

Regulation: another form of taxation?

UK Regulatory Impact Assessments in 2003/4

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Foreword



The cost of complying with new regulations introduced since 1997 has now reached £38.9bn. One of the strongest complaints from Chamber members is the cost to their business of complying with new regulations. The British Chambers of Commerce have therefore measured this cost in our Burdens Barometer and then, in our reports on Regulatory Impact Assessments, focused on how we can reduce the costs and prevent unnecessary additional burdens.

The system of Regulatory Impact Assessments (RIAs) should, in theory, mean that the benefits of regulation are even greater than the costs. However, it often seems to businesses that the cumulative burden is discounted, the

dynamic effects on our competitiveness are ignored and the benefits that are claimed to justify the regulations are seldom quantified.

On behalf of the business community, we want to see the Government implement specific, achievable and lasting reform to the regulatory system to stem the increase in regulation. In this respect we broadly welcome the announcements on regulation in the 2005 Budget statement. We want to see the overall burden of regulation reduced. The evidence in this report shows that the Regulatory Impact Assessment system has in places improved but still fails to achieve its primary objective to prevent unnecessary regulation. The increasing burden of regulation has led us to ask whether the costs of complying have become another form of business taxation.

We are indebted to Tim Ambler, Francis Chittenden and to Chanyeon Hwang for their ground breaking work in examining RIAs for the BCC. Their work should mean that Government will strengthen the system and make it more likely that only those proposals which are objectively justified go forward.

A handwritten signature in blue ink that reads "David D. Frost". The signature is fluid and cursive, with a small flourish at the end.

David Frost
Director General
British Chambers of Commerce

Executive summary

This paper updates the 2004 analysis of UK Regulatory Impact Assessments (RIAs). 1,100 RIAs have been issued since the introduction of the system in 1998, i.e. about 190 RIAs per year. Of the 226 RIAs issued for the period, 217 were obtained through searching department's websites and submitting special requests to departments.

The availability and compliance with the Regulatory Impact Unit's (RIU) guidelines have improved but the objective of the RIA system namely that the need for each regulation would be thoroughly challenged, and alternatives considered, is still not being met. As a consequence, in many cases regulation is transferring government's administrative and social policy costs onto industry. In other words, whether intentionally or not, many regulations act as a form of taxation. For example the Statutory Maternity Pay administration costs currently incurred by employers on behalf of government amount to a lump sum tax of £55m and an ongoing annual tax of £26m per annum (see page 19).

We are concerned about government presentation of regulatory issues. There is confusion between quantity and quality. 'Better' regulation may mean more regulations, consequently damaging competitiveness. The emphasis on 'better' diverts attention from the rapidly growing quantum of regulation and the administrative and social policy costs being transferred on to business. In the first six months of 2004, the number of regulations increased by 46 percent from the corresponding period of 2003. Our Burdens Barometer 2005 showed that the regulatory cost to business had increased by £9bn since the previous year.

The 2005 Budget Report stated that over 400 deregulatory measures from the 2003 Regulatory Reform Action Plan have been delivered. The Action Plan anticipated the introduction of 58 Regulatory Reform Orders, eight of which were subject to some administrative or legal uncertainty. Twenty one RROs are in force at the date of this report. Just four of these came into effect in 2004. The same report states 'Half of significant new regulations affecting businesses in the UK originate in EU law.' 'Significant' should mean the same as requiring an RIA, whereas the proportion of EU sourced regulations in the year to July 2004 actually declined from 34 to 29 percent in terms of the number of RIAs (Table 2, page 14). In value terms, the EU is responsible for 20 percent of gross cost to business and 34 percent of net.

Challenging EU requirements when they are being transposed into UK law is too late. From the point of view of any EU business, the challenge needs to take place during the EU formative stage and member states should not add to (gold plate) EU requirements since doing so undermines the whole point of a common market. New EU sourced rules need, and are increasingly getting, Impact Assessments but additional UK RIAs should not be required and therefore represent an unnecessary burden on UK industry. We discuss the formation and implementation of EU Directives and Regulations in a paper to be published later this year. This paper concerns itself purely with the UK RIA system.

The report notes the improvements in RIA practice as well as those areas where improvement has been minimal.

For the sake of good order we repeat previous recommendations before making a few new ones.

- 1 A Minister agreeing an RIA where the quantified benefits do not appear to exceed the costs should explain why, in his or her view, the RIA is justified nonetheless. The blanket assertion without support undermines the entire RIA process.
- 2 Ministers, when signing, should also certify that the RIA meets the Cabinet Office guidelines and justify those areas where it does not.
- 3 Where consultees provide estimates of costs and benefits, a summary of these figures should be reported in the RIA. If these figures differ significantly from the department's own estimates, a review date should be set within two years to examine the actual costs and benefits, as the guidelines already suggest in all cases. If, on completion of this review, it becomes apparent that the costs of the regulation are not justified by the benefits, the regulation should be revised or repealed.
- 4 As proposed in the guidelines, sunset clauses should be used except where the Minister, when signing, explains why it would be inappropriate in this case.
- 5 The Cabinet Office RIU (soon to become the Better Regulation Executive/BRE) should maintain an up to date database and website of all RIAs, which should be serial-numbered and linked to relevant documents. Constant reorganisation of government departments, which can be expected to continue into the future, makes leaving RIA recording to departments impractical over the long term.
- 6 The RIU/BRE should publish an annual report, audited by the National Audit Office (NAO), of the government's regulatory performance and compliance. This report should include additional costs and benefits arising from major regulations which have a significant impact on society, the economy and the environment. In Budget 2005 an enhanced role for the NAO was announced. We welcome this.

Our new recommendations are –

- 7 The BRTF propose that regulating departments should appoint consultants to value the administrative burdens placed on business. However, we do not believe that this suggestion goes far enough. We recommend that the preparation of major RIAs should be outsourced from professional experts, so that objective assessments of costs, benefits and regulatory alternatives are produced independently of the regulating departments, that may lack the capacity and expertise to conduct this work with appropriate rigour.
- 8 The process of consultation, though well-intentioned, is itself burdensome on business and often ineffective. Consultations simply give all control to a department going through the motions in order to achieve the regulation it wanted in the first place. Some consultation can be useful to improve the compliance (i.e. 'better' regulation) but it does not effectively challenge regulation (i.e. reduce regulation). The main safeguard should shift to the appointment of a professional assessor for each regulation who can challenge the need for the new rule, point out failures in meeting guidelines while it is still in draft and prepare, in agreement with the department, a balanced one page summary of the RIA to be sent to all MPs. That will make clear whether the external assessor considers the new regulation justified or not.
- 9 We do not understand why the UK needs a Better Regulation Task Force (BRTF) or Better Regulation Commission (BRC), an RIU/BRE, a Business Deregulation Team, and a Panel for Regulatory Accountability (PRA). We propose streamlining the UK deregulatory process with a much smaller number of bodies that take an active role in achieving less regulation, appoint the assessors suggested above, conduct business transparently, and report to Parliament, not government. We believe the EU should have a similar independent body to challenge new business legislation. The Budget 2005 announcements move

some way towards this recommendation and we look forward to assessing whether the parallel existence of the BRC, the BRE and the PRA are successful.

- 10 Those central regulatory functions that need to remain with government should be part of the RIU/BRE which should have stronger powers of enforcement as well as the duties outlined above.
- 11 RIAs are, in theory, analysed for costs and benefits but their conclusions are not clear. If it is burdensome for business and bad for UK PLC, but financially beneficial for government departmental costs, is the regulation justified? We propose that Ministers should additionally sign off that the new regulation is cost effective, i.e. it will deliver the policy objectives at the least cost to business. Business should be reimbursed for any departmental financial gains and the policy costs that they incur on behalf of the regulating department. In other words, government should not use regulation to transfer policy and/or departmental costs to business, i.e. as a form of taxation.
- 12 The BRTF and the government agree that regulations should be reviewed after they are implemented to ensure that they are having the intended effect. We also propose that RIAs should in future specify how and when new regulations will be monitored and reviewed, in accordance with the current Cabinet Office guidelines.
- 13 We are concerned that the proposals for a one in one out system will undermine the drive for a net reduction in regulation. As an interim measure, pending the implementation of targets to reduce regulations, the one in one out principle may have a role. However, the real objective is the need to achieve a significant net reduction in the regulatory burden presently placed on business.

The RIA system was introduced seven years ago. RIA practice has improved as government departments are accumulating knowledge and experience in RIA preparation and consultation exercises. However, this study has found that the RIA system is still not working to reduce the burden of regulation as originally, and indeed currently, claimed. It has simply facilitated the rapid increase in the burden on business. The Hampton Review concluded, as this and our previous reports have indicated, a more accountable regulatory framework is needed at the heart of government. Whether the proposed BRC, BRE and PRA will achieve this remains to be seen. There is much that needs to be done if business is to be allowed to achieve its full potential for wealth creation in the UK.

Introduction

The British Chambers of Commerce (BCC) database of Regulatory Impact Assessments (RIAs) contains 1,100 RIAs, including 217 which were published for the period from July 2003 to June 2004. Since the introduction of the system in 1998, about 190 RIAs per year have been issued. An RIA is a tool for policy making, which assesses the impact of policy options¹ and is required for any UK or EU proposed legislation that has an impact on business, charities or voluntary bodies.

This report updates the study of UK Regulatory Impact Assessments (RIAs) in 2002/2003². The previous report concluded that in comparison with the analysis conducted in 2003 there was little evidence that UK regulators were 'Raising Their Game', perhaps the reverse. The 2002/3 analysis also questioned whether the RIAs analysed provided a genuine search for the lightest regulatory touch consistent with national interest or a convenient, if time consuming device, for leveraging departmental wishes to introduce regulations.

The aims of this report are to review the extent to which government departments comply with the Cabinet Office's best practice guidelines for RIAs (which have been recognised as 'excellent' by the Organisation for Economic Co-operation and Development³), and to attempt to evaluate the quality of RIAs produced in 2003/4. This study also summarises the aggregate benefits and costs of new

regulations for the year. The benefits and costs are compared with those of previous years in order to identify the extent to which the 2003/4 RIAs have altered the regulatory burden on business, charities and voluntary bodies.

Although the Cabinet Office guidelines for RIAs require that they should be published on departmental websites, some difficulties in finding RIAs are still being experienced. The Regulatory Impact Unit's website does not always maintain links to actual RIA documents. However, access to RIAs appears to have improved over the last 2 years, which is encouraging. Of 226 RIAs issued for the period, 217 were obtained through searching departments' websites and submitting special requests to departments.

This report consists of the following sections–

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[Main shortfalls in RIA practice](#)

[Recommendations](#)

[Conclusions](#)

¹ Cabinet Office (2003)
Better Policy Making – A Guide to Regulatory Impact Assessment

² Tim Ambler, Francis Chittenden and Mikhail Obodovski (2004)
Are Regulators Raising Their Game? British Chambers of Commerce

³ OECD (2002)
Regulatory Policies in OECD Countries – From Interventionism to Regulatory Governance

Background and recent developments

Since 1997, the government has claimed to pursue an agenda of better regulation, e.g. through establishing the Better Regulation Task Force (BRTF) and the RIA system. This section discusses recent developments with regard to the agenda of better regulation.

Panel for Regulatory Accountability (PRA)

The Panel for Regulatory Accountability (PRA) was enhanced in Budget 2004 to reduce the flow and improve the quality of regulations and, at UK level, to ensure that regulation is used only where necessary. The PRA, now chaired by the Prime Minister, scrutinises all new regulations likely to impose a significant cost to business before they can become law. According to the 2005 Budget Report¹, the PRA has already rejected or delayed a significant proportion of regulatory proposals, where departments had not properly justified extra burdens on business and challenged departments to tackle regulations with a high cost to business. We asked for details of the regulations considered and specific outcomes in 2004 and, when we were advised that the information was not available, made the same request again in 2005 under the Freedom of Information Act². We do not accept that factual matters of this sort, as distinct from advice to Ministers, are exempted by the Act. Nevertheless, a response to our second request has been delayed and it is, therefore, impossible to verify the claims made.

Hampton Review of regulatory inspection and enforcement

In Budget 2004, Philip Hampton was asked to lead a review into regulatory inspections and enforcement without reducing regulatory outcomes. The final Hampton Report³ was published with the Spring Budget 2005 and made the following recommendations, accepted by government -

- general use of comprehensive risk assessment methodology with no inspection without a reason
- rebalancing advice and inspection because good advice-giving leads to better regulatory outcomes, especially for small business
- more effective incentives for compliance including tougher penalties for businesses that continually break the rules
- measures to consolidate information resulting in fewer, simpler forms, and for government regulators to share information
- continuing the recent trend of consolidation of functions into national regulatory bodies. For example, 31 national regulators will be consolidated into seven thematic bodies over the next four years.

¹ HM Treasury 2005
Meeting the productivity challenge (2005 Budget Report)

² Cabinet Office, December 2004

³ The Hampton Review (2005)
Reducing Administrative Burdens – effective inspection and enforcement

Merger of HM Customs and Excise and the Inland Revenue

The government is currently implementing the merger of HM Customs and Excise and the Inland Revenue. In May 2004, it was announced that the new department would be called Her Majesty's Revenue and Customs (HMRC). The integration is intended to provide the opportunity to simplify administration of the tax system and to deliver deregulatory gains and reductions in compliance costs. A key priority for the HMRC would be tackling areas of tax administration and compliance that are unnecessarily burdensome to business, as well as providing support and education to improve the capacity of firms to comply with their obligations. In Budget 2005 HMRC launched a consultation aimed at reducing the administrative burden of the tax system on small business¹.

Developments in the EU

The EU is considering regulatory reform. For example, the 2004 Four Presidencies initiative has been extended to six Presidencies and sets out a series of joint proposals designed to place regulatory reform at the heart of the EU agenda, spanning 2004, 2005 and 2006. In addition, procedures for competitiveness-testing new EU regulations have been developed and Member States have agreed new proposals for simplifying existing EU law in 2005. In response to these developments in the EU, Finance Ministers have called for further action to measure and control the administrative burden associated with new and existing laws, which the Commission will implement in a pilot phase starting early in 2005. According to the Pre-Budget December 2004 report half of all significant new regulations affecting businesses originate in EU law². The European Movement claims this to be a gross exaggeration with a figure of only eight per cent of UK regulations being due to the EU³. As the data in this paper later shows (see pages 14 and 21), both camps are equally wrong with the true figure, by value and volume, roughly in the middle.

¹ HMRC, March 2005
Working Towards a New Relationship – a consultation on priorities for reducing the administrative burden of the tax system on small business

² HM Treasury (2004),
Opportunity for all – The strength to take the long-term decisions for Britain (2004 Pre-Budget Report), 3.43

³ David Stephen
Regulation by Brussels? The Myths and The Challenges European Movement, November 2004

Announcements in Budget 2005

With the election in sight the government made a number of important recommendations relating to regulation in the Spring 2005 Budget Statement.

The government welcomed the Better Regulation Task Force report and the final report of the Hampton Review (see above, P7) and accepted their recommendations. As a consequence government has committed to –

- Assessing the existing costs to business of administering regulations using a common methodology across departments. The costs of administering regulations include the time and expense needed to comprehend the requirements, complete the necessary paperwork and deal with inspections.
- All regulating departments will provide, by the pre-budget statement in 2006, an assessment of the cost to business of administering regulations and publish plans for reducing these costs by implementing the recommendations of the Hampton Review.
- The Cabinet Office Regulatory Impact Unit (RIU) will become the Better Regulation Executive (BRE) that will be led by a person from outside government and will be managed by a board with several non-executive members. The BRE will take on the work of the existing RIU, drive the changes to inspection and enforcement as recommended by the Hampton Review, support the Panel for Regulatory Accountability in holding regulators to account for their actions, and advise government on regulatory policy in both the UK and EU.
- Transform the Better Regulation Task Force into a Better Regulation Commission (BRC) that will provide independent advice to government on new regulatory proposals and the government's overall regulatory performance. The BRC will also monitor progress towards the ambitious reforms set out by Hampton and the BRTF, assess departmental plans for the reduction of the burden of regulation and work with business to develop proposals for regulatory simplification.
- The National Audit Office (NAO) will also be asked to take on an enhanced role with regards to regulation, conducting technical evaluations of departments and regulators and reporting to Parliament on progress towards reducing the administrative burdens of regulation, establishing the reduced number of regulators proposed by Hampton and measuring the performance of all regulatory bodies.
- In addition in the Budget it was announced that the Department for Environment, Food and Rural Affairs (DEFRA) has already agreed to reduce the administrative cost of the regulations that they administer by 25% and the Department of Trade and Industry by £1bn over the next five years. HM Revenue and Customs launched a consultation document about reducing the costs of compliance with tax regulations.

The role of RIA's

An RIA is defined as a tool that informs policy decisions and provides an assessment of the impact of policy options in terms of the costs, benefits and risks of a proposal¹.

RIAs are prepared in three stages – initial, partial and final. The ‘initial’ version is intended for use during informal consultations within the regulating department and, when a more robust assessment is ready, more generally within government. The ‘partial RIA’ serves as the basis for formal public consultation. Subsequently the ‘final RIA’ is submitted to the responsible Minister for signature before being presented to Parliament with the resultant regulation. Furthermore, the 2003 Cabinet Office guidelines require that an RIA should be prepared in accordance with the steps laid out in the guidelines for EU proposals which include directives, regulations and decisions.

In his foreword to the 2003 guidelines for RIAs, the Prime Minister stated – *“Where regulations or alternative measures are introduced, this should be done in a light touch way, with decisions informed by a full regulatory impact assessment, which includes details of not only the obvious costs and benefits of the proposal but also the wider economic,*

social and environmental impacts. New regulations should only be introduced when other alternatives have first been considered and rejected, and where the benefits justify the costs”.

The guidelines require the identification of a wide range of options, including alternatives to legislation such as ‘do nothing’, self-regulation, financial incentives and the involvement of representative bodies. It further requires consideration of whether the problem to be addressed could be remedied by using existing powers, rather than by introducing new measures.

However, the current study discovered few RIAs which seriously considered alternatives to regulation and a number of RIAs seem to treat the ‘do nothing’ option as a ‘box-ticking’ exercise. There may be examples of regulations being aborted on those grounds, although our methodology would not detect regulations that were withdrawn for this or any other reason. When we made this charge in our two previous papers, no examples of regulation aborted by the RIA process were produced, although some have failed for other reasons (e.g. an upcoming general election). We therefore conclude that RIAs are not meeting this objective.

¹ Cabinet Office (2003)
Better Policy Making – A Guide to Regulatory Impact Assessment

Data collection

The main sources of data for this study are the House of Commons Command Papers (CPs), the Regulatory Impact Unit (RIU) page of the Cabinet Office's website and government departments' websites. While CPs provide a list of RIAs produced over a 6 month period, the RIU website offers hyperlinks to an electronic copy of many (but not all) RIA documents on departmental websites. The RIAs obtained were loaded into the British Chamber's of Commerce database of Regulatory Impact Assessments.

For this study, two CPs, Cm 6180¹ and Cm 6329² issued in May and November 2004, were used. The CPs list the title of RIAs; the month of production; the department responsible and departmental contacts. Cm 6180 lists 89 RIAs produced for the period from 1 July 2003 to 31 December 31 2003 while Cm 6329 provided 137 RIAs produced for the period from 1 January 2004 to 30 June 2004.

The Cabinet Office's RIA guidelines require all final RIAs to be available on departmental websites in a clear and accessible manner and also to be linked to the RIU website. Despite this requirement, not all RIAs could be obtained from the RIU or departmental websites. For the RIAs produced for the second half of 2003, the RIU website listed all RIAs for the period but of 89 RIAs, only 47 (53 per cent) had hyperlinks to the RIA documents at

the time of writing, December 2004. For the RIAs produced for the first half of 2004, however, the practice has been substantially improved – of 137 RIAs, 134 were listed in the website and 115 of 134 RIAs (86 per cent) had hyperlinks to the RIA documents. Also, the manner of keeping RIAs on the website has been improved. For example, a breakdown of RIAs for the first half of 2004 by department and month of production is now maintained, which is in line with the CP, this contrasts with the breakdown of RIAs for the second half of 2003 which differs substantially from the CPs.

The RIAs which could not be obtained from the RIU website were obtained from departmental websites or from individual departments by submitting special requests. The degree of difficulty in finding RIAs differed substantially between individual departments. The Cabinet Office, HM Customs and Exercise and Office of Deputy Prime Minister did not have specific web pages for RIAs, so a search engine was necessary for locating RIAs. Although the Inland Revenue and Health and Safety Executive maintained specific web pages, they were difficult to find as links do not appear on the departments' home pages. In contrast, the Department for Education and Skills, Department for Transport, Department for Environment, Food and Rural Affairs, Department of Health, Food Standards Agency, Work and Pensions

¹ Cabinet Office (2004)
Regulatory Impact Assessments – 1st July to 31st December 2003

² Cabinet Office (2004)
Regulatory Impact Assessments – 1st January to 30th June 2004



had well organised web pages from which RIAs could be easily located. The Department of Trade and Industry, the largest producer of RIAs, had a specific web page for RIAs and maintains a breakdown by year of production. However only a small portion of RIAs produced to date were available there.

Departments confirmed that three RIAs for the first half of 2004 were listed in the CP erroneously and an RIA¹ produced in the second half of 2003 was included in the CP for the first half of 2004 due to the delay in introducing the regulation for which the RIA was prepared. As a result, all but one of 89 RIAs for the second half of 2003 and 129 out of 134 RIAs for the first half of 2004 were obtained. For these documents, the following information was loaded into the database –

- RIA title
- month of production
- responsible department
- month of introduction of regulation
- origin of ensuing regulation
- monetary benefits and costs to business, government, consumers and the environment
- costs to SMEs
- non-monetary benefits to environment and society
- the extent of compliance with the Cabinet Office's guidelines for RIAs.

For the information on monetary benefits and costs to business, government and consumers, nominal values, rather than present values, were loaded into the database with a breakdown of one-off and recurring costs and benefits. If only present value figures were provided in RIAs, the nominal annual amounts were calculated for the periods concerned using the discount rate stated in the RIAs or the rate (3.5 percent per annum) recommended by the HM Treasury Green Book. Furthermore, where costs were identified only for a small number of years (e.g. three) during which the regulation was coming into force, these are treated as one-off costs. Where costs varied (e.g. increasing over the first three years and then levelling out), the recurrent costs were first deducted from the annual costs in the first few years after introduction (the period of implementation). The one-off costs reported are the difference between the recurring costs and the total costs incurred during the period of implementation.

¹ The RIA for *The Merchant Shipping (High-Speed Craft) Regulations 2004*

Findings

Number of RIAs produced for the period

Figure 1 below illustrates the trend in the production of RIAs by year. After 1998, when the RIA system was introduced, the lowest number was 136 in 2001 (the year of a general election) and this increased again in 2002. While 2003 saw a slight fall in the number, the first half of 2004 saw a 46 percent rise on 2003, when 92 RIAs were produced. Thus, as the reduction in the number of regulations produced in 2001 was a result of the election, there is no evidence that the RIA system has constrained the number of regulations introduced by the government. The Prime Minister becoming chairman of the PRA does not appear to have had an impact on the number of regulations introduced and, given the Budget 2005 announcements, it will be interesting to see in future years whether there is any reduction in the rate of production of regulations or improvements in the quality of RIAs.

Number of RIAs produced and obtained for each department

Table 1 overleaf shows the number of RIAs produced by departments for the period from 1 July 2003 to 30 June 2004 and the number of RIAs available for this study at the time of writing, December 2004. Of 223 RIAs, 217 (97 percent) were obtained, which has substantially improved, compared with the last year's result (84 percent). This may indicate that departments are increasingly paying attention to the RIA system. For example, ODPM was much more helpful than last year in our search for the missing RIAs.

As shown in the table overleaf, the DTI, DT and DEFRA remain the top three producers of regulations but their shares increased from 43 to 48 percent. The number of regulations produced by IR more than doubled from eight to 19, while HSE dramatically reduced new regulations from 11 to one.

Figure 1 Number of RIAs produced by year

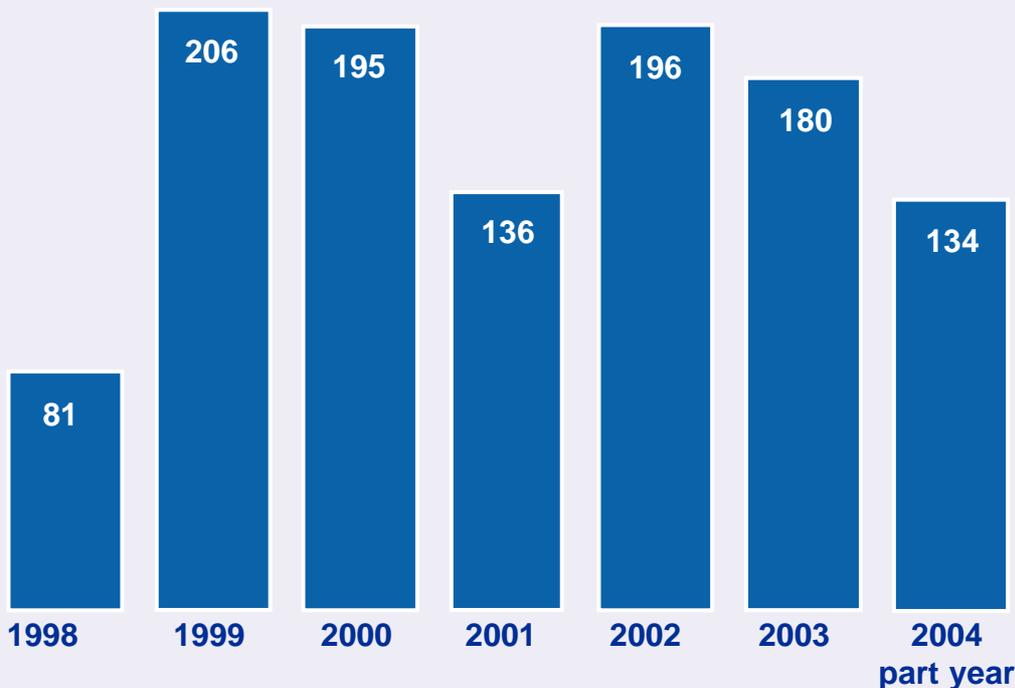


Table 1 Number of RIAs produced and obtained from departments

Departments (current names)	Number of RIAs produced	Number of RIA obtained	Percent of total RIAs produced
Department of Trade and Industry (DTI)	43	41	19.3
Department for Transport (DT)	32	29	14.3
Department for Environment, Food and Rural Affairs (DEFRA)	33	32	14.8
Department of Health (DOH)	27	27	12.1
Inland Revenue (IR)	19	19	8.5
Food Standards Agency (FSA)	14	14	6.3
Office of the Deputy Prime Minister (ODPM)	13	13	5.8
HM Customs and Excise (HMCE)	10	10	4.5
Home Office (HO)	10	10	4.5
Department for Education and Skills (DFES)	6	6	2.7
Department for Constitutional Affairs (DCA)	4	4	1.9
HM Treasury (HMT)	4	4	1.9
Cabinet Office (CO)	2	2	0.9
Department for Work and Pensions (DWP)	3	3	1.3
Department for Culture, Media and Sport (DCMS)	1	1	0.4
Health and Safety Executive (HSE)	1	1	0.4
Foreign and Commonwealth Office (FCO)	1	1	0.4
Total	223	217	100

Proportion of RIAs originating from the European Union

Table 2 below illustrates the proportion of regulations originating in the EU, based on 217 RIAs obtained. Unexpectedly, the proportion of EU origin regulations continued its decline from 1998–2002 and reduced from 34 percent in 2002/2003 to 29 percent in 2003/2004. This was mostly due to the increase in UK originated regulations. According to Table 2, UK origin regulations that we could obtain increased by 44 percent and those of EU origin increased by 17 percent. *Note that the penultimate*

column below is the 200 RIA sample used for our first report, not the 718 RIAs produced in that period.

The proportion of costs and benefits analysed between EU and UK sourced regulations appears later on page 21 and Table 11.

RIA formats

Most of the RIAs for the period appear to comply with the 2003 guideline formats. However, a closer review identified some examples of poor practice. The RIA for ‘The Medicines (Advertising) Amendment Regulations 2004’ missed sections such as ‘Equity and Fairness’, ‘Competition Assessment’, ‘Small Firm’s Impact Test’, ‘Enforcement arrangement’, ‘Monitoring and evaluating/reviewing’ and ‘Consultation’. The RIA for the ‘Proposal to Amend the Motor Vehicles (International Circulation) Order 1975 and to Also Issue a Driving Licence (Exchangeable Licences) Order’ has only 1 page which describes ‘Purpose and effect’ and ‘Compliance cost’.

Table 2 Origins of regulations

	2003/2004		2002/2003		1998-2002 (sample)	
	No	%	No	%	No	%
UK origin	154	71	107	66	116	58
EU origin	63	29	54	34	84	42
Total	217	100	161	100	200	100

Table 3 Costs to business

Quantified in RIA?	2003/2004		2002/2003		1998-2002	
	All RIAs		All RIAs		Sample	
	#	%	#	%	#	%
Number of RIAs	217	100	165	100	200	100
Yes, quantified	144	66	95	58	109	55
Yes, but figures insignificant	28	13	31	19	30	15
Not quantified or not relevant	45	21	39	23	61	30
Total recurrent cost, £m	3,029		2,804		1,773	
Recurrent cost per RIA, mean £m	14.0		17.0		8.9	
Total non-recurrent cost, £m	1,507		3,313		3,634	
Non-recurrent cost per RIA, mean, £m	6.9		20.1		18.2	

‘Non-regulatory’ options

The proportion of RIAs which considered ‘non-regulatory’ options increased dramatically from 23 percent in 2002/2003 to 91 percent in 2003/2004. However, few examples considered and analysed options other than ‘do nothing’. An exception was the RIA for the ‘Gangmaster (Licensing) Bill 2004’ which considered five alternatives including ‘do nothing’ and substantially analysed each alternative except for the ‘do nothing’ option.

No examples of sunset clauses (one of the alternatives suggested by BRTF¹) were found. This finding is in line with the 2002/3 study. Yet some existing regulations are obsolete. For example, the RIA for ‘Repeal of Trading Stamps Act’ estimates that business can save £0.25m–£0.75m per annum without any extra cost from repeal of the regulation. Sunset clauses provide, at the very least, opportunities for reviewing regulation which the 2004 Pre-Budget report and the BRTF 2005 Report² also suggest should take place. We see no justification for the continued evasion of this guideline.

Government states that 400 deregulatory measures have flowed from the Regulatory Reform Action Plan³. The Action Plan anticipates the introduction of 50 to 60 Regulatory Reform Orders. In the period of this study, we found only four relevant RIAs –

1 The RIA for the ‘Regulatory Reform (Sunday Trading) Order 2004 (Proposal 1)’ proposed to repeal some paragraphs of the Sunday Trading Act 1994, which brings benefits of £60k–75k per year to business, without extra cost. This regulatory reform order has recently been made⁴.

2 The RIA for ‘Regulatory Reform (Fire Safety) Order 2004’ proposed to create a single regime, which can be better understood and administered by both businesses and the relevant authorities. This provides one-off costs of £77m and annual benefits of £92m to business. However, this proposal is currently undergoing scrutiny.

3 The RIA for ‘Regulatory Reform (Unsolicited Goods and Services Act 1971) Order 2004’ proposed to amend section 3 of the Unsolicited Goods and Services Act 1971, which offers annual benefits of £1m to business, without extra cost. However, this proposal is currently undergoing scrutiny.

4 As mentioned earlier, the RIA for ‘Repeal of Trading Stamps Act’ estimates annual benefits of £0.25m–£0.75m to business without extra cost. However, this proposal is currently undergoing scrutiny.

¹ BRTF (2003) *Imaginative Thinking for Better Regulation*

² BRTF (2005) *Regulation – Less is More. Reducing Burdens, Improving Outcomes*

³ HM Treasury (2004), *Opportunity for all: The strength to take the long-term decisions for Britain (2004 PreBudget Report)* P49

⁴ RRU website www.cabinet-office.gov.uk/regulation

Table 4 Benefits to business

Quantified in RIA?	2003/2004 All RIAs		2002/2003 All RIAs		1998-2002 Sample	
	#	%	#	%	#	%
Number of RIAs	217	100	165	100	200	100
Yes, quantified	37	17	40	24	36	18
Yes, but figures insignificant	5	2	8	5	3	2
Not quantified or not relevant	175	81	117	71	161	80
Total recurrent benefit, £m	1,267		292		3,203	
Recurrent benefit per RIA, mean £m	5.8		1.8		16.0	
Total non-recurrent benefit, £m	1,057		843		1,464	
Non-recurrent benefit per RIA, mean £m	4.9		5.1		7.3	

Costs and benefits

As discussed earlier, an RIA crucially assesses the costs and benefits of a proposal so that the Minister can reach a conclusion and declare that *“I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs”*¹.

The following sections summarise the costs and benefits to business, consumers and government and compares the results with last year’s analysis.

Costs and benefits to business

Table 3 on page 15 shows the compliance costs to business, charities and the voluntary sector estimated by RIAs produced in 2003/2004, compared with previous years. The costs to business were £3bn per annum for recurring costs and £1.5bn for one-off costs when new regulations were introduced in 2003/2004. It should be noted that only 66 percent of RIAs quantified the costs to the private sector, which rose slightly from 58 percent in the previous study. However, 21 percent of RIAs still did not quantify the costs and 13 percent stated that small/minimal costs to the private sector are expected. Thus although the number of regulations sharply increased the level of additional burden remained about the same, but note that this is additional.

Total recurring costs increased by eight percent. The one-off costs more than halved from

£3.3bn to £1.5bn in 2003/2004. On a like for like comparison, mean recurring/non-recurring costs per RIA are presented in the table.

The mean recurring costs decreased from £17m to £14m and also the mean non-recurring costs fell substantially from £20m to £7m.

Table 4 presents benefits to business, charities and the voluntary sector quantified by RIAs for the period, compared with previous years. Fewer RIAs (17 percent) quantified the benefits to private sector than in the previous year (24 percent). Total recurring benefits more than quadrupled to £1.3bn and one-off benefits rose by a quarter to £1bn. The mean of recurrent benefits more than tripled from £1.8m to £5.8m.

Comparison of costs and benefits indicates that the recurring costs are more than double the recurring benefits while the one-off costs also exceed one-off benefits.

There were a few examples of RIAs providing more benefits than costs to business. One RIA related to raising the thresholds that define SMEs and it can be seen both why that would need a regulation and also be welcome to those SMEs concerned. The only other net beneficial RIA concerned electronic filing of employee returns where employers are financially incentivised, but not compelled, to do so. We do not understand how this could need a regulation at all and it makes an important point. Government should pay for what they

¹ Cabinet Office’s 2003 guideline for RIAs P37

Table 5 Benefits to consumers and the environment

Quantified in RIA?	2003/2004		2002/2003		1998-2002	
	All RIAs		All RIAs		Sample	
	#	%	#	%	#	%
Number of RIAs	217	100	165	100	200	100
Yes, quantified	26	12	15	9	12	6
Yes, but figures insignificant	4	2	54	33	96	48
Not quantified or not relevant	187	86	96	58	92	46
Total recurrent benefit, £m	2,635		1,471		2,817	
Recurrent benefit per RIA, mean £m	12.1		8.9		14.1	
Total non-recurrent benefit, £m	8		0		0	
Non-recurrent benefit per RIA, mean £m	0.04		0		0	

want industry to do. If it suits both sides, there should be enough money in the kitty to persuade business to comply without regulation. This will be a key recommendation.

Identification of benefits and costs to consumers and the environment

Table 5 illustrates the benefits to consumers and the environment for RIAs in 2003/2004 compared with previous years. The benefits in 2002/3 were £1.5bn and these rose substantially to £2.6bn in 2003/2004. Although more RIAs (12 percent) quantified the benefits to consumers and the environment than previous years (nine percent for 2002/2003 and six percent for 1998–2002), the number of RIAs identifying and quantifying benefits to consumers and the environment remains low.

Identification of benefits and costs to government

Table 6 shows the costs to government estimated by RIAs in 2003/2004, compared with estimates for previous periods. The total recurring costs to government in 2003/2004 were five times greater than the previous year and the one-off cost to government in 2003/2004 is more than four times greater than the previous year. As a result, the mean recurrent costs to government per RIA quadrupled from £0.6m in 2002/2003 to £2.4m in 2003/2004. The mean non-recurrent costs to government also rose sharply from £2.5m to £9.3m.

Table 6 Costs to government

Quantified in RIA?	2003/2004		2002/2003		1998-2002	
	All RIAs		All RIAs		Sample	
	#	%	#	%	#	%
Number of RIAs	217	100	165	100	200	100
Yes, quantified	90	41	38	23	50	25
Yes, but figures insignificant	7	3	16	10	17	9
Not quantified or not relevant	120	56	111	67	133	66
Total recurrent cost, £m	514		103		186	
Recurrent cost per RIA, mean £m	2.4		0.6		0.9	
Total non-recurrent cost, £m	2,022		418		593	
Non-recurrent cost per RIA, mean £m	9.3		2.5		3.0	

Table 7 Benefits to government

Quantified in RIA?	2003/2004 All RIAs		2002/2003 All RIAs		1998-2002 Sample	
	#	%	#	%	#	%
Number of RIAs	217	100	165	100	200	100
Yes, quantified	31	14	15	9	8	4
Yes, but figures insignificant	0	0	8	5	2	1
Not quantified or not relevant	186	86	142	86	190	95
Total recurrent benefit, £m	1,077		42		1,368	
Recurrent benefit per RIA, mean £m	5.0		0.3		6.8	
Total non-recurrent benefit, £m	1,760		98		3,000	
Non-recurrent benefit per RIA, mean £m	8.1		0.6		15.0	

Table 7 shows the benefits to government estimated by RIAs. The total recurring benefits to government rose dramatically to £1,077m in 2003/4 from £42m in 2002/3, and one-off benefits also dramatically increased to £1,760m (£98m in 2002/2003). As a result, the mean recurrent and one-off benefits increased from £0.3m to £5m and £0.6m to £8.1m in 2003/2004, respectively.

Combining the results in Table 6 and 7 shows that government will receive net recurring benefits of £563m per annum through the introduction of new regulations while it has a net one-off shortfall of £262m.

Justification of benefits against costs

Table 8 illustrates the aggregate benefits and costs for the three study periods. As shown in the table, aggregate recurrent benefits exceeded the costs in 2003/2004, which is the opposite of the result in 2002/2003. The aggregate non-recurrent costs exceeded the benefits, which is in line with the previous year. In 2003/2004, business is disadvantaged with additional net recurring costs amounting to £1.8bn per annum and net one-off costs amounting to £450m. Consumers have net recurring benefits amounting to £2.6bn per

Table 8 The overall RIA scorecard: combined costs net of benefits

Total amount £m	2003/2004	2002/2003	1998-2002
Recurrent			
Business costs (Table 3)	3,029	2,804	1,773
Business benefits (Table 4)	-1,267	-292	-3,203
Consumer etc benefits (Table 5)	-2,635	-1,471	-2,817
Government costs (Table 6)	514	103	186
Government benefits (Table 7)	-1,077	-42	-1,368
Net recurrent costs/(benefits)	-1,436	1,102	-5,429
Non-recurrent			
Business costs (Table 3)	1,507	3,313	3,634
Business benefits (Table 4)	-1,057	-843	-1,464
Consumer etc benefits (Table 5)	-8	0	0
Government costs (Table 6)	2,022	418	593
Government benefits (Table 7)	-1,760	-98	-3,000
Net non-recurrent costs/(benefits)	704	2,790	-237

Regulation as a form of Taxation? – Case Study

A good example of the way that regulation acts as a form of taxation may be seen from the current proposal for the Inland Revenue to take on the role of calculating and paying Statutory Maternity Pay, Maternity Allowance and Statutory Adoption Pay. The Partial RIA on this topic states that it will cost the Inland Revenue £55m in one off-costs and £26m per year in on-going costs to take this work over from employers. Since employers are currently required to administer SMP etc. on behalf of government, employers are effectively contributing a lump sum of £55m plus £26m per year to the Inland Revenue.

(See http://www.dti.gov.uk/er/choice_flexibility_consultation.doc - accessed 10th March 2005)

annum and net one-off benefits amounting to £8m, while the government receives net recurring benefits amounting to £563m per annum and net one-off cost amounting to £262m. In terms of aggregate recurring costs and benefits, benefits were transferred from business to consumers and the government, in much the same way as with business taxes.

Using a like for like comparison, mean aggregate costs and benefits, were calculated in Table 9. On average RIAs produced in 2003/2004 resulted in net recurrent benefits per RIA, the opposite to 2002/2003, while net non-recurrent costs per RIA for 2003/2004 is

much smaller than the previous year. However, on a recurrent basis businesses are worse off, whilst government and the consumers receive ongoing net benefits. What we are witnessing here is a consistent transfer of financial responsibility for government policies that benefit the Exchequer and the taxpayer at the expense of business. After all, if the objectives for regulation were good for business, then non-regulatory options, such as simple persuasion, should work. Instead we find that non-regulatory options are not seriously considered and the policy costs are simply loaded onto business. In other words, we are witnessing an implicit form of taxation¹.

Table 9 The overall RIA scorecard: combined costs net of benefits

Mean £m	2003/2004	2002/2003	1998-2002
Recurrent			
Business costs (Table 3)	14.0	17.0	8.9
Business benefits (Table 4)	-5.8	-1.8	-16.0
Consumer etc benefits (Table 5)	-12.1	-8.9	-14.1
Government costs (Table 6)	2.4	0.6	0.9
Government benefits (Table 7)	-5.0	-0.3	-6.8
Net recurrent costs/(benefits)	-6.5	6.6	-27.1
Non-recurrent			
Business costs (Table 3)	6.9	20.1	18.2
Business benefits (Table 4)	-4.9	-5.1	-7.3
Consumer etc benefits (Table 5)	0.0	0.0	0.0
Government costs (Table 6)	9.3	2.5	3.0
Government benefits (Table 7)	-8.1	-0.6	-15.0
Net non-recurrent costs/(benefits)	3.2	16.9	-1.1

¹ Guash J L and Hahn R W
The Costs and Benefits of Regulation – Implications for Developing Countries, The World Bank Research Observer,
 vol 14, no 1, February 1999

Table 10 Additional costs to SMEs

Quantified in RIA?	2003/2004		2002/2003		1998-2002	
	#	%	#	%	#	%
Number of RIAs	217	100	165	100	200	100
Yes, quantified	41	19	5	3	4	2
Yes, but figures insignificant	38	18	0	0	4	2
Identified but not quantified	77	35	6	4	13	7
No data available or not relevant	61	28	154	93	179	89
Total recurrent cost, £m	22		11		42	
Recurrent cost per RIA, mean £m	0.10		0.07		0.21	
Total non-recurrent cost, £m	58		8		6	
Non-recurrent cost per RIA, mean £m	0.27		0.05		0.03	

Identification of additional costs to SMEs

Table 10 presents additional costs to SMEs for 2003/2004. Although almost all of the RIAs for the period include an SME section, the degree of detail in the discussion varied. Discussion was often limited to simple comments that this regulation is not expected to impose significant costs nor to have a disproportionate effect on SMEs. As presented in Table 10, 63 percent of RIAs did not provide any quantification of costs to SMEs and 18 percent of RIAs stated that this regulation imposed insignificant/small amounts of additional costs to SMEs. Only 19 percent of RIAs quantified costs to SMEs, compared to 3 percent in the previous studies. According to the table, new regulations introduced in 2003/2004 are expected to impose additional

costs on SMEs – recurring cost of £0.1m per RIA in 2003/2004 against recurring cost of £0.07m per RIA in 2002/2004. The non-recurrent cost per RIA increased from £0.05 in 2002/2003 to £0.27m in 2003/2004.

Unless a new regulation has an exemption or other special arrangement for SMEs, SMEs inevitably incur proportionally higher costs than larger organisation mainly due to the lack of economies of scale¹. The RIA for 'Reform of the Construction Industry Scheme' issued in March 2004 is a good example. It indicates that SMEs still incurred 99 percent of the compliance costs of the construction industry in relation to the scheme although it argued that the total recurring costs to SMEs decreased substantially from £51m per annum to £16m per annum as a result of the new regulation.

¹ Chittenden F, Kauser S and Poutziouris P (2002) *The Regulatory Burden of Small Firms – A Literature Review*, the Small Business Service, Sheffield

Table 11 Scorecard of UK origin RIAs and EU origin RIAs in 2003/4

Total amount £m	UK origin	EU origin	Total	2003/4	2002/3
				Percent UK	Percent UK
Recurrent					
Business costs	2,347	682	3,029	77	79
Business benefits	-1,184	-83	-1,267	93	97
Consumer etc benefits	-2,423	-212	-2,635	92	99
Government costs	457	57	514	89	100
Government benefits	-1,010	-67	-1,077	94	90
Net recurrent costs/(benefits)	-1,813	377	-1,436		
Non-recurrent					
Business costs	1,394	113	1,507	93	71
Business benefits	-1,057	0	-1,057	100	83
Consumer etc benefits	-8	0	-8	100	
Government costs	2,013	9	2,022	100	99
Government benefits	-1,760	0	-1,760	100	71
Net non-recurrent costs/(benefits)	582	122	704		

EU RIAs' costs and benefits as percent of total

As discussed earlier, a significant proportion of regulations originate from EU law. Table 11 illustrates the aggregate costs and benefits of UK and EU origin regulations and their proportion of total aggregate costs and benefits, based on the RIAs for 2003/2004. Overall, EU regulations impose net recurring costs of £377m per annum to the UK economy while UK origin regulations produce net recurring benefits of £1,813m per annum, however these benefit consumers and government at the expense of business. Further both EU regulations and UK regulations place net one-off costs to the UK economy; of £122m (17 percent) and £582m (83 percent) respectively.

In terms of recurrent business costs in 2003/4, EU regulations account for 23 percent of total costs to UK business, while UK regulations accounts for 77 percent of total costs to UK business.

As discussed above, the financial effect of regulation is primarily driven by Whitehall.

Taking the net recurrent business costs less benefits at face value, the business burden increased by £1.8bn¹ whereas government administration saved £0.5bn² and consumers gained £2.6bn.

The problems with these calculations partly arise from the partial completion of RIAs and the speculative nature of the figures. Nevertheless, two conclusions can be drawn –

- 1 The EU is contributing about 23 percent³ of the gross regulatory burden on business by value and 29 percent by volume (see Table 2). By value, at the net level (less benefits) the EU is responsible for 34 percent⁴. The 2004 Pre-Budget Report claim of 50 percent does not appear to be justified.
- 2 The financial effect of regulation is to transfer consumer and government costs to business, i.e. it is a form of covert taxation. In this respect, in 2003/4, the UK imposed twice as much recurrent cost on business (£1.2bn) compared to the EU (£0.6bn).

¹ Costs £3.029bn less Benefits £1.267bn

² Government benefits £1.077bn less Government costs £0.514bn

³ From Table 11, 100%-77%

⁴ From Table 11 (figures £bn) = (682-83) / (3029-1267) expressed as a percentage

Public consultations

The Prime Minister stated that effective consultation is a key part of the policy-making process, in his foreword to the Code of Practice on Consultation¹ published in January 2004. The guideline for consultation requires six criteria to be followed, including consultation being clear, concise and widely accessible, and providing feedback on the responses received and how the consultation process influenced the policy. Further, the Cabinet Office's 2003 RIA guidelines require a summary of the results of the consultation exercise, responses received and how/whether the assumptions, costings and recommendations have changed following consultation.

As found in the previous study, most of the RIAs for the period provided only a very high level of summary, although almost all have consultation sections. Very few RIAs summarised in detail the results of consultations and consequent changes. One good example of a consultation section is the RIA for 'Simplifying the Taxation of Pensions' – which summarised the responses received and the main changes to proposals in the light of consultation, clearly showing how the proposal had changed. This helpful presentation should encourage more businesses to participate in future consultation for policy-making.

¹ Cabinet Office (2004), *Code of Practice on Consultation*

Main shortfalls in RIA practice

Despite the fact that some improvement in RIA practice has been observed, compared to the earlier studies, the following major shortcomings remain –

- Although the RIU website is up to date, links to departmental websites are frequently inoperable, especially for the RIAs issued in the second half of 2003.
- Although all departments maintain websites for RIAs, some are neither well managed nor user friendly. For instance, the Cabinet Office (which houses the RIU) issued two RIAs in the first half of 2004 but provided only one link to the RIA on the RIU website. The Office of the Deputy Prime Minister does not maintain a specific web page for RIAs so that a search engine is required and the short-listing of numerous irrelevant documents is annoying for the users. Further, not all RIAs are recorded in the specific web page of the DTI, which is the major producer of RIAs.
- While almost all RIAs complied with the Cabinet Office guidelines for RIAs (2003) in terms of format, only a few RIAs seriously considered non-regulatory options. The impression still remains that in many cases completion of RIAs remains a bureaucratic task to be despatched with as little effort as possible, which is in line with previous studies.
- Despite almost all RIAs having SME sections, only a few seriously discussed impacts of regulations on SMEs and quantified the additional costs and benefits to SMEs. No RIAs stated that the original proposal changed or made special arrangements for SMEs. It seems to remain the case that few civil servants appreciate the disproportionate impact of regulation on SMEs.
- Even though more RIAs quantified the costs and benefits of new regulations in monetary term than last year, a substantial number of RIAs still failed to do this. For example, 34 percent of RIAs either failed to quantify any costs and benefits to the private sector economy (see Table 3), or stated that the costs to the economy were insignificant. Given that RIAs should only be prepared where costs exceed £20m in any year¹, it is difficult to see why more RIAs should not be withdrawn at the partial RIA stage, rather than consuming scarce resources in publishing a final document that adds little information to the debate.
- Most RIAs in the study period present only a very high level summary of consultations. Very few stated the changes to regulations that have resulted from the consultations.
- Most of the RIAs for EU legislation were prepared after or just before implementation of the legislation. They seem to be prepared just to follow up EU policies that had already been decided. For example, only two² of 12 RIAs relating to EU Regulation produced in 2003/4 were prepared early enough to allow discussion of the proposed EU Regulation (i.e. a consultation conducted more than three months before the adoption date of the EU Regulation).
- Although the RIA system gives regulators an opportunity to develop better regulations, it does not seem to act as a constraint either on the production of regulations or on the increases in the regulatory burden placed on businesses. The BRTF have considered whether, in due course, each government department should have an annual “regulatory budget”, i.e. a limit to the amount of burden placed on business. These budgets could, following the Dutch practice for administrative budgets, decline year on year. Attractive as it is, such a system would add to bureaucracy. We prefer, (see number 11, page 25) that government should desist from using regulations as covert taxation and reimburse business from departmental budgets which would therefore become subject to the usual Treasury and Parliamentary budget approval process.

¹ Based on the guidance for RIA preparation (2003), a proposal for which the partial RIA suggests less than a £20m impact in any year is not required to prepare a final RIA

² For example, the partial RIA on ‘Additives for Use in Animal Nutrition (England) Regulations 2003’ had been prepared more than 7 month before the EU Regulation was adopted

Recommendations

Most of nine recommendations made by the previous study¹ are still valid, and have had no formal response. Either the RIA process is simply a cloak for other objectives, such as covert taxation and facilitating more regulation, or it is being implemented in good faith, albeit slowly and with blemishes. Given the announcements in Budget 2005, the latter is probably true. It is regrettable that it took an impending election to persuade government to listen to the business community.

For the sake of good order we repeat previous recommendations before making a few new ones

- 1 A Minister agreeing an RIA where the quantified benefits do not appear to exceed the costs should explain why, in his or her view, the RIA is justified nonetheless. The blanket assertion without support undermines the entire RIA process.
- 2 Ministers, when signing, should also certify that the RIA meets the Cabinet Office guidelines and justify those areas where it does not.
- 3 Where consultees provide estimates of costs and benefits, a summary of these figures should be reported in the RIA. If these figures differ significantly from the department's own estimates, a review date should be set within two years to examine the actual costs and benefits, as the guidelines already suggest in all cases. If, on completion of this review, it becomes apparent that the costs of the regulation are not justified by the benefits, the regulation should be revised or repealed.
- 4 As proposed in the guidelines and broadly supported by the BRTF², sunset clauses should be used except where the Minister, when signing, explains why it would be inappropriate in this case.
- 5 The Cabinet Office RIU should maintain an up to date database and website of all RIAs,

which should be serial-numbered and linked to relevant documents. Constant reorganisation of government departments, which can be expected to continue into the future, makes leaving RIA recording simply to departments impractical over the long term.

- 6 The RIU/BRE should publish an annual report, audited by the NAO, of the government's regulatory performance and compliance. This report should include additional costs and benefits arising from major regulations which have a significant impact on society, the economy and the environment.

Our new recommendations are

- 7 The BRTF propose that regulating departments should use consultants to value the administrative burden placed on business for the purpose of the Standard Cost Model. However, we do not believe that this suggestion goes far enough. We recommend that the preparation of major RIAs should be outsourced from professional experts, so that objective assessments of costs, benefits and regulatory alternatives are produced independently of the regulating departments, that may lack the capacity and expertise to conduct this work with appropriate rigour.
- 8 The process of consultation, though well-intentioned, is itself burdensome on business and ineffective. Imagine a court of law with no defence counsel but a counsel for the prosecution who begins "*I have consulted with the defendant and here now is my case.*" Consultation simply gives all control to a department going through the motions in order to achieve the regulation it wanted in the first place. Some consultation can be useful to improve compliance (i.e. 'better' regulation) but it does not effectively challenge regulation (i.e. reduce regulation). The main safeguard should shift to the appointment of a professional assessor for each regulation who can

¹ Tim Ambler, Francis Chittenden and Mikhail Obodovski (2004) *Are Regulators Raising Their Game?* British Chambers of Commerce

² *Regulation – Less is More*, P47, BRTF, March 2005

challenge the need for the new rule, point out failures in meeting guidelines while it is still in draft and prepare, in agreement with the department, a balanced one page summary of the RIA to be sent to all MPs. That will make clear whether the external assessor considers the new regulation justified or not.

- 9 We do not understand why the UK needs a Better Regulation Task Force (BRTF) or Better Regulation Commission (BRC), an RIU/BRE, a Business Deregulation Team, and a Panel for Regulatory Accountability (PRA). We propose streamlining the UK deregulatory process with a much smaller number of bodies that take an active role in achieving less regulation, appoint the assessors suggested above, conduct business transparently, and report to Parliament, not government. We believe the EU should have a similar independent body to challenge new business legislation. The Budget 2005 announcements move some way towards this recommendation and we look forward to assessing whether the parallel existence of the BRC, the BRE and the PRA are successful.
- 10 Those central regulatory functions that need to remain with government should be part of the RIU/BRE which should have stronger powers of enforcement as well as the duties outlined above.
- 11 RIAs are, in theory, analysed for costs and benefits but their conclusions are not clear. If it is burdensome for business and bad for UK PLC, but financially beneficial for government departmental costs, is the regulation justified? We propose that Ministers should additionally sign off that the new regulation is cost effective, i.e. it will deliver the policy objectives at the least cost to business. Business should be reimbursed for any departmental financial gains and the policy costs that they incur on behalf of the regulating department. In other words, government should not use regulation

to transfer policy and/or departmental costs to business, i.e. as a form of taxation.

- 12 In the 2004 Pre-Budget Report government stated that regulations should be reviewed after they are implemented to ensure that they are having the intended effect. We also propose that RIAs should in future specify how and when new regulations will be monitored and reviewed, in accordance with the current Cabinet Office guidelines.
- 13 We are concerned that the proposals for a one in one out system will undermine the drive for a net reduction in regulation. As an interim measure, pending the implementation of targets to reduce regulations, the one in one out principle may have a role. However, the real objective is the need to achieve a significant net reduction in the regulatory burden presently placed on business.



Conclusions

The RIA system was introduced seven years ago. RIA practice has improved as government departments are accumulating knowledge and experience in RIA preparation and consultation exercises. However, this study has found that the RIA system is still not working to reduce the burden of regulation as originally, and indeed currently, claimed. It is simply facilitating the rapid increase in the burden on business.

Two explanations exist - either the RIA system is diverting attention from the rising burden of regulation and the introduction of a new form of taxation or the government is having difficulty implementing its good intentions.

Regulation as a form of Taxation? – Case Study

The Money Laundering Regulations 2003 place responsibility on accountants and solicitors (amongst others) to report clients that could be involved in money laundering activities. The objective is to improve law enforcement by making it harder for criminals to conceal and utilise the proceeds of crime.

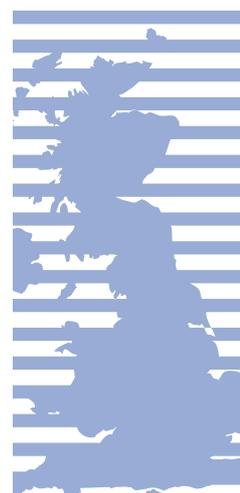
In order to achieve this goal, both qualified and unqualified lawyers and accountants (most of whom operate in small professional firms) will incur costs estimated in the RIA to amount in total to £80 to £100 million pounds per annum.

The objectives of this regulation are laudable, but these costs of detection and law enforcement should surely be met from the public purse, rather than acting as a tax on professional advisers and their clients.

Source: Full Regulatory Impact Assessment – Money Laundering Regulations 2003

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