile part of the RIA pilot exercise. Data deficiency and a limited awareness of applicable techniques restricted the capacity for structured assessment of costs and benefits in several cases. It was also seen as important in the cases examined to put limits on what costs and benefits should be assessed, identifying the priority issues to be addressed by a RIA rather than trying to assess all costs and benefits associated with the legislation.

The quantification of costs was easier than the quantification of benefits, though cost estimation was less than straightforward, often because the proposed legislation had uncertainties associated with it. This is particularly the case where primary legislation sets out broad parameters but leaves to secondary legislation the job of fleshing out the picture. The Medical Practitioners Bill RIA addressed costing problems by identifying what aspects of the legislation had the most significant costs at the screening stage, and then in the full RIA gave best estimates of likely costs of the options considered, explaining assumptions underpinning the estimates where these were significant. In terms of assessing benefits, the Medical Practitioners Bill and Coroners Bill RIAs both made use of multi-criteria analysis to provide a structured estimate of benefits. Multi-criteria analysis is a technique used to qualitatively assess the benefits of a proposal or group of options against the stated objectives.

The REACH Directive and Groundwater Directive RIAs were the only RIAs that had significant costs and benefits affecting third parties, that is, groups not directly targeted by the regulation. For example, in the REACH Directive RIA, significant costs were found for 'downstream' users/consumers of chemicals, in addition to the producers and importers of chemicals directly affected by the proposed regulations. A particular benefit of this RIA was seen to be the identification and estimation of the downstream costs of the proposed directive. This case also cautions against simplification of costs and benefits into single monetary figures, particularly

when the assumptions on which such figures are based are subject to a high degree of uncertainty. In the case of assessing the upstream costs of REACH to the chemical industry, the REACH RIA included four scenarios with different assumptions about the level of voluntary consortia created (voluntary consortia enable the sharing of costs of testing and reporting, hence the higher the proportion of voluntary consortia, the lower the level of overall costs). Each of these scenarios is in turn subject to sensitivity testing of the costing assumptions.

The experience of the pilot exercise on cost and benefit evaluation of options, as with other elements of RIA, is in line with practice elsewhere. UK experience is for the quantification of costs to be quite common, but that the quantification of benefits is harder and more unusual in RIAs (National Audit Office, 2001). Problems in terms of uncertainties associated with cost estimations exist. In such cases, the National Audit Office (2004) recommends the use of sensitivity tests showing the consequences of changes in key assumptions.

In terms of the degree of effort needed to produce cost and benefit estimates for the evaluation of options, the OECD (2002) recommend the application of the principle of proportionality. Low cost or low impact regulations may require only a brief, qualitative assessment of costs and benefits. Regulations with major impacts require more rigorous assessment. In this latter case, it is likely that cost benefit analysis (CBA) or cost effectiveness analysis (CEA) will be appropriate methodologies to apply. An excellent description of these methodologies and their application is given in USA guidance on regulatory analysis (Office of Management and Budget, 2003). Particular skills are needed in applying these more rigorous methodologies. For example, willingness to pay and revealed preference techniques are often used in CBA and CEA.



In all, this element of the proposed model is seen as valuable in attempting to clarify the main costs and benefits associated with the proposed regulation under scrutiny.

When done well, the estimation may identify costs and benefits that would not otherwise have come to light or been fully considered. This is the case whether or not the estimates are fully quantified. As Jacobs (2004) states: 'Contrary to most expectations, the most important contributor to the quality of government decisions is not the precision of the calculations, but the action of asking the right questions, understanding real-world impacts, and exploring assumptions'. In further developing the guidance associated with applying this element of the model, a number of lessons can be learned from the pilot exercise and international experience:

- The assumptions behind cost and benefit estimations should be made explicit, and sensitivity tests carried out where there is a high degree of uncertainty, giving a range of possible figures rather than a single figure.
- The guidance should clearly indicate that cost benefit analysis (CBA) refers to the quantification of costs and benefits in such a way that all costs and benefits have a monetary value attached to them, and is only likely to be applicable in a relatively small number of RIAs.
- Multi-criteria analysis is a helpful way of structuring the qualitative assessment of benefits, and its use should be promoted.
- In full RIAs, more rigorous methodologies need to be applied to the evaluation of options. Cost benefit analysis (CBA) and cost effectiveness analysis (CEA) are the most common methodologies applicable to full RIAs, where there are extensive third party costs and/or benefits.

#### *4.3.4 Impact analysis*

At this stage, the analysis is intended to identify the significant impacts of the options considered. The draft model proposes

the examination of economic, social (including poverty, rural and gender proofing) and environmental impacts (Department of the Taoiseach, 2002a).

As with the evaluation of options discussed above in section 4.3.3, with the exception of the REACH and Groundwater Directive RIAs, few significant third party impacts were present in the RIAs undertaken as part of the pilot exercise. In the Groundwater Directive RIA, potentially significant economic impacts on the mining industry and on road construction and maintenance costs were identified. The limited extent of economic, social and environmental impacts in the pilot exercise makes it difficult to assess this element of the model in detail.

There was, however, some confusion in the distinction between this element of the model and the evaluation of options in practice. Most participants noted that the identification of the costs and benefits of the options is in essence the same thing as identifying the impacts. With this in mind, the full RIA outlined in Table 4.2, as proposed by the Department of the Taoiseach (2005), indicates that the evaluation of options and impact analysis elements of the model be merged in future guidance. This approach would seem to be practical and sensible in terms of simplifying the process.

#### *4.3.5 Consultation*

Consultation is identified as an important element in the RIA process in the draft RIA model. Preliminary consultation is required for the screening RIA, with the identification of key stakeholders and consultation with them taking place. For the full RIA, full formal public consultation is specified, to ensure that a wide range of views are obtained, not just those of the main interest groups (Department of the Taoiseach, 2002a).

In practice, for a variety of reasons, consultation did not feature highly in many of the pilot RIAs. Given the stage of the policy process reached, in several cases public consultation had already taken place to a large extent and it was felt to be unproductive to repeat the exercise. In the Export Control Bill

and the Coroners Bill RIAs, for example, consultation had taken place when review groups were examining the issues. In these cases, the RIA reported on the results from the consultation process.

The reporting of the consultation process varied in the RIA reports. At the most basic level, a listing of the main stakeholders consulted was given. More detailed reporting also gave the findings of the consultation and the consequent response. The Medical Practitioners Bill RIA, for example, commented on a submission made by the Competition Authority amongst others. The main points made by the Competition Authority were listed, along with the departmental response indicating which points were accepted and which were not accepted, and why.

Where consultation did take place, the benefits of consultation were apparent. In the case of the REACH Directive, because of the complexity of the regulation, it was decided to conduct a number of case study interviews as well as issue a questionnaire. These interviews served a useful purpose both in gathering responses, but also in informing organisations about the implications of the REACH Directive which many people did not understand because of its complexity. In the case of the Groundwater Directive RIA, consultation with key stakeholders highlighted six significant additionalities arising specifically from the Directive rather than from the underlying Water Framework Directive. These additionalities were subsequently used to form the basis for the impact analysis.

International experience points to the key role consultation can play in ensuring an effective RIA process. The Australian Productivity Commission (2004) notes that effective consultation can help create a working partnership with stakeholders, demonstrate the commitment of the government to openness and accountability, contribute to regulatory quality and minimise the risk of regulatory failure. The Productivity Commission (2004) identifies a number of prerequisites for a good consultation process:

- Consultation objectives need to be set. Clear objectives help identify the target audience, select the right consultation method and assist evaluation.
- The stakeholders need to be clearly identified. In particular, the target audience may be broader than those directly impacted or those who have a known interest.
- Other departments and agencies may need to be involved.
- Methods of consultation need to be determined.
- The nature and form of questions included in written consultation documents need to be considered.
- Consultation risks need to be managed. Actions may need to be taken to mitigate such risks as low participation rates and poor presentation of complex issues that may be too difficult to understand.

Humphreys (2002) notes that identifying the right groups and/or populations for consultation is not necessarily straightforward: 'For example, the extent to which representative groups fully reflect the diversity of the populations they purport to represent can be uncertain. In such circumstances it may be appropriate to supplement information coming from group consultations by undertaking focus group discussions or a sample survey of the wider population'. Such issues are particularly important to consider in terms of avoiding regulatory capture by a small group and giving their views particular prominence at the expense of less cohesive or less directly affected publics who may nevertheless be significantly affected by regulation. Humphreys (2002) provides a good overview of methods and approaches that can be used to facilitate effective consultation.

In terms of the development of guidance on RIA, this analysis would suggest that consultation is an important issue to be maintained in both the screening and the full RIA process, with a more thorough and formal consultation process expected as part of the full RIA. To be done well, the consultation process needs to give particular attention to the audience(s) to be involved, the objectives of the consultation and the methods

used to consult. Dangers of regulatory capture by interest groups should be avoided. In reporting on the results of the consultation, reference should be made to who was consulted, the outcomes of the consultation, and the response to the consultation findings. As the Productivity Commission (2004) notes:

Finally, good consultation does not necessarily mean that the views of stakeholders have to be accepted. The purpose of consultation is to assist in ensuring that regulatory proposals provide net benefits to the community as a whole rather than to specific stakeholders. At the same time, where stakeholders have put forward their views in good faith, there is a responsibility to explain why a regulatory proposal should not reflect their views in terms of achieving regulatory best practice.

#### *4.3.6 Recommendation*

The draft RIA model indicates that, at this stage, a recommendation should be made as to which of the options examined would best achieve the stated objective, giving brief reasons for the choice. The recommendation should be based on the analysis of costs and benefits, the experience of other EU and OECD member states (in the case of a full RIA), the results of the consultation process and any other relevant information (Department of the Taoiseach, 2002a).

The recommendation is in many ways a logical follow-on from the application of the other elements of the model. The previous analysis should lead logically to the choice of a preferred option. In most cases in the pilot exercise, this was the case. In the Groundwater and REACH Directive cases, rather than a preferred option, the recommendation section focused on the main issues to be clarified or further negotiated with the European Commission.

Two additional points emerge from the pilot exercise. One is that the recommendation, while taking things forward at a point in time in the policy process, may not be the final step. Policy continues to evolve and develop. In the Medical

Practitioners Bill RIA, the preferred option for both competence assurance and fitness to practice was qualified, recognising the need for further information that could lead to subsequent adaptation of the preferred course of action.

The second point to emerge arose in discussions at the RIA steering group, and concerns the issue of whether it is possible in all cases to recommend one preferred option. While in most RIAs this is not seen as problematic, the point was raised that for some RIAs (a) that are particularly politically sensitive, or (b) where the analysis indicates that the case between options is too difficult to call, it may not be feasible to put forward one preferred option. In such cases, it may make more sense to clearly outline and summarise the main benefits and costs associated with the viable options, and leave the final decision on a recommendation at the political level. The guidance on the RIA model would need to be adapted to allow for such circumstances.

#### *4.3.7 Enforcement and compliance*

At this stage, consideration is to be given as to how the proposal is to be enforced and how compliance will be achieved. The level of enforcement costs, and who will bear these costs are to be assessed (Department of the Taoiseach, 2002a).

The first point to be made from the pilot exercise is that while in the draft model enforcement and compliance are put after the recommendation, suggesting that it is only enforcement and compliance of the recommended option that is to be considered, in practice experience suggests that enforcement and compliance issues associated with all the considered options should be assessed. As previously mentioned (section 3.2) a significant benefit of the RIA process is that it leads to a more considered view being taken of enforcement and compliance issues earlier in the policy process than would have been the case otherwise. The experience of the pilot exercise is that different options are likely to have different enforcement and compliance costs associated with

them, and these need to be factored in to the decision-making process.

Data deficiencies and skills limitations, as with the estimation of costs and benefits discussed in section 4.3.3, limited the ability to arrive at detailed enforcement and compliance costs. There is a need for risk assessment to identify uncertainties and the production of associated ranges of costs rather than precise figures in many cases.

UK experience suggests that the level of compliance is an important consideration. The sample of RIAs analysed by the National Audit Office (2005) received criticism from the NAO for assuming 100 per cent compliance with the proposals. Likely levels of compliance with options, given existing compliance levels, should be considered along with the consequent compliance costs (National Audit Office, 2001).

These findings would suggest that in the guidance to be issued as RIA is mainstreamed:

- Enforcement and compliance costs should be considered for all options, not just the recommended option. Indeed, the inclusion of enforcement and compliance costs may be a determining factor in the choice of whether to regulate or not, and if so which regulatory approach to take.
- Sensitivity testing of enforcement and compliance costing should take place, with uncertainties identified and included in the analysis where appropriate, giving ranges of costs rather than a single figure.
- Estimates should be made of the level of compliance likely with each option.

#### *4.3.8 Review*

The review stage is intended to give consideration as to how the proposal will be reviewed to ensure that it is achieving its objectives and that no unintended impacts have been caused. Criteria for assessing the success of the proposal should be established (Department of the Taoiseach, 2002a).

Just as with the enforcement and compliance issue, this element of the RIA model was found by respondents to be of particular benefit in ensuring that consideration is given to this issue. Often, review is not considered when a regulation is being determined. The inclusion of review in the RIA means that it must be addressed at an early stage. This was found to be an explicit benefit of the RIA process.

The Export Control Bill RIA and the Medical Practitioners Bill RIA both give good information on proposed review procedures. In the case of the Export Control Bill RIA, the intention is that the Department of Enterprise, Trade and Employment should prepare and publish an annual report in relation to the licensing and exporting of military and dual-use products. It is also proposed that the department should undertake or oversee a systematic review three years after the new controls come into force to look at (a) the validity of the costs and benefits in the original RIA, and (b) the effectiveness of the proposed enforcement regime. Explicit criteria to be considered in the review are included in the report.

In the case of the Medical Practitioners Bill full RIA, annual review by the Medical Council is proposed for competence assurance issues, including the provision of information on issues such as the level of compliance and the number of performance reviews per annum and their outcomes. It is proposed that the Medical Council should also periodically commission a survey of medical practitioners, employees and patients to evaluate the programme. Suggestions on topics to be included in the evaluation are included in the RIA. For fitness to practice, suggested performance indicators that should be reported on in an annual report by the Medical Council are contained in the RIA. Suggested indicators include: the number of fitness to practice complaints made each year; the number of complaints proposed for resolution through mediation; the proportion of cases going to mediation that were resolved; and the costs involved in dealing with each category of case.



The benefits of including review in the RIA model are clear. Each RIA should set out how the proposal will be monitored and evaluated after implementation, by whom, and with a summary of the type of data to be collected and how the data should be collected.

#### **4.4 Conclusions**

This section of the report has examined the application of the RIA model in practice. The experience of the pilot exercise has confirmed the broad approach outlined in the model as providing a comprehensive structure for conducting regulatory impact analysis. However, as might be expected with an untested model, the pilot exercise has also illustrated some limitations and weaknesses with aspects of the model. These have been highlighted and suggestions made for the adaptation of the RIA model to ensure it is effective when the experience is rolled out to all departments and offices.

## 5

# Managing the RIA process

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### 5.1 Introduction

In this chapter, the focus is on the management and oversight of implementing RIA. Two main issues are examined. First, management of the RIA process at departmental/office level is reviewed. Issues such as the resource implications of RIA and the role of external assistance are assessed. Second, the role of the centre in coordinating and controlling the RIA process is investigated.

### 5.2 Managing RIA at departmental/office level

#### 5.2.1 *Resourcing the RIA*

In the process of getting the pilot exercise up and running, several departments and offices expressed concerns about the resource implications of RIA. There was a concern that carrying out a RIA would be time consuming and a heavy demand on staff resources. In practice, the experience from the pilot process is that, on the whole, the resource implications are not dramatically different from what would be required normally when progressing legislation with regulatory implications.

For the Betting Duty, Coroners Bill, Export Control Bill and Medical Practitioners Bill RIAs, it was officials from within the relevant sections of the department or office who had responsibility for undertaking the RIA (in the Medical

Practitioners Bill case, support was also provided by the assistant principal officer from the Department of the Taoiseach completing the second year of the IPA Masters of Economic Science in Policy Analysis). A recurring comment from these participants is that while the RIA is a demanding exercise, if started early enough in the policy process the RIA essentially puts a structure on what should have been done anyway, though in a more comprehensive manner.

The main additional demands arise in the assessment of costs and benefits. This was found to be the case in particular in the Medical Practitioners Bill full RIA and the Coroners Bill screening RIA, where multi-criteria analysis was used to structure the assessment of benefits. In both these cases, external expertise was required to support this exercise (the assistant principal from the Department of the Taoiseach in the case of the Medical Practitioners Bill; the economic consultant [see section 5.2.2 below] in the case of the Coroners Bill). The requisite skills were not available within the departments to conduct multi-criteria analysis. This issue is addressed further when discussing training and development supports in section 5.3.2.

The REACH and Groundwater Directive RIAs, dealing with complex European legislation, were more time-consuming exercises requiring external support. In both these cases the RIA was undertaken by consultants commissioned to undertake the work because of their particular expertise and knowledge of the issues under scrutiny. Also in both cases, the departments concerned used agencies under their aegis to oversee and commission the RIA – Forfás in the case of the REACH Directive RIA and the Environmental Protection Agency in the case of the Groundwater Directive RIA. Again, however, the sense of participants was that much of the work involved in producing the RIA should have been done anyway to inform the Irish case and perspective on these pieces of European legislation.

The lesson learned from the pilot exercise in terms of departmental resourcing is that while RIA is a time consuming

exercise, essentially it puts a structure and provides a framework for what should be happening anyway as part of the policy-making process. In terms of mainstreaming RIA, the implications would seem to be that for most screening RIAs that would be undertaken, officials within the relevant sections should be able to deal with this as part of their normal duties (see section 5.3.2 below for training and development supports). For full RIAs or screening RIAs where methodologies such as multi-criteria analysis are needed or where complex European legislation is involved (or where particular consultative approaches such as focus group surveys are required), external supports or consultancy may be needed to facilitate the process.

#### *5.2.2 Supporting the RIA process*

In terms of supporting the RIA process at departmental level, a number of issues were raised by the pilot exercise. The role of central supports within departments, the support provided in the pilot exercise by the economic consultant, and the role of steering groups are examined here.

##### *Central supports within departments*

All respondents interviewed felt that some degree of support within the department or office for RIA would be helpful. In particular, in terms of providing advice and guidance as to effective methodologies, consultation mechanisms and so on, it was seen as helpful in the future to have some central resource to turn to. The Office of the Revenue Commissioners has appointed an assistant principal officer with specific responsibility for supporting the RIA process in the office and to act as the contact point with central departments. In other countries, the appointment of specific staff with particular skills has taken place in some departments. For example, in the UK several departments have economists and other specialists who can advise on technical issues, especially relating to the analysis of costs and benefits (National Audit Office, 2001).

With regard to mainstreaming RIA, departments and offices will need to examine the support structure for RIA. It may be useful to appoint a specific member of staff with responsibility for being the main departmental/office point of contact with regard to RIA. A key point, however, is that responsibility for undertaking RIA should rest with the staff of the section(s) affected. Any supports should be seen as supports and not as the location for RIA. It is important that the RIA process permeates departmental and office thinking and practice.

#### *Role of the economic consultant*

As mentioned in section 2.3, the Department of the Taoiseach selected economic consultants, on the basis of a competitive tender, to provide advice and guidance to departments and offices participating in the pilot in relation to elements of conducting a RIA such as data analysis and appropriate methodologies. The consultant was not made available to departments to carry out the RIA, but to offer advice and guidance and, if appropriate, contribute to particular elements of the RIA process.

Participants in the pilot exercise found this support particularly helpful. In most cases one to two days of the consultants' time was the order of magnitude of support provided. In terms of providing advice on rigorous and methodologically sound economic analysis, the consultants provided a valuable service to staff trying to complete the RIA process. The consultants' knowledge of appropriate approaches to conducting RIA was found helpful to departments and offices with no previous experience to draw on.

In terms of mainstreaming RIA, the experience from the appointment of the economic consultants suggests that there are benefits to this approach. Particularly in the early days of mainstreaming, external economic consultancy support available to departments may facilitate the process. As expertise develops within departments and offices, the need for such support should diminish. This economic consultancy

support may be particularly helpful to smaller departments and offices that do not have the resources available to develop internal central supports such as discussed above.

#### *The role of a steering group*

The experience of the steering groups set up to oversee the REACH and Groundwater Directive RIAs provides valuable lessons for departmental and office RIAs where the issue under investigation cuts across a number of departments and agencies. In both these cases, steering groups were established to oversee the RIA. In the case of the Groundwater Directive RIA, the group included economists, geologists, environmentalists and agricultural representatives. In the case of the REACH Directive RIA, the steering group included departmental and agency representatives and an independent academic expert. The inclusion of the independent expert was seen as a particularly helpful element of the RIA process, providing neutral but expert guidance on significant issues. In general, the range of perspectives brought to the process, and the inclusion of people with particular areas of expertise of relevance to the RIA, was seen as facilitating the process.

The implications for RIAs conducted following mainstreaming is that where the RIA is likely to involve the examination of issues that go beyond the remit of an individual department, the establishment of a steering group with representatives from other affected departments and agencies, and with appropriate academic expertise, should be considered. Even where issues remain within a department, it may be worthwhile establishing an internal steering group, partly as a means of tapping in to relevant expertise within the department.

#### *5.2.3 Publication of the RIA*

An issue that came up in discussion during the pilot exercise was dealing with the publication of the RIA report. The draft RIA model proposes the publication of the RIA report when the legislation is published, and suggests that it might be

appropriate to include a RIA as part of, or accompanying, the Explanatory Memorandum to a Bill.

While in general terms there was acceptance for this approach, some respondents note that there may be occasions when departments or offices would feel unable to publish a RIA. This is particularly the case where confidential and commercially sensitive information has been used in the analysis, or where release of the information may prejudice sensitive industrial relations negotiations.

International practice strongly supports the principle of publishing RIA reports. Jacobs (2004) notes that RIA publication improves the transparency of decisions. Publication also acts as an informal quality control mechanism, as the workings of the RIA are subject to public scrutiny and hence the incentive to produce a high-quality report is enhanced.

International trends would support the contention that the norm should be for RIA reports to be published. It should only be in exceptional circumstances, in clearly defined cases, that RIA reports are not published.

### **5.3 The role of the centre in coordinating and controlling the RIA process**

The OECD (1997) in a review of regulatory management notes that 'regulatory reform cannot be left entirely to regulators ... Instead, reform must be a shared responsibility between central regulatory managers, who protect global values of regulatory quality, and regulators pursuing specific policy goals'. In this section, the role of central regulatory managers in promoting and controlling the RIA process is examined.

Previous research indicates that the role of the centre can be challenging:

The central unit in the Department of the Taoiseach is thus likely to have two main roles: the provision of advice and guidance and the monitoring and quality control of activities. There can be tension between these activities.

The first is developmental in nature, the second more focused on control. Maintaining the balance between the two can be a delicate task for those employed in central units (Boyle, 1999).

Four specific issues that are important for the centre to address with regard to RIA are examined here: advice and guidance; training, education and development; quality and compliance assurance; and evaluation of RIA.

### *5.3.1 Advice and guidance*

The Better Regulation Unit has an ongoing role in relation to the provision of advice and guidance to departments and offices engaged in RIA. This advice and guidance role is a common feature of central regulatory management units in OECD countries (OECD, 2002). The main elements of guidance are the draft RIA model and associated guidelines.

Suggestions have been made in this report as to changes in the draft model and guidance that are needed as RIA is mainstreamed, based on the pilot experience. As experience with RIA progresses, there will be a need to keep this guidance continually updated.

Some countries have developed a central web page listing RIAs, sometimes also providing links to the RIA reports (see, for example, [http://www.cabinetoffice.gov.uk/regulation/ria/regulatory\\_reporting/index.asp](http://www.cabinetoffice.gov.uk/regulation/ria/regulatory_reporting/index.asp)). This can be a useful facility both for the general public and for departmental and office staff looking to see how others have addressed RIA, perhaps in a similar area or using particular methodologies. Linked to such a central listing, a central unit can also play a role in identifying and highlighting good practice examples. For example, where consultation has been handled particularly well, or where benefits have been assessed in a rigorous manner. The Better Regulation Unit should give consideration to developing a central listing of RIAs and the identification and dissemination of good practice.



### *5.3.2 Training, education and development*

Much training, education and development for the conduct of RIA can be dealt with at departmental/office level. But in terms of ensuring a cohesive approach, and for cross-departmental learning, some degree of central involvement is needed.

One particular need highlighted by the pilot exercise is for some type of cross-departmental networking supports for departmental staff involved in RIA. All respondents commented very favourably on the inter-departmental committee set up to oversee the pilot exercise. The benefit of the committee in terms of facilitating the exchange of views and experiences with staff from other departments engaged in carrying out a RIA was seen as very helpful to the process. Building on this experience, some type of network whereby experiences can be exchanged and common training and development needs can be addressed, would seem to be a valuable contribution to the RIA process. Such a network would need central support. The expenditure reviewers network, overseen by the expenditure review secretariat in the Department of Finance, offers a useful model that could be replicated in the case of RIA. There are three main aspects to the expenditure reviewers network:

- a) *The provision of training supports.* A three module training programme has been developed for people doing expenditure reviews. As most reviewers are civil servants who often do not have any expertise in evaluation, the training gives basic information on how to proceed. As well as this training programme, other ad hoc training events are organised on a periodic basis, such as guest lectures by experts on particular topics.
- b) *The provision of extranet support for reviewers.* The secretariat has established an extranet for the network, hosted by the Centre for Management and Organisation Development in the Department of Finance. This extranet is intended to keep reviewers up to date with developments, provides links to source documentation and other resources for conducting reviews, and has a

chat facility. Access to previous review reports is also available through the site, so that reviewers can see if similar issues/methodologies have been used before.

- c) *The promotion of discussion and debate on the expenditure review initiative.* The network is used as a sounding board for discussion on issues regarding future developments of the expenditure review initiative.

With regard to education, the role of the Masters of Economic Science in Policy Analysis, sponsored by the Centre for Management and Organisation Development (CMOD) has been mentioned. Other economics-focused masters degrees may also be of relevance to RIA. Arising from the pilot exercise, one point that is clear is that such educational initiatives should be encouraged by the Better Regulation Unit to contain a strong focus on methodologies for assessing costs and benefits. In particular, multi-criteria analysis, cost benefit analysis and cost effectiveness analysis should form a significant part of the syllabus.

### *5.3.3 Compliance and quality assurance*

The centre has an important role to play in ensuring that RIAs are produced in a timely fashion, and in ensuring that the quality of RIAs produced is of a high standard. In terms of timeliness of individual RIA production, the Department of the Taoiseach (2005) notes that this would seem an obvious role for the Government Secretariat within the Department of the Taoiseach, which is responsible for overseeing and circulating all memoranda to government.

With regard to compliance overall, there would seem to be a role for the centre in reporting on compliance with RIA requirements. Such a reporting process might also have a quality dimension, commenting on the adequacy of the RIAs produced from a quality perspective. The annual report produced by the Productivity Commission in Australia (Productivity Commission, 2004) provides a good example of how such a reporting procedure might operate. The annual report includes an assessment of the level of compliance with

Australian government requirements with regard to RIA. In this context, consideration is given to whether: (a) a RIA was prepared to inform the decision maker at the policy approval stage and if the analysis contained in the RIA was adequate against a list of agreed criteria, and (b) a RIA was tabled in the parliament or otherwise made public and the analysis was adequate.

With regard to checking on the quality of the assessment of costs and benefits, particularly with regard to full RIAs involving cost benefit analysis or cost effectiveness analysis, *Regulating Better* (2004) suggests that a unit based in the public expenditure division of the Department of Finance should undertake this role. There will need to be close liaison between this unit and the Better Regulation Unit to ensure a common voice is heard from the centre.

#### *5.3.4 Evaluation of the RIA process*

Linked to the issue of quality assurance, there is a need for periodic evaluation of the RIA process to help ensure that high-quality RIAs are being produced, and that the RIA process is leading to a positive impact in terms of better regulation. If the steps outlined in sections 5.3.2 and 5.3.3 are taken, such reports could draw from sources such as an annual compliance report and feedback from the network of staff involved in RIA. The first formal report on the expenditure review initiative (Department of Finance, 2004) provides a good illustrative example of how such a reporting process might work.

There may also be a role for the Comptroller and Auditor General. The work of the National Audit Office in the UK in assessing a sample of RIAs has been referred to in several sections in this report (National Audit Office, 2004 and 2005). The Comptroller and Auditor General, from a value for money perspective, may consider a similar approach to that of the National Audit Office. One issue to consider in this context is the need to avoid a sense of over-audit or evaluation. Evaluation in this context is intended to provide assurance but also to identify and promote good practice. Periodic, 'light-touch' evaluation is preferable in such circumstances.

## 6

# Conclusions and recommendations

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### 6.1 Addressing some of the concerns about RIA

The draft report of the RIA working group (Department of the Taoiseach, 2002a) notes a number of issues raised relating to the introduction of RIA during the consultation process leading up to the production of the *Regulating Better* (2004) white paper. Most of those consulted expressed support for the introduction of a model of RIA. But a number of concerns were expressed about the implications of how the model would be applied (Department of the Taoiseach, 2002b). It is interesting to examine what the experience from the pilot exercise tells us about the validity of these concerns.

#### 6.1.1 *Resource implications*

The concern expressed in the consultation exercise was that RIA would be a resource intensive and costly process. The experience from the pilot exercise is that there are some resource implications arising from RIA. Departmental supports and central supports will be needed if the process is to work well. But the indications are that officials can undertake most RIAs as part of their normal policy development work. The steps outlined in the RIA model encompass issues that should be addressed anyway as part of policy making, with the RIA model putting a structure on this process. Some RIAs dealing with large-scale third party effects will be more time consuming, and may on occasion require external consultancy support and expertise. But these will be limited in number, and

given the importance and complexity of the regulations assessed in these cases, would probably have required a significant resource commitment in any case.

#### *6.1.2 Negative effects on timing and throughput of policies*

The concern here is that RIA may lead to delays in the policy process, delaying legislation being introduced. In practice, there is no evidence of this happening from the pilot exercise. The legislative timetable itself puts a limit on the RIA process, rather than the other way around. Several participants referred to the tight timescale within which RIAs must be undertaken. But this was largely seen as a positive element, focusing attention on what needed to be done and stopping the RIA exercise from being overly consuming.

#### *6.1.3 Cost benefit analysis should not be mandatory*

Here, the concern expressed is that economic effects cannot be the primary driver of regulation in the social sphere, and that techniques such as cost benefit analysis may not adequately reflect hard to measure social issues. The experience from the pilot exercise suggests that cost benefit analysis will be the exception rather than the norm in RIAs. For most RIAs, a more qualitative but structured assessment of costs and benefits is likely to be the norm. Cost benefit analysis will have a role to play in the case of larger scale RIAs, where economic impacts are significant in scale.

#### *6.1.4 Data availability*

The concern expressed here is that data limitations will affect the usefulness and relevance of RIA. Undoubtedly, from the experience of the RIA pilot exercise, data limitations can affect the extent of the analysis carried out. One potential departmental participant in the pilot exercise did not participate because of concerns about data availability for the regulatory area under scrutiny. But the pilot RIAs undertaken suggest that much good work can be done with existing data sets in many

cases. And indeed a further benefit of RIA is to identify, at an early stage in the policy process, precisely where data limitations are and what needs to be done to address these limitations to better inform policy in the future.

#### *6.1.5 Social variables and impacts are difficult to quantify*

This concern is similar to that about cost benefit analysis, and reflects a concern that RIA may attempt to over-emphasise those issues that can be measured at the expense of more intangible impacts. The evidence from the pilot exercise is that indeed many social benefits of regulation are difficult if not impossible to quantify in many cases. But the RIA process itself supports a structured consideration of such benefits alongside the more readily quantified items. Techniques such as multi-criteria analysis enable hard-to-quantify social benefits to be considered in a rigorous manner as part of the RIA process.

In all, the experience from the pilot exercise would tend to allay many of the concerns raised during consultation on the *Regulating Better* white paper. While issues such as resource implications, data availability and hard-to-measure social impacts are all real issues, the RIA exercise itself can be undertaken in such a way as to minimise or adapt to these concerns.

## **6.2 Conclusions and recommendations**

Drawing from the analysis undertaken in Chapters 3 to 5, this section abstracts the main conclusions and recommendations arising from the pilot RIA exercise.

### *6.2.1 Is RIA worthwhile?*

The evidence from the pilot exercise and the international literature is that there are significant benefits to be achieved from carrying out a RIA. RIAs can contribute to more effective policy making, reduce the risk of poor quality regulation, and may lead to savings for both the regulated and the regulators in

some circumstances. Savings are not the only incentive, however, and the greater clarification of benefits arising from RIA may show that regulatory options are beneficial even when they impose new costs.

The main point is that RIA can lead to better quality regulation. This process is not automatic however. Limitations to the RIA process exist. But the focus should be on overcoming these limitations rather than saying that RIA is unnecessary. The RIA process clearly has important benefits associated with it.

### *6.2.2 When to do a RIA?*

The broad conclusion from this analysis of the pilot exercise and international developments is that RIA should ideally be undertaken early in the policy-making process, before policy options to achieve policy outcomes have been closed off. In the case of European legislation, RIA should be undertaken in time to inform the Irish negotiation stance before the legislation is finalised.

There may, however, be occasions where RIA is conducted later in the policy process. This can still be a worthwhile exercise, as it can help identify flexibilities to implement regulation in the least burdensome or most effective way, even if the policy direction has been set.

### *6.2.3 Adapting the draft RIA model and associated guidance*

The experience of the pilot exercise has confirmed the broad approach outlined in the draft RIA model (Department of the Taoiseach, 2002a) as providing a comprehensive structure for conducting regulatory impact analysis. However, as might be expected with an untested model, the pilot exercise also illustrated some limitations and weaknesses with aspects of the model. Suggestions for adapting elements of the model and associated guidance are outlined below. Details behind the

conclusions and recommendations are contained in the earlier chapters.

### *Screening and full RIA phases*

Experience from the pilot exercise suggests that the screening/full RIA distinction outlined in the draft model is not a particularly helpful one. It would seem to make most sense to think in terms of applying a screening RIA to all regulatory proposals under the scope of RIA, and a full RIA to a relatively small number of proposals, particularly where significant third-party costs or other significant costs are associated with the regulation. In such a scenario, the screening RIA would be the standard analysis undertaken and would require a systematic yet relatively light-touch approach to RIA, with a short document being the desired product. The full RIA would be a more rigorous analysis, including more sophisticated methodologies and deeper analysis of potential options and impacts. Tables 4.1 and 4.2 outline potential content areas for screening and full RIAs.

The threshold criteria proposed for the pilot RIA exercise as to when to move to a full RIA (regulation exceeds £2.5 million in costs or has particular policy significance) were not found to be particularly helpful in practice. While there are likely to always be problems with defining thresholds, and while the criteria should not attempt to be too delimiting or prescriptive, the financial limit should be raised significantly in deciding when to do a full RIA, and the presence of significant third party costs or other significant costs should be a key deciding factor as to when to conduct a full RIA.

### *Statement of the case*

It is recommended that the RIA model guidance be altered so as to give more explicit prominence to the need for clear policy objectives to be articulated in the statement of the case. These objectives will facilitate the identification and analysis of options and of their relevant costs and benefits.



*Generation of options*

In light of the experience to date, there are implications for the generation of options from this analysis. In a screening RIA, a statement should be made as to why regulation is considered the most suitable approach, but a detailed generation of alternative options is not required. This does not rule out the consideration of possible alternatives, but reflects the administrative reality that often choices are relatively restricted in practice. For a full RIA, however, options would need to be considered, including the do nothing/status quo option and some alternative regulatory approaches.

*Evaluation of options (assessment of costs and benefits)*

This element of the proposed model is vital in attempting to clarify the main costs and benefits associated with the proposed regulation under scrutiny. When done well, the estimation may identify costs and benefits that would not otherwise have come to light or have been fully considered. This is the case whether or not the estimates are fully quantified. In further developing the guidance associated with applying this element of the model, a number of lessons can be learned from the pilot exercise and international experience:

- The assumptions behind cost and benefit estimations should be made explicit, and sensitivity tests carried out where there is a high degree of uncertainty, giving a range of possible figures rather than a single figure.
- The guidance should clearly indicate that cost benefit analysis (CBA) refers to the quantification of costs and benefits in such a way that all costs and benefits have a monetary value attached to them, and is only likely to be applicable in a relatively small number of RIAs.
- Multi-criteria analysis is a helpful way of structuring the qualitative assessment of benefits, and its use should be promoted.

- In full RIAs, more rigorous methodologies need to be applied to the evaluation of options. Cost benefit analysis (CBA) and cost effectiveness analysis (CEA) are the most common methodologies applicable for full RIAs, where there are extensive third party costs and/or benefits.

#### *Impact analysis*

There was some confusion in the distinction between this element of the model and the evaluation of options in practice. With this in mind, the evaluation of options and impact analysis elements of the model should be merged in future guidance.

#### *Consultation*

In terms of the development of guidance on RIA, the analysis and international experience indicates that consultation is an important issue to be maintained in both the screening and the full RIA process, with a more thorough and formal consultation process expected as part of the full RIA. To be done well, the consultation process needs to give particular attention to the audience(s) to be involved, the objectives of the consultation and the methods used to consult. Dangers of regulatory capture by interest groups should be avoided. In reporting on the results of the consultation, reference should be made to who was consulted, the outcomes of the consultation, and the response to the consultation findings.

#### *Recommendation of preferred option*

An issue raised by the pilot exercise is whether it is possible in all cases to recommend one preferred option. While in most RIAs this is not seen as problematic, there may be some RIAs (a) that are particularly politically sensitive, or (b) where the analysis indicates that the case between options is too difficult to call. In these circumstances, it may not be feasible to put forward one preferred option. In such cases, it may make more sense to clearly outline and summarise the main benefits and costs associated with the viable options, and leave the final

decision on a recommendation at the political level. The guidance on the RIA model needs to be adapted to allow for such circumstances.

#### *Enforcement and compliance*

The findings from the pilot exercise indicate that the RIA model guidance should be adapted to take account of a number of items regarding enforcement and compliance:

- Enforcement and compliance costs should be considered for all options, not just the recommended option. Indeed, the inclusion of enforcement and compliance costs may be a determining factor in the choice of whether to regulate or not, and if so which regulatory approach to take.
- Sensitivity testing of enforcement and compliance costing should take place, with uncertainties identified and included in the analysis where appropriate, giving ranges of costs rather than a single figure.
- Estimates should be made of the level of compliance likely with each option.

#### *Review*

There are clear benefits to including review in the RIA model. The model guidance should indicate that each RIA should set out how the proposal will be monitored and evaluated after implementation, by whom, and with a summary of the type of data to be collected and how the data should be collected.

#### *6.2.4 Managing the RIA process*

In terms of managing the RIA process (resourcing the RIA exercise, providing appropriate supports and so on) there are actions needed at both departmental and central levels.

*Managing the RIA process in departments and offices*

As mentioned in section 6.1.1, in terms of departmental resourcing, while RIA is a time consuming exercise, essentially it puts a structure and provides a framework for what should be happening anyway as part of the policy-making process. In terms of mainstreaming RIA, the implications would seem to be that for most screening RIAs that would be undertaken, officials within the relevant sections should be able to deal with this as part of their normal duties. For full RIAs or screening RIAs where methodologies such as multi-criteria analysis are needed or where complex European legislation is involved (or where particular consultative approaches such as focus group surveys are required), external supports or consultancy may be needed to facilitate the process.

Departments and offices will need to examine the support structure for RIA. It may be useful to appoint a specific member of staff with responsibility for being the main departmental/office point of contact with regard to RIA. A key point, however, is that responsibility for undertaking RIA should rest with the staff of the section(s) affected. Any supports should be seen as supports and not as the location for RIA. It is important that the RIA process permeates departmental and office thinking and practice.

Where the RIA is likely to involve the examination of issues that go beyond the remit of an individual department, the establishment of a steering group with representatives from other affected departments and agencies, and with appropriate academic expertise, should be considered. Even where issues remain within a department, it may be worthwhile establishing an internal steering group, partly as a means of tapping in to relevant expertise within the department.

RIA reports produced by departments and offices should be published. It should only be in exceptional circumstances, in clearly defined cases, that RIA reports are not published.

*Implications for the centre of managing the RIA process*

In terms of guidance provided by the centre, the main element of guidance is the RIA model and associated guidelines. As experience with RIA progresses, there will be a need to keep this guidance continually updated. To further develop guidance and advice supports, the Better Regulation Unit should give consideration to developing a central listing of RIAs and the identification and dissemination of good practice case studies.

Much training, education and development for the conduct of RIA can be dealt with at departmental/office level. But in terms of ensuring a cohesive approach, and for cross-departmental learning, some degree of central involvement is needed. One particular need highlighted by the pilot exercise is for some type of cross-departmental networking supports for departmental staff involved in RIA. The expenditure reviewers network, overseen by the expenditure review secretariat in the Department of Finance, offers a useful model that could be replicated in the case of RIA.

The experience from the appointment by the Department of the Taoiseach of economic consultants to support the work of departmental/office staff suggests that there are benefits to this approach. Particularly in the early days of mainstreaming, external economic consultancy support available to departments may facilitate the process. As expertise develops within departments and offices, the need for such support should diminish. This economic consultancy support may be particularly helpful to smaller departments and offices that do not have the resources available to develop internal central supports.

With regard to education, arising from the pilot exercise, one point that emerges is that educational initiatives such as the CMOD-sponsored Masters of Economic Science in Policy Analysis should be encouraged by the Better Regulation Unit, and should contain a strong focus on methodologies for assessing costs and benefits. In particular, multi-criteria analysis, cost benefit analysis and cost effectiveness analysis should form a significant part of the syllabus.

Compliance and quality assurance are important issues for the centre to address with regard to managing the RIA process. A number of points emerge in relation to compliance and quality assurance from the pilot exercise:

- In terms of timeliness of individual RIA production, the Government Secretariat within the Department of the Taoiseach, which is responsible for overseeing and circulating all memoranda to government, has a key role in overseeing developments.
- With regard to compliance overall, there may be a role for the centre in reporting on compliance with RIA requirements. Such a reporting process could also have a quality dimension, commenting on the adequacy of the RIAs produced from a quality perspective. The annual report produced by the Australian Productivity Commission (Productivity Commission, 2004) provides a good example of how such a reporting procedure might operate.
- With regard to checking on the quality of the assessment of costs and benefits, particularly with regard to full RIAs involving cost benefit analysis or cost effectiveness analysis, *Regulating Better* (2004) suggests that a unit based in the public expenditure division of the Department of Finance should undertake this role. There will need to be close liaison between this unit and the Better Regulation Unit to ensure a common voice is heard from the centre.

Finally, with regard to evaluation of the long-term impact of RIA, the centre is well placed to periodically report giving an overview on the RIA process. The first formal report on the expenditure review initiative (Department of Finance, 2004) provides a good illustrative example of how such a reporting process might work. There may also be a role for the Comptroller and Auditor General in periodically assessing a sample of RIAs and commenting from a value for money perspective on the RIA process. One issue to consider in this context is the need to avoid a sense of over-audit or evaluation. Evaluation in this context is intended to provide assurance but also to identify and promote good practice. Periodic 'light-touch' evaluation is preferable in such circumstances.

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