

A GUIDE TO REGULATORY IMPACT ASSESSMENT

Chapter 1 Introduction

What is an RIA?

1.1 A Regulatory Impact Assessment (RIA) is a tool which informs policy decisions. It is an assessment of the impact of policy options in terms of the costs, benefits and risks of a proposal.

Why should I do an RIA?

1.2 In August 1998 the Prime Minister announced that no policy proposal, which has an impact on business, charities or voluntary bodies, should be considered by Ministers without an RIA being carried out. He reiterated this requirement in the 2000 version of the RIA guidance, stressing that an RIA is an integral part of the policy development process and advice that goes to Ministers.

1.3 Since then, there has been a slow but steady movement towards non-regulatory solutions – codes of practice and industry standards are two examples. And the Government is publishing more of its policy thinking and proposals in the form of strategy papers and discussion documents as well as the more established formats of Green Papers, White Papers and consultation documents. Regardless of the format, any published proposal or set of options which impact on business, charities or voluntary bodies and *could* result in regulation should be accompanied by an RIA, even if your recommended option is not regulatory.

1.4 The RIA process helps you to:

- think through the full **impact** of your proposals;
- identify **alternative options** for achieving the desired policy change;
- **assess** options (regulatory and non-regulatory);
- ensure your **consultation** exercise is meaningful and reaches the widest possible range of stakeholders;
- inform **negotiations** in the EU;
- determine whether the **benefits justify the costs**;
- determine whether particular sectors are **disproportionately affected**.

Who is required to do an RIA?

1.5 All government departments and agencies where they exercise statutory powers and make rules with a general effect on others should produce an RIA.

When should I do an RIA ?

1.6 It is always good practice to produce an RIA as a structured way to inform policy making, but you **must** prepare an RIA for all proposals (legislative and non-legislative) which are likely to have a direct or indirect impact (whether benefit or cost) on business, charities or the voluntary sector and could have a regulatory solution (see para 1.3 above).

This includes proposals which reduce costs on business and others, as well as those that increase them. However, although the trigger for producing an RIA is that it has an impact on business, charities or the voluntary sector, once it is undertaken it should cover the full range of impacts on all stakeholders.

1.7 You will always need to prepare an RIA for any changes you are making by **Regulatory Reform Order** (RRO), even if they have no impact on business, charities or the voluntary sector.

1.8 In the case of **Private Members' Bills** which the Government is planning to support, or is not intending to oppose, you should produce an RIA by the date set down for Second Reading. It is good

practice to prepare an RIA for a Private Members' Bill being opposed, in order to obtain the evidence to justify the objection to the Bill, although it is not a requirement.

1.9 For legislative or non-legislative proposals which originate **outside the UK**, you should prepare an RIA in order to obtain policy clearance for your Minister's negotiating stance when attending international meetings and to support UK negotiations. See www.cabinet-office.gov.uk/cabsec/2002/guide/index.htm for further information on obtaining policy clearance.

1.10 For **EU proposals** your RIA should follow the steps laid out in this guide. EU proposals include directives, regulations and decisions, including technical adaptations to EU provisions, and joint positions and conventions under second and third pillar co-operation. The same steps should be followed for **international agreements** such as Treaties and Conventions.

1.11 For international meetings which might result in legally binding commitments at a later date, such as meetings or conferences where recommendations are made which may later lead to action to implement them, you should carry out an initial assessment in order to inform your Minister's negotiating line.

1.12 **You do not need to do an RIA for:**

- proposals which impose **no costs or no savings**, or negligible costs or savings on business, charities or the voluntary sector;
- increases in statutory fees by a predetermined formula such as the rate of inflation; or
- road closure orders.

1.13 However, even if you think that the effects of your proposals are likely to be negligible, it is still good practice to produce an RIA. It is not always clear when a proposal is being formulated whether there will be any impact on business, charities or the voluntary sector or how large any impacts will be. If this is the case, prepare an initial RIA to see whether this gives you sufficient information to decide. Early consultation or informal soundings with your stakeholders will be particularly important in this situation.

If the outcome is still not clear, continue developing the RIA and include the partial RIA in your consultation document. You can then ask stakeholders to comment on your assumption that there is no impact. If your assumption proves to be correct, you do not need to carry on and do a full RIA.

1.14 In the case of **Budget and Finance Bill measures** you may not be able to publish your RIA in advance – for example, where there is a danger of pre-emptive action.

How do I start doing an RIA?

1.15 You should start with an initial assessment at the early stage of policy development when options are being considered. See **Chapter 2**.

1.16 Help and advice

- Your first port of call should be your Departmental Regulatory Impact Unit (DRIU)

What makes a good RIA?

1.17 A good RIA will:

- include the best information available at the time;
- be clear, concise and proportionate to the problem/risk it is addressing;
- be a stand-alone document, explaining the problem clearly, setting out the alternatives to regulation and the options, without the need to refer to other documents;

Example of starting RIAs early

The Health and Safety Executive (HSE) shared their initial thinking on genetically modified organisms with 24 organisations affected by the proposals. The responses gave the HSE valuable information to include in the RIA, eg how much time businesses considered they would save under different aspects of the proposals.

Departments must be prepared, if challenged, to defend the decision not to produce an RIA.

Regulatory Impact Statement

1.18 Where a proposal is judged to be significant, then the lead department must agree with the RIU.

1.19 In their report *Better Regulation: Making Good Use of Regulatory Impact Assessments*, published in November 2001, the National Audit Office (NAO) said that RIAs add value to the policy making process and can help deliver **better and lighter touch regulation**.

1.20 RIAs should be seen within the context of making **better policy**.

1.21 The Better Regulation Task Force (BRTF) has developed **five principles of good regulation** which are a **useful test**:

- transparent – open, simple and user friendly;
- accountable – to Ministers and Parliament, to users and the public;
- proportionate – to the risk;
- consistent – predictable, so that people know where they stand; and
- targeted – focused on the problem, with minimal side effects.

RIAs and the policy making process

1.24 You should always aim to start your RIA early. The RIA process is a continuous one. However, it can be thought of as consisting of three phases:

- an **initial RIA** which should be prepared as soon as a policy idea is generated;
- a **partial RIA** which builds upon this, is produced prior to the consultation exercise and must accompany the consultation document; and
- a **full/final RIA**, building on the information and analysis in the partial RIA, which is prepared for the post-consultation collective agreement and, if it is a regulatory proposal, for the Parliamentary process.

Chapter 2

Initial RIA: early policy development

2.1 The initial RIA should inform and ideally accompany your submission to your own Ministers seeking departmental ministerial agreement to a proposal.

2.2 An initial RIA can consist of a rough and ready analysis based on what you already know. It should include your best estimates of the possible risks, benefits and costs, and will help you to identify areas where you need more information.

The contents of an initial RIA

2.3 Hints and tips

- Provide a clear statement of the policy objectives and the **issue**.
- Describe and, where possible, quantify the scale of the **risk** (ie the problem to be addressed).
- Identify regulatory and non-regulatory alternative **options, including do nothing/base case**.
- Consider the pros and cons of each option and the fit with **existing requirements** on the relevant sector.
- Identify who is affected, including **business sectors affected**.
- Identify any issues of **equity and fairness**.
- Examine what is already known about the **costs and benefits**.
- Flag up any potential **unintended consequences**.
- Identify **distributional impacts**.
- Try to identify markets that may be affected and flag up any potential **competition issues**.
- Consider how to secure **compliance** and whether a **review** of how it is working is required.

Early/informal consultation

2.4 Early consultation can help you obtain an informed view of risks and options and a broad indication of the likely costs and benefits involved. It is not a substitute for wider consultation later in the policy making process, but it should help you plan to make that consultation more effective.

Note that the RIA should be **proportionate** to the likely impact of the proposal. If the proposal is likely to affect only a few firms, many firms to a very small degree, or if the costs and benefits are likely to be small, then the RIA can be quite short. Where the impact is likely to be substantial, however, more data and depth of analysis will be required.

2.5 People within government you need to consider consulting include:

- the Small Business Service, which must be consulted at the initial RIA stage on any proposal that will have an impact on small businesses;
- the Office of Fair Trading (in relation to potential competition and/or consumer issues);
- other policy makers (within and outside your department) having responsibility for the industry or sector involved, enforcement bodies and representative bodies;
- departmental economists and statisticians;
- the Office of Science and Technology who can offer advice about the use of scientific advice in policy making. Their website is at www.ost.gov.uk/policy/advice/index.htm

2.6. You will need to carry out stage 1 of the **Small Firms' Impact Test** as part of the early soundings (see pages 21 to 23 for more information). Depending upon the nature and potential costs of the policy proposal, you should also consider involving external experts at an early stage.

2.7 Your early soundings may also alert you to others who could be affected. As a general rule you should meet small groups of **independent experts** or individuals working in the sector as well as the large **umbrella organisations**. Do not forget to include **charities** and the **voluntary sector**.

Being creative about who you consult, and engaging early on with a range of stakeholders, can help you to identify and avoid any **unintended consequences** of your policy proposals and identify **alternatives to legislation**.

2.8 Early informal consultation can lead to **better formal consultation** as you will have worked up your options using **evidence from stakeholders**. This can be particularly helpful if you do not have anyone on the policy team who has experience of the particular commercial/business sector(s) likely to be affected by your proposals. Also bear in mind that if the first your stakeholders hear about a proposal is when they receive the formal consultation document, it may appear to them that decisions have already been made.

Considering the risk

2.9 There is a link between assessing the risk and the description of the proposal's objectives.

The **Policy Objectives section** should describe what the policy is intended to achieve, and what effects it will have and on whom – eg reduce theft of motor vehicles by x, halve air pollution from manufacture of product y.

The **Risk Assessment** section should explain, and where possible quantify, the problem or the risk that the policy is trying to address – eg the scale of car theft and the associated costs to insurers, the police etc.

Identifying the problem in this way will make it easier to assess the extent of the benefits arising from the proposals.

2.10 Many proposals are introduced to deal with risks to the environment, consumer or worker safety or health. Risk assessment involves identifying the hazard or situation which, in particular circumstances, leads to harm or detriment. It then involves estimating the incidence of that harm (ie how often it occurs in a given period) or the probability it will occur (eg 1 in 1,000 chance per year).

So the risk assessment might, for example, consider people dying from electrocution (the harm) as the result of the sale of a dangerous consumer product (the hazard). If in the last 10 years, there have been

20 reported deaths resulting from the use of this product; the risk may be estimated to be two deaths a year. It may be difficult, sometimes impossible, to quantify a risk.

But you should in any case use qualitative data as well, for instance providing examples of the problems you are referring to. Your estimate should be for a specified period of time, usually a year.

You may also need to consider whether the risk is likely to increase or decrease over time. Sometimes it is necessary to consider the risk over a longer period than a year, eg in the case of radioactive substances.

2.11 Sometimes policy proposals are intended to address a situation where there is some inefficiency, rather than a particular harm of the sort described above.

For example, the proposal might be the establishment of a single regulatory body for a particular area, where previously there might have been a number of different bodies.

In these cases it is important in the risks section to describe and quantify the current situation in terms of the costs and burdens on firms, noting that these are inefficient. This will help you to make an assessment of the **additional** benefits that are subsequently realised.

Identifying options

2.13 Identify a wide range of options, including **alternatives to legislation** as well as ‘**do nothing**’.

2.14 Even if you feel one particular option is an obvious front-runner it is essential that you keep an open mind, as consultation can often bring new evidence from stakeholders that you were not aware of at this early stage.

Where the broad policy direction is already determined (for example when transposing a European Directive) you should focus on options for implementing the desired solution most effectively, considering opt outs etc and avoidance of gold plating (see **Chapter 5**).

2.15 Always explain how each option will achieve or contribute to the policy goal. For example, ”A voluntary agreement to reduce the use of substance XXX by x% over the next three years is expected to lead to manufacturers halving its use, thereby halving the number of related deaths.”

Consider how your proposals fit with any **existing requirements** and obligations on those who might be affected. You may need to consult colleagues outside your own unit or department to ensure you have picked up all related requirements and other proposals that may be in the pipeline that would affect the same sector or industry.

2.16 For each option, you should think about the risks associated with its implementation. You should consider the key assumptions underlying each option, scenarios in which these assumptions change or no longer hold and the consequences of this. For example, if the outcome of the option was reliant on a particular IT system being developed, what would happen if it was late in development? If the option in question was a tax, which was intended to alter behaviour, what would be the result if people just opted to pay the tax rather than alter their behaviour? At this stage, this section should just outline any potential risks, and make a general judgement on their likelihood and importance. However, if there is a strong likelihood of a particular risk occurring, and the consequences of it at this stage are sufficiently great, you should think about designing the options to mitigate this risk.

Alternatives

2.17 **Remember, legislation may not be necessary.**

Alternatives include:

- do nothing;
- self-regulation;
- co-regulation;
- information and education campaigns (eg product labelling or media campaigns);
- financial incentives (eg tax incentives or disincentives or price control);
- tradeable permit schemes;
- guarantee arrangements (eg the Association of British Travel Agents scheme);
- mediation services;

- quality marks;
- recommendation schemes;
- representative bodies (eg Community Health Councils);
- pre-market assessment schemes (eg listing, certification and licensing);
- post-market exclusion measures (eg bans, recalls, licence revocation provisions and ‘negative’ licensing);
- service charters;
- codes of practice;
- standards (eg voluntary and regulatory, performance-based or prescriptive);
- other mechanisms (eg public information registers, mandatory audits and quality assurance schemes); and
- ombudsmen.

2.18 Do not forget that the options could include more detailed alternatives – eg delaying implementation, exempting small firms, reducing the scope of the proposal or different ways of enforcing the proposed requirements.

2.19 You should always consider whether the problem that you are seeking to address could be remedied by using existing powers, rather than by introducing new measures. For example, if the problem clearly arises out of a lack of competition, you should consider whether a remedy might be available through a market reference to the Competition Commissioner, or sector-specific action by a sector regulator.

Regulatory Reform Orders (RROs)

2.20 Regulatory Reform Orders can be used to reform existing primary legislation. RROs should contain measures aimed at simplifying or reforming legislation in order to reduce burdens impacting upon business, the public sector and the voluntary sector, charities or individuals.

Sunsetting and review

2.21 Sunsetting is a way of ensuring that legislation is reviewed and kept up to date, and not left on the statute book after it has served its purpose. It allows a law to be removed automatically after a fixed period unless something specific is done to keep it in place.

It can be applied to the whole regulation or just to particular clauses and powers. At an early stage of policy development, you should consider whether you can use sunseting.

Examples where sunseting might be appropriate include:

- rules made under the precautionary principle, where there are significant scientific uncertainties and more information might lead to a different solution. See **Annex 5** for more details of the precautionary principle;
- regulation responding to a particular crisis or to media and public pressure;
- measures based on a particular set of market conditions, or giving powers of economic regulation which can be removed as markets develop;
- measures where events or technologies are fast moving;
- measures including specific requirements which might become out of date;
- measures taken in the face of considerable opposition;
- measures extending the powers of the state or reducing civil liberties; and
- reserve powers that may never be used, or bodies that are set up but not immediately given any powers to do anything.

Review

2.22 Where sunseting may not be appropriate, consider a review mechanism instead. The RIA should give details including whether it is to be a statutory review (for example, put on the face of the legislation) or a political commitment for a review to be done within a number of years.

Equity and fairness

2.23 Issues of equity and fairness arise in a number of different situations. They can be both positive (for example, the proposal helps elderly people in some way), or they could be negative (for example, the proposal will reduce the incomes of those in poorer parts of society).

In general, in this section you should outline important positive and negative aspects of the proposals, particularly those that might affect one group more than another.

2.24 Issues of equity and fairness are sometimes obvious, when, for example, a proposal impacts on one particular group of people (eg the elderly, ethnic minorities, those with disabilities) or business sector or where the benefits are gained by a different group to those that bear the costs. However, it may be less obvious, so informal consultation is important to establish where the impacts fall. You should also ensure your chosen option does not inadvertently create new groups of vulnerable people.

2.25 The Commission for Racial Equality works with public bodies, business and organisations from all sectors to promote policies and practices that will help to ensure equal treatment for all. It provides advice and assistance on how to assess the possible impact of policies on race and equality.

Analysing the benefits and costs of the proposal

2.26 Your departmental economists or economic advisers will be able to help you with the analysis of costs and benefits. You may also need the help of technical experts or consultants in specialist areas, for example social scientists or statisticians.

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

The purpose of the analysis of benefits and costs is to determine whether these costs are proportionate to the expected benefits.

2.28 An assessment of the expected benefits is therefore one of the most essential aspects of an RIA. But it is also one of the areas which receives least attention. It cannot be automatically assumed that the benefits outweigh the costs and thus do not need to be valued.

2.29 Valuing benefits is often difficult. For example, as benefits may be environmental or social in nature and there is not always a simple price tag attached to these.

However, without estimating the costs *and* benefits, the Minister cannot readily sign the declaration that the benefits justify the costs, as he or she may not have the necessary information.

2.30 Where a policy has redistributive impacts, it is relevant to discuss these 'transfers' between, say, consumers and the Government.

It should, however, be made very clear that these are transfers and do not count as economic costs and benefits, as one sector's gain is another sector's loss. They may have an impact on the distribution of income or opportunity in the economy, and in redistributive policies these will constitute the major element of the costs and benefits. For example, if the policy is a tax on pollution, you could mention the fact that this is a cost to business. However, it should be made very clear that this is just a transfer from business to Government, and that the tax revenues earned will be used for spending, or to fund tax cuts elsewhere. Redistributive issues should be identified in general terms in the **Equity and Fairness** section.

2.31 Identifying the **business sectors affected** (including charities and the voluntary sector), the number of firms involved and the sizes of the firms (in terms of their employment and turnover) is crucial in helping you to estimate your proposal's impact on business. Think about the problem/risk you are trying to address and hence which products and/or services are going to be affected, and consider consulting informally to get others' views.

Analyse separately how costs and benefits apply to **different industry sectors** and types and size of business, including small businesses.

Sustainable development

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

2.32 When assessing costs and benefits you must be careful to include only those costs and benefits that are additional to those which would have been incurred if no action were taken. This will help you to assess whether the proposals are genuinely more beneficial than doing nothing.

2.33 You should assess the risks, costs and benefits for each option. Examine what is already known about them.

2.34 You are likely to have some feel for what the impacts of the proposal might be based on:

- your knowledge of the area;
- departmental colleagues' (including economists') information or ideas;
- existing research in the same or similar areas; and
- information from your informal contacts with other government departments and external organisations and businesses.

2.35 Make sure you use the best figures available and be as definitive as you can in estimating the costs and benefits, though be prepared to use ranges of figures where there is uncertainty, in order to avoid spurious accuracy. Moreover, remember to implement the principle of proportionality in this exercise, ie where the impact is likely to be small, analysis of costs and benefits need not be long. This will help to make the RIA an effective tool to inform decision making. Always spell out your assumptions.

Assessing benefits

2.36 It is crucial to recognise the link between the benefits section and the risks section. The latter will have spelt out the nature of the problems being addressed and their extent and scale. This section will assess the degree to which each of the options proposed is able to address those problems. **You should talk to your economists about what should be included here.**

2.37 You should first identify the type of organisations and/or individuals likely to **benefit** from your proposals and estimate the numbers involved. You can then move on to determining broadly how they will benefit, for example from a cleaner environment, better health, a safer workplace, improved food hygiene etc.

2.38 Keep the full range of potential benefits in mind, including any **social and environmental benefits** of your proposals. Valuing such benefits is not straightforward, although a range of techniques do exist which can provide estimates in some cases. Speak to your departmental economists for advice.

2.39 Generally, valuing benefits can be difficult at any stage, though there are a number of ways of doing it (see **Annex 4**). You may not be able to calculate the benefits precisely at the initial stage. It should, however, be possible at least to come up with broad estimates of the benefits, eg "The benefits are likely to be in the order of tens of millions of pounds".

If it is not possible to do this then try to give some idea of the magnitude by quantifying the main impacts – eg a broad idea of the number of injuries avoided, number/miles of rivers improved, number of employees enjoying better working conditions etc. Where this is not possible, quantify as much as possible and offer a detailed qualitative description where you cannot.

2.40 It is also important to look at the potential **dynamic benefits** of regulations. Certain regulations can encourage innovation or more efficient investment by firms as they try to meet their requirements, enabling savings to be made (perhaps from greater resource productivity) and enhancing the productivity and competitiveness of the sector as a whole.

It can be very difficult to quantify the effects of this as there can be considerable uncertainty surrounding future benefits, but where appropriate it is worth mentioning this possibility, and giving good evidence of what the dynamic effects might be, to substantiate this claim.

2.41 Where a policy has **distributional impacts**, you should consider the transfers involved. It is important to recognise where the benefits identified are not benefits to the economy as a whole, because the perceived gain to one section of the economy will come only at a cost or loss to some other section of the economy. Examples of this might include an increase in social security payments or increased sales by one sector at the expense of another sector. What should be noted is the redistribution of income or opportunity arising from the policy. This element is still an important impact of the policy.

2.42 If you have specified any potential **risks associated with the different options**, you should think about how this will affect the benefits. You should think about the underlying assumptions and how the changes described might affect them, and therefore the benefits. For example, if you considered the risk of a tax not altering behaviour, you might assume that the benefits from this option would be lower. At this stage it is enough to think about these risks in terms of broad order of magnitude changes to the outcomes.

Assessing costs

2.43 First, identify the type of organisations or individuals likely to be affected by your proposals and estimate the numbers involved. For business, charities and the voluntary sector identify the kind of activities which they will need to undertake and the likely changes in behaviour – for example, extra training, familiarisation, buying equipment, changing working practices, changing production processes, gathering information, reporting to government etc. Think about how long this will take them, how many employees will be affected and how much the equipment will cost.

Using the number of firms, charities and voluntary organisations affected as estimated in the Business Sectors Affected section, estimate the cost, or at least estimate the broad order of magnitude of the costs – e.g., “The costs are likely to be of the order of a few million pounds”.

Where this is not possible, give as much quantification as you can and give a detailed qualitative description of those elements you cannot quantify.

2.44 The **dynamic effects** of a regulation on the way in which product markets develop (including the unintended consequences/indirect costs) can also be important. For example, a regulation that imposes heavy burdens on UK firms may adversely affect output, investment or innovation decisions, and may have a harmful effect on the longer-term competitiveness and productivity of the sector. This should be noted. (NB: It is important not to confuse ‘competitiveness’ with ‘competition’. Competitiveness refers to the ability of all firms within a sector to compete with equivalent firms in a similar sector elsewhere, while competition is more concerned with the ability of firms within a sector to compete with each other and the consequences of this for UK consumers. Adverse impacts on competition should be noted in the competition section.)

In other cases – for example, Working Tax Credit – the dynamic effects should be beneficial, as more people are encouraged to stay in or enter the labour market, helping to improve the ability of the UK economy to grow.

2.45 Sometimes it can be difficult to establish if proposals have unintended consequences. Early consultation with stakeholders can help you identify these at an early stage.

2.46 When considering the costs, options for compliance and impact on business, consumers and other end users, you should take into account the impact of your proposal on **e-commerce**. You should be careful to avoid undue burdens on e-commerce and consider the impact of your proposal on the

international competitiveness of the UK for e-commerce. Remember that e-commerce operators are highly mobile and can readily re-locate outside the UK if the costs get too high.

2.47 The e-policy principles will help you consider the impact that local, national, European and other international policy decisions and legislative proposals may have on e-commerce. You can find them at [www.envoy.gov.uk/oeo/oeo.nsf/sections/index/\\$file/index.htm](http://www.envoy.gov.uk/oeo/oeo.nsf/sections/index/$file/index.htm) The e-commerce Directive may also be helpful and can be found on the same website.

2.48 If you have specified any potential **risks** associated with the different options, you should think about how this will affect any of the costs described in the RIA. You should think about the underlying assumptions and how the changes described might affect them, and therefore the costs. For example, if the proposal's success was dependent on an IT system being developed in time, you might consider that it is so crucial that you would double the costs to ensure that it was developed in time. At this stage it is enough to think about these risks in terms of broad order of magnitude changes to the outcomes.

Other costs

2.49 You should use the RIA to ensure that your proposals do not impose disproportionate costs elsewhere. Accordingly, in the **Other Costs** section, you should identify and (as far as possible) quantify costs on those other than business, charities and the voluntary sector.

You should therefore think about costs to:

- consumers/people (eg public health and safety effects, crime and education);
- the public sector (central and local government) (eg costs of developing the legislation, enforcement, monitoring as well as meeting any requirements imposed upon them by the proposals); and
- the economy at large (eg environmental impacts).

2.50 The Government has a manifesto commitment towards **sustainable development**, so it is also important when looking at other costs to recognise the precise size of the contribution the proposal will have on economic, social and environmental development.

Distributional impacts

2.51 Sometimes, as mentioned in para 2.30, some or all of the effects of a policy will be redistributive in nature, altering the distribution of incomes or opportunities, but not leading to an overall gain or loss to the economy. In these instances, while one section of the economy will incur a cost or loss as a result of the proposal, another section will benefit.

Accordingly, the impacts are merely transfers. However, the redistribution element is still an important effect of the policy. Where such a transfer has been noted in the assessment of benefits, the corresponding cost should be noted here.

2.52 This section is also the correct place for discussion of 'second-order' effects. The main costs section should describe the costs at the point of impact. However, where this is a firm, for example, these costs might be passed on to consumers or other firms in higher prices, with related distributional consequences – these should be noted here, but not included in the calculation of net impacts.

Hints and tips

2.54 Ensure that you have evidence supporting your assessment of the costs and benefits. It may be sufficient to accept firms' and business organisations' estimates of costs, if they are all in the same range. You need to ensure you apply the same evidence requirements to all sources of information, and include details (maybe in an annex) in the RIA.

It is equally important to be open and honest about any uncertainty about costs and benefits, and specifically ask consultees to fill in the gaps.

2.55 There is detailed guidance on assessing costs and valuing benefits at **Annex 4** and in the HMT Green Book, which can be found on the HMT website at www.hm-treasury.gov.uk. Do not forget that the analysis in the RIA is trying to assess the extra costs and benefits associated with your proposal. Having said that, you should also be aware of any **related or overlapping regulations** that already affect those organisations and individuals likely to be affected by your proposal. These should be discussed in the RIA.

2.56 In considering the benefits and costs, separate out the benefits to firms, charities and the voluntary sector from the impacts on others.

Policy/implementation costs

2.57 You should separate costs into **policy and implementation costs**. This will identify the ‘**red tape**’ or ‘**compliance**’ cost.

■ **Policy costs** are those costs that arise from prescribed changes to achieve policy goals (eg designing and fitting catalytic converters to achieve the goal of reducing pollution, buying hard hats to reduce the number of deaths in the workplace).

■ **Implementation costs** are those costs that arise from inspection and monitoring arrangements, from staff having to learn about a new requirement and from internal administrative changes made to facilitate or prove compliance (eg the cost of going through the approval process to certify that the catalytic converter meets legal requirements, licence fees, or setting up a website).

2.58 **Annex 4** contains more information on all aspects of the assessment of costs and benefits.

Competition Assessment

2.59 All RIAs must include a Competition Assessment. The first stage is to apply the **competition filter** to each policy option. The filter test (set out in **Annex 3**) consists of nine yes/no questions. You should do this as early as possible. It will help you to identify any effects, adverse or beneficial, on competition, and determine whether you need to provide a **simple** or a **detailed assessment** in your partial RIA.

Results of the filter:

(a) Simple Competition Assessment

Where there are more ‘no’ than ‘yes’ answers to the filter questions, this shows that the proposal is likely to have little or no effect on competition. It will generally be sufficient to write up the findings of the filter test in the initial RIA, without carrying out a detailed analysis of competition effects.

The write-up should:

- identify the affected market(s);
- summarise the characteristics of each market; and
- contain a clear statement about the anticipated positive and negative effects on competition **for each policy option** with an explanation of the reasoning behind the answers to the nine questions.

You should not reproduce the filter test grid in the write-up.

(b) Detailed Competition Assessment

Where the filter test results in more ‘yes’ than ‘no’ answers, this indicates that there is potential for significant competition impacts. In this case you will, at a later stage, need to carry out detailed analysis of the competition effects for the affected markets and prepare a **detailed assessment** to include in your partial RIA before you consult.

At the initial RIA stage, it will be sufficient to describe briefly the anticipated significant competition impacts. You will need to involve your departmental economists and you should also consult the OFT, who will provide help with the competition analysis and with drafting the detailed assessment.

Further information about how to conduct the filter test, and writing up the Competition Assessment, is contained in Annex 3.

Small Firms' Impact Test

2.61 Small businesses are a major contributor to the health of our economy and to the diversity of opportunity in our society. There are over 3.7 million small businesses, which employ 12.5 million people in UK. They come in many shapes and sizes: from high-growth start-ups to 'lifestyle' businesses and social enterprises, from sole traders and micro firms to companies with many employees. Their motivations, aspirations and concerns are as important to their success as their financing structures. Government, and its delivery partners, need to understand them better, and think hard about how to help them.

2.62 Most proposals which are likely to impact on business will have an impact on small firms, either directly or indirectly. The Small Firms' Impact Test is an integral part of the RIA process. If you think your proposal has no impact on small firms, you must test this assumption by having an informal discussion with a number of small businesses or a representative group. Speak to the Small Business Service (SBS) in order to seek agreement/confirmation of your view. For a simple picture of how the Small Firms' Impact Test fits into the overall RIA process, see the flow chart on page 23.

Stage 1

2.63 **The first stage** of the test is an **initial sounding** on a range of options with small businesses. This can give you an early warning about possible unintended consequences and provide an indication of whether the proposal is likely to be contentious. You should record your findings in the initial RIA. It will help you decide whether you need to complete stage 2 of the test – a consultation exploring in more detail the policy options and how they might be delivered – which should form part of the partial RIA.

2.64 When canvassing for small business views and carrying out the Small Firms' Impact Test, bear in mind that focus groups and face-to-face meetings are often better than written responses. You should include your findings in the partial RIA. The SBS offers advice on how to run effective focus groups and can help you identify contacts. See their additional guidance at www.sbs.gov.uk

Results of stage 1:

(a) Insignificant impact

If you find from your stage 1 discussions that the impact on small business is likely to be small, simply agree a form of words with the SBS for the partial RIA.

(b) Significant yet straightforward impact

If the anticipated impact is significant but simple to evaluate, you may conduct stage 2 discussions by phone.

(c) Significant and complex impact

If the anticipated impact is significant and a complex picture has emerged during stage 1 discussions, you should arrange for stage 2 focus groups/panels to explore the options for delivery in detail. The SBS can advise you on how to arrange these. See para 3.18 for more information.

Getting agreement from your own Ministers

2.65 All the work you have done so far on the RIA will help inform your submission to Ministers. You should include your **initial RIA** in the submission.

What is a small firm?

The definition of a small firm is one with:

- fewer than 50 employees; and
- no more than 25% of the business owned by another enterprise (which is not a small business); and either
- less than J4.44 million annual turnover; or
- less than J3.18 million annual balance sheet total.

Chapter 3

Partial RIA

3.1 The partial RIA builds on the initial RIA. The partial RIA must be submitted with any proposal needing collective agreement from Cabinet, Cabinet Committee, No 10 or other interested Ministers.

It must also accompany the formal consultation. It should be informed by more discussions, data gathering and informal consultations. You will have worked up the options and developed your thinking on compliance and monitoring. You will also have refined your cost and benefit estimates.

Risks

3.2 The Risks section will build upon the risk assessment in the initial RIA. It will, however, present a more detailed, and more precisely quantified, analysis of the risk and harm which the proposal is trying to address.

Options

3.3 The policy options will include those from the initial RIA that are judged still to be feasible following further work. You might also include those dismissed, and explain why, to show what has been considered.

They might also include more detailed elements of the proposal – eg when the proposal might come into effect, whether a small firm exemption might be appropriate, different methods of enforcement etc. Set out the options in terms a layperson will understand.

Describe how each option will achieve or contribute to the policy goal, eg “A ban on the use of substance XXX will stop its use by UK manufacturers and importers into the UK and prevent the current six deaths per annum reported to be attributable to this substance”.

3.4 At this stage you should make a much more thorough consideration of the **risks** associated with the implementation of the options. The likely sources of risk for each option should be spelled out along with an estimation of the likelihood of these risks occurring. The consequences of these risks for the proper implementation of the options and the likely outcomes ensuing should be examined.

Comparison with similar schemes previously introduced could help to inform this analysis.

For example, if one option is to introduce a new IT system to facilitate compliance, you could look at other projects where IT has been a crucial factor for evidence of the impact of delays in development. This could inform thinking on the likelihood of the risk occurring and also its consequences.

Partial RIA – hints and tips

- Provide a clear statement of the policy objectives and the issue.
- Describe and quantify the scale of the risk (or problem being addressed).
- Identify regulatory and non-regulatory options.
- Consider the pros and cons of each option and the fit with existing requirements on the relevant sector.
- Identify who is affected, including the **business sectors affected**.
- Identify any issues of equity and fairness.
- Estimate the benefits and costs and identify the key risks associated with each option.
- Flag up any potential unintended consequences.
- Identify distributional impacts.
- Provide a Competition Assessment that includes a clear statement of anticipated competition impacts for each option.
- Include the outcome of the Small Firms’ Impact Test.
- Consider how to secure **compliance** and how the risk factors identified would affect this.
- Consider **monitoring** and whether a **review** of how well the policy is working is required.

- 3.5 Once you have identified the consequences of a risk, and the likelihood of it occurring, you should:
- think about the design of the options so as to mitigate either the likelihood or the scale of that risk;
- or
- think of ways in which the effects of that risk could be mitigated if it were to happen.

Analysing costs and benefits

3.6 The data gathering and analysis which has gone on following the drafting of the initial RIA should be used in the partial RIA to confirm or change the business sectors, charities or voluntary organisations affected and to refine the estimates of the impacts of the options.

New benefits and costs might have been identified, and other impacts already identified might be dismissed as being irrelevant.

Importantly, the estimates of the benefits and costs in the partial RIA should be more precise than those in the initial RIA.

They are key to informing both other government departments and external consultees about the impacts of the proposals and hence are central to the policy making process.

The more definite they are the better and you should always spell out the assumptions that you use to arrive at the estimates as well as referencing the data sources, and setting out data assessment methodologies where data might be disputed.

3.7 At this stage, before the formal consultation has brought more information and data out into the open, it might be that the partial RIA can only contain ballpark figures and ranges rather than more exact estimates.

If you are uncertain about the precise level of costs, it is better to specify an approximate range rather than fall into the trap of spurious accuracy – eg “The benefits are estimated to be up to J100 million. The costs are estimated between J50–80 million”. If placing such a monetary value of the impact is not possible then try to quantify the main impacts – “around 20 injuries avoided”, “10,000 elderly people lifted out of poverty”. You should include a reference to how the costs are distributed across the firms/sectors you have identified in the Business Sectors Affected section – eg provide a cost per firm figure.

3.8 Quantifying and putting a monetary value on some benefits and costs can, by their very nature, be difficult. The general rule is to use quantitative assessments wherever you can, and qualitative assessments wherever you cannot.

3.9 **Annex 4** offers some methods of estimating the impacts and points you to other guidance that is available. Also talk to your economists who can offer advice, analysis, help and data. If the impact of the proposal is likely to be substantial, you might want to consider employing consultants to work on impact estimates.

3.10 All benefits and costs should be reported as annual costs – ie Jx per year. Where there are one-off costs or benefits (eg a piece of equipment bought) this should be recorded in the RIA text. However, in the explicit calculation of costs and benefits, one-off costs and benefits should be converted into an annual amount over the period considered, and discounted to reflect the fact that society wants good things now (the benefits) and wants to delay paying for things (the costs) until later. You may need to speak to your economist.

Remember, if the impact is likely to be small, the RIA need not be long.

3.11 Do not forget for these improved estimates to:

- split the costs between **policy and implementation** costs (see **Annex 4**);
- consider the costs and benefits to **consumers/individuals, other organisations, local and central government** (including the costs of policy development, enforcement, monitoring and complying with any requirements) **and to the economy**;
- consider the costs to the **environment** and to **society** (other impact appraisals, such as the **Environmental Impact Appraisal**, may inform this analysis);
- assess **unintended consequences** and **indirect costs and benefits**;

- consider **distributional impacts** of your policies; and
- consider **equity and fairness** issues and **where** the costs and benefits might fall.

3.12 At this stage, you should make detailed estimates of the impacts of the risks associated with the implementation of the options. You may need to use detailed sensitivity analysis, to look at just how changes in the key underlying assumptions will affect the balance of costs and benefits, and the extent to which the benefits would still justify the costs if these risks became reality. This analysis should be informed by both the likelihood of the risk occurring and the extent of the consequences. If either of these, or the combination of these is too great, you may need to reconsider your options, or at least flag this issue up in your consultation document.

Competition Assessment

3.13 The initial RIA should have identified the affected market(s) and flagged up any potential competition issues. You should have applied the competition filter to all policy options as they were identified. The results of these tests will indicate whether you need to include a **simple** or a **detailed assessment** in the partial RIA.

3.14 If only a simple assessment is needed, include this in the partial RIA as you did in the initial RIA.

3.15 If, however, you have to complete a detailed assessment, you will need the help of your departmental economists. You should also consult the Office for Fair Training who will provide help with the competition analysis, as well as with drafting the assessment. You may not be able to finalise a detailed assessment until you have gathered further information from the consultation exercise, but you should include as much detail as possible in the partial RIA. You can then highlight any questions or gaps in your information that you would like consultees to respond to (see **Annex 3**).

Small Firms' Impact Test

3.16 In the Partial RIA you need to provide a statement of the results of your initial soundings with small businesses (stage 1).

You should include:

- details of the companies you consulted (size, sector, location);
- how they were contacted (eg phone, email);
- issues raised;
- whether a significant impact on business was revealed; and
- whether stage 1 changed the substance of your recommendation to Ministers.

3.17 If you did not complete stage 1 you must give a statement justifying your decision. If the impact on small businesses of your proposed policy is significant but straightforward, it may be appropriate to conduct stage 2 of the Small Firms' Impact Test by telephone.

3.18 If the expected impact of your chosen option is complex, convening small business **focus groups** will help you to explore the least burdensome ways of delivering the chosen policy. The Small Business Service has detailed guidance on how to run focus groups. They can help you set up stage 2 consultations with small businesses, and help identify participants directly and representative organisations happy to identify volunteers (including the Small Business Council – see contact list for full details).

Enforcement and compliance

3.19 You need to consider from the outset whether your proposals are enforceable. Then you should consider compliance.

Obtain a clear view of how those affected will comply with the proposal. Establish what the current levels of compliance are.

It can be tempting to try to resolve current compliance problems by proposing more regulation.

Before you do this, look carefully at the reasons for current non-compliance, and try to think of ways of improving it – for example, by targeting those businesses or individuals who are not complying.

3.20 You also need to consider whether any of the risks you have identified as being associated with the options might affect the level of compliance. Where this is the case, you may need to consider the enforcement regime proposed in the light of this.

3.21 Assess the likely impact of different enforcement regimes. Achieving full compliance is not always possible, at least at a reasonable cost, and you may have to expect a level of non-compliance. There is no general answer to what is an acceptable level of non-compliance but the nature of the risks involved should give you some indication. For example, safety in the nuclear industry is clearly of more concern than whether farmers keep names and addresses of casual seasonal workers.

3.22 You need to consider alternative methods of enforcement and examine the likely costs and compliance rates in the light of your policy objective and the risks. The Enforcement Concordat gives some good examples of different methods of enforcement and can be found at www.cabinet-office.gov.uk/regulation/publicsector/enforcement/enforcement.htm You will also find some helpful advice in the Better Regulation Task Force review and recommendations on good enforcement practice which can be found at www.brta.gov.uk

3.23 You may want to use a light touch – one option is to check compliance on a small proportion of companies, especially if risks are low. Levels of scrutiny can be varied according to risks of non-compliance and according to the characteristics of the firm, by size etc. Another option is self-assessment. Instead of requiring enforcement officers to check whether businesses are complying with a regulation, individuals are given the right to challenge a business if they believe it is not complying with a regulation.

What is a ‘significant impact’ on small businesses?

A significant impact can be both a high cost and/or a disproportionate cost on small firms, relative to other sized businesses. Differences in the number of employees, market structure, handling of the personnel function etc mean that the implementation costs of a policy can vary widely from business to business. You should test your estimate of costs with a range of businesses. See **Annex 4** for further details of how to identify costs.

3.24 You may decide that active enforcement is required. If so, you must involve the potential enforcement authorities at an early stage to agree procedures and estimate resource implications. Where enforcement responsibilities overlap, make sure there is co-ordination between authorities to ensure consistency. If you propose creating a new enforcement body, make sure that its activities are integrated properly with those of any existing agencies. Also ensure that you have HMT approval and that you allow sufficient time for the recruitment and training of personnel.

Sanctions

3.25 **Do you need any sanctions?** If you do need sanctions for non-compliance, you should choose a fair and effective regime which is proportionate to the non-compliance.

Non-criminal sanctions aimed at actively securing compliance should be your first choice. Criminal sanctions should not normally be considered across the board where there is no intention of risk or harm, though they may be necessary when creating certain legally enforceable rights. The Home Office has policy responsibility for criminal law and you should consult them about any proposed new criminal offence. You should also consult the Lord Chancellor’s Department (LCD) as proposed new criminal offences are likely to result in increased work for the courts.

You should always consider:

- **administrative** methods of preventative control. Examples include licensing, registration and enforcement approaches including improvement notices, suspension notices and prohibition notices. Do bear in mind the cost of administrative methods, and aim to minimise any bureaucracy;

- using **civil penalties** or **statutory fines** as a means of providing redress or as a deterrent; and
 - if these are not sufficient on their own, using criminal sanctions (but only for serious breaches, eg criminal intent, negligence, persistent offenders and those who may cause serious harm).
- Seek advice from LCD before considering criminal sanctions.

3.26 Your proposals must comply with the Human Rights Act. See www.lcd.gov.uk/hract/hramenu.htm for more information.

3.27 Where the sanctions are administrative rather than criminal, you should provide business with a fair, independent, speedy and inexpensive appeals process for resolving disputes. If new rights of appeal are being considered you should consult LCD at an early stage to consider the form of appeal mechanism to be used, and whether there is an existing vehicle which might be accessed. You should also take account of the cost of establishing an appeal mechanism.

Monitoring and evaluation

3.28 You will need to make arrangements for monitoring and evaluating the implementation methods you identify, including the effectiveness of the proposed enforcement regime, and for collecting reliable data on compliance levels. This process and its timing should be recorded in the RIA. In the longer term this information should feed back into the policy making process. Consider setting up a feedback mechanism for recording any ongoing complaints from those affected by the proposals, eg business and members of the public.

3.29 In most cases it is better if evaluation or review is done by someone independent of the original team who worked on the proposal. An example of an exception to this is in the case of a policy evaluation, where it is acceptable for someone who has worked on the original team to do the evaluation. It should include consideration of whether the costs and benefits in the original RIA were correct, and the extent to which the ‘solution’ did actually solve the problem.

3.30 There is also a government commitment to systematic post-implementation reviews of major pieces of legislation. Where applicable you will need to consider when and how you are going to undertake such a review.

3.31 See the Cabinet Office Policy Hub for more guidance on monitoring and evaluating your policy (www.cabinet-office.gsi.gov.uk/cmpps/Policy_Hub_GSI/welcome_to_policy_hub.htm).

Using the partial RIA

Getting collective agreement to your proposal

3.32 At this stage, your own Ministers will have given the go-ahead to the proposal and you will be working up the different options. Your partial RIA will reflect this ongoing work, and will contain more information than the initial RIA you showed your Minister.

Collective Ministerial agreement, where needed, can be sought through Ministerial correspondence or through Cabinet Committee discussion by Ministers, depending on the nature of the proposal.

3.33 Guidance on when to seek policy clearance and how to go about it is available in the booklet *Cabinet Committee Business – A guide for departments* available from the Cabinet Office Committee Secretariat on 020 720 0055 or on the internet at www.cabinet-office.gov.uk/cabsec/2002/guide/index.htm

Decisions by correspondence

3.34 The majority of committee business can be settled through an exchange of letters with the Minister who chairs the relevant committee, copied to the Prime Minister, members of the committee and the Secretary of the Cabinet. You should keep your letters short, clear and accurate and **include the partial RIA**.

3.35 The Prime Minister has asked that all letters should start with a short paragraph in bold which summarises the key issues and recommendations in the letter with a specific date by which responses are sought. This date must allow no less than **ten clear working days for comment**. Reasons must be given if less time is allowed.

3.36 The SBS must always be included in the circulation list if the proposals affect small firms.

Regulatory Impact Statement

3.37 A Regulatory Impact Statement is a paragraph (**in addition to the partial RIA**) to include in the Cabinet paper or Ministerial letter to colleagues seeking collective agreement to the proposal. The paragraph must explain the impact on business, charities or voluntary organisations of any proposals involving new or amended regulations. It must take account of the results of the partial RIA and any discussions with the Cabinet Office RIU and SBS.

3.38 A proposal requires a Regulatory Impact Statement if it is ‘significant’, ie:

- the partial RIA suggests high costs (in excess of J20 million in any year);
- the issue has high media topicality or sensitivity;
- the issue is one on which the Better Regulation Task Force has reported or where there is Task Force work in hand; and
- the proposal would have a disproportionate impact on a particular group, eg small businesses, charities or a particular business sector.

3.39 The Regulatory Impact Statement must be agreed with the Regulatory Impact Unit at the Cabinet Office and, if the proposal affects small firms, the SBS. The SBS has the right to have its view recorded in the Cabinet paper or letter to colleagues.

3.40 If you are not sure whether you need to prepare a Regulatory Impact Statement, consult your DRIU or the Regulatory Impact Unit at the Cabinet Office.

Example of Regulatory Impact Statement on proposals to revise controls on the recycling of sewage sludge to agricultural land.

“The investment necessary to deal with the end of sea dumping and the increased quantities of sludge which will be produced during the period up to end 2005 has been allowed in price limits set by OFWAT, with water company strategies based on greater use of recycling sludge on agricultural land and in some cases partly on increased incineration. The capital cost of these improvements in England and Wales is estimated to be approximately J400 million between 2000–2005.

“The partial Regulatory Impact Assessment demonstrates clear environmental benefits of the proposed Regulations compared to the costs for businesses. Incineration would require J173 million in recurring costs, landfill J83 million while the agricultural route costs J23 million. In addition incineration would require capital costs of J661 million whereas the current AMP3 programme for the agricultural route requires J400 million. As this proposal may involve significant costs for industry, the Cabinet Office’s Regulatory Impact Unit has been consulted. The Unit was content that the risks, costs and benefits of this proposal had been properly assessed and that the proposal appears consistent with the principles of good regulation – transparency, accountability, targeting, consistency and proportionality.”

Announcing proposals and carrying out public consultation

3.41 There is more to consultation than issuing a formal consultation document. Consultation gives you the opportunity to develop your assumptions and expose them for consideration, comment and challenge. Persuading businesses and other interested parties to comment on the likely impact of something that is yet to happen can be a challenge.

3.42 Practice on public consultation

www.cabinet-office.gov.uk/servicefirst/index/consultation.htm The website also includes a pro forma which you must complete when publishing consultation documents on the online register of public consultations.

How to get the best from your consultation exercise

3.43 **You must include a partial RIA with your consultation document. Allow enough time** by building consultation into the planning process. The **minimum consultation period** you must consider is **12 weeks**. Try to avoid consulting during holiday periods, but if you do so, consider extending your consultation beyond 12 weeks. If you engage a third party to run your consultation exercise you must ensure they adhere to the Cabinet Office Code of Practice and the guidance below.

3.44 **Don't forget the voluntary sector.** They employ 2% of the workforce and have a wide range of functions. There is a Compact on relations between government and the voluntary and community sector which is underpinned by more detailed codes of practice, including one on how to prepare a good consultation document.

How to prepare a good consultation document

3.45 **Be transparent.** Consultation documents should be clear, concise and focused.

3.46 **Include a list of questions for consultees at the beginning:**

- ask whether the benefits and costs look reasonable;
- ask whether the assessment of competition effects looks reasonable;
- ask about enforcement issues; and
- ask about unintended consequences.

3.47 Ensure that any questions about potential costs of proposals make it clear that you need evidence to support respondents' claims. This will avoid respondents overstating costs in order to deter your department or agency from pursuing a particular line.

3.48 You may want to use survey experts to help you draw up the questions to accompany your consultation document.

Draw attention to:

- key assumptions;
- options (regulatory and alternatives to legislation);
- implementation issues (including guidance and timing); and
- the accompanying RIA by providing clear signposting to it at the start of the consultation document.

3.49 **Key elements of a good consultation exercise:**

- **Focused.** Be clear about who is being consulted, about what questions, in what timescale and for what purpose.
- **Seek advice** from the SBS and others about who to consult (see list of organisations at **Annex 6**).
- Use the most **appropriate** approach. Written consultation is not always the best way to canvass views on a new policy or service, but must always be included alongside other methods.

Other methods include:

- meetings with interested parties;
- listening events;
- web forums;
- public surveys; and
- focus groups.

The consultation document on the reform of fire safety legislation issued in July 2002 is a good example of best practice. It can be found on the Office of the Deputy Prime Minister's website at www.safety.odpm.gov.uk/fire/consult/legislate/index.htm

■ **Accessibility.** Consultation should be easy to respond to, for example by using electronic means or a separate questionnaire.

■ Put all consultation documents and their accompanying RIAs on your department or agency website and on the open government site at www.ukonline.gov.uk in a clear and accessible form.

Copy them to Cabinet Office RIU who will place them on the RIU website. Include details of where to send responses when you put a consultation document on the website (remember to put the covering letter on the website).

■ Make sure that consultation documents are easy to access from your website – for example, via a link on your home page. Do not rely on search engines as they often inundate users with numerous irrelevant documents.

■ **Be proactive.** Send emails to consultees with a hyperlink to the consultation document. Do not just place a consultation document on your website and leave it up to people to find out about it for themselves.

Make it easier for your consultees

3.50 You should consider publishing a **shorter version** or summary of the consultation document, containing an overview of the proposals, as well as the full length version. This will help consultees decide whether they need to read and digest the fuller version, saving them time. If you do use this approach, make sure your overview contains details of all the proposals, so that the overall effect or impact is not diluted. See the DTI White Paper on the Company Law Review for an example of this at www.dti.gov.uk/companiesbill/index.htm

Avoid consultation fatigue

3.51 Liaise with colleagues in both your own and other departments to ensure that you join up consultation exercises on related issues. One of the most common complaints from businesses, charities, the voluntary sector and their representative organisations is that policy makers do not consider the wider timing of their consultation exercises.

3.52 Consider how many other consultation documents organisations have got to respond to, and whether you really need to consult during the summer break. If the timing is governed by factors outside your control, eg the Parliamentary timetable, consider warning organisations of impending consultation exercises, so that they can plan their work around them. You will probably have been speaking to them when preparing your initial RIA and working up options, so take the opportunity to discuss the timetable with them at that stage.

3.53 You will get better quality responses from your stakeholders if they have more time to consider the consultation document and respond, and are not trying to respond to lots of different consultation exercises at the same time.

Reporting back

3.54 You should analyse the responses carefully and make the results available, giving the reasons for final decisions. When you are looking at the responses, bear in mind that representative organisations and umbrella organisations will have consulted their members, and you should give their responses due weight. For example, the TUC represents the views of 69 affiliated associations and unions and the CBI represents many businesses.

3.55 Review your proposals in the light of the consultation exercise and if necessary amend the ongoing RIA.

Need more help?

3.56 The Cabinet Office Code of Practice on consultation can be found at www.cabinetoffice.gov.uk/servicefirst/index/consultation.htm You may also find helpful the Cabinet Office publication *Viewfinder: A policy maker's guide to public involvement* at www.policyhub.gov.uk

The Better Regulation Task Force report *Helping Small Firms Cope with Regulations – exemptions and other approaches* includes a menu of approaches for helping small firms and can be found at www.brtf.gov.uk

Chapter 4

Full/final RIA

4.1 The full/final RIA builds upon the analysis in the partial RIA. You should update your RIA in the light of consultation and further information and analysis. You can then submit it to Ministers with clear recommendations.

4.2 The **full** RIA will accompany legislation when it is presented to Parliament. It becomes a **final** RIA when it is signed by the responsible Minister and placed in the House library. It should also be placed on your departmental website.

4.3 The contents of a full/final RIA:

- identify the policy **objectives**;
- identify and quantify the **risks** that the proposal is addressing;
- describe the remaining **options**, explain how each option would fit with existing requirements and describe the key risks associated with the options, and how these can be mitigated;
- identify the **business sectors** affected;
- set out any issues of **equity and fairness**;
- compare the **benefits and costs for each option considered in the partial RIA**. At this stage the estimates of costs and benefits should be much more precise, as you will have the information from the consultation as well as from further data collection and analysis being done within your department. Where there are uncertainties about the impacts, use ranges rather than being spuriously accurate (eg “J1–2 million”).

Always spell out your assumptions underlying the analysis of costs and benefits, and provide references to data sources and data analysis methodologies used. And undertake sensitivity analysis on those assumptions where there is uncertainty. The estimates of costs and benefits should be on a per annum basis and, where necessary, discounted.

Costs should be split between **policy and implementation costs**. (See **Annex 4** for more information about costs and benefits).

By now it should be possible to quantify and place a monetary value on all impacts.

In the few cases where this is not possible then quantify what you can and provide detailed qualitative analysis where you cannot.

Remember that there needs to be enough analysis of impacts to enable Ministers to decide whether or not the benefits justify the costs and for any external scrutiny to take place;

- also consider ‘other’ costs and benefits – ie not just those to firms, charities and the voluntary sector but also to consumers/individuals, the public sector and to the economy at large, taking in the economic, social and environmental effects.

These costs should be recorded separately from the costs to business, charities and the voluntary sector;

- consider any **distributional impacts**, clearly identifying both the positive and negative aspects of any transfers of income or redistribution of opportunities;
- summarise who or what **sectors** bear the costs and benefits of each option;
- address any **unintended consequences** and **indirect costs**;
- include a simple or a detailed Competition Assessment according to the result of the filter test (see pages 20–21 and 27, and **Annex 3**);
- include details of the **Small Firms’ Impact Test** and any comments from the Small Business Service;
- set out the **enforcement** arrangements for securing **compliance** with each of the proposed options, as well as a consideration of the risks involved with this, and include your plans for **guidance**;
- say how the policy will be **monitored and evaluated/reviewed**, eg set an appropriate point at which to look back at what the actual costs and benefits were;
- provide a summary of the results of the **consultation exercise**, responses received from different sectors or types of business/body (where these vary) and set out **how/whether you have changed the assumptions, costings and recommendations following consultation**;
- summarise the **impacts**, including the impact of each option on small firms and any measures for helping them comply; and

■ **recommend a preferred option**, giving reasons based on the elements of the RIA, in particular the analysis of the benefit and costs.

Implementation

4.4 Consider any other changes that are coming in at the same time. Would it make sense to have a common starting date, or would it help businesses if you staggered the start dates? Generally, businesses prefer changes to happen in a co-ordinated way – for example, all payroll changes to be effective from April. If there are changes happening throughout the year, businesses will have to continually watch out for changes.

There is a danger that they may miss the changes, or may ignore them completely.

4.5 In November 2000 the Prime Minister introduced a **minimum 12-week implementation period for all new legislation**. You will need to ensure that you allow at least 12 weeks between issuing guidance and your proposal or regulation taking effect. This requirement applies even where your proposal or regulation is beneficial to business.

Small firms

4.6 If the Small Firms' Impact Test identified that your policy has a significant impact on small businesses, you will have carried out stage 2 of the impact test. If your policy proposal has changed substantially as a result of the general consultation, you should reconvene focus groups/panels.

Ideally, you should include small businesses that have already taken part in the earlier focus groups since they will be familiar with the policy goal and options for implementation.

This will help them to identify pitfalls and make suggestions to ensure that any burden is minimised. This is a good opportunity to test out any forms that businesses will be required to complete. For more information about the Small Firms' Impact Test and small firms panels/focus groups, see the earlier guidance at pages 21–23 and 27–28 and at www.sbs.gov.uk

Guidance

4.7 The RIA should include details of how the new proposals are to be explained.

Your guidance should enable those affected by the regulation or proposals to understand easily what they have to do to comply. You should start work on the guidance during the policy development process, rather than leaving it until the end.

4.8 Some hints on good guidance are:

- keep it short;
- use question and answer format;
- include a brief summary of what the regulation means;
- use plain language;
- avoid jargon;
- road test draft guidance with users, particularly business users, before it is issued;
- clear all guidance to be used by small firms with the SBS; and
- allow a minimum of **12 weeks' implementation period** between issuing guidance and the regulations coming into force.

4.9 For more information on how to produce effective guidance see *How to get the message across* produced by the SBS which is available at www.sbs.gov.uk/content/legislation/smeguidance.pdf

Collective agreement

4.10 You should bear in mind that if the proposal has been changed substantially following consultation you may need to get further collective Ministerial clearance (and clearance through the Legislative Programme Committee (LP Committee) if primary legislation is involved). Check with your DRIU and with the relevant Cabinet Committee Secretariat for more advice about whether this is necessary.

Ministerial sign-off

4.11 If the Minister chooses a legislative option he or she must sign off the full RIA. Where a policy is shared across two or more departments, it will normally be the lead Minister who is responsible for signing off the RIA.

4.12 All RIAs should also give a contact point for enquiries and comments. This should consist of a name, address, telephone number and email address.

4.13 All final RIAs should use the following wording in the Ministerial declaration:

“I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs

Signed by the responsible Minister

.....

Date.....

Contact points: Name, unit or branch. Department address, telephone number and email address.”

4.14 The RIA becomes a final RIA once it is signed by the Minister. You will need to arrange for it to be placed in the libraries of both Houses when the regulation or legislation is presented to Parliament by sending:

Three copies of the RIA to

Deposited Papers Clerk

Oriel Room

House of Commons Library

London SW1A 0AA

One copy of the RIA to

Deposited Papers Clerk

Derby Gate Library

1 Derby Gate

London SW1A 2DG

One copy of the RIA to

Deposited Papers Clerk

The Library

House of Lords

London SW1A 0PW

Publication

4.15 RIAs are not formally published. They must be placed on departmental websites and a copy of the final RIA is placed in the House library. The full RIA should accompany all primary, secondary and European legislation when it is presented to Parliament. The requirements are as follows:

■ In the case of **Government Bills**, including those implementing European Directives, a summary of the RIA forms part of the Explanatory Memorandum to the Bill.

This should be a neutral statement of the costs and benefits and should avoid being an argument or justification of the measure.

You should include a reference to where the full RIA can be obtained using the following standard form of words:

A full RIA of the costs and benefits that this Bill would have is available to the public from ...”

■ In the case of **Statutory Instruments**, the Explanatory Note should say that an RIA is available and where it can be obtained.

■ In the case of **European legislation**, an RIA must accompany all Explanatory Memoranda submitted to Parliament. In cases where you are not able to prepare a full RIA in time, you should ensure the Explanatory Memorandum contains the best possible initial assessment and that the RIA follows as quickly as possible.

■ In the case of **Private Members’ Bills** that the Government is planning to support, or is not intending to oppose, you should produce an RIA by the date set down for Second Reading. It is good practice to prepare an RIA for a Private Members’ Bill being opposed, in order to obtain the evidence to justify the objection to the Bill.

4.16 When a Bill passes into the Lords (or the Commons if it was introduced in the Lords), you will need to issue another version of the RIA if there have been any significant changes made to the Bill in the Commons.

You should ensure that all full RIAs are available on departmental websites in a clear and accessible manner and linked to the RIU website.

If your RIA is not linked to legislation – for example, because it relates to a strategy document or a code of practice – you should publish the RIA on your departmental website along with the relevant document or code of practice.

Chapter 5

Handling European proposals

5.1 This chapter covers the special features of handling European proposals, focusing on directives being negotiated under the co-decision procedure.

However, the principles can be applied across the board as best practice in handling European proposals. The Cabinet Office European Secretariat produces information and guidance on different EU decision making procedures. They can be contacted on 020 7276 0086.

5.2 In June 2002 the European Commission adopted an Action Plan for Better Regulation, in which it committed itself to introducing systematic impact assessment and minimum standards for consultation for new policy proposals. Details of what you can expect to see from the Commission are at para 5.11. This does not affect the requirement for a UK RIA to be produced.

5.3 You should carry out an RIA when negotiating a piece of legislation or an agreement which will ultimately have to be implemented in the UK. For European proposals this includes directives, regulations, decisions, technical adaptations to European Union (EU) provisions, and joint positions and conventions under second and third pillar co-operation. The way you complete your RIA is covered in **Chapters 2, 3 and 4**, and you should read these in conjunction with this chapter.

5.4 Key points to remember when handling European proposals

- You do not have control of producing the proposal, the Commission does. It is therefore vital to seek early warning of ideas that the Commission may be developing. You should already have good links with policy makers in the relevant Directorates-General (DGs) but, if not, find out who the best contacts are and talk to them. They are often glad of external input as they try to find solutions to problems which will work across the EU.
- You are one of many players (14 other Member States and the European Parliament) so you have to find out what their positions are to inform your options and your negotiating strategy. This is crucial – no one can negotiate effectively without knowing the position of others.
- Networking, lobbying and forming alliances are crucial.
- Ensure UK representation on informal/expert working groups.
- Start thinking early about the practicalities of implementation and enforcement as these are often overlooked during negotiations but can have a significant impact, in particular the time allowed for negotiation.
- Keep in regular contact with the relevant desk officer in the European Secretariat as they co-ordinate the UK negotiating position in all areas.
- Use UKRep in Brussels to identify and help make contact with key policy makers in the Commission, Parliament and the Permanent Representations of other Member States – <http://ukrep.fco.gov.uk>

Explanation of terms

Commission = European Commission

Parliament = European Parliament

Council = Council of Ministers

UKRep = United Kingdom Permanent Representation to the European Union

- Contact the Foreign and Commonwealth Office to explore using UK embassies in other EU Member States to help you identify the most appropriate contacts in the respective Ministries.

5.5 When to prepare an RIA

- Prepare an **initial RIA** as soon as you know that the European Commission is thinking about a new proposal.
- Develop this into a **partial RIA** when the Commission produces its proposal. You will have to include this with Ministerial correspondence seeking collective agreement on the negotiating line and the Explanatory Memorandum (EM) to the UK Parliament, as well as the formal consultation document.

Update your partial RIA when Council or the European Parliament put forward amendments.

- **Refocus your RIA** when you are at the transposition stage to include options for implementation.

5.6 Whether you are working on EU or other international proposals, all stages of your RIA should be used to inform the negotiations as well as in the UK clearance/scrutiny process.

Initial RIA

5.7 An initial assessment at the earliest stages of the development of a proposal will enable you to inform the early thinking of your Minister, and will help in early contact with the European Commission, other Member States and those likely to be affected by the proposal.

■ **Involve your Ministers** at the outset to decide on your position. They will have political considerations to take into account, and may wish to guide or take an active role in early lobbying of the key EU institutions or Ministers in other Member States.

■ **Seek the views of Whitehall and Devolved Administration** colleagues as necessary.

■ **Seek the views of stakeholders.** Informal consultation with those likely to be affected by a proposal will inform your range of options and their costs and benefits.

It is also a useful way of mobilising others to take action to try to shape the proposal, particularly on how the proposal might work on the ground and what costs and problems it might cause UK industry.

Early contact of this kind can often prevent implementation and enforcement problems later on.

Encourage stakeholders to respond to any consultations that are conducted by the Commission. The Commission has said that its external consultations should be conducted at an early enough stage in the process to allow for the shape of proposals to be influenced.

■ **Maintain contact with Commission officials.** If you are able to influence the Commission's decision whether or not to come forward with a proposal, consider whether the measures proposed at Community level are fully justified, and what will happen if the Commission does not take action.

This will provide a base against which you can assess other options.

Even at this stage you should be starting to work out the costs and benefits of all the options (See **Chapter 2**).

Look out for consultations carried out by the Commission on its proposals before they are formally published, and feed in your comments.

■ **Involve departmental lawyers** at the outset. It is very important that you involve departmental legal advisers at an early stage in a legislative proposal. They will be able to advise:

– whether the Community has the **legal competence** to act in this area;

– whether the proposed legal base is appropriate;

– whether there is consistency within a measure and consistency between measures;

– the proposal's compatibility with the existing UK legal framework, what controls already exist that cover these issues, the extent of amendments necessary to accommodate it and whether it would work in practice (**thinking about implementation and enforcement issues from the start is crucial – including the practicality of the proposed timescales and sanctions**);

– how far the proposal is the appropriate means of meeting the objective at which it is aimed and whether there are alternatives to legislation;

– whether to consult other lawyers, particularly those in the Devolved Administrations, where the legal system differs; and

– when considering European draft legislation, if it is not feasible or appropriate to have **sunsetting**, those negotiating the directive should consider getting a commitment to **review** in the text of the directive itself.

Through its Action Plan on Better Regulation the European Commission, without prejudice to its right of initiative, is committed to take steps to add, where appropriate, a review clause to its legislative proposals.

5.8 If the possibility of legislation arises, get in early.

If you are aware that the Commission plans to propose new or amending legislation, early involvement before a proposal is formally made often gives you the best chance to influence the scope, cost and effectiveness of a new legislative proposal.

Suggesting text can often work, but you should also consider using your RIA to influence Commission thinking.

In April 2002 the Department for Transport, Local Government and the Regions presented to the Commission (DGTREN), and officials in other Member States, an initial RIA on proposals to change roadworthiness emissions requirements for cars and lorries.

At the ensuing Commission Working Group enough Member States took on board UK comments in the RIA to block the proposal and the Commission subsequently indicated its intention to withdraw the proposal.

5.9 **Use information gained from the informal consultation** to work out the various options and discuss as appropriate with the Commission.

5.10 **Inform your DRIU contact and your departmental EU Division** if the proposal looks as though it will have a significant impact (see para 3.17 for a definition of 'significant impact'). They will wish to discuss it with Cabinet Office RIU.

What the Commission is doing

5.11 The following gives an overview of what the Commission has committed itself to in its Action Plan on Better Regulation.

In its Better Regulation Action Plan, adopted in June 2002, the **Commission** committed itself to the following key measures:

- The introduction of a **two-stage impact assessment process**, covering the economic, social and environmental impacts of policy proposals – to be implemented gradually from start 2003, with a view to being fully operational in 2004/2005.

Impact assessment will be applied to all proposals listed in the Annual Policy Strategy or Work Programme.

All proposals will be subject to a preliminary assessment, with some proposals being selected for extended assessment.

- A commitment to **establishing and adhering to minimum standards for consultation** to improve the openness and transparency of the policy making process from start 2003, including a commitment to an inclusive approach, to acknowledging responses, ensuring feedback and a minimum period for consultations of eight weeks.

All Directorates within the Commission are signed up to the Action Plan. However, since this is a new initiative, it will take time to become embedded in the Commission's working practices. The support and assistance of UK policy officials will be key to promoting and delivering on this agenda, which is a priority for the UK.

Suggestions for what you can do

5.12 The Commission's impact assessments will cover impacts across the European Union.

You will still need to produce a UK RIA in connection with European proposals, in order to assess UK-specific impacts in more detail.

The information you produce for UK use may feed into the Commission's impact assessment.

Partial RIA

5.13 When the Commission issues its proposal for consideration by the Council and Parliament, you should be in a position to develop your RIA to consider more fully the costs and benefits and risks of each of your options. Your partial RIA will be used for three things:

- to inform your Minister's decision on a negotiating line;
- to seek agreement to your negotiating line from Cabinet, Cabinet Committee, No 10 or other interested Ministers; and
- to inform the UK Parliament of your negotiating strategy (your RIA should always accompany any Explanatory Memorandum (EM) you send to scrutiny committees). See the Europe section of the RIU website for further information (www.cabinet-office.gov.uk/regulation/europe/index.htm).

Assessing the costs and benefits

5.14 Start thinking at the earliest possible stages about the costs and benefits of the options and how the measures would be implemented in the UK.

Your Ministers will wish to consider the options, and the possible effect the proposal might have at national level.

This might include a description of what it might mean for a typical large/small firm.

5.15 Although the prime concerns are the costs and benefits of regulation to the UK, it would be useful to have this information for other Member States or the EU as a whole where such information is not costly or burdensome to obtain, or where the proposal itself has major cost implications.

5.16 Take into account any figures put forward by the Commission in its impact assessment.

- **The Commission is committed to producing preliminary impact assessments for all proposals presented from start 2004.**

However, for reasons of good practice, it should be encouraged to carry out impact assessments for all proposals adopted during 2003.

- You should check that proposals identified as **significant in the Annual Work Programme for 2003 are accompanied by an extended impact assessment** when they are published. (One of the issues not yet clarified, at the time of writing, is the basis on which the Commission will select the proposals for extended assessment. However, there is no harm in challenging the Commission's views on this and asking for an extended impact assessment for any measure if we think it is warranted.)

- You should be **prepared to contribute the UK data on the likely impact of the proposal** if requested to do so by the Commission. This information should already be available from preparing the UK RIA.

- You should check that **consultation has been conducted (at least) according to the minimum standards** established by the Commission, and that the results of the consultation are reflected in the Explanatory Memoranda accompanying the proposal.

■ Encourage **other Member States and external stakeholders** to influence the Commission to produce well-assessed proposals, based on effective consultation.

5.17 Contact officials in **other Member States** to find out their views and what their priorities and constraints are. Where appropriate, you should share your early figures on costs and benefits with them.

5.18 The **European Secretariat** also co-ordinates on legislative issues, particularly where concessions in one area may impact on others. You should consult the Secretariat as necessary throughout the negotiating process, particularly where any UK difficulties might arise (for example, when there is an unresolved difference of opinion between departments on a key negotiating point).

Formal consultation on European proposals

5.19 You should aim to start the process of public consultation as soon as a proposal is communicated to the European Parliament and Council in the Official Journal, using your partial RIA to help inform the consultation, and then updating it based on the results obtained. Although your informal contacts will have given you a great deal of information, you may find that open consultation of this kind will highlight unexpected or previously unconsidered consequences.

5.20 You will normally be able to complete your consultation in the 12-week UK minimum period, but if the speed of negotiations on the proposal means this is not possible, you should highlight this in your consultation document. In this case, use the results of your informal contacts to supplement the information gained during open consultation as necessary.

5.21 Whilst striving for maximum openness and transparency in the process, there may be occasions where a judgement needs to be made about the level or nature of information published in the RIA due either to commercial sensitivity, or the desire to retain the confidentiality of a negotiating position. In such cases seek advice from your DRIU, who will contact the Cabinet Office RIU, the European Secretariat or UKRep, as appropriate.

Using the RIA to inform your negotiating line

5.22 Ensure you have read Cabinet Office guidance on how to negotiate in the EU, available from the Cabinet Office European Secretariat.

5.23 **Work with other Member States.** You need to discover the positions of other Member States and form alliances where possible. Get others to support your amendments. Look out for any RIAs they may have carried out and encourage them to consider the impacts on their own industry. You may wish to share information from your own RIA with them, subject to the sensitivity of keeping your negotiating position confidential.

5.24 **Work with the European Parliament.** Briefing MEPs and making contact with members of the relevant committee can be a good way to influence the final shape of any legislative proposal, as they put down amendments to the proposal, or give an opinion on it. You can contact MEPs from all countries directly, and UKRep (<http://ukrep.fco.gov.uk>) and the European Secretariat in the Cabinet Office can give you advice on this. Generally, a very short factual note is the most effective means, supplemented by individual meetings with key committee members. Recently, a UK RIA on fuel quality was used to demonstrate to MEPs the massive cost of changing Non Road Mobile Machinery fuel compared with the negligible benefits, leading to a change in the Parliament's position.

5.25 **Work with the Council Secretariat** (who are experts in the field and know about previous, related legislation) and the Council Legal Service (who will be working with the Commission and Presidency to redraft legislation during the negotiations). Getting them to understand your points of view can be just as important as with Member States, and a successful way to make changes to the text. During negotiations, the Council Legal Service can be requested to advise on the Treaty base or other aspects of the text. It is prudent to check with departmental lawyers and UKRep before seeking the advice of the Council Legal Service.

5.26 **Update the RIA as you go along.** Assess all significant changes to the substance and the text of the legislative proposal as negotiation proceeds, as these may change the extent of the impact on those affected by the legislation in the UK. Encourage the Commission to update their assessments. There may be occasions where there is very little time between a vote in the European Parliament and the next Council meeting so updates to the RIA will need to be made quickly.

Project plan for transposition

5.27 Put together a project plan for the eventual transposition of the legislation. You should have been considering the practicalities of transposition and enforcement from the earliest stages of the negotiation, in order to ensure UK implementation places the minimum burden on industry, and talking to the parts of the UK Government likely to have a role in implementing it. Your plan should set out the timing and resources required in order to transpose the legislation properly and on time. It should be agreed with Ministers, other departments, Cabinet Office and, where appropriate, Devolved Administrations, no later than adoption of the Common Position by the Council.

Ministerial sign-off

5.28 Although agreeing a piece of legislation, your Minister does not need to sign off the RIA at this point as you have only reached a halfway stage in the process. It is only when laying a piece of UK legislation before Parliament that this sign-off is required.

Implementing European legislation

5.29 Your RIA should be refocused at this stage to consider options for implementation, some of which will already have been considered during the negotiations. For example, a directive might state that an activity must be licensed but, depending on the risk involved, it might be appropriate to issue a ten-year licence rather than an annual one. This would significantly reduce the administrative burden on industry while still achieving the directive's objective. Thinking about the practicalities early enough allows you to negotiate a degree of flexibility into the wording of a directive or regulation to help it fit with existing UK mechanisms, and reduce the costs of implementation to both the public and private sectors.

5.30 It is a requirement of Community law that EC legislation should be implemented in an effective, timely and proportionate manner. Where directives are concerned, the Government's policy is to transpose so as to achieve the objectives of the European measure, on time and in accordance with other UK policy goals, including minimising the burdens on business. Your RIA should cover all the options for implementation, highlighting any risks attached, including the consequences of legal challenge, and the potential economic and other impacts.

5.31 **Obtain legal advice** on whether each option will achieve the results required by the directive. Identify areas of uncertainty in interpretation in the directive itself. Where there is doubt about the precise legal obligation, you should present Ministers with options, and the risk attached to each, not just the lowest risk route. When considering the options, the 'do nothing' option should still be mentioned. It will rarely be a feasible option because the requirements of the European legislation will not usually be fully met in the UK. However, the figures you will have worked out for the 'do nothing' option in advance of negotiations will serve as a baseline for all other options to be measured against.

5.32 Ensure adequate consultation with stakeholders about the options, in particular where decisions are yet to be taken in committees designated to adopt implementing measures. Such measures might include decisions on the detailed implementation of Community laws, decisions on managing Community policies, and technical adaptation or updating of legislation. Your RIA should take into account the decisions made in such committees as these can have a significant effect on the impact of legislation.

5.33 You should continue to work closely with any relevant enforcement agencies.

5.34 **Identify instances of over or under-implementation.** There may be pressures to preserve the existing domestic legislative framework; to provide legal certainty and avoid possibilities of challenge in the courts; and to implement different parts of a directive in different ways where it covers the responsibilities of more than one domestic department. These pressures can lead departments to 'over-implementation' and in particular to 'gold-plating' or 'double-banking'.

5.35 Gold-plating is when implementation goes beyond the minimum necessary to comply with a directive. For further information see the Europe section of the RIU website (www.cabinetoffice.gov.uk/regulation/europe/index.htm). It is Government policy not to gold-plate directives unless there are exceptional reasons for doing so. Any gold-plating must be justified against any costs or benefits that will arise from it. Instances of gold-plating will need to be brought to the attention of the Cabinet Office RIU.

5.36 Double-banking is when European legislation covers the same ground as existing domestic legislation, though possibly in different ways and to a varying extent. For further information see the Europe section of the RIU website (www.cabinet-office.gov.uk/regulation/europe/index.htm).

Transposition Checklist

5.37 It is important that UK legislation implementing European legislation is simple, transparent and easily understood.

5.38 The **checklist** exists to guide officials in transposing European legislation in the best possible way. It covers the important issues in the transposition process, allowing officials to make sure that they have taken all necessary action, from identifying policy goals to the legal risks. See the Europe section of the RIU website for more information (www.cabinet-office.gov.uk/regulation/europe/index.htm).

Consultation on draft implementing legislation

5.39 When you have drafted your implementing regulations (and gained Cabinet clearance) you will need to consult on them, following the steps outlined in Chapter 3.

5.40 Guidance on drafting can be found in the Europe section of the RIU website and from Cabinet Office Legal Advisers.

Full/final RIA

5.41 You should update your RIA in the light of the results of your consultation and any further information and analysis. **Chapter 4** outlines what your full RIA should cover.

5.42 Implementation of European legislation is usually via a UK legislative route and so your Minister will need to sign off the full RIA. See **Chapter 4** for guidance on the steps to follow.

Transposition Notes

5.43 Since November 2001 it has been a requirement that all legislation laid before the UK Parliament that transposes any European directive must be accompanied by a **Transposition Note** (TN). The TN should show how each element of the directive has been, or will be, transposed into UK law. This will allow greater transparency but also highlight areas of over or under-implementation.

5.44 See the Europe section of the RIU website for more information on TNs.

Guidance

5.45 Clear practical guidance can play a timely role in helping to avoid Commission infraction proceedings and national court cases based on alleged inadequate or incorrect implementation or enforcement of EC legislation. Any such guidance should form part of your department's entry on the Direct Access Government website which can be found at www.ukonline.gov.uk

Monitoring implementation in the UK

5.46 The European Secretariat of the Cabinet Office is responsible for monitoring the implementation of all EC law in the UK. The Lord Chancellor's Department should be consulted about the Isle of Man and the Channel Islands (www.lcd.gov.uk/constitution/crown/govguide.htm), and the Foreign and Commonwealth Office about Gibraltar (020 7008 3310). You should inform them as soon as possible if there are likely to be any difficulties with the implementation of a particular piece of Community legislation (for example, if it is going to be difficult to meet a deadline for implementation). The European Secretariat also co-ordinates the Government's response to infraction proceedings which the European Commission brings against the UK for any failure to transpose Community law properly or in time.

Infraction proceedings and European Court of Justice cases

5.47 You may need to revisit some of the options laid out in your RIA, or consider new options, when faced with infraction proceedings. This may mean consulting stakeholders on an informal basis, with due regard for the confidentiality of the legal process, and bearing in mind the often short timescales allowed for responses to the Commission. **Ensure all advice to Ministers covers all the options and the risks associated with each.**

5.48 Most infraction cases are resolved before they reach the European Court of Justice. However, if a case does reach this stage you should set out the advice to Ministers in the same way as above, bearing in mind that you are

not bound by the same rules of confidentiality, allowing more open consultation where deemed necessary/appropriate.

Glossary of European terms

Acquis

This is the collection of Treaties, legislation and European Court rulings that make up the legal identity of the European Community.

Cabinets of the European Commission

Each Commissioner has a private office, or *cabinet* of personal staff, the head of which is called the *chef de cabinet*. There are usually six *cabinet* members (the President's being larger). Individual *cabinet* members play a significant role in policy formulation, and act as a filter between the Commissioner and the Commission's permanent civil service. They have a wider role than private offices in Whitehall.

Codecision Procedure (Article 251/EC)

Introduced by the Treaty of Maastricht, this procedure has been modified by the Treaty of Amsterdam and now applies to most areas of Community legislation. It is a complex process – what follows is a simplified version to act as a guide only. A proposal submitted to the European Parliament and Council for adoption is first examined by the Parliament (First Reading). Any amendments must be accepted by a simple majority of MEPs. These views are then considered by the Commission, which makes an amended proposal to take them into account. The Council modifies this text and adopts its Common Position, by either Qualified Majority Voting or unanimity depending on the circumstances. The Common Position is transmitted to the Parliament (Second Reading) where any further amendments must be adopted by an absolute majority of MEPs. The Council again examines the resulting text and decides whether it accepts the Parliament's amendments. If not, the Conciliation Committee is convened to seek a compromise.

See also the **Consultation Procedure**.

Commission of the European Communities (CEC)

The Commission is the guardian of the Treaties. It has the sole power to propose legislation based on the Treaties, and executes the decisions taken by the Council. The Commission is composed of twenty Commissioners (two each from the five larger Member States and one each from the others) appointed by the Member States for a five-year term and headed by the President. They are supported by their *cabinets*. A full meeting of Commissioners occurs weekly (usually on Wednesdays). The Commission services are further divided into 24 Directorates-General, which deal with specific policy areas plus a number of other functions (translation, interpretation, legal etc).

Committee (European Parliament)

Most of the legislative and policy work of the European Parliament is done in specialised committees of MEPs, similar to Select or Standing Committees in Westminster. It then goes to the plenary session for final agreement.

Committee of Permanent Representatives (COREPER)

Preparation of items for discussion in Council is usually undertaken by COREPER which consists of ambassadors (COREPER II) and deputy ambassadors (COREPER I) from Member States' Permanent Representations in Brussels. Both COREPERs meet at least weekly (eg COREPER I generally meets on Wednesdays and Fridays) and usually instruct Working Groups to carry out preparatory work. COREPER agendas are divided into (I) and (II) points, which correspond to 'A' and 'B' points on Council agendas.

Comitology

This is the name given to the system of committees set up by various pieces of Community legislation to assist the Commission in its implementation duties. Chaired by the Commission and made up of representatives of all Member States, they are also often used as fora for initial consultations on proposed legislation.

Common Position

This is the name given to the first (and most significant) Council agreed text on a legislative proposal from the Commission. Most issues have been resolved by this stage, and all but (usually) minor details have been finalised. See also the **Codecision Procedure**.

Conclusions

These are one of two main methods the Council uses to signal a political commitment, without the need for binding legislation. They also have the advantage of not needing the Commission to propose them – generally the Presidency will do so. They are of two types: Council and Presidency conclusions, the latter produced on the authority of the Presidency only. The former are generally recognised as needing the agreement of all Member States (and usually of the Commission too). They are Council inventions and tools (ie do not appear in the Treaties), and are of slightly more force than the other method used – resolutions.

Consultation Procedure

The oldest of the main procedures for involving the European Parliament (EP) whereby the Council must wait for the EP's opinion before adopting the legislation. This possibility for delay was in the early days the EP's only weapon. See also the **Codecision Procedure**.

Co-operation on Justice and Home Affairs

Also known as the third pillar, this is a mainly intergovernmental arrangement initially covering areas such as immigration, asylum and visa policies and police and judicial co-operation. The Treaty of Amsterdam has brought much of this into the first pillar. The third pillar is now restricted to police and judicial co-operation in criminal matters.

Council of Ministers of the European Union

This is the final decision making body of the Union for most matters. It meets in specialist formats attended by the relevant national ministers (eg Social Affairs, Environment and Internal Market Councils), chaired by the Presidency and also attended by the Commission (usually the relevant Commissioner). Working Groups and COREPER prepare its work. It is supported by the Council Secretariat.

Council Secretariat

This is the permanent staff at the Council, responsible for the organisation of meetings at all levels. It also provides the resident experts on precedents and procedures in the Council. It is divided up into Directorates-General.

Council Working Groups

As the name suggests, meetings of officials (from national capitals and/or Permanent Representations), chaired by the Presidency, where the bulk of negotiation of legislation takes place and the technical detail worked out before the dossier is passed up to COREPER and then the Council itself. The Commission also attends, usually at the level of Head of Unit.

Decisions (Article 249/EC)

Decisions are one of the three kinds of binding legislation the Community uses. Adopted by the European Parliament and Council (if the Codecision Procedure used), or by the Council alone, or by the Commission in certain circumstances, they are binding on those to whom they are addressed (be it Member States, companies or even individuals).

Directives (Article 249/EC)

Directives are one of the three kinds of binding legislation the Community uses. They are adopted by the European Parliament and Council (if the Codecision Procedure is used), or by the Council alone, or by the Commission in certain circumstances. They are addressed to the Member States and are binding on them as to their effect whilst leaving the choice of means of implementation to national administrations. This means that unlike most regulations and decisions, directives must be transposed into national law.

See also **Regulations** and **Decisions**.

Directly Applicable

Where a legal instrument applies in the Member States without having to be transposed into national law (regulations and certain articles of the Treaties, and some decisions). See below.

Directly Effective

A legal instrument that is not directly applicable can nevertheless produce direct effects for individuals, who can thereby rely on provisions of that instrument against the State and its emanations in advance of that instrument being transposed into national law. Certain conditions must be satisfied for direct effect to be available.

Directorate-General

This is the main division of the European civil service. The Commission's services have 24, given Roman numerals (eg DGIV, DGXIII), the European Parliament's have Arabic numerals (DG3, DG5) and the Council's letters (DGC, DGJ).

European Community

There are actually three European Communities governed by separate Treaties from the 1950s: the European Community (EC, formerly the European Economic Community (EEC)), the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EAEC or EURATOM). The Merger Treaty of 1965 merged the three in a single institutional structure. The Single European Act, the Treaty of Maastricht and the Treaty of Amsterdam also amended them. Together these three Communities form the first pillar of the European Union.

European Council

A summit of Heads of State or Government that has met regularly since the 1970s, and at least twice a year since 1986. Originally an informal gathering, the European Council was given formal recognition in the Single European Act of 1986. Charged by the Treaty of Maastricht with co-ordinating intergovernmental policy in the areas of common foreign and security policy and justice and home affairs, the European Council also retains its original function of stimulating and co-ordinating community activities. These meetings are sometimes referred to as European summits.

European Court of Justice (ECJ)

The European Court of Justice is composed of an odd number of judges – one from each Member State, plus one more if necessary (ie currently 15, but 13 before the accession of Austria, Finland and Sweden), appointed for periods of six years. It rules on questions relating to interpretation of the three Community Treaties, and the secondary legislation in direct actions and in cases referred to it by national courts. ECJ judgments form part of national law. It also has certain powers in relation to third pillar measures.

European Economic Area (EEA)

The European Economic Area in effect extends the single market to cover Iceland, Liechtenstein and Norway – subject to agreement they must follow the applicable EC legislation without having had a full say in its negotiation, in return for which they have full access to the Internal Market.

European Parliament (EP)

The European Parliament is composed of 626 members (87 from the UK), elected every five years according to the electoral rules of each Member State. Formerly largely a consultative body with some real budgetary powers and the right of approval of the entirety of the College of Commissioners, the Treaty of Maastricht has increased its potential control over the activities of the Commission, and has augmented its direct links with European citizens, a trend continued by the Treaty of Amsterdam. The Parliament meets regularly in Strasbourg and Brussels.

European Union

The European Union was created by the Treaty of Maastricht in 1992 (also called the Treaty on European Union, or TEU). It consists of three pillars – the Economy (ie the European Community), Common Foreign and Security Policy and, following changes by the Treaty of Amsterdam, Police and Judicial Co-operation in Criminal Matters. It also created the concept of European citizenship, extended many policy areas and introduced the Codecision Procedure for adopting legislation. The Members of the European Union are the same as the Member States of the three European Communities.

First pillar

See **European Community**.

Implementation

The application and enforcement of Community law within the Member States, once it has been transposed into national law where necessary.

See also **Transposition**.

Infractions

Where a Member State fails to comply with its obligations under the Treaty – for example, by not correctly transposing a directive (or not doing so on time), or by failing to implement it properly. Infraction cases are taken to the European Court of Justice by the Commission for trial if their Reasoned Opinion is not adequately answered.

Legal base (or basis)

The article of the European Community Treaty of Rome that gives the Community the right to act is often called the legal base. It also describes the voting procedure and type of legislative procedure (eg codecision) that should be used.

Member State

A country which is a member of the EU.

Permanent Representations

The permanent offices in Brussels of each Member State – effectively the ‘embassies’. They generally have four main functions:

- to participate in and service the negotiating machinery of the Council;
- to maintain contact with Community institutions and other Permanent Representations;
- to provide information and advice to their national authorities; and
- to deal with visitors representing special interests, particularly organisations interested in Community activities and business people.

The UK’s office is known as UKRep.

Presidency

This is in effect the chairmanship of the European Union. The Presidency chairs all Working Groups, COREPER and Council meetings and is important in setting the Union’s agenda and working towards an agreement.

Qualified Majority Voting (QMV)

One of the three forms of voting in the Council, a proposal requiring QMV to be adopted needs 62 votes from Member States in favour out of the total of 87 weighted votes. Votes are distributed according to an approximation of relative population, with the UK having 10 votes.

See also **Unanimity**.

Rapporteur

A member of a European Parliament Committee selected to draft the Committee’s report on a specific issue such as a legislative proposal. Their role is to research the background to the topic, bring forward their own ideas and combine them with a synthesis of the views of other Committee members. Once amended and adopted by the Committee, the rapporteur’s report becomes the main basis for discussion, amendment and adoption by the plenary. The influence of a good rapporteur on the final shape of a proposal can therefore be quite large.

Recital

The explanatory and/or declamatory clauses at the beginning of a piece of legislation. Also known as the ‘Whereases’ as most start with ‘Whereas...’.

Recommendations (Article 249/EC)

One of the two kinds of non-binding act cited in the European Community Treaty of Rome, these are without legal force but are negotiated and voted on according to the appropriate procedure (eg codecision etc). They can be adopted by the European Parliament and Council (if the Codecision Procedure is used), or by the Council alone, or by the Commission in certain circumstances. Though without legal force, they do have a political weight.

Regulations (Article 249/EC)

Regulations are one of the three kinds of binding legislation the Community uses. Adopted by the European Parliament and Council (if the Codecision Procedure used), or by the Council alone, or by the Commission in certain circumstances, they are directly applicable and binding on everyone, including Member State administrations. See also **Directives** and **Decisions**.

Resolutions

These are one of two main methods the Council uses to signal a political commitment, without the need for binding legislation. They also have the advantage of not needing the Commission to propose them – generally the Presidency will do so. They are generally recognised as needing the agreement of all Member States (and usually of the Commission too). They are Council inventions and tools (ie do not appear in the Treaties), and are of slightly less force than the other method used – **Conclusions**.

Second pillar

Deals with Common Foreign and Security Policy in the European Communities.

Subsidiarity

The concept that action should only be taken by the Community if it cannot be done well enough or better at national level.

Third pillar

Created by the Treaty of Maastricht, this pillar describes the sections of that Treaty which provide for intergovernmental action in the field of security policy and co-operation. Following entry into force of the Amsterdam Treaty, the third pillar is now restricted to Police and Judicial Co-operation in Criminal Matters.

See also **Co-operation on Justice** and **Home Affairs**.

Transposition

The process of writing Community law into national legislation – needed for directives.

See also **Implementation**.

Treaty of Amsterdam

The Treaty of Amsterdam entered into force on 1 May 1999. It provides for important changes in the range of matters falling under EC competence – incorporation of the Schengen acquis, moving visas and asylum policy to the first pillar, employment chapter, incorporation of social protocol. It also brings about changes in the way that the Community goes about its business – extension of codecision and QMV, transparency etc.

Treaty of Maastricht

This Treaty amended each of the three existing Treaties (Treaty of Paris and Treaties of Rome) and outlined further activities which the Member States could undertake on an intergovernmental basis (the added pillars of Justice and Home Affairs, and Foreign and Security Policy).

Unanimity

One of the three forms of voting in the Council, a proposal requiring unanimity must have no Member State voting against (abstentions do not matter).

Annex 1

Initial/partial/final RIA template

1. Title of proposal

In full including any EU document reference.

2. Purpose and intended effect of measure

(i) The objective

State clearly what the proposal or proposed regulation intends to do. What effects will it have, on whom?

Devolution: *Mention specifically if this change applies to UK, GB or England only.*

(ii) The background

Give a brief resume of the problem, the current legislative framework and why it needs to change.

(iii) Risk assessment

What risk is the regulation addressing? Can it be quantified, eg how many people are affected, and how?

3. Options

Option 1: Do nothing

Option 2: (eg) Get the industry to impose a voluntary code of practice/self-regulation

Option 3: ...

Flag up any potential **risks** associated with the options, describing the likelihood of them occurring and their effect if they were to occur.

4. Benefits

Option 1:

Option 2:

Option 3: ...

Think widely about the benefits (to people, the economy, firms, environment...) and involve your departmental economist when quantifying them. As far as possible benefits should be calculated on a per annum basis. Use ballpark figures and ranges where there is uncertainty about the impacts. You should also note any transfers to highlight distributional aspects of the policy, and the effects on individual benefits of changes in the assumptions.

Business sectors affected

Think widely about who might be affected both directly and indirectly – which sectors, how many firms, what size are the firms?

Issues of equity and fairness

You need to consider whether the proposal is correcting a current inequality, introducing an inequality that might be justified or will be neutral in effect. Will some be more affected than others? Will the benefits be gained by a different group from those that bear the costs?

5. Costs

(i) Compliance costs

Option 1:

Option 2:

Option 3: ...

What will firms need to do to comply? Think widely – will they have to buy new equipment or train staff? Will they need to provide revised guidance material or spend more time filling in new forms or undertaking checks? Will the costs all fall in the first year or will they be incurred every year? As far as possible costs should be calculated on a per annum basis (including spreading any one-off costs over time – ask your economists how to do this). Use ballpark figures and ranges where there is uncertainty. The analysis needs to reflect both the policy costs and the implementation costs, as well as any unintended consequences.

(ii) Other costs

What effects will the policy have on those other than businesses, charities and the voluntary sector? What costs will be imposed on society or on the environment? You should also note any transfers to highlight distributional aspects of the policy.

(iii) Costs for a typical business

If possible identify a typical business (or several typical businesses if your proposal covers a wide range of firms), explain the type of activities that will have to be undertaken by such firms, quantify those activities and cost them out. It may be helpful to do this before 5(i) to help inform the estimate of total cost. Talk to your economists.

6. Consultation with small business: the Small Firms' Impact Test

Talk formally and informally to small firms and their organisations. Talk to the Small Business Service on 020 7215 8378 (website www.sbs.gov.uk).

7. Competition Assessment

Your answers to the nine competition filter questions (see **Annex 3**) will determine whether you need to include a simple or detailed assessment of competition effects (see *Guidelines for Competition Assessment* – www.offt.gov.uk). Speak to your economists and/or the Office of Fair Trading on their helpline 020 7211 8500 if you need further advice or do not have adequate information.

8. Enforcement and sanctions

How will the proposal be enforced?

Who will enforce any legislation? If your proposal or regulations will impose costs on another organisation, are they content to accept this? Under HM Treasury's New Burdens agreement, any burden on other government departments and local authorities must be quantified and costed: your department will need to transfer funds from its own budget to fund the requirement. Will the legislation impose criminal sanctions for non-compliance? If so, on what scale? Is the Lord Chancellor's Department content (it is their job to manage the courts)?

9. Monitoring and review

How is the effectiveness of the legislation to be measured and when?

10. Consultation

(i) Within government

List those departments and agencies you have consulted.

(ii) Public consultation

- In the early stages of an RIA this should say how you plan to consult and indicate with which groups. The Cabinet Office Code on Consultation sets out 12 weeks as the normal minimum – if you plan to deviate from that you should state why here. Consultees can often help you by providing detailed information about costs and benefits.
- In the final RIA you should give a brief analysis of the number and nature of the responses.

11. Summary and recommendation

Can often be helpfully presented as a grid: You should then explain in a paragraph or two which option is recommended and why.

- When drafting this you should bear in mind the Ministerial declaration: your proposal should offer the best balance, ie an option which gives 90% of the benefits at 50% of the cost will often be preferable to one that gives 100% of the benefits but is much more expensive.
- Be careful that this summary does not introduce any new thoughts that have not been explained elsewhere in the document.

Option	Total cost per annum	Total benefit per annum
1		
2		
3		
4		

12. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed (This remains blank until the legislation is to be sent to Parliament. It then becomes a final RIA)

Date

Minister's name, title, department

Contact point

Insert name, address and phone number of an official who can answer any queries on the assessment or proposed legislation.

A2.1 Alternative methods can be less costly, more flexible and more effective than prescriptive legislation.

Do nothing?

A2.2 You should always consider first whether you need to take any action. This option relies on the market in conjunction with general liability laws and insurance laws.

A2.3 In some cases it is possible that action will not improve the problem, or alternatively, that the problem may solve itself (eg where markets are moving rapidly). Government action may only shift the problem elsewhere, or the costs of government action may be greater than the costs imposed by the problem it is designed to correct.

A2.4 You should also consider the cause of the problem. It is possible that it may have been caused by previous government action and there may be areas of existing regulation that need to be removed, simplified or amended in order to resolve the problem.

A2.5 Regulation is often designed to reduce risk, but holding people responsible for their actions and requiring them to pay damages can provide an incentive to take appropriate levels of care. For example, insurance cover allows businesses to assess risks and determine cost-effective ways to reduce them.

Self-regulation

A2.6 An industry or sector can self-regulate, by producing its own rules and codes of conduct, which it then enforces. In some cases, the Government can also be involved in a limited way, for example by providing advisory information. In other cases, the arrangements may be underpinned by legislation.

A2.7 Self-regulation is common in the professional and financial sectors. For example, the Banking Code, which is sponsored by the British Bankers' Association. Membership is voluntary, but all main banks and building societies subscribe and the British Bankers' Association website lists those who do not comply.

A2.8 You will also need to consider how a proposed scheme will obtain industry compliance and coverage.

Code of practice

A2.9 Codes are generally adopted and administered by the industry to which they relate, although they often complement regulations. Codes may deal with a range of issues such as: membership eligibility, standards for processes, practice or products and services and complaint handling procedures. The advantage of codes is that they are industry specific. This raises commitment from individual companies who are part of the industry. If the drafting and set-up of a code is flexible enough it can be amended quickly. In addition, the industry is often best placed to police compliance.

A2.10 Codes may either be voluntary or mandatory. Voluntary codes are more flexible but outcomes may be less certain. They are best applied where:

- there are strong occupational or industry bodies;
- the implications of non-compliance do not pose significant or irreversible risks; and
- non-compliance with the standard or code is visible (certification, for example, will tell consumers whether their supplier complies with specified standards). The costs and benefits of a code depend very much on its details, so you need to work closely with the organisation preparing the code to ensure that an impact assessment can be made.

Co-regulation

A2.11 **Co-regulation** is a form of self-regulation under which industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangements to be enforced.

A2.12 For example, the Enterprise Act 2002 gives the Office of Fair Trading the powers they need to give formal approval to codes of practice, oversee the monitoring of the operation of approved codes and withdraw approval from codes that are not operating satisfactorily. Another example is the Broadcasting Standards Commission, a non-departmental public and statutory body set up under the Broadcasting Act 1986, and underpinned by a recognised code. Membership is compulsory for all broadcasting authorities.

A2.13 You need to ensure that self-regulation or co-regulation arrangements do not protect or confer commercial advantage on one group over another, or exclude entrants to an industry, fix prices or limit competition. They may also affect consumers, for example by reducing their ability to choose lower cost and/or quality products and services (although prescriptive legislation would probably have similar effects). You will need to consider these issues, and include an analysis of any restrictions on competition and consumer choice that may arise from proposals in your and consumer choice that may arise from proposals in your **Competition Assessment**.

A2.14 Although self and co-regulatory arrangements are usually designed by the industry, you should prepare an RIA to demonstrate that the best option has been chosen. The relevant government department, statutory authority or board should prepare the RIA in consultation with the industry.

Quasi-regulation

A2.15 Quasi-regulation can be used by the Government to influence businesses to comply with rules and standards, for example government-endorsed industry codes of practice, government agency guidance notes and national accreditation schemes like NVQs.

A2.16 Quasi-regulation, like self-regulation, can be more flexible and responsive than formal government regulation. It can also result in better compliance if the rules are designed in collaboration with industry experts.

A2.17 Benefits of self-regulation, co-regulation and quasi-regulation:

- Lower administration costs, because such regulations are developed and often administered by business.
- Lower compliance costs for business.
- Innovative inducements for compliance and sanctions for non-compliance.
- Rules which are tailored to specific needs and thus better targeted.
- Improved information flows, using clearer terms.
- Improved credibility.
- Enhanced flexibility, responsiveness and speed of implementation and modification.
- Greater responsiveness to consumer demands.

A2.18 Potential costs of self-regulation, co-regulation and quasi-regulation:

- Restrictions on competition, eg barriers to entry, restrictions on advertising, prescribed prices etc.
- Some ‘fringe’ businesses not complying with minimum standards.
- Ineffective sanctions for non-compliance.
- Reductions in consumer choice, eg by imposing minimum standards that do not allow consumers to choose lower cost/quality products or services.
- Compliance expectations not met when some businesses do not comply.
- Confusion about regulatory requirements.
- Business may not have the resources and capacity to develop or administer a quasi-regulation scheme.
- The industry may not be able to agree on one code – and may have more than one, leading to higher consumer cost and confusion.

Information and education campaigns

A2.19 Information and education campaigns can improve market functioning by enabling people to make better informed decisions. This allows individuals to choose what is best for them, taking account of the information that is available, rather than regulation imposing one solution for all.

A2.20 Information can be provided through government action in two ways:

- by requiring companies to disclose information about certain features or attributes of the product to consumers, eg labelling requirements. Disclosure of information can also be voluntary. Customers are then likely to turn to companies who do provide information; and
- through the government collecting and disclosing information to the public, eg local authority recycling schemes and anti-smoking campaigns.

A2.21 The benefits of **labelling** are that producers are required to reveal information to buyers that they might otherwise not reveal, for example on the potentially harmful attributes of their products. Labelling can also be voluntary. An example of this is the labelling of nutritional contents. The only obligation is to give correct information. More and more companies are doing it as customers are demanding to see how many calories etc are in the food they are buying. This allows consumers to make informed choices and is often preferable to a ban on the product which imposes one solution on all consumers and does not account for different circumstances (eg the product may pose less harm to some people).

A2.22 Labelling requirements may impose costs on businesses, and these costs are often passed on to the consumer in the form of higher prices. The Government will also incur costs in enforcing the requirements.

Market-based instruments (taxes, subsidies and user charges)

A2.23 Economic incentives can be used in order to change behaviour by altering the relative prices of goods and services in a market, or by creating a market where none previously existed. They can be more efficient than prescriptive regulation because they allow individuals to make their own cost-benefit trade-offs by making their own choices. However, outcomes are less certain than those associated with prescriptive legislation. Taxes and tax credits are usually underpinned by regulation. See the HMT Green Book for more information about these at www.hm-treasury.gov.uk

A2.24 A tax will raise the cost of a certain activity, while a subsidy will lower it. User charges can also be used to increase the cost of certain activities. But taxes can also be used to create incentives by offering credits or favourable tax write-offs.

A2.25 Examples include taxes on emissions of pollution, like the climate change levy, or alcohol and tobacco duties, subsidies to undertake education and charges for using common resources such as water.

Tradeable property rights (marketable rights)

A2.26 These are government-issued permits granting property rights (for example, to a resource) that can be bought and sold in a market. They can be used as an alternative to issuing licences and permits to limit production or consumption.

A2.27 Examples of tradeable permits include water or air pollution permits. As pollution cannot be reduced to zero because it would be too costly in terms of production and employment lost, a desired level of a particular pollutant needs to be set as a ceiling. Once this level is determined, permits are issued which allow the holder to produce a certain share of the total.

A2.28 By allowing trade in permits, those firms that find it easiest or less costly to reduce pollution can do so and sell their excess permits to other firms who are unable to reduce emissions, except at relatively high cost.

A2.29 Tradeable quotas have been used effectively in the United States to control emissions of sulphur dioxide, and in New Zealand to provide for the sustainability of commercial fisheries.

Standards (including voluntary and regulatory standards)

A2.30 Voluntary standards are developed by the British Standards Council (kitemark). They can be incorporated into regulations or used as regulatory standards. There are three main types of standard:

- **principles-based** – which describe the objective being sought in general terms and require interpretation according to the circumstances;
- **performance-based** – which specify the desired outcome in precise terms, but allow individual organisations to determine how to achieve the outcome; and
- **prescriptive** – which specify the technical means for achieving the specified outcome.

A2.31 Examples of alternatives to legislation

Electrical contractors

When customers hire service providers like electrical contractors, they want to be sure that work will be carried out competently. The enrolment criteria for the National Inspection Council for Electrical Installation Contracting (NICEIC) sets out the basic competencies electrical contractors must meet before they join the scheme.

Internet

For consumers using the internet, distinguishing between scams and legitimate information and between reliable and unreliable businesses can be a challenge. The Better Business Bureau in the USA has developed BBBOnline to help businesses and consumers safely navigate the internet.

Display of the BBBOnline seal provides a link to a company's BBB reliability report – and only companies meeting strict BBB standards are able to display the seal.

Further information

See the **Better Regulation Task Force** Report, *Alternatives to State Legislation*, which can be found at www.brtf.gov.uk See also a discussion paper prepared by the National Audit Office on alternatives to state-imposed regulation at www.nao.gov.uk/intosai/wgap/9thmeeting/9thcontents.htm The National Consumer Council has produced two guides to self-regulation: *Better Business Practice: How to make self-regulation work for consumers and business* which can be found at www.ncc.org.uk/pubs/self-reg.htm and *Models of Self-Regulation* which can be found at www.ncc.org.uk/pubs/self.htm The Department of Trade and Industry has produced a booklet *Thinking alternatively!* which contains guidance on alternatives to regulation. It is available from the DTI Better Regulation Team on 020 7215 5557.

ANNEX 3 THE COMPETITION ASSESSMENT

A3.1 Carrying out a detailed assessment can be complex and requires an understanding of competition issues. Policy makers will need to contact their departmental economists and DRIU, and seek the advice of the OFT.

A3.2 Full guidance on the filter and detailed assessment is contained in the OFT publication *Guidelines for Competition Assessment* (OFT 355). The OFT publication *Market Definition* (OFT 403) provides guidance on how to identify the relevant markets. Both of these can be downloaded from the OFT website: www.of.gov.uk or obtained by calling the Competition Assessment helpline 020 7211 8500.

A3.3 All RIAs must include a Competition Assessment. This looks at the impact for UK customers. It should analyse the impacts of a proposed regulation on UK firms in the relevant market(s) and on importers into the UK. The Competition Assessment does not attempt to consider whether the proposal will affect the ability of UK firms to compete outside the UK (ie the effect on UK ‘competitiveness’ – see para 2.44) which should be addressed elsewhere in the RIA. Competition is an essential part of a healthy economy, helping to provide low prices and choice for the consumer. It also tends to increase efficiency and innovation. Regulations can prevent markets from working well when they impact adversely on competition. For example, a regulation that deters potential new entrants to a market, introduces distortions between existing competitors, reduces innovation, or changes firms’ behaviour in other related activities may lead to higher prices and reduced choice for the consumer.

A3.4 Regulations can impact on competition in a number of ways, for example by:

- directly affecting firms’ costs, availability of resources or requirements of customers, eg by changing cost structures;
- directly specifying what product or service must be produced, eg by specifying a minimum standard for a product; and
- directly impacting on how firms compete in a market, eg by preventing new firms from entering a market.

A3.5 Policies may have unintentional effects of distorting or restricting competition. Carrying out a Competition Assessment will help you to identify such effects, and to consider whether it may be possible to lessen or remove significant adverse effects by adopting alternative policy options, or modifying existing ones.

A3.6 The first step in carrying out the Competition Assessment is to apply the **competition filter test** to each market which will be affected by the proposed regulation, in order to assess the risk of a significant detrimental effect on competition. If the test results show that the risk is low (and there are no anticipated significant benefits for competition), you will only need a simple assessment, describing the markets, the effects on competition and your reasoning behind the conclusion. If, on the other hand, the test results show that the risk is high (or if significant competition benefits are anticipated), you will need to undertake a detailed analysis of the competition effects, and the Competition Assessment in your RIA will need to be a **detailed assessment**.

The competition filter test

A3.7 In order to apply the competition filter correctly, you must first identify **the markets** that will be affected (ie the firms that compete against one another to sell the same or similar products or services). However, you should check your market definition with your departmental economist and/or the OFT as this is not always as straightforward as it first appears. Remember also that a regulation or proposal may impact directly on more than one market and on related markets which either supply goods or services to the affected markets or buy products from them. (For example, the recreational craft directive affects the engines needed for boats used for leisure purposes. Within this, though, there are two distinct markets: engine manufacturers who make standard engines, and boat builders who modify them for use on leisure boats.) You should consider applying the competition filter to any related markets that you identify as likely to be affected.

A3.8 Some regulations impact on a very wide range of markets (eg the National Minimum Wage). Here you should try to identify two or three markets/sectors where competition effects are most likely (usually relatively concentrated markets/sectors where there are only a few firms competing with each other) and apply the filter to those markets/sectors. Consult your DRIU and departmental economists for further help on selecting markets/sectors in such cases. Additional help and/or advice can also be obtained from the OFT.

A3.9 The competition filter test has nine straightforward questions about the markets that are likely to be affected. It is set out overleaf, together with points to consider in answering the questions. Further detail (with examples and references) is contained in the OFT’s *Guidelines for Competition Assessment* (OFT 355).

Each ‘yes’ answer indicates a possible competition concern.

- If the answer to more than half of the questions is ‘yes’, then there is some risk that the regulation may have a significant effect on competition and a **detailed assessment** is necessary.
- If the answer to more than half the questions is ‘no’, this suggests that the regulation is unlikely to have a significant detrimental effect on competition, and a **simple assessment** is all that is required.

However, as new information comes to light, you should re-apply the filter test and review the results. If at any point a review results in more ‘yes’ than ‘no’ answers, you should carry out a **detailed assessment**. If at any stage during the process you believe that the existing market structure would be significantly affected by

implementation of the regulation/proposal, then a detailed assessment may become necessary, even though the filter test may produce fewer than five 'yes' answers.

Questions 1, 2 and 3: the market

These questions focus on the structure of the affected market, ie the distribution of market shares within it. This is important because competition concerns are more likely where there are only a few firms in a market, or where some firms are very large, making it difficult for smaller firms to compete. To calculate market shares with a reasonable degree of accuracy, care must be taken in determining the extent of the market under consideration.

THE COMPETITION FILTER TEST

Question Answer yes or no

Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?

Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?

Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?

Q4: Would the costs of the regulation affect some firms substantially more than others?

Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?

Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?

Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?

Q8: Is the sector characterised by rapid technological change?

Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?

While the RIA focuses on the UK, it may be necessary for the Competition Assessment to consider a larger or smaller geographical market. For example, if importers compete with UK firms, the importers should be considered as part of the market. For some goods, competition may be limited to a local market, eg one large city or one region. If customers will only buy a product from a local firm and if there are only a few firms in the area, competition may be limited. To help identify the market, consider the alternatives that customers may choose if the price of the product in question rises.

Question 4: substantially different effect on firms

Will the costs fall differently on different firms? For example, will the costs have a significantly greater impact on small firms than on large ones? This may be particularly relevant where the costs are not directly related to output: for example, where there has to be a large capital investment, or where administrative costs are substantial.

Question 5: changes to market structure

If regulations are likely to penalise certain firms, then this may affect whether those firms stay in business. This could then alter the number or size of firms in the market, and hence change market shares. Consider whether firms that face a greater impact will be able to stay in the market given the additional costs they face. If they have to raise prices as a result of the regulation, will customers move to other firms?

Questions 6 and 7: penalising new firms

Consider whether new firms entering the market would be affected differently from existing firms. Question 6 focuses on set-up costs for new or potential firms. Here new firms may be penalised if they face higher costs, making it harder for them to compete. An example would be where new firms must meet higher standards immediately, while established firms have a lengthy period in which to meet them. Question 7 focuses on ongoing costs for new and potential firms. (Note, however, that capital set-up costs incurred by new firms should be dealt with under question 6, and ongoing costs of borrowing capital should not be taken into account for question 7.)

Question 8: technological change

Consider whether firms in the market are continually innovating to introduce new methods of production or new products (as, for example, in the IT and telecoms markets). Consider also whether the affected market has recently experienced a greater level of innovation and product/process development than previously. In both cases you should answer 'yes'. The reason for identifying those markets experiencing rapid technological change is that there is a risk that regulation may restrict innovation in such markets.

Question 9: restrictions on firms

Will the regulation stop firms providing products or services that they would otherwise provide? An example would be a regulation imposing minimum standards, thus preventing firms from selling low cost or lower quality options. Further examples would be regulations imposing price restrictions or restrictions on what firms use to make their products. If locations are restricted, customers may suffer, especially if there are local markets as discussed for question 1.

The simple assessment

A3.10 A simple assessment of competition impacts is sufficient when the filter test results in more 'no' than 'yes' answers. It should set out the findings of the filter test (including the thinking behind the answers) and identify any impacts. It does not require detailed analysis. You should not reproduce the filter test grid in the write-up of the assessment.

A3.11 In the write-up you should describe the market(s) you have identified as being affected, and give a brief description of their characteristics (reflecting the answers to the competition filter test questions). Your write-up should also include a clear statement setting out all anticipated effects on competition (negative and positive) with an explanation of the reasoning which has led to these conclusions. The more detail you are able to provide, the more it will improve internal and external consultation and inform Ministers when signing off the RIA.

The detailed assessment

A3.12 The aim of the detailed assessment is to understand in more depth the potential competition impacts identified in the competition filter test. In undertaking the detailed assessment, you should:

- consider all possible effects of a regulation, including any knock-on effects on related sectors;
- check whether these effects do in fact raise concerns for competition; and
- compare policy options in terms of their impact on competition, and, if possible, identify suitable alternative policy options.

The three steps in carrying out a detailed assessment are as follows:

- **Identifying affected markets:** First, define more precisely which markets are affected by a regulation. NB do not forget markets that may be indirectly affected.
- **Understanding the current nature of competition:** Before investigating how a regulation will change competition, policy makers should understand how competition currently operates in the relevant markets. This involves exploring in more detail supply and demand factors, market outcomes and the competitive process.
- **Identifying the impacts of the regulation:** Identify both the direct and indirect impacts on competition resulting from each policy option presented in the RIA.

A3.13 You may not be able to finalise a detailed assessment until you have gathered further information from the consultation exercise, but you should include as much detail as possible in the partial RIA. You can then highlight any questions or gaps in your information that you would like consultees to respond to, and incorporate information gathered in this way in the Competition Assessment included in the final RIA.

Annex 4

Analysing costs and benefits

A4.1 Hints

- Get advice from your economists and consult the HMT Green Book.
- The information and analysis on the costs and benefits in the RIA should be proportionate to the likely impact. But the analysis should always be rigorous in order to inform decision making to the greatest degree.
- You should spell out and test any assumptions, and provide a reference to any data sources or data analysing methodologies used.
- Quantify where possible and provide detailed qualitative analysis for the few cases where not. Use broad orders of magnitude or ranges where there is uncertainty.
- Think about who benefits and who bears the costs.
- What sort of costs are there (policy or implementation)?
- What are the distributional impacts of the policy?
- What are the risks associated with implementation and how will this affect the costs and benefits?
- Think about the impact on small firms.
- Do not assume 100% compliance with existing law – extra costs and benefits can arise from new regulations designed to improve compliance with existing law.

Where is there information on cost and benefits?

A4.2 There are a wide range of sources for information. Below are a number of examples, but there will be others, including policy-specific sources.

- Your own knowledge and experience.
- The knowledge and experience of colleagues in your own and other departments (also other departments' websites – eg DEFRA for information on valuing the environment, HSE for information on the cost of workplace accidents, DTI for information on the labour force).
- Your own departmental economists, RIU economists and those in other departments.
- Consultation with those likely to be affected.
- Academics and consultants.
- Your library for research documents, market reports, internet searches...
- Office for National Statistics publications on the economy, number and sizes of firms, earnings (New Earnings Survey), hours worked, production, imports and exports, regional trends, social trends, household expenditure...
- The HMT Green Book.

How to identify and quantify the risk

A4.3 The risks represent the current problems that necessitate the policy choices you are thinking about. Accordingly, to identify the risks you need to think about the policy objectives you are trying to attain, what problem you are addressing and why.

A4.4 It is easy in some cases to identify the risks involved, eg if you are trying to protect consumers (from fraud, accident, lack of information, monopolies or from poor or dangerous products), prevent or clean up environmental damage, introduce workers' rights, improve health standards or increase economic growth (creating a level playing field or facilitating firms setting up in business or growing). In other cases it can be less obvious, eg if you are improving animal welfare (the risks might be a failure to meet international obligations or to take into account people's preferences).

A4.5 Where possible quantify the risk over a specified period of time – probably a year, but it can be longer depending on the nature of the risk. This helps to give the reader an indication of the scale of the risk. Think about the hazard, the harm and the likelihood that the harm will occur. For example the hazard might be cars speeding, the harm is people getting injured in car accidents, the risk will be the number of injuries per year from accidents where speeding was a key factor responsible. Another example is where the hazard might be a flood. The harm is the deaths and the damage to properties and business, while the risk is the number of lives lost and the cost of the damage caused per year.

A4.6 It will not always be possible to quantify the risk, eg there might be scientific uncertainty or the risk may simply not be quantifiable. In these cases, quantify what you can and provide detailed qualitative analysis where you cannot, for example providing examples of the kinds of problems that need to be addressed – remember RIAs are there to enable decision making to be transparent and evidence-based.

A4.7 Guidance on risk assessment is available from www.cabinet-office.gov.uk/risk Your DRIU will be able to put you in touch with risk experts in your department. Also talk to other departments – eg HSE, DEFRA, DoH – who are familiar with assessing and dealing with risk.

Identifying the business sectors affected and disproportionate impacts

A4.8 To help identify the **business sectors affected**, the number of firms involved and the sizes of the firms (in terms of their employment and turnover), think about the problem you are trying to address and hence which products and/or services are going to be affected. It might be a ban on a substance and in this case you should think about the manufacturers of the substance, the suppliers to those manufacturers, and the firms using the products containing the substances. Some proposals will be sector specific – eg on agriculture or construction. If a proposal is increasing all workers' rights, then you might be affecting all firms across the economy, though there are likely to be some sectors or types of firms more affected than others (eg those which have high staff turnover or those that are labour intensive).

- Talk to your economists and colleagues in your department.
- Consult external contacts.
- Talk to other departments.
- The Office For National Statistics (ONS) publication *Indexes to the United Kingdom Standard Industrial Classification of Economic Activities: 1992* will identify the sectors products fall into. The ONS's *Business Monitor PA1003* gives information on the number and size of firms by sector.

A4.9 Some firms may be more affected than others – eg small firms (speak to the SBS). You should identify where the burden is likely to fall most heavily – again thinking about your policy objective and talking to others will help you identify these. Think about what you are asking firms to do and when – eg buying new equipment in the near future might be harder for small firms. Also think about whether the benefits fall in one place and the costs fall somewhere else and whether it is desirable or possible to address the balance in some way.

Other groups

A4.10 You should also consider the extent to which ‘other groups’ (ie not firms, charities or the voluntary sector) – for example, consumers and the public sector – might be affected by your proposal. Benefits may accrue to a specific group such as workers, consumers, or low-income groups or to society in general. Common benefits may be a cleaner environment, better health, a safer workplace or improved food hygiene. On the other hand there may be costs to certain groups, such as premiums for car owners having to comply with compulsory motor insurance or fees from increased vehicle testing requirements. The proposal may impose costs on public sector organisations such as local authorities. Finally, the analysis should also include the costs to authorities of developing, publicising, implementing, monitoring and enforcing the proposed policy.

Sustainable development

A4.11 One purpose of cost-benefit analysis is to ensure that in pursuing any single objective, we should not impose disproportionate costs elsewhere. Apart from the burdens on business, regulatory policies designed to meet the needs of the present may also result in costs to the environment or social welfare. The principle of sustainable development requires that these costs be considered in policy appraisal so that the welfare (social, economic and environmental) of future generations is not compromised. Therefore the cost-benefit analysis must take account of a wide range of costs and benefits, which may be broadly categorised in three groups: social values and progress; environmental protection; and the economy’s long-term growth and development.

A4.12 The cost-benefit analysis should reflect the values and needs of society. Value should be placed on improving access to services for all social groups and tackling social exclusion. For example, the benefits of a tax regulation which reduces tax liabilities on lower income groups would include the reduction in the harm to health caused by poverty, poor housing and unemployment.

A4.13 The analysis should also reflect the impact on the environment and our natural resources. Value needs to be placed on preserving wildlife, landscapes and historic buildings as well as the prudent use of non-renewable natural resources like oil and gas. Any environmental degradation should be included among the costs of the proposal. Finally, the cost-benefit analysis should take a long-term perspective on the impact of the proposal. Continued prosperity of the UK economy requires the efficient production of high quality goods and services at competitive prices. To that end, value needs to be placed on the infrastructure and skills base that support and improve productivity and innovation.

The benefits

A4.14 **Identify** the benefits by thinking about the aim of the proposal and the risks being addressed. If the proposal is to improve consumer health then the benefit should be a reduction in illness/death; if it is to reduce air pollution then the benefit should be x% fewer tonnes of the pollutant being emitted to the atmosphere. The risks associated with this pollution might be illness, and damage to property and crops. The benefits would therefore also be a reduction in these. In the RIA spell out how the proposal will achieve the benefits – describe the process by which the changes in behaviour or activity or the act of complying are expected to lead to achieving the goals. Do not forget any indirect benefits – changes in behaviour that can have additional effects, eg more firms setting up in business as a result of reduced hiring costs or more people entering the labour market as a result of tax changes.

4.15 Once you have identified the benefits then you should **quantify** them if at all possible – without quantification it will be less clear whether or not the benefits justify the costs. How many lives are saved, how many illnesses will be avoided, how many animals will face better conditions, how many workers will have improved rights, how much money will be saved through reduced fraud, how much time will be saved?

A4.16 **Where there is uncertainty, make it clear and spell out the assumptions you use to arrive at your estimates.**

Putting a monetary value on the benefits

A4.17 Some benefits will be easy to estimate – eg higher wages to those now on the National Minimum Wage; others will be more difficult. You can look at the HMT Green Book, the US Office of Management Budgets’

guidance, the HSE website on the cost of injuries, the DoH's work on the National Air Quality Strategy and DEFRA's website for appraising the environment. Ask your economists and your colleagues, use existing research (ask your library to do a search), consult external contacts.

A4.18 Examples of the types of techniques you can use are given below. Thus for placing a value on:

- time – you could use wages multiplied by the hours saved;
- the environment – you could use surveys which show people's willingness to pay (how much people would pay for a clean river, fresh air or a national park) or their willingness to accept (how much people would be prepared to accept in compensation for suffering from pollution); you could use the cost of cleaning up the environmental damage which the proposal is trying to avoid; or use people's purchasing behaviour when it gives some idea of the value they place on the environment (eg people might show how much they value peace and quiet by the greater amount they are prepared to pay for a house away from an airport or motorway);
- life/health – you could use estimates of the value of a statistical life, or the cost to the NHS of treating the illness;
- social benefits – again you could use surveys, eg showing people's willingness to pay to have a more equal distribution of income; also again people's purchases might give some idea of people's values; and
- training – you could use surveys of firms' increased revenue and productivity gains following training; or use analysis of the higher wages that trained staff can command.

A4.19 There is likely to be uncertainty over the valuations. In this case spell out your assumptions and use ranges or ballpark figures where necessary. Where the impact is likely to be substantial you might want to consider employing consultants to help estimate the costs and benefits.

The costs

A4.20 **Identify** the costs by thinking about the aim of the proposal and what you will be requiring firms to do and consumers or the public sector to do. Also think how the proposals might impact on, for example, the environment. Will firms have to familiarise themselves with the new requirements, will they have to do more training, employ more people, invest in new equipment, get in external consultants, change their working practices, change their product, move to new premises etc? What costs will the public sector bear in complying with your proposal, and in enforcing and monitoring it? What costs will central government incur in developing and disseminating the policy? Will consumers bear any direct costs? Don't forget any indirect costs – changes in behaviour such as fewer firms setting up in business, reduced consumer choice, less competition between firms, less innovation etc.

A4.21 Once you have identified the costs then you should **quantify** them if at all possible – without quantification it will be less clear whether or not the benefits justify the costs. How many extra hours are spent by firms training, how much new equipment purchased etc?

A4.22 Where there is uncertainty, make it clear and spell out the assumptions you use to arrive at your estimates.

Putting a monetary value on the costs

A4.23 Again some costs will be easy to estimate, eg increased labour costs, while others will be more difficult. Look at the publications listed above for information. Ask your economists and your colleagues, use existing research and consult external contacts. Examples of techniques you can use to estimate costs of environmental damage, poor health, loss of life or social disbenefits are similar to those listed above. Other costs might include:

- labour costs (familiarisation with new legislation, training, new working practices, time spent taking inspectors around the firm etc) – here you could take the wages (from say the New Earnings Survey), multiply by 1.3 to reflect non-wage labour costs, multiply by the extra time these activities take per firm and multiply by the number of firms affected;

- cost of new equipment or new production processes – formal/informal consultation with those likely to be affected might provide the best data here;
- collecting information and providing proof of compliance – use labour costs, plus the cost of new equipment (eg computers or software) required to do this;
- cost of getting licences – these will involve estimating the fees plus administrative/labour costs. Here the enforcement authorities should be able to help with providing estimates; and
- cost of extra legal, accountancy or other consultancy advice – again consultation or colleagues' experience might be informative.

A4.24 The nature of the costs and on whom they fall depends on the policy proposal.

Costs and benefits occurring over time

A4.25 It is likely that most regulatory proposals will impose costs over a number of years and have benefits accruing over a number of years. Having identified and put a monetary value on the benefits and costs, in order to compare options which might have costs and benefits occurring at different points over time, we need to adjust the estimates to take account of **the time value of money**. We need to reflect the fact that people prefer to get good things sooner rather than later and prefer to put off paying for things as far into the future as they can. It is the same for regulatory proposals – the sooner the benefits and the further into the future the costs, the better.

A4.26 One way to do this is to take any one-off costs (eg the cost of new equipment) and using the Treasury discount rate to ‘annualise’ these to arrive at an annual figure. An example is a J100 machine lasting three years which would be equivalent to spending J36 in each of years 1, 2 and 3 at a 3.5% discount rate. This annual cost figure would then be added to any annual recurring costs to produce a total annual cost figure. Where there are annual costs that differ year to year you might want to set out explicitly the costs that will arise in each year for each option using a spreadsheet.

A4.27 **How many years should I discount over?** It depends on the policy proposal, but a ten-year period is typical. If the main cost is the purchase of a piece of equipment then the expected lifetime of that equipment could be used. If the policy has a sunset clause then the discount period should be the number of years the policy has to run. If the costs or benefits are likely to appear well into the future you might want to consider a longer timescale. Talk to your economist.

A4.28 **How to do it.** The methodology, rates and table are provided in the HMT Green Book. If in doubt speak to your economist or to the RIU economists.

A4.29 **How to estimate the costs of firms being forced out of business by the proposal.** Talk to your economist. One way is to use the value of assets that have to be scrapped by the firms going out of business and which cannot be sold on for productive use by other firms together with goodwill that cannot be sold on.

Transfers and double counting

A4.30 When identifying benefits (or costs) it is important to identify those that are purely transfers from one section of society to another. Examples of such transfers might include the revenue from pollution taxes and social security payments. Transfers may change the distribution of income or wealth but they do not of themselves give rise to direct economic costs (or benefits), except for any associated costs of administration or compliance. You should refer to these in the **Costs and Benefits** section (in Distributional Impacts) but you should take care to ensure that they are not included in the calculation of the net impact. Where they raise strong distributional issues, you may also want to refer to this in the **Equity and Fairness** section. Care also needs to be taken to avoid any double counting of costs and benefits (eg one firm incurs a cost which it then passes on to a customer through higher prices – only the former should be recorded in the main **Costs** section of the RIA; the latter should be recorded under Distributional Impacts while other equity or competition issues arising from this can be considered elsewhere in the RIA).

How to test the robustness of your assumptions

A4.31 The Strategy Unit report *Risk: Improving Government’s capability to handle risk and uncertainty* (available at www.strategy.gov.uk) addresses the issue of how the Government can improve its risk handling. Poor risk management can lead to serious problems with costs and impacts borne by the public either directly or through costly operations to put right policies which have not gone as planned. The report therefore recommends a proportionate and wide-ranging consideration of risk for policy proposals, and that cost-benefit analysis be developed to include explicit risk analysis as an element of option appraisal. The report also recommends that action be taken to mitigate these risks.

A4.32 RIAs will almost certainly involve making assumptions to produce estimates. In accordance with the Strategy Unit paper, these assumptions should be reviewed and formally tested, in order to assess the risks associated with them. Where these risks are considered too great, some action must be taken to mitigate the likelihood of their occurring or to mitigate their effects if they do occur.

A4.33 Sometimes the probabilities of different outcomes can be estimated using statistical techniques (eg including the risk of accident or fires). But more often than not probabilities cannot be calculated in this way because the necessary data either does not exist or is not available. Sensitivity analysis is the calculation of how changes in particular assumptions affect the anticipated impacts of the various options being considered.

Sensitivity analyses need to be well designed and clearly presented. The alternative outcomes need to be chosen carefully to focus especially on those uncertainties/assumptions that are most important.

A4.34 It may be that a single factor is crucial to the decision of whether or not an option is worth implementing. In such cases a useful form of sensitivity analysis is to see how much the value of this factor would have to fall (if it is a benefit) or rise (if it is a cost) to make it not worth undertaking the option. This value is called a switching value or point. Once this point has been determined it may be relatively easy to assess the likelihood of the outturn being worse than this. However, this method only works in the minority of cases when all the costs and benefits of a proposal can be reliably assigned a monetary value.

A4.35 Scenario planning is a more complicated form of sensitivity analysis involving looking at the consequences of various possible states of the world. A scenario is not a forecast but a description of a possible situation, involving a set of assumptions. Scenarios should be chosen to draw attention to the major uncertainties upon which the success of an option depends. Generally, the best approach is to set up two or three scenarios, taking care that no one scenario is seen as central or most likely.

A4.36 A fuller description with examples of the various approaches can be found in the HMT Green Book and in departmental guidance. Further information can be found through the knowledge pools, which are linked to the CMPS Policy Hub – <http://policyhub.gov.uk/default.htm>

Policy and implementation costs

A4.37 The separation of policy and implementation costs is important for several reasons. First, policy costs represent the essential costs of meeting the policy objectives while implementation costs usually arise from the regulatory aspects of the policy (familiarisation with the requirements, monitoring and enforcement, proving compliance etc). Identifying the implementation costs separately sheds light on the extent to which it would be desirable to find an alternative to regulation. Second, the relative magnitudes of the two categories reflect how efficiently the policy would be implemented and therefore how well it is designed and thought through. Finally, thinking in these categories when assessing the impact of the policy will also help you to identify and include anything that might have been missed, particularly at the initial stage as it helps you to make the best of the consultation.

Definition

4.38 Policy costs are those that are **directly** attributable to the policy goal while implementation costs are those that are not and as such are seen to represent the ‘red-tape burden’. It is therefore useful to define the ultimate policy objective before proceeding to categorise the costs. This is best illustrated with an example.

Example: Catalytic converters

If the ultimate goal were to reduce pollution caused by cars, the policy cost would be the cost of the measures prescribed to reduce it, such as the fitting of catalytic converters. The regulatory policy could therefore be stated as follows: *Pollution caused by cars will be reduced by the mandatory use of catalytic converters in all cars.* Hence, the capital cost of the converters and the labour costs of designing and fitting them (wages as well as training) would be considered as policy costs. However, the costs of manufacturers now having to familiarise themselves and their staff with the new requirements or the administrative costs of proving compliance (eg the cost of going through the approval process to certify that the catalytic converter meets legal requirements) are not direct costs of the ultimate objective and hence are considered as implementation rather than policy costs.

Example: Storage space for explosive material

Policy: To reduce the extent of damage in the event of an accident by placing limits on the amount of explosive material that can be stored in one area.

This policy has the unintended consequence of placing more explosive material in transport. The cost of the harm expected from an increased presence of explosive material on the road would be an unintended cost of the policy. However, it could also result in additional formalities being placed on the transportation of such material by transport police and authorities (eg special licence requirements). Hence there may be an unintended implementation cost of the policy as well.

Annex 5

The precautionary principle

A5.1 The precautionary principle provides a framework for action by governments where there is a threat of serious or irreversible harm even where there is scientific uncertainty about the nature and extent of the risk. The UK, along with other developed countries, is committed to using the precautionary principle.

A5.2 The Interdepartmental Liaison Group on Risk Assessment's (ILGRA's) guidance recommends that the precautionary principle should be invoked when:

- there is good reason to believe that harmful effects may occur to human, animal or plant health or to the environment; and
- the level of scientific uncertainty about the consequences or likelihood of the risk is such that the best available scientific advice cannot assess the risk with sufficient confidence to inform decision making.

A5.3 Action in response to the precautionary principle should accord with the Better Regulation Task Force principles of good regulation, i.e. be proportionate, consistent, targeted, transparent and accountable.

A5.4 Decisions reached by invoking and applying the precautionary principle should be actively reviewed, and revisited when further information that reduces uncertainty becomes available.

REGULATORY IMPACT ASSESSMENT CHECKLIST

Title of proposal/proposed regulation

Full title including any document reference, eg that of the EC directive.

Purpose and intended effect of measure

Objective

State clearly what the proposal intends to do and who it will affect (both directly and indirectly).

Background

What is the problem, the existing situation and the current legislative framework in place?

Risk assessment

Identify the situation that causes harm, what that harm is and the probability that it will occur. If the proposal concerns an increase in efficiency or realisation of benefits, you should describe and quantify the current situation. This will allow you to work out the costs and benefits of the different options in later sections.

Options

Identify all the options and the potential of each to achieve the objective. The 'do nothing' option should be included, not only because the implications of not acting should be clear but also because it acts as a baseline for the other options. You should be careful to flag up any risks associated with each option, the likelihood of these risks occurring and ways that these risks could be mitigated.

Costs and benefits

Business sectors affected

List the sectors likely to be most affected by the proposal. State the number, and size distribution, and Annex 4 of the firms in each sector.

Assumptions

All underlying assumptions must be clearly spelled out. Test the validity of the most important or speculative assumptions used. How likely are they to change? How would any changes in assumptions affect the levels of costs and benefits?

Benefits

Examine each of the options in turn. Set out how far they will get in achieving the policy goal and how this will be done. The benefits should be quantified as far as possible. Remember to consider environmental and social benefits, and distributional impacts.

Costs

Total costs

Describe what firms will need to do to comply. Quantify these activities/changes and calculate how much they will cost on a per annum basis. Where there is uncertainty, use estimates and ranges. The analysis should reflect the split between policy and implementation costs, and should take account of environmental and social costs, public sector and distributional impacts.

Costs for a typical business

Identify a typical business(es), explain the type of activities that they will have to undertake, quantify those activities and calculate the cost.

Equity and fairness

For each option identify key groups that could be disproportionately affected.

Small Firms' Impact Test

Consider the impacts of each option on small firms and record the details of both stages of the impact test. Remember to speak to the Small Business Service.

Competition assessment

Provide an assessment of the competition impacts for each option (talk to the OFT)

Enforcement and sanctions

How will the proposal be enforced? Who will enforce it?

Consultation

Within government

List the government agencies and departments that have been consulted.

Public consultation

Record the consultation's results and the impact on the decision being taken.

Monitoring and review

How is the effectiveness of the legislation to be measured and when? Major new regulations will have to be reviewed within three years of coming into force.

Summary and recommendation

Which option is recommended and why? Refer to analysis of the costs and benefits in reaching the decision. Summarise in a table the information gathered for each option.

Ministerial declaration

"I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs."

Contact point

Insert name, address and phone number of an official who can answer any queries on the assessment or proposed legislation. Include the date.

HINTS AND TIPS

You need evidence – so collect it

■ **Pick up the phone.** Have early informal discussions with business, charities and the voluntary sector, and relevant trade associations. They will be able to help get information on the scale of the problem, both in the UK and, if appropriate, more widely. For example, on the number, type and size of businesses likely to be affected and the potential costs and benefit of your proposals. They may even be able to suggest ways of solving the problem. All of this will be useful for your initial RIA.

■ **What do we already know?** There may already be an existing body of experience, research and data available for you to call on (talk to your economist). But in any event, if you have no data you will need to make some assumptions about the likely impact.

Spelling out those assumptions will be essential when you write round for Ministerial agreement and go out to consult formally.

■ **Start early.** Giving some idea of the likely impact of a proposal, even early on, is vital to informing policy development.

■ **Build in time for consultation and implementation.**

www.cabinet-office.gov.uk/servicefirst/index/consultation.htm; www.sbs.gov.uk/content/pdf/implementationguidelines.pdf

Do you need to regulate? Stop and think

■ **Think about a range of options.** These should include ‘do nothing’ and could also include non-regulatory approaches such as codes of practice and financial incentives. These should be considered for EC legislation, as well as for domestic regulations.

■ **Think small first.** You should always consider the impact on small firms. The Small Business Service is there to help you use the Small Firms’ Impact Test.

■ **Think widely about possible unintended consequences.** By regulating in one area, you may unintentionally create problems elsewhere.

■ **Think about consistency with existing regulation,** including legislation in the same sectors, international trade rules, EC law and competition policy.

Assessing your options

■ **Balance risk, cost and practical benefits.**

What’s the scale of the problem? Who is affected and how? Does the extent of the problem merit regulation? Will regulation really solve the problem? Who will benefit and who will bear the cost? Are there any major risks associated with the options?

■ **How will the regulatory proposal be enforced?** You should consider which government agencies or Devolved Administrations would enforce the proposed regulation. Have you consulted the relevant organisation? What will be the extra cost on government resources? Always think **early** about how your proposal will be implemented and enforced.

■ The RIA should be **proportionate to the probable impacts.** This will be reflected in the breadth and depth of your analysis.

■ An RIA is a **living document**, each draft building on the previous one and adding to the information and refining the data.

Key contacts

Departmental Regulatory Impact Unit contacts; departmental consultation contacts; Cabinet Office Regulatory Impact Unit officials; Small Business Service; departmental economists and lawyers; Office of Fair Trading.

Regulatory Impact Unit

Cabinet Office

UK