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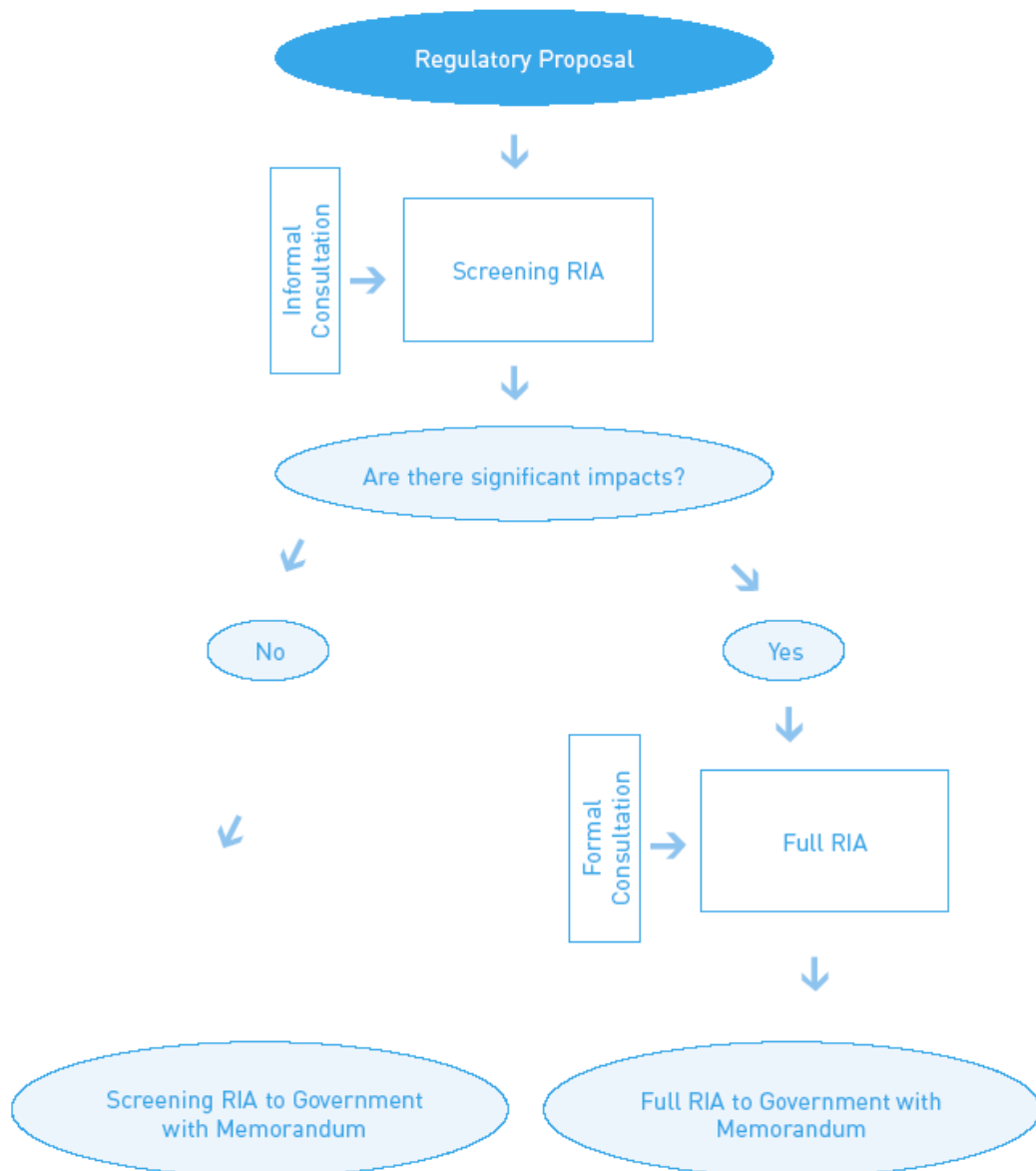
Roinn an Taoisigh  
Department of the Taoiseach

# REPORT ON THE INTRODUCTION OF REGULATORY IMPACT ANALYSIS



July 2005

## The RIA Process



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## Taoiseach's Foreword

When I launched the Government White Paper *Regulating Better* in 2004, one of the key actions I committed to was the introduction of Regulatory Impact Analysis (RIA). Although the terminology associated with RIA can be technical and challenging, RIA is an approach which is based on common sense.

Essentially, RIA is an assessment of the likely effects of a proposed new regulation or regulatory change. It involves a detailed analysis to ascertain whether or not the new regulation would have the desired impact. It helps to identify the side effects and any hidden costs associated with regulation. RIA clarifies the desired outcomes of the proposed regulatory change. It also provides for consultation with stakeholders to ensure that their views and interests are understood during the regulatory process.

The application of RIA contributes to increasing the accountability and transparency of the process of preparing regulations and can help to ensure that debates on regulations are based on shared understanding, sound evidence and structured information. I expect RIA to enhance the quality of lawmaking in social and economic areas, improve systems of governance and improve the capacity and performance of the public service.

While RIA has many advantages, it is important to ensure that it is introduced in a form appropriate to the Irish system. This is why as an initial step several of my Ministerial colleagues agreed to pilot RIA in their Departments to gain an insight into its workings in the Irish context. This pilot process is now complete and I am happy to note that it demonstrated many of the benefits indicated by international experience. In particular, it highlighted the contribution that RIAs can make to the negotiation and transposition of EU Directives so as to ensure Ireland's best interests are reflected in EU legislation.

Based on this pilot phase, a model of RIA has now been developed which I believe meets the needs of the Irish system and will integrate well into existing procedures and practices.

Although as with the introduction of any new initiative this will be a challenge, many elements of RIA are already routinely being done although in a less structured way. Officials in my Department will be on hand to assist Departments and Offices in conducting their RIAs and resources and supports including training and guidance will also be provided.

I would like to thank the officials who contributed to the process by piloting RIA and contributing their insights to this Report.

Bertie Ahern TD  
Taoiseach

## EXECUTIVE SUMMARY

### *(i) Background and context*

The introduction of Regulatory Impact Analysis (RIA) was a key commitment in the Government White Paper *Regulating Better*. Regulatory Impact Analysis is a tool used to assess the likely effects of a proposed new regulation or regulatory change. It involves a detailed analysis to ascertain whether or not the new regulation would have the desired impact. It helps to identify any possible side effects or hidden costs associated with regulation and to quantify the likely costs of compliance on the individual citizen or business. It also helps to clarify the costs of enforcement for the State. RIA can enhance the quality of lawmaking in social and economic areas, enhance systems of governance and improve the capacity and performance of the public service.

The impetus for RIA can be traced back to the inclusion of regulatory reform as a central element of the Strategic Management/ Delivering Better Government Initiative. Following Ireland's participation in an OECD regulatory reform peer review programme in 2000-2001, a Working Group developed a draft RIA model for the Irish context. As part of the White Paper *Regulating Better*, the Government committed to the piloting of this model with a view to its subsequent introduction in all Government Departments and Offices.

In agreeing these actions on RIA, the Government was influenced both by the EU Commission's work on impact assessment and the extensive benefits which have been associated with RIA internationally. RIA methodologies have been introduced in many other Member States and recent statistics suggest that it is compulsory in twelve of the twenty-five Member States. It is also increasingly being applied by Member States to draft EU Directives both during the negotiation and transposition phases. RIA has clear benefits in terms of identifying the national impacts of EU proposals on a timely basis. In particular, it can highlight impacts that proposals may have on Ireland that are not identified in the EU Commission's impact assessment, which focuses on aggregate impacts across, rather than within, Member States.

### *(ii) Pilot process*

The pilot process commenced in June 2004. The following Departments/Offices agreed to participate:

- Department of Health and Children - Medical Practitioners Bill
- Department of Justice, Equality and Law Reform - Coroners Bill
- Department of Enterprise, Trade and Employment - Export Control Bill
- Office of the Revenue Commissioners - Betting Duty Regulations
- Department of the Environment, Heritage and Local Government - draft EU Groundwater Directive

The pilot experience demonstrated many of the ascribed benefits of RIA and supported the existing commitment that RIA should be extended across all Government Departments and Offices. This Report has been drawn up in the light of that experience and proposes a number of changes to the draft model to ensure that RIA is proportionate, flexible and effective.

(iii) Revised RIA model and its application

A two-phase approach to RIA will be adopted. The first phase, known as a *Screening RIA*, is applied in all cases where RIA is required. The second phase, or *Full RIA*, is only required in relation to more significant proposals. The steps of each RIA are set out below:

<b>Steps of RIA model</b>	
<i>Screening RIA</i>	<i>Full RIA</i>
<ol style="list-style-type: none"> <li>1. Description of policy context, objectives and options (for example different forms of regulation)</li> <li>2. Identification of costs, benefits and other impacts of options which are being considered</li> <li>3. Consultation</li> <li>4. Enforcement and compliance</li> <li>5. Review</li> </ol>	<ol style="list-style-type: none"> <li>1: Statement of policy problem</li> <li>2: Identification and description of options</li> <li>3: Impact analysis including costs and benefits of each option</li> <li>4: Consultation</li> <li>5: Enforcement, and compliance for each option.</li> <li>6. Review</li> <li>7. Summary of the performance of each option and identification of recommended option where appropriate.</li> </ol>

RIAs will be prepared by the officials charged with overseeing the introduction of particular regulatory proposals. The Screening RIA should apply to all primary legislation which proposes changes to the regulatory framework apart from the Finance Bill and some emergency, security or criminal legislation. It should also be used for significant Statutory Instruments. Where the Screening RIA suggests that the proposals are particularly significant in terms of costs or impact, a Full RIA should then be conducted.

It is proposed that a Full RIA be conducted where any one of the following applies:

- (a) there will be significant negative impacts on national competitiveness;
- (b) there will be significant negative impacts on the socially excluded or vulnerable groups;
- (c) there will be significant negative impacts on the environment;
- (d) the proposals involve a significant policy change in an economic market;
- (e) the proposals will impinge disproportionately on the rights of citizens;
- (f) the proposals will impose a disproportionate compliance burden;
- (g) the costs to the Exchequer or third parties are significant, or are disproportionately borne by one group or sector. It is suggested that initial costs of €10 million or cumulative costs of €50 million (to include both costs to the Exchequer and third parties) over ten years might be considered significant in this context. This threshold will be reviewed periodically based on early experience with the introduction of RIA.

The criteria for triggering a Full RIA will also be kept under review in light of future experience. Apart from cost thresholds and these specific impacts, it is proposed that the Government could request a RIA where regulatory proposals are politically significant or potentially sensitive, before considering the merits of regulating at

Cabinet. It may base such decisions on requests or submissions from the Social Partners or other bodies.

The pilot process also highlighted the importance of RIA being applied as early as possible in the regulatory process. RIA should therefore be conducted before a Memorandum is brought to Government seeking permission to regulate and a RIA should accompany the Government Memorandum seeking approval for the General Scheme of a Bill. In some cases, regulations may be recommended by Policy Review Groups. Where a policy review group is formed, and its recommendations involve legislation, changes to the regulatory framework or the creation of a new Sectoral Regulator, a RIA should be conducted by the policy review group.

The experience of the pilot phase indicates that the use of RIA does not slow down the regulatory process, particularly given the general pace of legislative procedures. A key finding of the pilot process was that RIA is of particular assistance in refining regulatory proposals. This suggests that there is no policy area where the application of RIA would not be of benefit, although it will not be compulsory in a certain number of sensitive areas.

RIAs should also be applied to draft EU Directives and significant EU Regulations so that the information they generate can inform Ireland's negotiating position. Departments should take account of the RIA model in compiling information notes for the Joint Oireachtas Sub-Committee on European Scrutiny, as required by the European Union (Scrutiny) Act 2002.

It is intended that RIAs will be published and should be available on Departmental websites. Where RIAs contain information which is exempt under the provisions of the Freedom of Information Act, RIAs can be partially published or in exceptional circumstances may be withheld in their entirety. A decision on publication or withholding a RIA should be taken in tandem with the decision to publish the legislation in question.

#### *(iv) Institutional, training and resource supports*

For RIA to be successfully introduced, it must be supported by resources and training and effectively integrated into existing regulatory processes and institutions. The Department of the Taoiseach will continue to provide guidance and support, working with other organisations where appropriate, such as with the Centre for Management Organisation and Development (CMOD), Department of Finance to develop RIA training.

Government Secretariat, Department of the Taoiseach will ensure that Departments meet an updated Cabinet Handbook requirement that RIAs accompany any Memorandum which proposes new legislation or regulations and that an appropriate summary of the RIA findings is included within the Memorandum. Government Secretariat will be assisted and supported in this by the Better Regulation Unit, Department of the Taoiseach which will play a central co-ordination and support role for the introduction of RIA. Individual Departments will bear responsibility for ensuring that impacts within their policy areas are included in RIAs. As set out in the White Paper *Regulating Better*, Public Expenditure Division, Department of Finance will have a key role in assessing the quality of RIAs from an economic and financial perspective.

The Better Regulation Unit in the Department of the Taoiseach will review the operation of RIA and report to Government after two years.

## REPORT ON THE INTRODUCTION OF REGULATORY IMPACT ANALYSIS

### 1. Background and context

#### *Background to RIA in Ireland*

- 1.1. Regulatory Impact Analysis (RIA) is an assessment of the likely effects of a proposed new regulation or regulatory change. It involves a detailed analysis to ascertain whether or not the new regulation would have the desired impact. It also helps to identify any possible side effects or hidden costs associated with regulation. In this regard, it helps to quantify the likely costs of compliance on business or the individual citizen and to clarify the costs of enforcement for the state. In addition, it promotes the consideration of alternatives to regulation to achieve the desired policy objective.
- 1.2. The introduction of Regulatory Impact Analysis is a core commitment in the Government White Paper *Regulating Better*. The impetus for RIA can be traced back to the inclusion of regulatory reform as a central element of the Strategic Management/ Delivering Better Government Initiative. Arising from this, Ireland participated in an OECD review of its regulatory regime in 2000-2001. The wide-ranging and extensive Report *Regulatory Reform in Ireland* which resulted from the review has informed subsequent Irish regulatory reform initiatives.
- 1.3. The OECD report commended Ireland for its market openness and relatively light regulatory approach but made a number of criticisms of Ireland's regulatory regime suggesting that competition policy needed further development in Ireland. It also recommended that consumer interests and views should be more clearly integrated into the policy-making system.
- 1.4. Most directly relevant to this Report, it pointed to the absence in Ireland of a system for quantifying the impacts of policy measures being proposed through legislation and Statutory Instruments and recommended that this be addressed through the introduction of Regulatory Impact Analysis, which should include:
  - Structured consultation with stakeholders;
  - Quantification of impacts;
  - Greater consideration and use of alternatives to regulation;
  - Increased emphasis being given in regulatory proposals as to how compliance and enforcement will be achieved.
- 1.5. In response to the OECD's Report, the Government decided that a system of RIA should be introduced in Ireland and a group of officials from Government Departments and other regulatory bodies was formed to progress the government's commitments on RIA. In October 2002, it produced a report outlining a preliminary model to be piloted within the Civil Service as a first step to the mainstreaming of RIA across all Departments and Offices. Proposals in relation to RIA were further refined as part of the development of the Government White Paper *Regulating Better* which was published in January 2004 after an extensive consultation process.
- 1.6. The White Paper committed to a number of actions with regard to RIA (see text box below):



*White Paper commitments on RIA*

- RIA will be piloted in a number of Government Departments and Offices with a view to gaining further insights into its use and the practical issues arising from its use, e.g. appropriate thresholds and other criteria to ensure that RIAs are only required for important and relevant proposals.
- Following the pilot phase, the RIA model will be refined and mainstreamed across all Departments and Offices.
- Detailed guidelines will be prepared and issued prior to the mainstreaming of RIA within the Civil Service to ensure quality and consistency of approach.
- RIAs will pay particular attention to business impact assessment, especially in respect of SMEs.
- Cabinet procedures will be amended as appropriate to take account of the RIA process. This will include changes to procedures being made under the e-Cabinet initiative.
- RIAs will be scrutinised by the Departments of the Taoiseach and Finance (Public Expenditure Division) from a quality perspective. RIAs will also be examined by relevant Departments/Offices in respect of particular policy impacts, e.g. by the Department of Enterprise, Trade and Employment in respect of business and consumer impacts or by the Department of Social and Family Affairs in respect of impacts on poverty.
- RIAs will be used in assessing the introduction or variation of Public Service Obligations with a significant impact.

*Source: Department of the Taoiseach 2004, 40*

In agreeing these actions on RIA, the Government was influenced both by the EU Commission's work on impact assessment and the extensive benefits which have been associated with RIA internationally.

*International experience*

- 1.7 The European Commission introduced a new integrated method of impact assessment in 2002 covering economic, social and environmental impacts. Until the end of 2004, it had conducted just over 50 impact assessments. It reviewed its methodology at the end of 2004 and has made certain changes, increasing the focus on competitiveness and on the achievement of the objectives agreed at the European Council meeting in Lisbon in 2000 of making the European Union "the most dynamic and competitive knowledge-based economy in the world" by 2010 (the series of reforms proposed is known as the Lisbon Strategy). From 2005 all of the major legislative and policy-defining proposals contained in the Commission's Legislative and Work Programme will be subject to an Impact Assessment.
- 1.8 RIA methodologies have been introduced in many other Member States and recent statistics suggest that it is compulsory in twelve of the twenty-five Member States. It is also increasingly being applied by Member States to determine their negotiating stance in relation to European Commission proposals for EU Directives. Therefore, it is important that RIA is introduced in Ireland so that we adopt best practice and incur the many benefits that can be gained from integrating RIA into the regulatory process.

### *Benefits of RIA*

1.9 The OECD has suggested that RIA can contribute to economic efficiency by highlighting aspects of regulation which limit consumer choice and the level of competition in an economy. RIA can also identify potentially anti-competitive or protectionist regulations before these are enacted. It is also a means of improving the quality of governance through increasing the use of evidence-based decision-making and enhancing the transparency and legitimacy of the regulatory process. These benefits have been summarised in the consultation document *Towards Better Regulation* (2002) in terms of:

- performance of the economy and consumer welfare;
- quality of governance and
- efficiency and effectiveness of the public service.

Clearly these goals are not mutually exclusive but rather reflect different dimensions of the promotion of the welfare of citizens and consumers.

RIA has also been associated with a number of other benefits which are summarised below (OECD 1997, 16-17; McGarity 1991, 112-123):

- it can improve understanding of the impacts of government action, including both benefits and costs;
- it helps integrate multiple policy objectives that affect each other through identifying linkages among policies and enabling decision-makers to weight trade-offs. In this way it assists both analysis and co-ordination;
- it can improve accountability through putting more extensive information in the public domain and demonstrating how government decisions benefit society;
- it encourages policy-makers to identify fresh options and to search for less burdensome solutions; and
- finally and significantly, the preparation of RIAs can lead to the explicit identification of information gaps and assumptions where before these would have been implicit.

A number of organisations at national level including the National Competitiveness Council, the Irish Business and Employer's Confederation (IBEC) and the Enterprise Strategy Group have recognised these benefits of RIA and recommended its introduction in the Irish administration.

## 2 The draft RIA model and the pilot process

- 2.1 The Group which developed the RIA model took account of approaches to RIA in a number of other countries as well as reports and recommendations on RIA from the European Commission and the OECD. The Group also sought to ensure that its model was appropriate to the Irish case. In particular as the Group stated in its 2002 report:

*“it is crucially important to ensure that RIA does not become an overly bureaucratic exercise, the costs of which outweigh the advantages. Practical use must take precedence over superficial compliance and the level of analysis required in any instance must be proportionate to the likely impact of the proposal.”*

- 2.2 The concern to minimise bureaucracy while simultaneously achieving an appropriate level of analysis and scrutiny led the Group to propose a two-part approach to RIA: an initial *Screening RIA* to apply to all regulatory proposals and a more detailed *Full RIA* which would only apply to certain significant proposals. A Full RIA would only apply where certain thresholds or criteria were met (for the pilot phase €2.5 million) and proposed that the issue of the thresholds/ criteria be reviewed after the pilot phase.
- 2.3 Detailed templates for the Screening and Full RIAs which were used in the pilot phase are set out at Appendix 2 and summarised below:

Steps of the draft RIA model
<ol style="list-style-type: none"> <li>1. Statement of case</li> <li>2. Generation of options</li> <li>3. Evaluation of options including identification of costs and benefits</li> <li>4. Impact analysis</li> <li>5. Consultation</li> <li>6. Enforcement and compliance</li> <li>7. Recommended option</li> <li>8. Review</li> </ol>

- 2.4 The pilot process commenced in June 2004. The following Departments/Offices agreed to participate and identified regulatory proposals on which the RIA approach could be tested:

- Medical Practitioners Bill – Department of Health and Children
- Coroners Bill – Department of Justice, Equality and Law Reform
- Export Control Bill – Department of Enterprise, Trade and Employment
- Betting Duty Regulations – Office of the Revenue Commissioners

Subsequently the Department of Environment, Heritage and Local Government also agreed to pilot RIA on a draft EU Groundwater Directive as

part of an EU Benchmarking Project on RIA. This was also treated as a pilot project for the purpose of the national pilot process.

It should be noted that all of these regulatory proposals were at a relatively advanced stage when the pilot project began and the Government had already agreed to proceed with regulations in four of the five cases. Ideally RIA should be applied before a decision has been taken to regulate so that there is more scope for the analysis to feed into the regulatory decision-making process. However, as will be outlined in Section 3 below, RIA still contributed positively to the development of all five regulatory proposals.

- 2.5 A Steering Group was formed to oversee the pilot process. The Group was chaired by the Department of the Taoiseach and comprised representatives of the pilot Departments, the Institute of Public Administration, and a consultant from Goodbody Economic Consultants who was engaged by the Department of the Taoiseach to provide economic assistance to pilot Departments.
- 2.6 This Group provided a very useful forum for the exchange of experience and best practice. The Group also received updates on developments at European level. Particularly useful to the work of the Group was a presentation made by Forfás on its experience in co-ordinating a RIA on the draft REACH Directive (the Registration, Evaluation and Authorisation of CHemicals). Insights from this project have also fed into the conclusions and recommendations in this Report.

### 3 Benefits and critiques of RIA

- 3.1 The pilot experience demonstrated significant benefits of using RIA. The pilot process and the broader regulatory experience of Steering Group members suggests that RIA can enhance the Irish regulatory system and improve the quality of regulation introduced. The pilot experience also gave rise to a range of recommendations in relation to how the model and approach can be amended and improved in advance of mainstreaming and these are detailed within this Report.

#### **Recommendation 1: Introduce RIA**

RIA should be introduced across Departments and Offices as agreed in the Government White Paper *Regulating Better* subject to various modifications of the RIA model and other recommendations highlighted in this Report.

#### *Clarity of objectives*

- 3.2 The application of RIA encouraged a far more structured examination of the objectives and impacts of regulating. It was acknowledged that applying RIA to the pilot proposals had raised issues that might not otherwise have been considered. In particular, it resulted in a much clearer and explicit consideration of the objectives behind regulations. RIA proved invaluable in encouraging the policy-makers involved to consider the reasoning and objectives behind their proposed regulations and to state them explicitly.

#### *Identification and quantification of costs*

- 3.3 The RIA pilot experience identified a need for more analysis and quantification of the costs associated with regulations. Even though some of the pilot regulatory proposals were relatively advanced, limited consideration had been given to quantifying the expected costs.
- 3.4 It was recognised that the costing process is more complex in cases where decisions had not been taken as to the nature of the specific measures to be introduced. The application of RIA necessitated a considerable period of consultation between the relevant parties and stakeholders in attempting to identify potential hidden costs, specifying where they would fall and considering how best to estimate their likely magnitude. This process added considerable value to the regulatory process by highlighting costs that may not have been fully considered and in identifying more or less costly options for implementing various measures contained within the regulatory proposals.
- 3.5 A significant constraint associated with identifying costs within the RIAs was a lack of data and a shortage of previous research, particularly because the costs were often very specific to the particular regulation in question. The established wisdom in cost-benefit analysis (CBA) literature is that costs are much more straightforward to identify and quantify than the benefits. However, in some of the pilots, identification of the costs proved to be difficult and time-consuming due to a lack of reliable data.
- 3.6 Obtaining increased certainty in relation to costs would have involved much more detailed research to collect the required data and possibly the engagement of consultants. Where costs are relatively low this might not be

financially worthwhile. However, where costs are significant, more time and resources should be dedicated to establishing more precise costings of regulatory policy proposals more generally. In some cases, this may require assigning dedicated economists or statisticians to Departments/Offices. Consideration might also be given to commissioning additional statistics from the Central Statistics Office (CSO) and to involving academic institutions such as the Economic and Social Research Institute, the Institute of Public Administration and the Policy Institute.

The issue of data and statistics needs has arisen in a variety of public service contexts and a number of initiatives have already been undertaken. For example the National Statistics Board has focussed extensively on the issue of social and equality statistics and on identifying administrative data in Government Departments which could contribute to the development and evaluation of policy. There should therefore be considerable scope for collaboration with existing groups and initiatives in identifying and, where necessary, commissioning data for use in RIAs.

**Recommendation 2: Improve data sources.**

The RIA network which is to be established will identify any significant data gaps which are highlighted by the introduction of RIA and take note of available information resources. It will also liaise with other groups and bodies (such as the CSO) where necessary.

- 3.7 The costing of the regulatory proposals would have been more straightforward and valuable had the RIAs been conducted at an earlier stage in the decision-making process. In these circumstances, there would have been more time available to carry out the relevant research. Furthermore, the cost analysis would have increased influence on the decision-making process if it were conducted early in the regulatory cycle. This issue of the timing of RIAs will be discussed further in Section 4.

*Analysis of benefits*

- 3.8 There are a number of methodologies available for evaluating costs and benefits, the most rigorous and complex of which is cost-benefit analysis. Although often used colloquially to refer simply to the identification of costs and benefits, CBA, in the sense in which it is formally used, refers to a rigorous and technical analytical process where all costs and benefits, both market and non-market, are identified, quantified and evaluated on a common monetary scale to assess whether benefits of a proposal/project exceed costs. Other approaches to analysing benefits vary in their level of rigour from the quantification of benefits without monetisation (e.g. the number of lives saved by a policy initiative) to a simple qualitative description of the predicted benefits.
- 3.9 Although the draft RIA model recommended the use of CBA where possible, the assignment of monetary values (monetisation) to the intended benefits of a regulatory proposal is the most challenging element of applying CBA and is often impossible particularly when non-tangible benefits are involved. Given the intangible nature of many of the relevant benefits, the time constraints, data shortages and limited economic expertise at the disposal of pilot Departments, it was decided that monetisation (and in most cases even quantification) of benefits was neither feasible nor particularly useful in the

pilot cases. Notwithstanding this, those piloting RIA identified the analysis of benefits as a very useful stage in the RIA process.

- 3.10 Some of the pilot projects analysed benefits qualitatively. Others used more structured techniques. Regardless of the approach used, those piloting RIA were particularly positive about this element of the RIA since it encouraged a more explicit identification and statement of expected benefits. This experience suggested that while monetisation of benefits may not always be possible, a structured analysis of benefits should be undertaken as part of the RIA process because it facilitates a more robust comparison between options.

**Recommendation 3: Reinforce analysis of benefits.**

Given the relative lack of rigour of current approaches to evaluating the expected benefits of policies and difficulties with their monetisation or quantification, the RIA guidance should detail the techniques available to analyse benefits<sup>1</sup> and provide some instruction as to how to apply them.

*Consultation*

- 3.11 The draft RIA model included systematic public consultation as a key component of a Full RIA. However, formal public consultation was not conducted during the application of RIA due to the time-frame involved and the fact that most of the regulatory proposals were relatively advanced by the time RIA was applied. However, a considerable amount of consultation had already been undertaken (including in some cases public consultation) in developing a number of the regulatory proposals.
- 3.12 International best practice stresses the importance of a systematic consultation phase as part of the development of regulations. In its 2001 Report *Regulatory Reform in Ireland*, the OECD (53) stated:
- “ there is little consistency in consultation processes; and consultation tends to be ad hoc and informal. There are no formal written procedures to prescribe as a matter of course who should be consulted, and in practice it is often producer groups. Important interests, notably consumer groups, report that they have not been able to participate and defend their interests.”*
- 3.13 Despite the emphasis on consultation in the Government’s White Paper *Regulating Better* and Ireland’s reputation for a long tradition of consultation (OECD 2001, 52), there is a need to ensure that consumer and citizens’ interests are firmly embedded in the policy process. Consultation should not focus on better resourced groups to the detriment of consumer or other interest groups. This suggests that systematic consultation should be an integral part of the RIA approach so as to increase democratic legitimacy and a broad representation of interests in the regulatory process.
- 3.14 The Government is publishing guidelines on consultation on the same day as this report which should be a valuable resource for those conducting consultations as part of RIA<sup>2</sup> These guidelines provide advice in relation to

<sup>1</sup> For example, multi-criteria analysis which involves the identification of the objectives of a policy proposal as well as criteria which would indicate the achievement of these objectives. The various policy options are then compared as to which best meets the criteria identified and therefore is most likely to achieve the overall objectives. This technique was used in two of the pilot projects and, although challenging, was found to be extremely useful.

<sup>2</sup> Department of the Taoiseach (2005)

best practice in consultation, the various models and approaches available and when these are best used. It also provides guidance to those who may wish to respond to consultation processes.

*Enforcement, compliance and review*

- 3.15 The inclusion in RIA of steps in relation to enforcement, compliance and review was found to be a very useful element of the pilot process. Such issues can often receive limited consideration once a decision has been taken in principle to proceed with regulations.
- 3.16 It has been suggested by business groups and other commentators that relatively little attention is paid to compliance costs and the potential impacts of regulations on national competitiveness and SMEs. As already referenced, the negative effects that regulations can have on economic growth and competitiveness are increasingly being recognised, particularly at EU level where the Commission's revised impact assessment model published in 2004 increases the emphasis on competitiveness impacts.
- 3.17 The idea of developing performance indicators for regulations and undertaking systematic review is a relatively new concept. However, these aspects were recognised in the pilot process as extremely significant elements of good regulatory practice.
- 3.18 The RIA model which is mainstreamed must emphasise the fact that difficulties with enforcement or disproportionate compliance costs can, and should in some cases lead to a reconsideration of regulatory proposals. The use of lighter regulatory approaches or alternatives to regulation should be considered in these circumstances. It is important that such issues are considered before the decision is taken to regulate rather than after.

**Recommendation 4: Increase the focus on compliance and enforcement issues.**

The burden of enforcement and compliance must not exceed the benefits to be achieved. Where costs of enforcement or compliance are likely to exceed the benefits or where difficulties with enforcement are identified, a review of alternative approaches should be triggered.

*Cross-cutting nature of regulations*

- 3.19 The treatment of cross-cutting issues has long been recognised as a key challenge for the Irish administrative system. One of the key priorities in *Delivering Better Government* (1996) was the development of appropriate strategies to deal with cross-departmental issues and in its review of the Strategic Management Initiative, PA Consulting (2002) suggested the necessity for a renewed focus on cross-cutting issues.
- 3.20 In practice, many draft regulations are cross-cutting in that their impacts may range across a number of businesses, sectors, social groups and so on. This is reflected in the inclusion of a set of obligatory policy proofings in the Cabinet Handbook. RIA has been recognised internationally as a useful co-ordination tool that can help decision-makers to weigh trade-offs in mediating a variety of interests and the achievement of different policy objectives.



- 3.21 In order to meet this challenge, a number of the pilot projects set up inter-departmental steering groups to oversee the process. The range of perspectives and expertise which were brought to the process and would not have been heard without the impetus of RIA, was found to be highly valuable. For example, the Steering Group which oversaw the Groundwater RIA included economists, geologists, environmentalists and agricultural representatives. The representation of a wide variety of interests at the early stages of a RIA could also alleviate the tendency for the existing proofing mechanisms to become a 'box-ticking' exercise once regulations have already been developed and are close to completion.
- 3.22 Where regulations might have impacts outside the policy remit of the sponsoring Department there may be value in the formation of a cross-departmental group to oversee the RIA. Individual Departments will be in a position to adjudicate on the merits of this approach on a case-by-case basis. In some cases such groups could provide an early opportunity for Departments to feed into regulatory proposals and this could dramatically improve the quality of regulations as well as reduce the negative impacts on competitiveness, business, poverty and so on.

**Recommendation 5: Use RIA to enhance approaches to cross-cutting issues.** Where either the objectives or impacts of a regulatory proposal span a number of policy areas consideration should be given to forming a multi-agency group to conduct the impact assessment exercise and this should be done at the earliest stage possible.

- 3.23 On the whole, RIA brought considerable benefits to the regulatory process through the various stages of application of the model, a fact recognised and acknowledged in the pilot process. The use of RIA encouraged a consideration of aspects that might otherwise have been glossed over and expanded the range of perspectives considered as part of the regulatory process.
- 3.24 No dramatic changes were made to draft regulations or the proposed regulatory approaches on the basis of the RIAs and a number of officials stated that RIA had been useful but would have been more useful and influential had it been applied at a much earlier stage in the development of regulatory proposals. This is a crucial issue. The application of RIA at a suitably early stage in the regulatory process is a key and critical success factor for the introduction of RIA. This will be discussed further in Section 5.

**Recommendation 6: Apply RIA early.** RIA should be applied as early as possible in the regulatory process.

#### *Academic critiques of RIA*

- 3.25 Some critics suggest that RIA is overly technical and that it can slow down the regulatory process. The pilot process did not directly test these criticisms of RIA because many of the regulatory proposals were at quite an advanced stage prior to the application of RIA. However, the experience of the pilots is

that RIA is unlikely to slow down the regulatory process providing it is initiated at an early stage. Furthermore, RIA should ensure a more strategic and coherent approach to regulating, ultimately making the regulatory process more efficient. It should be said that some of the arguments against RIA seem to assume a form of RIA designed to meet expert, civil service and business needs rather than a broader model incorporating the needs and interests of citizens/consumers.

- 3.26 Another critique of RIA is that it can encourage an over-emphasis on economic efficiency at the expense of other values. The RIAs in the pilot process did not use full CBA techniques. In fact their experience suggests that more focus on cost effectiveness and efficiency in the regulatory process is necessary even if it is not in the form of full CBA. This argument has been made by a number of advocates of the introduction of RIA in Ireland including IBEC [in a submission made to the Better Regulation Group], the Enterprise Strategy Group (2004, 93-94) and the National Competitiveness Council (2001).
- 3.27 Similarly the pilot process failed to support a third assertion of some critics of RIA: that RIA may result in a reduction in accountability and stakeholder access. The pilot process suggested a tendency for Irish officials to conduct relatively limited consultations, a custom which RIA will alter through introducing formal consultation requirements. This implies that RIA should improve rather than damage accountability within the regulatory process and will increase the consideration of multiple interests and stakeholder positions.
- 3.28 The pilot process did to some degree support the assertion that RIAs can be technical and difficult to access for a layperson. For example, the final RIAs on the REACH and Groundwater Directives are undoubtedly highly technical and complex pieces of analysis. However, it can be argued that these are specialist, technical areas and the draft regulations themselves were complicated and challenging. The RIA process did not render them more so. Rather it ensured that the complexity of the proposals was demonstrated, and that the issues were formally examined and stated on paper. Otherwise debates and decisions on these Directives would have been less transparent and accessible. More complex economic calculations do not necessarily need to be studied in detail by all stakeholders. However, if the conclusions or findings of such calculations are communicated clearly and in accessible language, this will enhance capacity.

### *Summary*

- 3.29 For RIA to achieve the benefits discussed and to avoid the drawbacks identified, it needs to be implemented in a form that is suitable to the needs of the Irish system and to be accompanied by all the necessary institutional and resource supports (outlined in Section 6 below). The key issues to be addressed based on the pilot phase are:
- whether the two-phase model of RIA should be continued;
  - which classes of regulations should be subject to RIA;
  - at what stage should RIA be applied and
  - are there any amendments which should be made to the RIA model based on the pilot experience?

#### 4. Recommended RIA model

##### Two-phase approach

- 4.1 One of the key features of the draft RIA model agreed by the 2002 RIA Working Group was a two-phase approach to RIA involving a Screening RIA and a Full RIA. It was intended that regulations of relatively low impact should undergo a Screening RIA, a preliminary less detailed analysis. More significant regulations would be subject to a Full RIA consisting of a more extensive and rigorous analysis. According to this approach, a Full RIA would be triggered where regulations imposed costs over a particular threshold (a figure of €2.5 million was suggested) or if the regulations had implications for a particular policy area identified by Government as being of particular importance. The intention behind this approach was to ensure that RIA was applied proportionately and did not become overly burdensome.
- 4.2 In developing this approach, the RIA Working Group was influenced by international best practice and in particular the EU Commission's approach which was developed around the same time. The initial EU Guidance (2002) provided that preliminary impact assessments should apply to all Decisions, Directives and Regulations as well as non-regulatory proposals with economic, social or environmental impacts. A Full Impact Assessment should be conducted:

“where the preliminary impact assessment indicated that the proposal would result in substantial economic, environmental and/or social impacts on a specific sector or sectors, and have a significant impact on major interested parties, and/or when the proposal represents a major policy reform in one or more sectors.” (Commission of the European Communities 2002, 12).

However, the Commission found that this two-step approach failed to achieve proportionate analysis and has reformed its procedures accordingly (see Text Box below).

*EU Commission's revised impact assessment procedure*

The previous approach to impact assessment should be simplified: Impact Assessments will be conducted on all major policy defining documents and all legislative proposals listed in the Commission's legislative and work programme. The previous preliminary Impact Assessments (similar to the Screening RIA of the Irish draft model) will be replaced by a document called a roadmap. This is a document of one or two pages to be presented at the early stages in developing proposals and will set out:

- the issue at hand,
- policy options,
- likely impacts,
- assessments and
- consultations to be undertaken, and their timing.

They include initial impact assessment screening and the planning of further impact assessment work.

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These roadmap documents will better inform other parts of the Commission and the public and will also provide the basis for assessing the level of analysis needed (Commission of the European Communities, 2004, 6).

- 4.3 Similarly, the Irish pilot process highlighted a number of flaws with the existing Screening/Full RIA distinction which indicates that it must be amended prior to the introduction of RIA. In particular, there is too much overlap between the two RIA phases as currently constituted.
- 4.4 It is proposed that a two-phase approach to RIA should be retained, albeit with more differentiation between the two stages. By ensuring that most regulatory proposals would be subject to some analysis this would contribute to the objectives of RIA in an Irish context through improving the standards of advice provided to Ministers and increasing the accountability and transparency of the process. It should also help ensure proportionate analysis assuming that the thresholds that trigger a Full RIA are set appropriately.

**Recommendation 7:** It is proposed that the two phase approach to RIA be retained but with a scaled down first-stage Screening RIA and a second-stage Full RIA involving more detailed analysis which would only apply to certain regulations.

#### Screening RIA

- 4.5 Based on the pilot experience, it is proposed that the screening RIA be remodelled so that it is more limited and less detailed in scope. Where legislation or regulations are proposed, the Screening RIA would be incorporated into the Government Memorandum structure and would supersede the existing Quality Regulation Checklist and its proofing requirements.

- 4.6 The Screening RIA would be applied to all proposals for primary legislation with a regulatory impact, to draft European Directives and some draft Regulations, review group reports and certain significant Statutory Instruments. The criteria set out at Recommendation 9 may be used to guide the decision as to what is significant in this regard. A template for the screening RIA is set out in the Text Box below.

**Recommendation 8: Introduce a Screening RIA as outlined below.**

*Screening RIA*

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 (taking account of the issues raised at paragraph 5.7).. It should also be used as a framework for analysing draft EU Directives. It should contain the following:

**1. Description of policy context, objectives and options (for example different forms of regulation)**

- (i) A brief description of the policy context.
- (ii) An explicit statement of the objectives that are being pursued.
- (iii) An identification of the various policy options or choices which are under consideration.

**2. Identification of costs, benefits and other impacts of any options which are being considered**

- (i) Identification of likely costs, an estimation of their magnitude and to whom they fall.
- (ii) A description of expected benefits and where these will fall.
- (iii) Verification that there will not be disproportionately negative impacts on
  - (a) national competitiveness
  - (b) the socially excluded or vulnerable groups
  - (c) the environment
 and that the regulations do not
  - (d) involve a significant policy change in an economic market
  - (e) impinge disproportionately on the rights of citizens
  - (f) impose a disproportionate compliance burden on third parties
 and other criteria to be decided from time to time by Government
- (iv) Summary of costs, benefits and impacts of each option identified in 1 identifying preferred option where appropriate.

**3. Consultation**

Summary of the views of any key stakeholders consulted - which must include any relevant consumer interests and other Government Departments.

**4. Enforcement and compliance**

Brief description of how enforcement and compliance will be achieved.

**5. Review**

Identify mechanisms for review and specify indicators which would demonstrate the success of the policy proposal.

- 4.7 Use of the Screening RIA should aid the development of clearer and more coherent thinking amongst Government officials in their development of regulations. It should avoid the development of regulations where objectives are unclear and impacts ignored and should create an awareness amongst policy-makers of the need to explicitly consider and explain regulatory approaches and strategies.
- 4.8 The model recognises the reality that alternatives to regulation may not be viable in all cases. However, it is envisaged that the Government could refuse permission to regulate where the Screening RIA does not make a strong or convincing case for the use of regulations rather than an alternative policy tool.

#### *Full RIA*

- 4.9 Of key importance is the issue of when a Full RIA is necessary and what level of rigour needs to be applied. If RIA is to succeed in achieving general support and improving the quality of regulations it is vital that it is applied where it can add value to the policy-making process and avoided where it would impose a burden or a delay on relatively insignificant proposals.
- 4.10 Therefore where the Screening RIA suggests that the proposals are particularly significant in terms of costs or impact, a Full Regulatory Impact Analysis should then be conducted. It is proposed that a Full RIA be conducted in the following circumstances:

**Recommendation 9:** A Full RIA to be conducted when any of the following applies:

- (a) there will be significant negative impacts on national competitiveness
- (b) there will be significant negative impacts on the socially excluded or vulnerable groups
- (c) there will be significant environmental damage
- (d) the proposals involve a significant policy change in an economic market
- (e) the proposals will disproportionately impinge on the rights of citizens
- (f) the proposals will impose a disproportionate compliance burden
- (g) the costs to the Exchequer or third parties are significant, or are disproportionately borne by one group or sector. It is suggested that initial costs of €10 million or cumulative costs of €50 million over ten years (to include both costs to the Exchequer and third parties) might be considered significant in this context. This threshold will be reviewed periodically based on early experience with RIA.

#### *Cost threshold*

- 4.11 The RIA model devised by the 2002 Working Group specified a cost threshold of €2.5 million annual costs to trigger a Full RIA. International best practice and other comparable guidelines suggest that €2.5 million annual cost is too low a threshold if the intention is to control and limit the number of regulatory proposals which are subject to a Full RIA.

- 4.12 Nonetheless, it is proposed to retain a requirement that where costs to the Exchequer or third parties are significant or are disproportionately borne by one group or sector a Full RIA be conducted. However, it is suggested that initial costs of €10 million<sup>1</sup> or cumulative costs of €50 million over ten years should be considered significant in this context.<sup>2</sup> This threshold will be reviewed periodically based on early experience with RIA.

*Other triggers*

- 4.13 Apart from cost thresholds and these specific impacts, it is proposed that Government could request a RIA where regulatory proposals are politically significant or sensitive, before considering the matter at Cabinet.

**Recommendation 10: Government discretion:**

the Government can request a Full RIA where it considers regulatory proposals to be politically significant or sensitive or where convincing submissions on the matter have been received from stakeholders.

- 4.14 The relevant Government Departments (e.g. Enterprise, Trade and Employment; Social and Family Affairs; Environment, Heritage and Local Government; Finance etc.) would be circulated with the draft Memorandum prior to its discussion at Government and could advise their Minister to request a Full RIA at the Government meeting if they feel the impacts referenced below will in fact be significant.

*Amendments to Full RIA model*

- 4.15 As well as changes to when detailed RIAs should be conducted, the pilot experience suggests that amendments to the Full RIA model are required and a reconstituted model is set out in the Text Box below. It incorporates the established elements of RIA best practice (as set out by advocates of RIA such as the OECD) but merges one or two aspects of the previous draft model as well as redefining some of its steps. More detail on these steps is provided in Appendix 2.

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<sup>1</sup> Discounting to reflect the time value of money should be applied where possible.

<sup>2</sup> The Department of Finance *Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector* (2005) recommend that projects which will cost €50 million over their lifetime should be subject to a CBA.



*Recommendation 11: Introduce the following Full RIA model*

**1: Statement of policy problem**

Description of background to the issue and identification of policy problem to be addressed.

**2: Identification and description of options**

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.)

**3: Impact analysis** including costs and benefits of each option

- (i) Tangible costs should be quantified as far as is possible including compliance costs. Effects on national competitiveness should be identified and where possible estimated. Compliance costs should be quantified. Any 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.

**4: Consultation**

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.

**5: Enforcement, and compliance for each option**

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.

**6. Review**

A description of how each policy approach would be reviewed. Identification of performance indicators for measuring the success of each option.

**7. Summary of the performance of each option and identification of recommended option where appropriate**

## 5. The timing and application of RIA

- 5.1 One of the fundamental goals of the RIA process is to reduce the unnecessary use of regulation through an examination of the possible use of alternatives. As the RIA pilot process showed, this requires that the RIA process must be conducted at an early stage and before a decision to regulate has been taken. This means that it is at least possible to consider alternatives to regulation, even if they are not necessarily considered to be the most appropriate approach in the long run. Even more fundamentally, for RIA to achieve legitimacy and become embedded within the policy-making system, it is vital that RIA is an integral step in the regulatory process rather than an add-on which must be complied with at the end. So when is the optimum stage in the regulatory process for the application of RIA?
- 5.2 “As early as possible” is the best practice answer and this is reflected in the Report of the Working Group which developed the draft RIA model. However, it is not altogether straightforward to identify the most strategic point in the policy development process for the application of RIA and to synchronise it with existing administrative procedures for the introduction of regulations.
- 5.3 By its very name ‘Regulatory Impact Analysis’ implies a focus on regulations rather than on other policy tools. Therefore there should be an expectation that regulations are at least a possibility before a RIA is triggered. However, the process by which regulations develop varies from one case to another and is particularly dependent on the type and source of the regulatory proposals. Therefore, it is recommended that the timing of RIAs vary to some degree depending on the context of the particular proposals and where regulations originate.
- 5.4 Regulations are sometimes initiated in response to the recommendations of a particular policy review group. This was the case for two of the RIA pilot projects. When these Groups have reported, the expectation tends to be that their recommendations will be accepted and this means that subsequently scope for the use of alternatives is limited.
- 5.5 A possible solution here is that when any policy review group is formed that its terms of reference should include a requirement to take account of the principles of better regulation (Department of the Taoiseach 2004). In particular, its terms of reference should specify that consideration be given to the potential for the use of alternatives to regulations prior to recommending regulatory solutions. In some cases, this might necessitate the conducting of a RIA as part of the work of the review group (subject to certain thresholds and conditions). According to this approach when review group reports contain recommendations to regulate, part of the Report will contain a Screening or a Full RIA. Given that most review groups conduct formal consultations and involve experts in a particular field, some form of Regulatory Impact Analysis should not be a heavy additional burden.

**Recommendation 12:** When a policy review group is formed its terms of reference should include a requirement to take account of the principles of better regulation and to consider the potential for the use of alternatives to regulation or lighter models of regulation prior to recommending regulatory solutions. This may in some situations necessitate the preparation of a RIA.

- 5.6 Commitments to regulate can occur in other circumstances such as through Government programmes or Partnership Agreements. Regulations can also be introduced in response to public opinion or high profile incidents. Similar to the review group cases, the most appropriate time for RIA to be conducted in these circumstances is in advance of the Memorandum which is brought to Government seeking permission to regulate. In such cases, the Memorandum seeking approval for the General Scheme of a Bill should be accompanied by either a Screening or Full RIA (depending on the significance of the proposal) setting out the case for changes to the existing approach, demonstrating why regulation is a more appropriate solution than other non-regulatory options and identifying potential impacts.
- 5.7 A key finding of the pilot process was that RIA is of particular assistance in refining regulatory proposals. This suggests that there is no policy area where the application of RIA would not be of benefit. However, it will not be compulsory to apply RIA to the Finance Bill and some emergency, criminal or security legislation. In addition, ex ante evaluations such as that represented by the RIA approach may not be applicable in the case of tax law/regulations or the imposition of charges because of their sensitivity and the need to guard against possible evasion or avoidance. However, systematic ex post evaluation of the impacts of taxation, levies, charges, reliefs etc is vital given the significant revenue streams and expenditure which these generate.

**Recommendation 13:**

For primary legislation with regulatory impacts, RIAs should be conducted before Memoranda are brought to Government seeking permission to regulate. The RIA should be attached to the Memorandum seeking approval for the General Scheme of a Bill when it is circulated to Ministers for observations in advance of the Government meeting as well as attached to the Memorandum when it is finally submitted for the Government meeting.

- 5.8 Since 2003, the EU Commission has gradually been phasing in impact assessment of its major policy measures. Up to October 2004 it had conducted over fifty impact assessments and as part of its latest Better Regulation package it committed to applying Impact Assessment to all measures on its 2005 work programme (Commission of the European Communities 2005).
- 5.9 Member States are at varying stages with their implementation of RIA. The application of RIA by Forfás to the REACH Directive was the first comprehensive and systematic RIA to be commissioned by the Irish Public Service on a draft Directive in this country and the Department of the Environment, Heritage and Local Government's pilot project was also on a draft EU Directive on Groundwater. Both these Directives were close to finalisation at EU level before the RIAs were conducted. However, given that Directives can be amended significantly during the negotiation process (as the REACH proposal in particular demonstrates) the question arises as to when to apply RIA.
- 5.10 If they are to contribute to the policy development process, RIAs should be applied to draft EU Directives before they are agreed so that the information they generate can inform Ireland's negotiating position and minimise potentially negative implications for Ireland. It is recommended that RIA be

applied to draft Directives (and draft Regulations where appropriate) after the Commission has published the draft Directive (or Regulation) and its own impact assessment, but before negotiations have been completed. Such an approach was supported by the RIA pilot experience where the RIAs on draft Directives highlighted particular implications which were not detected within the Commission's EU-wide Impact Assessment. However, it should be noted that similar exceptions to those detailed in paragraph 5.7 may apply in the case of certain categories of EU legislation.

- 5.11 The RIA must also be updated as required during the negotiation process and transposition into Irish law, to take account of significant changes. Departments should take account of the RIA model in compiling information notes for the Joint Oireachtas Sub-Committee on European Scrutiny, as required by the European Union (Scrutiny) Act 2002. RIA can also inform a Department's further briefing of an Oireachtas Committee, where the draft EU proposal has been referred to a specific sectoral Oireachtas Committee for further scrutiny.

**Recommendation 14:** RIA should be conducted on draft EU Directives (and on significant draft EU Regulations) after the EU Commission has published a draft Directive (or Regulation) and its own Impact Assessment- The RIA should also be updated as required during the negotiation and transposition process to take account of significant changes.

- 5.12 The pilot process involved one Statutory Instrument, a Revenue Commissioner's Regulation in relation to betting duty. In that case, the impact and scope of the regulations were relatively minimal and did not require Government approval. Notwithstanding this, the RIA was useful in identifying and quantifying the benefits or savings generated by this regulation.
- 5.13 There are a variety of forms of Statutory Instruments: Orders, Regulations and Rules, Schemes and Bye-laws. In addition, Statutory Instruments are often used to transpose EU Directives in Ireland. Apart from SIs coming from EU Directives, and regulations, the other classes of SI tend to be relatively insignificant in terms of overall impact. However, between 600-750 SIs are introduced in Ireland each year although only just over 100 Primary Acts have been enacted over the three-year lifetime of the current Dáil. These statistics reveal that many policy measures are given effect by SIs and the RIA process must reflect this.
- 5.14 In fact, the proposals suggested in relation to EU Directives mean that SIs which transpose EU Directives will have already been subject to the RIA process before they reach the national regulatory system. The assessment previously conducted could then be updated (if necessary) and attached to the transposing SI when it is laid before the Houses of the Oireachtas. A second method of triggering a RIA on an SI could be that when Government approves the introduction of a Primary Act, it could provide that secondary regulations to give effect to aspects of the Act which are of particular significance be subject to a RIA. To ensure proportionality, it is proposed that only significant Statutory Instruments be subject to RIA at least in the

early stages of its introduction. The criteria detailed in Recommendation 9 may be used to guide the decision as to what is significant in this regard.

**Recommendation 15:** RIA will only apply to certain significant SIs (including those which give effect to EU Directives and those which the Government agrees warrant a RIA) at least in the initial introductory phase. Further consideration will be given to the extension of RIA to more SIs as the process develops.

- 5.15 It is intended that RIAs will be published and should be available on Departmental websites. Where RIAs contain information which is exempt under the provisions of the Freedom of Information Act, RIAs can be partially published or in exceptional circumstances be withheld in their entirety. The decision on publication or withholding a RIA should be taken in tandem with the decision to publish the legislation in question.

**Recommendation 16:**

RIAs should as a general rule be published with the exception of any material within the RIA covered under the exemptions contained in the Freedom of Information Act. The decision on publication or withholding a RIA should be taken in tandem with the decision to publish the legislation in question.

## 6. Supports for RIA

### Preparation of RIAs

- 6.1 As well as highlighting certain limitations with the draft RIA model, the pilot experience also provided an opportunity to explore the institutional and resource implications of introducing RIA. Like any other innovation the introduction of RIA will be challenging. However, the fact that many RIA elements (e.g. consultation) have become increasingly commonplace in recent years means that mainstreaming should not prove unduly onerous in practice. Some resources and institutional supports may be necessary to facilitate the RIA process but in the main RIA will work within existing resources and institutions.
- 6.2 The pilot experience supports the idea that RIAs should be prepared by the Departmental officials who are in charge of the particular policy area covered by the regulatory proposals. Officials should be in a position to conduct Screening RIAs (assuming the existence of appropriate training) without recourse to the employment of external consultants or other 'experts' except in a small minority of cases. Such training should have the added value of enhancing the analytical capacity of policy-makers more generally.
- 6.3 Departments may however need some assistance in conducting Full RIAs, particularly where they involve formal cost-benefit analysis. However, once the RIA system is correctly targeted there should be a relatively low number of Full RIAs per year and the costs of engaging consultants or other experts should not be prohibitive, particularly given the cost savings which can emerge from an effective system of RIA. For example, an evaluation of 15 RIAs in the United States found that they cost \$10 million to conduct but resulted in revisions to regulations with estimated net benefits of about \$10 billion, or a benefit-cost ratio of about 1000 to 1 (OECD 1997, 30).

### Expertise and capacity

- 6.4 Initially it may be necessary to provide some limited economic assistance to Departments which have a comparatively high level of regulations, particularly when these are likely to be relatively technical. Training in quantitative techniques could also be provided to officials within Departments who already have a background in economics. These officers could then become a central RIA resource within their Departments. It is also intended to establish a RIA network which would provide an opportunity for officials to share best practice and experience in conducting RIAs.
- 6.5 There is already a significant degree of expertise within the administrative system and where Full RIAs are overseen by a cross-departmental steering group (an approach which worked well for both of the pilot RIAs on EU Directives) the quality of analysis should be particularly high. Such a cross-departmental approach also means that unforeseen negative impacts or problems with compliance and enforcement are less likely to occur. If necessary such a steering group could also involve external experts, as was the case for the Forfás RIA on the REACH Directive.

### *Oversight and scrutiny*

- 6.6 There are a number of oversight issues that must be resolved prior to introducing RIA. Firstly, there needs to be an enforcement mechanism to ensure that RIAs are actually conducted and at the correct stage. This should be undertaken by Government Secretariat within the Department of the Taoiseach which is responsible for approving all Memoranda to Government. It is therefore well placed to scan each Memorandum received to ensure that where regulations are proposed, a RIA has been conducted.

**Recommendation 17:** Government Secretariat, Department of the Taoiseach should ensure that Departments meet an updated Cabinet Handbook requirement that a RIA accompanies any Memorandum which proposes new regulations.

- 6.7 However, it is not sufficient to ensure that some form of RIA has been conducted. There must also be some quality assurance mechanism to ensure that the RIA covers all the required elements, that any estimates and costings are reasonable and that it does not omit any major impacts or elements. Individual Government Departments are best qualified to ensure that impacts in their own policy areas are covered. The circulation of draft Memoranda to all relevant Departments prior to submission to Government is compulsory under Cabinet procedures (Department of the Taoiseach, 1998, 21). Those charged with preparing Departmental observations could then be responsible for ensuring that any impacts relevant to their Department are covered (e.g. it would be for the Department of Enterprise, Trade and Employment to ensure that business impacts are detected; Environment, Heritage and Local Government would be responsible for ensuring environmental impacts are covered; Social and Family Affairs should check social impacts and so on).

**Recommendation 18:** Individual Departments should be charged with ensuring that impacts within their policy areas are included in RIAs.

- 6.8 However, costings or calculations within a Memorandum must also be checked to ensure that they are accurate, based on sound assumptions, that the methodology is appropriate and that calculations are correct (particularly a CBA within a RIA). Here there is a need for a central unit with economic and financial expertise to examine the calculations of costs and where applicable benefits, the assumptions made in carrying out the calculations and ensure that the economic or financial analysis is sound. As proposed in the Government White Paper *Regulating Better*, this task should be carried out by Public Expenditure Division in the Department of Finance.

**Recommendation 19:** Public Expenditure Division, Department of Finance should play a lead role in examining RIAs from an economic and financial perspective and ensuring that economic appraisals are accurate and valid.

### Training

- 6.9 A key element in introducing RIA is the development of a capacity within the Irish administrative system to conduct RIAs. Some initial awareness-raising has been underway for two years or so in the form of short modules on RIA



being delivered as part of three-day courses on policy analysis run by the Centre for Management and Organisation Development (CMOD) in the Department of Finance. The Department of the Taoiseach also sponsored a group of twenty officials from a number of Departments/Offices to attend a customised short course on regulation in the London School of Economics in April 2005 with one of the three days of the course solely dedicated to RIA. This course was also run in 2003.

- 6.10 Since responsibility for RIAs is to rest primarily with the officials actually working within the policy area concerned this may require the further development of evaluation techniques in Departments and sections with considerable regulatory throughput. The full-time Masters of Economic Science in Policy Analysis run by the Institute of Public Administration for the CMOD should help in developing this capacity. In-house training could be provided in Departments which have a large volume of legislation. The training might be delivered in a similar way to the FOI training involving a combination of basic and advanced courses. There could also be short courses on various components of the RIA process (e.g. consultation, cost-benefit techniques, multi-criteria analysis and so on). The appointment of RIA co-ordinators or advisers within Departments could be considered, perhaps drawing on the expertise of graduates of the Masters and Diploma Programmes in Policy Analysis. More detailed proposals in relation to training will be developed in conjunction with CMOD and appropriate academic institutions.

**Recommendation 20:** A detailed training strategy for RIA will be developed before the end of 2005 by the Department of the Taoiseach in conjunction with CMOD and other appropriate bodies.  
An assessment should be conducted of the level and number of staff within Departments with economic and statistical training. Depending on the results, supplementary training or the engagement of external support and advice to assist with Full RIAs should be considered.

- 6.11 Detailed RIA guidelines will also be prepared as has been the case with the Capital Appraisal Guidelines and the Freedom of Information Manual. It is hoped that these RIA guidelines will be available by the Autumn.
- 6.12 The European Directors of Better Regulation network is currently examining the possibility of the introduction of integrated RIA training to be conducted across Member States informed by the extensive Impact Assessment training which European Commission officials have received over the past few years. This will complement rather than address the need for training to be provided on the Irish RIA. However, for RIA to be successful it is important that the training is appropriate to Irish systems and structures and fits in with existing institutional developments such as the e-Cabinet system.
- 6.13 It is intended that the templates for the Screening and Full RIA and appropriate RIA guidance will be integrated into the e-Cabinet system. A summary of the RIA would form part of the Memorandum under the section on proofings and a link would allow Ministers call up the Full RIA. Guidance in relation to the timing of RIA, and the forms of regulatory proposals to which it



should be applied must also be finalised and set out in summary form in Cabinet procedures and other relevant documents.

- 6.14 The Better Regulation Unit in the Department of the Taoiseach will review the operation of RIA and report to Government after two years.

## **7. Conclusions**

- 7.1 The RIA pilot process has successfully tested the draft RIA model developed in 2002. It has both identified benefits of RIA and drawn attention to amendments to be made to the pilot approach prior to mainstreaming. These are not fundamental changes but are rather alterations to ensure that RIA is effective, targeted and proportionate.
- 7.2 The RIA pilot projects have demonstrated that RIA can improve the quality of regulation. International evidence also suggests that it can contribute in a broader level to three inter-related areas: the economy, systems of governance and efficiency of the public service. It will improve economic competitiveness and maximise consumer welfare by ensuring regulations do not impose disproportionate costs and unintended impacts on businesses or citizens. It will contribute to the development of principles of good governance by increasing the accountability and transparency of the regulatory process. Finally, it will significantly contribute to enhancing the skills and performance of the public service through the development of analytical techniques and capacity. These skills will then be employed by officials in their full range of policy-making activities.
- 7.3 There may initially be some tension between the dual goals of achieving legitimacy and support for RIA across the policy-making system and ensuring that RIAs are sufficiently rigorous in their economic analysis. These trade-offs are however likely to diminish in significance as RIA becomes more integrated in the regulatory process and its benefits become evident to consumers and policy-makers. If the RIA approach places the consumer and citizen at the centre of the regulatory process, the effects could be dramatic in terms of improving the quality and availability of goods and services, reducing prices, increasing public health and safety through better enforced and designed regulations and ensuring more open, accountable and transparent government.

## **Appendix 1: Summary of Recommendations**

### **Recommendation 1: Introduce RIA:**

RIA should be introduced across Departments and Offices as agreed in the Government White Paper *Regulating Better* subject to various modifications of the RIA model and other recommendations highlighted in this Report.

### **Recommendation 2: Improve data sources.**

The RIA network which is to be established will identify any significant data gaps which are highlighted by the introduction of RIA and take note of available information resources. It will also liaise with other groups and bodies (such as the CSO) where necessary.

### **Recommendation 3: Reinforce analysis of benefits.**

Given the relative lack of rigour of current approaches to evaluating the expected benefits of policies and difficulties with their monetisation or quantification, the RIA guidance should detail the techniques available to analyse benefits and provide some instruction as to how to apply them.

### **Recommendation 4: Increase the focus on compliance and enforcement issues.**

The burden of enforcement and compliance must not exceed the benefits to be achieved. Where costs of enforcement or compliance are likely to exceed the benefits or where difficulties with enforcement are identified, a review of alternative approaches should be triggered.

### **Recommendation 5: Use RIA to enhance approaches to cross-cutting issues.**

Where either the objectives or impacts of a regulatory proposal span a number of policy areas consideration should be given to forming a multi-agency group to conduct the impact assessment exercise and this should be done at the earliest stage possible.

### **Recommendation 6: Apply RIA early.**

RIA should be applied as early as possible in the regulatory process.

### **Recommendation 7:**

It is proposed that the two phase approach to RIA be retained but with a scaled down first-stage Screening RIA and a second-stage Full RIA involving more detailed analysis which would only apply to certain regulations.

### **Recommendation 8:**

#### **Introduce a Screening RIA as outlined below:**

1. Description of policy context, objectives and options (for example different forms of regulation)
2. Identification of costs, benefits and other impacts of any options which are being considered
3. Consultation
4. Enforcement and compliance
5. Review

### **Recommendation 9:**

A Full RIA to be conducted when any of the following apply:

- (a) there will be significant negative impacts on national competitiveness
- (b) there will be significant negative impacts on the socially excluded or vulnerable groups
- (c) there will be significant environmental damage
- (d) the proposals involve a significant policy change in an economic market
- (e) the proposals will disproportionately impinge on the rights of citizens
- (f) the proposals will impose a disproportionate compliance burden
- (g) the costs to the Exchequer or third parties are significant, or are disproportionately borne by one group or sector.

**Recommendation 10: Government discretion:**

The Government can request a Full RIA where it considers regulatory proposals to be politically significant or sensitive or where convincing submissions on the matter have been received from stakeholders.

**Recommendation 11: Introduce the following Full RIA model**

1. Statement of policy problem
2. Identification and description of options
3. Impact analysis including costs and benefits of each option
4. Consultation
5. Enforcement, and compliance for each option.
6. Review
7. Summary of the performance of each option and identification of recommended option where appropriate.

**Recommendation 12:**

When a policy review group is formed its terms of reference should include a requirement to take account of the principles of better regulation and to consider the potential for the use of alternatives to regulation or lighter models of regulation prior to recommending regulatory solutions. This may in some situations necessitate the preparation of a RIA.

**Recommendation 13:**

For primary legislation with regulatory impacts, RIAs should be conducted before Memoranda are brought to Government seeking permission to regulate. The RIA should be attached to the Memorandum seeking approval for the General Scheme of a Bill when it is circulated to Ministers for observations in advance of the Government meeting as well as attached to the Memorandum when it is finally submitted for the Government meeting.

**Recommendation 14:**

RIA should be conducted on draft EU Directives (and on significant draft EU Regulations) after the EU Commission has published a draft Directive (or Regulation) and its own Impact Assessment. The RIA should also be updated as required during the negotiation and transposition process to take account of significant changes.

**Recommendation 15:**

RIA will only apply to certain significant SIs (including those which give effect to EU Directives and those which the Government agrees warrant a RIA) at least in the initial introductory phase. Further consideration will be given to the extension of RIA to more SIs as the process develops.

**Recommendation 16:**

RIAs should as a general rule be published with the exception of any material within the RIA that would fall under the exemptions contained in the Freedom of Information Act. The decision on publication or withholding a RIA should be taken in tandem with the decision to publish the legislation in question.

**Recommendation 17:**

Government Secretariat, Department of the Taoiseach should ensure that Departments meet an updated Cabinet Handbook requirement that a RIA accompanies any Memorandum which proposes new regulations.

**Recommendation 18:**

Individual Departments should be charged with ensuring that impacts within their policy areas are included in RIAs.

**Recommendation 19:**

Public Expenditure Division, Department of Finance should play a lead role in examining RIAs from an economic and financial perspective and ensuring that economic appraisals are accurate and valid.

**Recommendation 20:**

A detailed training strategy for RIA will be developed before the end of 2005 by the Department of the Taoiseach in conjunction with CMOD and other appropriate bodies. An assessment should be conducted of the level and number of staff within Departments with economic and statistical training. Depending on the results, supplementary training or the engagement of external support and advice to assist with Full RIAs should be considered.

## APPENDIX 2: STEPS OF FULL RIA MODEL

### Steps One and Two

Stage 1 is largely similar both to the draft RIA model and to what is required under the Screening RIA. However, this first step should be relatively brief and should not consist of a lengthy historical narrative of the background to an issue. Rather, key aspects of the policy issue should be summarised as well as the reasons why change is being proposed. In particular, the objectives behind the policy proposal should be clearly identified and described.

The proposed model specifies that at least one non-regulatory alternative or alternative form of regulation should be considered. Because RIAs will be conducted prior to any commitment to regulations being sought, this analysis of alternatives will have much more scope for influence than the conducting of a similar exercise during the pilot phase.

The 'do nothing' or 'no change' solution must also be included (i.e. to continue with the existing policy approach rather than introduce a new proposal or regulation.) It should be noted however that it is not a viable option in many situations. Officials do not tend to propose changes unless there are fairly strong grounds for considering it necessary. The inclusion of the 'no change' option is included as a necessary benchmark for comparison – the significance of the costs, benefits and impacts of the other options can only be evaluated if there is similar information available for the current reality or the status quo.

### Impact Analysis

The model merges steps 3 and 4 of the draft RIA model (evaluation of options and impact analysis) because of the confusion their differentiation caused during the pilot phase. Both officials and consultants piloting RIA made the point that the costs and benefits of an option are part of its impacts. Therefore, separating impact analysis from the evaluation of options is somewhat artificial and tends to cause duplication. For example, a proposal which is developed to benefit low-paid workers is likely to also impact positively on those at risk of poverty and on women. It makes much more sense to merge these steps and describe the various impacts under the one heading.

### Methodologies

Prescribing the degree and level of analysis that should be applied to the costs and benefits is a complex issue. The key issue here is whether certain economic evaluation techniques should be mandatory or whether discretion should be left to those actually applying RIA.

It is proposed that those conducting Full RIAs should use the most rigorous technique possible in analysing costs and benefits. In some circumstances and in particular where cost-benefit analysis is applied, discounting (which takes account of the point in time when costs and benefits are accrued) will be necessary. For RIA to be successfully introduced there must be strong leadership at political level and from senior officials. If the initial guidance is overly technocratic in specifying the use of complex evaluation techniques such as CBA, there is a risk that RIA will be viewed as beyond the capacity of non-experts and lack accessibility to citizens and politicians. However, it is important that the quality of economic evaluation and costings is improved as part of the RIA process. Training and proper mechanisms for

the scrutiny of RIA can contribute to this and these issues are discussed in the main body of the Report.

### Consultation

OECD has suggested that consultation can tend to be focused on industry and producer groups at the expense of consumer/ citizen interests and that this can result in a national economic policy which favors producer interests. The pilot experience supports the importance of consultation and suggests that for RIA to fulfil its potential in the Irish case there must be a compulsory requirement to undertake a publicly advertised formal consultation process as part of the Full RIA model, except where extreme urgency prevents this. Those charged with overseeing the RIA process should be empowered to prevent regulatory proposals going to Government where there has been no formal consultation.

As is recommended in the Consultation Guidelines *Reaching Out: Guidelines on Consultation for Public Sector Bodies* (Department of the Taoiseach 2005), organisations should be consistent in relation to the time period which they provide for consultation responses, except where extreme urgency requires the truncation of the consultation period or means that formal consultation is not possible. For complex policy proposals and proposals made in the form of a Green Paper there should be longer consultation periods. All responses to consultations should be published (which happens already as part of most consultation processes conducted by Sectoral Regulators and the Government) and the particular Department or Regulator in question should publish a formal response to the points made during consultation. Such practices should greatly enhance the transparency and legitimacy of regulatory decision-making and ultimately increase the standard of regulations.

### Enforcement and Compliance

Issues in relation to enforcement and compliance are sometimes considered quite late in the regulatory cycle. A decision is made to regulate and at that stage enforcement and compliance are considered. Therefore, difficulties detected in enforcement or compliance do not influence the central decision as to whether regulations should be used in addressing the policy issue in question. It is vital that where costs of enforcement or difficulties in obtaining or measuring compliance are identified that lighter regulatory models or alternatives to regulation be considered.

### Review

Mechanisms for review are rarely considered when regulations are being developed. Similarly, although the concept of performance indicators is gradually permeating the Public Service, the idea of developing indicators to measure the performance of regulations is new to the Irish regulatory system. It is hoped that the very existence of such a step as part of the model, and a requirement to identify in writing, review provisions and performance indicators might generate an awareness that regulatory quality does not end once regulations have been drafted and enacted.

The final step of the Full RIA template takes account of the differing policy challenges which may be subject to a RIA, acknowledging that it will sometimes be appropriate to recommend a particular option, whereas in other circumstances the last stage may simply be the preparation of a summary of the different options and their impacts. In the latter situation, it is then the role of the key decision-maker (usually the relevant Minister) to decide which of the options to implement. This departure from previous approaches recognises that it is ultimately the Minister

rather than officials who must make final policy choices and that there may be other considerations influencing decisions apart from those captured in the RIA process.

Once this final stage has been completed the RIA should be attached to the draft Government Memorandum (or draft EU Directive if applicable) and the usual legislative and Cabinet procedures followed.



### **APPENDIX 3: SUMMARY OF PILOT RIAS**

#### **Case 1: Department of Enterprise, Trade and Employment**

The Department of Enterprise, Trade and Employment conducted a RIA on a proposed Exports Control Bill. In 2002, the Department had requested Forfás to undertake a review of Ireland's export controls system for military and dual-use goods (products which have both civilian and specific military applications) with a view to recommending how best we can modernise and strengthen the controls and ensure full compliance with Ireland's international obligations. Forfás produced a Report in 2004 which set out a number of recommendations including the introduction of new primary legislation with a view to ensuring that Ireland's export controls meet best international standards through introducing controls in the areas of arms brokering, on certain types of technical assistance and on the transfer of technology by intangible means. The proposed regulations are also intended to enhance existing inspection and audit powers and introduce revised penalties for non-compliance.

Three options were examined:

- (a) Maintaining the status quo (continuing to rely on the current controls as provided for under the Control of Exports Act, 1983)
- (b) Introducing new legislation providing for the introduction of powers to inspect and audit export companies, increased penalties for non-compliance and a wider definition of exportation that would include intangible transfers without providing for new controls in the areas of arms brokering or technical assistance.
- (c) Introducing new legislation along the lines of (b) above which would also include new controls in the areas of arms brokering and certain types of technical assistance.

The options were evaluated in terms of the likely costs, benefits and impacts. No significant cost implications were identified for any of the options either on the Exchequer or on third parties. In terms of benefits, it was concluded that the introduction of new legislation along the lines of the third option was the only option which would ensure that Ireland's export control system meets best international standards and EU obligations. As there is no evidence at present to suggest any firms engaged in arms brokering currently operate from Ireland or that Irish firms are involved in provision of technical assistance, the RIA suggests that new controls in these areas would have negligible economic impact.

Consultation on the proposed Bill was carried out in the context of the Forfás review process. This involved a series of approximately 40 bilateral consultations with individual organisations, including user-companies, representative organisations, NGOs, State agencies and others as well as an open public consultation process. The RIA examined enforcement and compliance issues and detailed institutional responsibility in this regard. It also detailed provisions for review of the legislation which includes the production of an Annual Report in relation to the licensing of military and dual-use products which will be laid before the Oireachtas. The Screening RIA concluded that a Full RIA was not necessary given the limited scale of the impacts identified.

In this case, RIA was applied before the Heads of the Bill went to Government. The RIA process was particularly useful in providing a structure for explicitly identifying and analysing the available options. It also encouraged an early focus on enforcement and compliance issues.

### **Case 2: Department of Health and Children**

The Department of Health and Children conducted a Screening and Full RIA on the draft Medical Practitioners Bill. This Bill is intended to update the existing regulatory framework governing medical practitioners which dates back to 1978 and to reflect new developments since then including significant advances in medical technology and practice; an increased emphasis on accountability; increased recognition of the importance of the rights of patients; reform of and changes within the health system and regulatory changes at EU level.

The Bill is intended to cover a wide variety of provisions and areas. The Screening RIA analysed the Bill as a whole while the Full RIA focussed on two significant aspects of the Bill:

- the proposed statutory introduction of competence assurance for medical practitioners and
- changes in fitness to practise structures.

Two ‘mini RIAs’ were conducted – one evaluated three possible models of competence assurance being considered by the Department. The second focussed on three alternative approaches to updating fitness to practise structures. Detailed analysis of previous consultations and submissions on the matter were referenced and key stakeholders were surveyed as part of the consultation component of the RIA. The proposals examined in the RIA were also informed by international best practice.

### **Competence Assurance**

The three options identified were:

- (i) No policy change (do nothing)
- (ii) Continuing Medical Education combined with Performance Review and
- (iii) Continuing Medical Education, Performance Review and Clinical Audit.

The RIA noted that technically it would be feasible to continue with competence assurance on a non-statutory basis. However, it suggested that introducing statutory requirements is vital to encouraging high standards of medical practice and ensuring that all medical practitioners participate in Continuing Professional Development.

Each option was explored in terms of its potential costs, benefits and impacts. The analysis suggests that the direct costs of all three models of competence assurance will be borne by the Exchequer, the Medical Council, medical practitioners and postgraduate training bodies but in varying degrees of magnitude. Option (i) will be the least costly and Option (iii) is likely to incur most costs. The benefits were explored through the use of multi-criteria analysis – the desired objectives of competence assurance were identified and the three options evaluated as to the extent to which they would achieve these objectives. This analysis suggested that of the three options, Option (iii) would achieve most benefits and it is selected as the recommended option in the final stage of the RIA. Issues in relation to enforcement and compliance were examined for all three options and mechanisms for review identified.

### Fitness to Practise

The three options examined here were:

(i) The status quo or current fitness to practise arrangements.

(ii) This option incorporates a number of elements as follows:

- Three statutory committees – a Screening Committee, a Professional Conduct Committee and a Health Committee.
- Professional Conduct Committee inquiries would generally be held in public, with *in camera* hearings in particular circumstances.
- Mediation to be used for minor complaints.

(iii) This option involves all the elements listed under (ii) with one addition: the employment of investigators where appropriate to assist in the gathering of information for the committees in advance of an inquiry.

Although alternative regulatory approaches are not being applied in this case, some innovative approaches such as mediation are being considered as part of the legislative changes.

Costs, benefits and impacts of each option were examined. For all three options costs will primarily be borne by the Medical Council (through retention fees paid by medical practitioners) and in some cases directly by medical practitioners. Option (i) is the least costly option while Option (iii) is likely to cost more than Option (ii) but the difference is not particularly significant. The multi-criteria analysis found that Options (ii) and (iii) would achieve a similar level of benefits and that these options would be more beneficial than Option (i).

Enforcement and compliance issues for all three options were examined and review mechanisms for each identified. The RIA did not come to a definitive conclusion in relation to the selection of a preferred option. This will ultimately be a political decision.

A number of key choices remain to be made in relation to the approach and content of this legislation. The application of RIA was extremely valuable in providing a framework for identifying these choices and analysing the costs and benefits of the particular options. The analysis of benefits proved particularly useful because it allowed benefits to be examined in a structured way. The use of a stakeholder survey here provided a valuable insight into the likely performance of each option in achieving the objectives behind the regulatory proposals and is likely to inform the final choices to be made in relation to the Bill.

### **Case 3: Office of the Revenue Commissioners**

The Office of the Revenue Commissioners conducted a RIA on proposals for changes to the betting returns system for the Bookmaking Industry. The Betting Duty Regulations 2002 had initiated progress in this area by changing the betting duty return period from every week to every month. The objective of the proposals was to identify ways of further reducing the administrative burden on bookmakers and the amount of Revenue resources devoted to processing returns and payments.

Two options were examined:

- Do nothing
- Review current procedures

The option of doing nothing was discounted as betting duty returns were already being eroded by increases in Internet and telephone betting and the introduction of betting exchanges. It was decided to proceed with the option of reviewing current procedures. Possibilities examined were:

- No change of the monthly returns system
- Returns every 2,3,4 or 6 months
- Single return by a bookmaker to cover all his/her betting shops, rather than the current requirement for one return per betting shop
- Dispensing with the requirement on bookmakers to take out security for betting duty (bonds)

These options were evaluated in terms of costs, benefits and impacts. Consultations were held internally and with bookmakers. It was concluded that changing to a quarterly betting returns system, requiring only one return per bookmaker irrespective of the number of premises and dispensing with bond cover would reduce the administrative burden on bookmakers with an estimated total annual savings to the industry of €413,000. Benefits to the Revenue were identified in terms of more effective deployment of staff formerly engaged in the processing of returns. No significant enforcement or compliance issues were identified.

The RIA approach added value in this case by providing an opportunity to identify and quantify the cost savings arising from the proposed regulations. This is likely to provide a basis for the analysis of similar regulatory proposals by the Office of the Revenue Commissioners in the future.

#### **Case 4: Department of Environment, Heritage and Local Government**

The Department of Environment, Heritage and Local Government conducted a RIA on a draft EU Groundwater Directive. This was conducted as part of an EU Benchmarking project on RIA which involved nine Member States applying RIA on the same Directive with a view to comparing approaches and outcomes to RIA. It is hoped that this project will contribute to the development of a common RIA methodology across Member States.

The RIA was overseen by a cross-departmental steering group comprising Government Department and Regulatory Agency representatives. Previous submissions provided during the Water Framework Directive (WFD) consultation process were also analysed. Because the transposition of the Directive was compulsory options were not examined in detail.

The draft Groundwater Directive is a daughter Directive of the Water Framework Directive so the main focus of the RIA was to identify and analyse the additional requirements specifically arising from the transposition of the Groundwater Directive (of which six were identified). Each additionality was examined in relation to its likely economic, environmental and social impact (both positive or negative).

Impacts identified include an overall positive impact on groundwater quality and hence on the quality of life for those in the population who obtain drinking water from a groundwater source. A number of other expected benefits for society as a whole

were also noted including reduced water treatment requirements and costs, improved likelihood of future generations being able to source unpolluted water from local groundwater sources and improved farming practices and industrial practices that result in decreased pollution.

The potential environmental impacts identified during the RIA were found to be intrinsically linked to the groundwater requirements of the Water Framework Directive. The economic costs highlighted relate to the additional monitoring costs of key compounds, additional reporting and, depending on one's interpretation of the Directive, potentially more onerous measures to prevent the input of certain substances into groundwater. Sectoral effects were also referenced including effects in relation to mining, road construction and maintenance and agriculture.

The RIA highlighted several points where different interpretations of the draft Directive were possible and the RIA process provided an opportunity to clarify these issues. The RIA concluded that the impacts of the Groundwater Directive were not sufficiently significant to warrant a Full RIA. However, the RIA highlighted the possible need for assessment of the overall impacts of the WFD itself in respect of groundwater and also with respect to the preparation of River Basin Management Plans. Enforcement and compliance issues were examined and mechanisms for review were outlined.

The formation of a collaborative, cross-departmental group to oversee this RIA encouraged a process of what UK consultants RPI described as 'creative brainstorming' in relation to the impacts of the draft Directive. This process highlighted potential impacts and ambiguous aspects of the Directive which may not otherwise have been identified. The RIA demonstrated that the application of RIA to all draft Directives could have considerable value in informing Ireland's negotiating position on draft Directives through highlighting at an early stage the potential impacts both positive and negative for Ireland.

### **Case 5: Department of Justice, Equality and Law Reform**

The Department of Justice, Equality and Law Reform conducted a RIA on a proposed Coroners Bill. This Bill is being developed in response to the Coroners Review Group Report (2000) which recommended a comprehensive overhaul and modernisation of the Coroners Service. Given that the objectives of the Bill involve updating and modernising the regulatory framework and addressing a broad variety of issues, use of alternatives to regulation was not a viable option in this case. The Department conducted a RIA on one element of the proposed Coroners Bill namely the structural and administrative arrangements for the reformed Coroners Service.

Four options were examined:

- Continue/build on the existing arrangements (a do nothing/do minimum model).
- Locate a new Coroners Service Division in the Department of Justice, Equality and Law Reform (with a liaison to the Courts Service).
- Attach the Coroners Service to the Courts Service.
- Establish a separate Coroners Agency.

The various options were evaluated in terms of benefits, costs and impacts. The analysis of benefits was assisted by the development of a multi-criteria framework which set out the desired objectives of a revised Coroners Service. Each option was analysed in terms of its ability to meet these objectives and the potential costs of

each option were also explored. In this case, costs will mainly be borne by the Exchequer and there will also be staffing implications which vary in magnitude depending on the option chosen. The RIA refers to previous consultation undertaken on the issue between 1999 and 2003.

Because the decision on the appropriate structure is related to a number of different factors and is currently under consideration, the RIA did not come to a definitive conclusion as regards the preferred option. The analysis suggested that the first two options might not be as effective in meeting the objectives of the Coroners Service as the third or fourth option. This would be the case particularly should it be decided in the context of the reforms to upgrade the part-time status of coroners to full-time. A final decision will be based on this analysis as well as a number of other factors such as the optimum number and nature of coroners and the precise scope of their responsibilities and powers.

RIA made a valuable contribution to the development of this regulatory proposal through encouraging an explicit and structured analysis of objectives and desired benefits. This was especially useful because of the non-tangible but significant nature of these benefits. It also provided a framework through which costs, benefits and other impacts could be identified and compared which should prove useful in informing the final decision as to the most appropriate structure for the coroners service.

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## Steps of the RIA Model

### Screening RIA

1. Description of policy context, objectives and options (for example different forms of regulation)
2. Identification of costs, benefits and other impacts of any options which are being considered
3. Consultation
4. Enforcement and compliance
5. Review

### Full RIA

1. Statement of policy problem
2. Identification and description of options
3. Impact analysis including costs and benefits of each option
4. Consultation
5. Enforcement, and compliance for each option
6. Review
7. Summary of merits/ drawbacks of each option and identification of recommended option where appropriate