
11 Regulatory impact assessment

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Introduction¹

Although there is no generally agreed definition of regulation, it can be broadly understood to refer to a government measure which is intended to affect individual or group behaviour. Alongside fiscal policy (taxation and government expenditure), regulation is the main policy tool that government can use to affect the outcomes of markets, and the design of effective regulatory policy is now the focus of much interest among policymakers in all parts of the world. The member countries of the OECD are each active in pursuing regulatory reform programmes aimed at improving the operating environment for investment and, more generally, enhancing the quality of public governance processes (OECD, 2002). Regulatory reform is a key component of the process of establishing the institutional infrastructure of a market economy in the transitional economies of central and eastern Europe (OECD, 2004a; Jacobs, S., 2004). In developing countries, regulatory reform is a central component of the development policy framework (World Bank, 2004b).

With the emergence of the ‘regulatory state’ (Majone, 1994, 1997) as the dominant paradigm in public sector management, increasing attention has been given to the design and implementation of ‘good’ regulation which contributes to the goals that are set for the regulatory system. Regulatory Impact Assessment (RIA) is a method of policy analysis which is intended to assist policymakers in the design, implementation and monitoring of improvements to regulatory systems, by providing a methodology for assessing the likely consequences of proposed regulation and the actual consequences of existing regulations.

The aim of this chapter is to review existing RIA methodologies and experience in their use in a range of different countries and contexts. The next section discusses the different definitions of RIA and describes the considerable variation in the scope and coverage of RIA in different countries. The following section identifies the core principles of RIA in terms of its outcome and process dimensions, and locates the role of RIA in the wider context of evidence-based decision-making. Later the evolution of RIA as a tool for better policy design is described and the experience with RIA in a range of developed, transitional and developing countries outlined. Also ‘good practice’ guidelines for RIA are discussed and a number of general lessons from the experience of applying RIA in practice are drawn. Towards the end of the chapter the *ex post* evaluation stage of RIA is examined, focusing on the alternative methods that have been

used to assess the performance and quality of RIA. The results of these quality evaluation studies are summarized. The final section of the chapter provides a brief summary and conclusion.

Definition of regulatory impact assessment (RIA)

‘Good’ regulation will be both *effective* and *efficient*; effective in the sense of achieving its planned goals and objectives, and efficient in terms of achieving these goals at least cost, in terms of government administrative costs and the costs imposed on the economy in terms of complying with regulations. There is, therefore, a compelling case for the systematic appraisal of the positive and negative impacts of any proposed or actual regulatory change. *Regulatory impact assessment* (alternatively referred to as *regulatory impact analysis*) provides a methodological framework for undertaking this systematic assessment of benefits and costs of regulation, and for informing decision-makers of the consequences of a regulatory measure.

There is no single or generally agreed definition of regulatory impact assessment or of the ‘regulations’ that are covered by RIA (Lee, 2002). The UK defines RIA as ‘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’ (Cabinet Office, 2003, p.5). The OECD, which has been active in developing ‘best practice’ guidance on RIA as part of its programme on regulatory reform practice, defines regulation broadly in the following terms: ‘regulation refers to the diverse set of instruments by which governments set requirements on enterprises and citizens’ (OECD, 1997). A more comprehensive definition of RIA is:

An information-based analytical approach to assess probable costs, consequences, and side effects of planned policy instruments (laws, regulations etc.). It can also be used to evaluate the real costs and consequences of policy instruments after they have been implemented. In either case, the results are used to improve the quality of policy decisions and policy instruments, such as laws, regulations, investment programmes and public investments. Basically, it is a means to inform government choices: choices about policy instruments, about the design of a specific instrument, or about the need to change or discontinue an existing instrument. (SIGMA, 2001, p. 10)

In practice, the scope of RIA is often narrower than is implied by the definitions above. Lee (2002, p. 10) notes that RIA may be limited in its application according to the levels of administration; the levels of the regulatory measures; the type of measure; and the sectors to which the measures apply or which they affect. The focus of RIA may also be narrowed by concentrating on a specific target, rather than the higher level strategic goals of regulatory policy as a whole. For example, the RIA may aim to reduce the number of existing regulations and the quantity of administrative red-tape, or reduce the financial costs of regulation

Table 11.1 *RIA adoption in selected OECD countries*

Country	Year that RIA was adopted	Scope of coverage
Australia	1985, strengthened 1997	<ul style="list-style-type: none"> ● Primary laws, subordinate regulations, international treaties and quasi-regulations that have business or competition impacts (150 regulations per year out of approximately 2000 regulations) ● Business impacts arise in case of significant market impact ● Reviews of existing regulations should adopt the RIS (Regulatory Impact Statement) framework
Canada	1978, strengthened 1986	<ul style="list-style-type: none"> ● RIA is required only for subordinate regulations Memorandum to Cabinet (MC) similar to RIA is required for primary laws and policies
Czech Republic	Developed since 2000	<ul style="list-style-type: none"> ● All primary laws including their 'substantial intents' and government decrees. Partial impact analysis is done in case of some major subordinate regulations in particular areas, however, this is not systematic
Germany	1984, strengthened 2000	<ul style="list-style-type: none"> ● Primary laws and subordinate regulations ● The RIA process can be applied to the review of existing regulations
Greece	Developed since 2001	<ul style="list-style-type: none"> ● Primary laws and subordinate regulations
Hungary	1987, strengthened 1996	<ul style="list-style-type: none"> ● Primary laws and subordinate regulations (all acts and decrees) ● The analysis process is applied to the existing regulations
Italy	1999	<ul style="list-style-type: none"> ● Primary laws and subordinate regulations
Mexico	1996, expanded 2000	<ul style="list-style-type: none"> ● Primary laws and subordinate regulations ● RIA does not apply to the review of existing regulations
The Netherlands	1985, strengthened 1994–1995	<ul style="list-style-type: none"> ● Primary laws in major regulations. Subordinate regulations in major regulations. Also applied to the review of existing regulations

Table 11.1 continued

Country	Year that RIA was adopted	Scope of coverage
Poland	2002	<ul style="list-style-type: none"> ● All legislative proposals (primary laws and subordinate regulations); but the Budget Act is excluded from that procedure ● RIA is not required to review existing regulations
United Kingdom	1985, strengthened 1996 and 1998	<ul style="list-style-type: none"> ● Any proposal for which regulation is an option – including both primary and secondary legislation – that would have a non-negligible impact on business, charities or the voluntary sector should have an RIA ● RIA is also applied to reviews of existing regulations ● Regulations affecting only the public sector are currently subject to a Policy Effects Framework (PEF) assessment, which was brought within RIA in 2004
United States	1974, strengthened 1981	<ul style="list-style-type: none"> ● Primary laws in selected cases and all subordinate regulations
European Commission	2002	<ul style="list-style-type: none"> ● Major regulatory and/or non-regulatory proposals with significant economic, social and/or environmental impacts ● Proposals with a significant impact on major interested parties ● Proposals that constitute a new policy, policy reform and/or significant change to existing policy ● Proposals that involve major regulatory issues (subsidiarity/proportionality/choice of regulatory instrument) ● The new procedure does not apply to Community decisions that derive from the executive powers of the European Commission, for example adoption of EU-funded projects, decisions on the application of EC competition law, etc.

Source: OECD (2004b) in Jacobs (2004).

to businesses, rather than assessing the impact of regulatory measures on the broader goals of economic and social development.

Comparative information on the variation in coverage of RIA systems in a sample of different countries is provided in Table 11.1. The table shows, for example, the variety of approaches to ex ante and ex post assessment, the use of preliminary screening of proposals and the range of goals that are used in assessing impacts.

The principles of regulatory impact assessment

There are two dimensions to a ‘good’ regulatory system (Ogus, 2001). The first relates to the instruments or legal forms selected to achieve the desired outcomes, which will be defined by the regulatory objectives. RIA helps in identifying the root cause of the problem that regulation is designed to address. The second relates to the procedures or processes by which the instruments are formulated and applied. RIA can contribute therefore, to both the *outcome* and the *process* dimensions of policy processes. The outcome contribution of RIA can be assessed against the goals that are set for regulatory systems. These goals are discussed in detail later in the chapter. The process contribution of RIA can be assessed in terms of the principles of ‘good governance’. There is a broad consensus that these principles encompass *proportionality*, the regulation should be appropriate to the size of the problem it is intended to address; *targeting*, the regulation focuses on the problem and does not cause unintended consequences in other area of the economy or society; *consistency* in decision-making, to avoid uncertainty; *accountability* for regulatory actions and outcomes; and *transparency* in decision-making (Parker, 2002).

The contribution of RIA to better regulatory decision making rests on the systematic assessment of the impacts of a regulatory measure, and the adherence to the principles of proportionality, targeting, consistency, accountability and transparency. The purpose of an RIA is

to explain the objectives of the [regulatory] proposal, the risks to be addressed and the options for delivering the objectives. In doing so it should make transparent the expected costs and benefits of the options for the different bodies involved, such as other parts of Government and small businesses, and how compliance with regulatory options would be secured and enforced. (NAO, 2002, p.51)

A properly conducted RIA, therefore, systematically examines the impact arising or likely to arise from government regulation and communicates this information to decision-makers. It should also set out *the consequences of not regulating* (NAO, 2002. p. 1). It also encourages public consultation to identify and measure benefits and costs and thereby has the potential to improve the transparency of governmental decision-making. It can promote government accountability by reporting on the information used in decision-making and by

demonstrating how the regulation will impact on society. The result should be an improved and more consistent regulatory environment for both producers and consumers.

It is important to recognize that RIA, even when operated well, is not a tool that substitutes for decision-making. Rather, it should be seen as an integral part of the policymaking that aims to raise the quality of debate and therefore the quality of the decision-making process. As Jacobs, S. (2004, p. 287) points out, 'the most important contributor to the quality of government decisions is not the precision of calculations, but the action of asking the right questions, understanding real-world impacts, and exploring assumptions'.

RIA is an evidence-based approach to policymaking where the decision is based on fact finding and analysis that define the parameters of action according to established criteria (OECD, 1997, pp. 14–15). It has the potential to strengthen regulation by systematically examining the possible impacts arising from government actions and communicating this information to decision-makers in a way that allows them to consider (ideally) the full range of positive and negative effects (benefits and costs) that are associated with a proposed regulatory change. Equally, RIA has the potential to improve the monitoring of existing regulatory policies (SIGMA, 2001). This might lead to revisions to an existing regulation to improve its performance. RIA may also help to constrain economically damaging regulatory discretion and expose cases of regulatory conflicts (e.g. between agencies).

RIA practice and experience

Guidelines on undertaking RIAs and on the issues to cover have been published by the OECD, and the majority of OECD countries have adopted formalized RIA arrangements. In March 1995, the Council of the OECD adopted a *Recommendation on Improving the Quality of Government Regulation*, which made reference to the use of RIA (OECD, 1995). In 1997 ministers of the member countries endorsed the *OECD Report on Regulatory Reform*, which recommended that governments 'integrate regulatory impact assessment into the development, review, and reform of regulations' (OECD, 1997). Jacobs (2002) reports that 20 out of the then 28 OECD countries were using RIA in some form by 2001, although Radaelli (2002) found that national guidelines for undertaking RIAs existed in only nine OECD countries. While the detail of the way in which RIA is being applied varies between countries, there is a degree of commonality in terms of the main characteristics of the procedures that have been adopted, as summarized in Table 11.2.

The origins of RIA can be traced to the United States. There the formal adoption of RIA in the 1970s was in response to a perceived increase in the regulatory burden associated with a surge in regulatory activity since the mid-1960s, together with concerns that this might be adding to inflationary pressures in the

Table 11.2 *Common characteristics of RIA*

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1. *Statement of problem.* Is government intervention both necessary and desirable?
 2. *Definition of alternative remedies.* These include different approaches, such as the use of economic incentives or voluntary approaches.
 3. *Determination of physical effects of each alternative, including potential unintended consequences.* The net should be cast wide. Generally speaking, regulations or investments in many areas of public policy can have environmental implications that must be kept in mind.
 4. *Estimation of benefits and costs of each alternative.* Benefits should be quantified and where possible monetized. Costs should be true opportunity costs. Not simply expenditures.
 5. *Assessment of other economic impacts,* including effects on competition, effects on small firms, international trade implications.
 6. *Identification of winners and losers,* those in the community who stand to gain and lose from each alternative and if possible. The extent of their gains and losses.
 7. *Communication with the interested public,* including the following activities: notification of intent to regulate; request for compliance costs and other data; public disclosure of regulatory proposals and supporting analysis; and consideration of and response to public comments.
 8. *A clear choice of the preferred alternative.* Plus a statement defending that choice.
 9. *Provision of a plan for ex post analysis of regulatory outcomes.* It is important, for example, to establish current conditions to have a benchmark to measure performance against. Planning is needed to ensure that procedures are in place for the collection of data to permit such benchmarking.
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Source: OECD (2004b), p. 27.

US economy (Anderson, 1998). Over time, there has been a broadening of the scope of assessments to consider all types of significant regulatory costs and benefits (i.e. not only costs falling on the business sector), accompanied by an emphasis on the role of economic analysis in the assessment of these costs and benefits (Lee, 2002, p. 5). Since 1995 the Office of Management and Budget (OMB) has been required to report on the costs and benefits of government regulations and in 2000 the OMB published guidance on how to conduct RIAs. This widened the scope of RIA to include non-quantifiable costs and benefits and put more emphasis on risk assessment and the quality of information collection (OMB, 2001).

In the United Kingdom the systematic assessment of the impact of regulation by government began in the 1980s as part of the Conservative government's deregulation initiative. Concern that excessive government intervention in industry might inhibit economic growth, especially small business activity, led to the establishment of a Deregulation Unit in the Department of Trade and Industry, together with eight Business Task Forces, with responsibility for reducing the existing burden on business, charities and voluntary organizations. For new regulations, the emphasis was placed on calculating business compliance costs and consulting business about these costs before legislating (NAO, 2001, appendix 1). In the mid-1990s the Deregulation Unit was transferred to the Cabinet Office and the Business Task Forces were replaced by a single Deregulation Unit. At the same time, risk assessment was added to the assessment process, and Ministers were required to sign risk assessments and cost compliance assessments to certify that the regulatory benefits and costs were appropriately balanced.

The Better Regulation Task Force was established as an independent advisory body in 1997 to advise government on regulatory issues, and is supported by the Regulatory Impact Unit located in the Cabinet Office. The Task Force's terms of reference are: 'to advise the government on action which improves the effectiveness and credibility of government regulation by ensuring that it is necessary, fair, and affordable, and simple to understand and administer, taking particular account of the needs of small businesses and ordinary people'. In 1998, the Prime Minister announced that no proposal for regulation should be considered by Ministers without a regulatory impact assessment being carried out. Guidelines for carrying out RIAs were published, and encompass risks, and costs and benefits not only to business but more widely. The RIA reports are published for public scrutiny. In 2000, revised RIA Guidelines were introduced. The main changes were: submission of an initial assessment to Ministers, before they choose the regulatory option; consultation with small business; emphasis on early informal consultation with those likely to be affected; greater emphasis on identifying non-regulatory options and making clear the benefits of proposals; more thorough assessment of costs and benefits; and a statement from the Minister responsible for the proposal that 'the benefits justify the costs' (Cabinet Office, 2000, 2003; Owen and Courtney, 2002).

Canada's RIA programme has evolved since the late 1970s, and in 1986 a formal government-wide regulatory policy was introduced with the requirement for an RIA for all regulation proposals. The Treasury Board Secretariat has developed a standard format for all RIAs and the Regulatory Affairs Directorate acts as the central agency responsible for reviewing proposals in draft form. It focuses on demonstrating through training and communication the benefits of conforming to the regulatory policy. This approach is judged to have been more effective in changing attitudes and enlisting cooperation than the 'gatekeeper'

approach operated from 1986 to 1991, when the Directorate had to formally approve all RIAs. The approach ‘focuses more on influencing regulatory culture within sponsoring departments than battling each regulatory proposal that falls short of the full requirements of the regulatory policy’ (Treasury Board of Canada, 2001). Regulatory departments have the flexibility to adopt different approaches to meeting RIA requirements. At the same time, ‘proposals which clearly violate the regulatory policy are systematically challenged at the Cabinet table’ and ‘in the highly collegial and consensus-oriented world of Ottawa decision-makers, that represents a significant deterrent to regulators’ (Treasury Board of Canada, 2001).

In common with the UK and Canada, New Zealand made it compulsory from April 2001 for all proposals submitted to Cabinet to have a Regulatory Impact Statement (RIS). This, where appropriate, should also include a Business Compliance Cost Statement (BCSS) explicitly recording the likely cost implications for business. Both the RIS and the BCCS are published on the responsible department’s website after agreement from the responsible Minister and/or Cabinet. The RIA Unit, in common with those in other OECD countries, is responsible for advice, guidance and training.

In recent years there has been a drive to reduce costs of excessive bureaucracy, under the leadership of the Ministerial Panel on Business Compliance Costs, aimed at obtaining a balance between achieving the government’s policy objectives and reducing unnecessary costs to business. The New Zealand government has also recognized the importance of seeking impartial assessment and has commissioned both university research centres and institutes of economic research to report to its Treasury and relevant departments, such as the Ministry of Consumer Affairs.

In the European Union, regulatory impact assessment is an important part of the ‘better governance’ agenda, which aims to improve the quality of legislation and make governance more transparent, responsive and accountable (Radaelli, 2003). The Goteborg European Council meeting in June 2001 agreed that ‘sustainable development should become the central objective of all sectors and policies ... careful assessment of the full effects of a policy proposal must include estimates of its economic, environmental and social impacts inside and outside the EU’ (EC, 2001, p. 1), and established procedures to ensure that each major legislative proposal is informed by an assessment of the potential impacts of the measure, both inside and outside the Union. The 2002 Communication of the European Commission on Impact Assessment commits the Commission to undertake an impact assessment of all major policy proposals in order ‘to improve the quality and coherence of the policy development process, [and to] contribute to an effective and efficient regulatory environment and further, to a more coherent implementation of the European strategy for Sustainable Development’ (EC, 2002a, p. 2). In 2003, the Commission began implementing the

new integrated system for the systematic use of impact assessment, which consists of the 'preliminary' assessment of all proposals in the Commission's work programme (Lee and Kirkpatrick, 2004).

Although the transitional economies of central and eastern Europe share a common history of Soviet or communist rule, there are considerable variances in the use of RIA, which suggests that history alone is not a sufficient explanation of the way reforms develop within government. Issues of administrative capacity, institutional infrastructure and incentives to carry out an RIA, all affect the reform process in transitional economies (Jacobs, 2005). The adoption of RIA is also seen as advantageous in terms of promoting the democratic principles of 'good government'. RIAs support legal government, which observes the rule of law with proportionate and equitable law. An accountable government is promoted through assessing direct costs and benefits that citizens will incur and selecting policies on the basis of best value for money, taking into account redistribution effects – that is, who gains and who loses. Consultation with consumers, business and civil society also helps build legitimacy and promotes issues of equity and fairness among citizens. This is particularly important in transition economies where NGOs and voluntary non-state institutions have been sluggish to develop and the role of civil society in shaping government is incipient and weak (Jacobs, 2004).

In developing countries there is a growing recognition among policymakers that RIA can be used in the design and implementation of regulatory reform programmes to bring about improvements in the quality of regulatory governance and policymaking (World Bank, 2004b, pp. 73–4). However, evidence on the use of RIA in developing countries is limited. For a small number of middle-income developing countries that are members of the OECD, notably South Korea and Mexico, there is information on the use of RIA in the country reviews of regulatory reform. The approaches adopted in these two countries are similar to those found in developed economies and are consistent with OECD principles. Nevertheless, their experiences appear to illustrate some of the challenges that may arise in adopting the OECD model in countries where institutional capacity is less well developed. More comprehensive information on RIA in developing countries is reported in Kirkpatrick et al. (2004), based on responses to a questionnaire that was sent to 311 departments with regulatory responsibilities in 99 countries. Overall, the findings from the questionnaire survey suggest that the level of awareness and application of RIA in developing countries is perhaps higher than might have been expected based on the limited information previously available. The survey findings indicate that RIA is already being applied in a number of lower-income economies, though it is still at an early stage of development. Forty per cent of the countries sampled returned completed questionnaires and the respondents suggested that RIA (or similar) is being used in the majority (75 per cent) of these countries. The coverage of RIA,

Table 11.3 *OECD RIA checklist*

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1. Is the problem correctly defined?
 2. Is government action justified?
 3. Is regulation the best form of government action?
 4. Is there a legal basis for regulation?
 5. What is the appropriate level (or levels) of government for this action?
 6. Do the benefits of regulation justify the costs?
 7. Is the distribution of effects across society transparent?
 8. Is the regulation clear, consistent, comprehensible, and accessible to users?
 9. Have all interested parties had the opportunity to present their views?
 10. How will compliance be achieved?
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Source: OECD (1995).

both in terms of types of regulation and number of regulation proposals appears, however, to vary widely between countries, and few countries appear to be applying RIA consistently to regulatory proposals affecting economic, social and environmental policies. While there is a general recognition of the desirability of including benefits as well as costs in an RIA, methods of quantification are generally underdeveloped. These findings lead to the conclusion that there is a need to improve understanding and practice of RIA in developing countries. In this context, while the OECD ‘best practice’ guidelines (Table 11.3) provide some pointers to how an RIA framework might be developed, they are unlikely to be a complete template or model for transfer and adoption in countries with very different institutions and objectives. The OECD guidelines need to be translated to reflect the particular issues that arise when regulating in developing countries, including issues to do with regulatory capacity, poverty reduction and development goals.

‘Good practice’ guidelines and the lessons of RIA experience

As already discussed, guidelines on undertaking RIAs have been published by a number of international organizations, including the OECD and the European Commission (OECD, 1995; EC, 2002b). There are variations in these ‘good practice’ guidelines, reflecting differences in legal, legislative and administrative traditions or systems (Mandelkern Group, 2001), but they follow a broadly similar approach. As an example, Table 11.3 sets out the OECD checklist issued in 1995 of questions that should be addressed in an RIA.

The publication of international guidelines should not be interpreted as advocating a ‘one-size-fits-all’ best practice approach to regulatory assessment. Rather, the principles and criteria for RIA practice that are described should be

viewed strictly as a guide to developing an RIA system that meets the particular needs and resource constraints of an individual country, rather than as best practice standards. These general guidelines can be supplemented by a number of practical lessons drawn from the experience of countries that have implemented some form of RIA.

First, RIA needs the development of RIA skills within the government machinery, including skills in enumeration and valuation of costs and benefits. Generally, qualitative effects will involve more judgmental or subjective evaluation, and physical units introduce serious problems of aggregation. There may be a temptation, therefore, to diminish the RIA to include only an evaluation of measurable financial costs and benefits. Or, the assessment could be reduced to looking solely at the cheapest way of achieving the regulatory outcome (in effect providing a cost-effectiveness study only) in which the benefits are taken as given. This lesser form of RIA risks ignoring important differential benefits from different forms of regulation.

Second, RIA requires the extension of consultation procedures to ensure that appropriate information is collected and analysed in reaching a view on the regulatory impact. There may be little tradition of consulting widely before undertaking regulation, or those chosen for consultation in the past may have been selected on political grounds. The need to consult and evaluate can be time consuming and resource heavy within hard-stretched governments. RIAs may involve multiple stages with each new regulation facing an initial RIA, another RIA after consultation and redrafting, and a final RIA on the legislation as passed by the legislature. A sensible approach to minimize these costs is to prioritize where detailed RIA should be undertaken, by using a screening procedure to identify when a regulation is likely to have major effects on the economy, society or the environment. It is important, however, that the decision on when to use a RIA is not made simply on political grounds.

Third, RIA needs to be championed across government if it is to be used consistently and become a normal feature of regulatory policymaking. It therefore needs clear and powerful political support within government if it is to overcome bureaucratic and political inertia. In the UK the Regulatory Impact Unit in the Cabinet Office monitors progress and encourages the implementation of RIA across government. Similar bodies exist in a number of other OECD countries (Radaelli, 2002, p.9).

Fourth, to achieve these improvements in regulatory governance may require a cultural change within government, involving more open policymaking as part of a broader process of governance reform.

Finally, RIA must also confront the possibility of 'regulatory capture'. In practice, the nature and content of regulation are likely to be 'captured' by special interest groups who have the time, resources and incentives to invest in influencing the regulatory process. In market economies, resources flow to where the

perceived returns are highest and this is no less true in the shaping of regulation policy. There will be constant pressure from external groups and their spokespersons within the legislature and government to advance regulations that promote their members' economic rents. For this reason, regulatory policymaking may not be the objective and rational process that RIA presumes, with its emphasis on fact finding and disinterested decision-making. At the same time, however, RIA can help to control rent seeking activity within government by promoting wider consultation and by requiring the explicit identification and evaluation of costs and benefits. RIA, by making the regulatory process more transparent and accountable, provides a means of weakening regulatory capture.

RIA has the potential to form an integrating framework within government to improve regulatory design and implementation. A properly carried out RIA will usefully address both regulatory goals and the regulatory process and by so doing should lead to improved regulatory capability, effectiveness, efficiency, and accountability.

Evaluating the quality of RIA

As the scope and scale of RIA practice have grown, there has been increasing recognition of the need for ex post evaluation of regulatory quality. Ex post evaluation can improve the quality of RIA, first, by contributing to the body of empirical evidence on which the design and implementation of future regulatory proposals can be assessed, and second, by placing evaluation results in the public domain, thereby making policymakers more accountable for their regulatory decisions. The OECD defines regulatory quality as follows:

Regulatory quality refers to the extent to which a regulatory system pursues its underlying objectives. These objectives involve the specific policy objectives which the regulatory tool is being employed to pursue and the efficiency with which these objectives are achieved, as well as governance based objectives including transparency and accountability. (OECD, 2004b, p.8)

The purpose of the evaluation of RIA, therefore, is to improve the effectiveness and efficiency of the RIA system, in terms of the goals that are set for it. These goals can be set in narrow or broad terms. In a restricted sense, the goals can be expressed in terms of improving the performance of the RIA procedures in contributing to 'better' regulation and regulatory governance. In a broader sense, the evaluation can be in terms of the goals of the regulatory reform process as a whole.

Almost all of the RIA evaluation work undertaken so far has focused on the narrower level. There are three basic approaches to 'narrow' evaluation, each of which contributes to the understanding of regulatory performance (OECD, 2004b):

- *Compliance tests* are input based, and evaluate formal compliance with the individual elements of the RIA procedures and process.
- *Performance tests* go beyond the question of formal compliance with procedural requirements, and measure the quality of the analysis undertaken. They link the inputs and the outcomes of the RIA process by assessing whether RIA is functioning adequately.
- *Function tests* are outcome focused, and evaluate the actual effect of RIA on the quality of the regulatory outcomes.

Compliance tests

Compliance testing typically involves a ‘scorecard’ assessment against the benchmark of the guidelines for good practice, such as the OECD checklist for regulatory decision-making shown in Table 11.3. In the United States, RIA evaluation studies have benchmarked actual RIA against published guidelines issued by the OMB. In a review of 48 RIA completed between 1996 and 1999, Hahn et al. (2000) found that many of the assessments failed to conform to the relevant guidelines. In a recent evaluation of UK RIAs, Ambler et al. (2003) compare compliance across different periods and find limited improvement over time. Overall, the authors conclude that ‘The impression remains that in many cases compliance of RIAs remains a bureaucratic task to be despatched with as little effort as possible’ (p. 23).

Vibert (2004) undertakes a compliance evaluation of the reports prepared by the European Commission during the first year (2003) of implementing Extended Impact Assessments. The scorecard benchmarks three main aspects of RIAs, namely their approach to the quantification of costs and benefits, procedural aspects such as whether alternative approaches to a policy question have been considered, and whether the lessons emerging from the RIA exercise are being taken into account in the outcome. The results of the evaluation show that, while little progress has been made towards being able to quantify and monetize the costs and benefits of proposed regulatory measures, the assessment process has contributed to greater transparency in the Commission’s law making processes.

Performance tests

Performance evaluation tests focus on the quality of the various components of the process, rather than simply asking whether the required procedures were in place. A recent example of the performance testing approach to evaluation is provided by the UK National Audit Office reports on RIAs prepared by UK government departments and agencies (NAO, 2001, 2004). Using a sample of 10 RIAs, the evaluation methodology involved asking six high-level questions, each of which was broken down into more detailed sub-questions (Table 11.4).

Table 11.4 National Audit Office, UK: framework of questions

1. Was the RIA process started early enough?
 - Did the department have clear objectives for the regulation?
 - Did the department allow a realistic timetable for the RIA process?
 - Did the department consider the risks?
 - Did the RIA consider a range of options?
 - Were alternatives to regulation considered?
 - Were alternative regulatory tools considered?

 2. Was consultation effective?
 - Was effective consultation started early in the process?
 - Did the department use appropriate consultation techniques?
 - Did the department explain clearly the impact of the regulation?
 - Did the department consult all interested groups of stakeholders?
 - Did the department consider the impact on small businesses?
 - Were the results of the consultation used well in formulating the regulation?

 3. Did the RIA assess the costs thoroughly?
 - Were the implementation and policy costs on all affected taken into account?
 - Did the department identify all parties on whom costs would fall?
 - Did the department consider the costs to small businesses?
 - Did the department identify all likely costs?
 - Did the department assess the costs of all options?

 4. Did the RIA assess benefits realistically?
 - Did the department identify all parties who would benefit?
 - Were the benefits realistic and relevant to the regulation?
 - Was the methodology for quantifying/scoring the benefits robust?

 5. Did the RIA realistically assess compliance?
 - Was possible non-compliance factored into the analysis?
 - Did the department assess the existing level of compliance?
 - Were ways of increasing compliance considered?

 6. Will the regulation be effectively monitored and evaluated?
 - Did the RIA contain procedures for monitoring and evaluating the extent to which the regulation meets its objectives?
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Source: Humpherson (2004).

Perhaps not surprisingly, the study identified the use of a number of practices and approaches across UK government departments, evidence of good practice and areas in need of improvement. There were a number of main findings (Humpherson, 2004). First, RIA was well embedded within government as part of the policymaking process and all new regulations are subject to RIAs. Second, within the sample, there was an insufficient degree of attention paid to the generation of alternative options, including 'do nothing', and to the analysis of options. Third, there had been improvement in the form, content and timing of consultations, although there was scope for improvement in the integration of consultations into the final RIA report. Fourth, quantifying costs and benefits was weak. Quantification of risks and hazards that the regulation was intended to reduce was attempted in some cases, but benefits were rarely quantified. Data uncertainties were often ignored and excessive accuracy attached to the quoted figures. Finally, there was insufficient consideration given to the enforcement, sanctions and evaluation of the RIAs.

Lee and Kirkpatrick (2004) carried out a performance evaluation of a sample of EC Extended Impact Assessments undertaken by the European Commission. The reports were evaluated in five main areas, each of which was disaggregated into more detailed sub-categories. Each area and sub-category is assessed and given a score which recorded the quality in terms of a scale which ranged from 'A – generally well performed, no important tasks left incomplete' to 'F – very unsatisfactory, important tasks poorly done or not attempted'. The study identified a number of areas of weakness, including poor identification of the problem, unbalanced coverage of different types of impacts and lack of clarity in the explanation of the analysis, and weaknesses in the presentation of the RIA findings.

Function tests

Function tests are focused on the outcomes of the RIA, and attempt to demonstrate the difference that the RIA has made to the quality of the regulatory system. Methodologically, a function test is intended to measure impact against the counterfactual 'do nothing' situation. A number of different types of RIA function tests have been applied in practice (OECD, 2004b, p. 35). The most frequently used method of evaluating RIA outcomes is to assemble data on the frequency with which regulatory proposals are revised or abandoned as a result of the RIA. This type of functional test faces the standard methodological difficulty of determining whether the observed change is the direct result of the RIA, or whether other factors have influenced the outcome. Also, a part of the impact will be unobservable if regulatory proposals are withdrawn in anticipation of an unfavourable RIA. Ambler et al. (2004) examined a sample of 200 RIAs conducted by UK government departments between mid-1998 and mid-2002. They found little evidence that RIAs had caused legislation to be aborted, with

only 11 cases of final RIAs being identified where this was a possibility. However, this may understate the impact of the RIA process, since the authors were unable to track initial and partial RIAs that were subsequently withdrawn. Vibert (2004) evaluated the first year of extended impact assessments undertaken by the European Commission, and found that ‘there is not a single case where EU action has been assessed to have negative net benefits or where the inability to quantify the net benefits has led to the conclusion that the measure should be withdrawn or that no policy would be the best policy’ (p.9).

A second method of evaluating outcomes is to conduct an audit trail in relation to the RIA process and focus on how suggested changes to the initial regulatory proposal have been dealt with. This approach has the advantage of reviewing the process of managing the consultation suggestions and the internal decision-making involved in the preparation of the RIA. It is likely, however, to be relatively resource intensive (Yarrow, 2004). It also requires access to the key actors within government, which external evaluators may have difficulty in obtaining, since this increases the pressure on the regulators to be transparent and to justify their decisions.

A third evaluation approach extends the audit trail method, and tests the effect of the RIA on the organizational and regulatory culture; that is, ‘how and whether RIAs are instrumental in instilling a greater appreciation and understanding of the benefits of the RIA process, and thereby encouraging a proactive rather than reactive use of the RIA as a policy development tool’ (OECD, 2004b, p. 38). This type of evaluation is largely qualitative in nature, which can pose problems in the interpretation of the results. It does have the merit, however, of providing a more direct measure of the extent to which the goal of RIA has been achieved. Interestingly, the National Audit Office, which has legal authority to investigate internal procedures within UK government, found that its RIA evaluations had a significant impact on accountability – ‘in essence, therefore, the fact of the NAO evaluation can help concentrate the minds of departments: a point borne out by the feedback discussions held with departments whose RIAs were in the pilot sample, following the completion of the first year’s work by the NAO’ (Humpherson, 2004, p. 281). A further example of this approach being applied is the independent study of the Canadian RIA system, which found that the implementation of RIA in Canada had induced a cultural change among regulators: ‘More attention is paid to alternatives and costs and benefits ... Officials were sensitive to RIA requirements and departments had systems in place to consider regulatory options and costs and benefits ... and a core of expertise was available in several departments’ (Delphi Group, 2000, pp. 5–6).

Evaluation at the ‘broader’ level involves assessing the impact of RIA on the regulatory environment and on the benefits that this provides, in terms of the goals of the regulatory reform process. This approach to evaluation is considerably more complex and methodologically challenging than the ‘narrow’

approach that has been discussed above. The causal chain from inputs to outcomes is extended by two additional stages: from the outcomes as measured in terms of the RIA process to changes in the overall regulatory framework, and from changes in the overall regulatory environment to the goals to which regulatory reform is expected to contribute. The methodological problems of establishing a counterfactual baseline from which to assess changes, and the difficulties of attributing changes to the initial RIA process, have limited the application of this evaluation approach to RIA.

The contribution of RIA to the quality of the overall regulatory reform effort might be evaluated by assessing the scope and coverage of the RIA process in relation to the regulatory environment. This would involve aggregating the evaluation results from the compliance and performance evaluation tests, to obtain a measure (or order of magnitude) of the significance of the total impact of RIA on the quality of the regulatory framework. So far there has been no systematic evaluation of the impact of RIA as a whole on the quality of the regulatory environment in any country.

There have been efforts, however, to evaluate the impact of changes in the regulatory environment on the broader societal goals. The OECD country reviews of regulatory reform have provided empirical evidence of a relationship between regulatory reform and better economic performance. Gains in terms of higher productivity and economic growth are found in countries such as Canada, the US and the UK, which have had a lengthy period of RIA. The general conclusion is that 'countries with explicit regulatory policies consistently make more rapid and sustained progress than countries without clear policies. The more complex the principles, and the more concrete and accountable the action program, the wider and more effective was reform' (OECD, 2002, p. 40). Evidence of the relationship between regulatory reform, particularly as it affects the business sector, and economic performance in a large number of developing and transitional countries, has been assembled by the World Bank (2004a). However, the supporting data are largely associative in nature, and provide little convincing evidence of causality. The World Bank has also gathered measures of the quality of regulatory governance in different countries (World Bank, 2004b), which has been used to test for a causal relationship between regulatory quality and economic performance. Jalilian et al. (2004) use multiple regression analysis to test for the impact of regulatory quality on economic growth in a sample of developed and developing countries. Their results are consistent with the argument that improving the efficiency, effectiveness and transparency of regulatory policymaking can have a significant positive effect on economic growth.

To conclude this section, a common limitation of most RIA systems is the limited attention given to the monitoring and evaluation of results. This is a significant weakness, given that the systematic and transparent evaluation of ex

post impacts can contribute to a better understanding of successes and failures, and thereby to improved performance of RIA and regulatory systems. However, establishing the links between RIA and improvements in the quality of the overall regulatory environment, and between the regulatory environment and society's economic, social and environmental goals for national development, is a highly challenging exercise. But the discipline of so doing, if only in terms of the order of magnitude, is almost certainly justified in terms of the indirect impact that learning from experience will have on the RIA process and the quality of the regulatory framework.

Conclusions

Globally, the past decade has seen a major shift in the role that the state plays in the process of economic growth and development. This has led to interest in new approaches to policymaking with the aims of improving the quality of legislation and making governance more transparent and accountable. Regulation policy has been at the centre of this move towards 'better' policy and governance.

Regulatory impact assessment provides an analytical framework for assessing the effects that the introduction of a new regulation is likely to have, and also for assessing the actual impact of existing regulatory measures. By providing decision-makers with evidence on the effects of their regulatory choices, RIA can contribute to more informed policy choices, thereby improving the efficiency and effectiveness of regulation policy.

RIA was initially adopted in the OECD countries but is now being used in a growing number of transitional and developing economies. The way in which RIA has been implemented has varied between countries, reflecting differences in the objectives selected, institutional capacity and resource constraints. For many of these countries, RIA has been adopted within government only recently, and there is limited evidence available so far on the impact that it has had in terms of improving the quality of regulation decision-making. But for those countries where there is sufficient experience on which to make an evaluation of RIA performance, the results suggest that the impact has been positive in terms of more efficient regulation and also in the contribution to the broader goal of better governance.

RIA is a tool for decision-making, not a decision-making tool. It should be seen, therefore, as an integral part of the policymaking process. The aim of its application is to raise the quality of the regulatory decision-making process and in this way contribute to society's goal of economic, social and environmental advancement.

Note

1. This chapter draws heavily on work on regulatory policy undertaken with David Parker. See Kirkpatrick and Parker (2003), Parker and Kirkpatrick (2003), Kirkpatrick et al. (2004).

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