



Creating Change Together

Experience of the United Kingdom in using Regulatory Impact Assessments on the EU Level

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The Development of Regulatory Impact Assessments in the UK

Regulatory Impact Assessments (RIAs) are a vital tool used in the UK to assess the objectives, options, costs, benefits, risks, and implementation plan for all new regulations. These are tools that have taken many years to develop and are still developing to this day. Until the 1980s, regulation was largely seen as providing necessary protections to UK citizens and organisations and very little analysis of the costs and benefits of new regulations were undertaken in a formal or consistent way. Whilst regulation is still seen as providing protections where the free market does not provide them, there has been a much greater emphasis over the past 30 years on the government to provide analysis of the impact of new regulation. There are three key periods in the UK which have seen development of a system of regulatory impact assessments, which include:

1. **The start of the deregulation agenda, 1980s-1990s:** This period saw the first real focus in the UK on deregulation. In the mid-1980s the first step towards RIAs was introduced with structured analysis of costs, benefits and options for regulation being introduced. A unit within government looking at regulation was set up in the early 1990s.
2. **The formalisation of RIAs and the better regulation agenda, since 1997:** After the 1997 general election the emphasis moved from deregulation to better regulation. In 1998 the UK introduced mandatory RIAs for all new regulation, and these were all assessed by the Regulatory Impact Unit in central government. In 2005 the Regulatory Impact Unit became the Better Regulation Executive and there was a major review of how regulation was enforced in the UK. The focus was very much on how regulation effected businesses and how to minimise the burdens. The UK National Audit Office took on the role of independently auditing RIAs for quality and consistency.
3. **Focus on deregulation since 2010:** The emphasis most recently in the UK has been firmly on deregulation. The government promised to cut red tape (bureaucracy) for businesses and individuals and introduced a number of initiatives to do so, which the next part of this report summarises. The RIA is still a very important tool in assessing new regulations and is key to the successful implementation of a number of deregulatory policies. The UK government has published comprehensive guidance, which is listed in the further reading section of this report.

Recent Policy Initiatives in the UK

Since 2010 there have been a number of high profile policies which focus on deregulation and improving the quality and use of RIAs. These are outlined below:

‘One-in, two-out’: for every new regulation, double the cost of burdens need to be removed from existing regulation. This means that if a new piece of regulation costs businesses £50 million, another older piece of regulation costing £100 million needs to be removed or deregulated. This policy is quite ambitious and replaces the previous policy from 2010 of ‘one-in, one-out.’ The policy from 2010 removed £836 million more costs to business than new regulation introduced. The evidence in RIAs underpins the figures used to show that the ‘one-in, two-out’ policy is being adhered to. Every RIA

produced is examined by an independent organisation called the Regulatory Policy Committee to ensure that the figures in RIAs are not downplaying costs and overplaying benefits. This policy only applies to domestic regulation and not EU derived legislation. However, the business lobby in the UK has called for this to apply to EU legislation too.

Red Tape Challenge: The Red Tape Challenge was launched in 2011 and is an innovative approach to reduce regulation in the UK. It is a 'crowd-sourcing' (public consultation) exercise which asks businesses and other organisations to make a case for removing existing regulations. So far, £155 million annual costs to business have been removed. If ministers in the UK want to keep regulation they need to make a case to the Reducing Regulation Cabinet Committee (comprising of a selection of other government ministers) to convince them of the need of the regulation. It is easier for the government to remove domestic regulation but it is still including EU regulation in this exercise. Of course existing EU regulation cannot be removed without negotiations at the EU level. However, where a convincing case has been put to the UK government that a piece of EU legislation is overly-burdensome, it will feature in the UK's negotiation position to the Commission reduce the existing costs. The RIA is again a useful tool to gather evidence for the Red Tape Challenge and a way to calculate how much the initiative is saving UK businesses.

Enforcement Review: In March 2012 the UK government launched an initiative called 'Focus on Enforcement' which is looking sector by sector on how regulations are enforced, or how businesses are inspected to check for compliance with regulations. The aim is to reduce overly-burdensome enforcement of regulation. RIAs show that a great deal of costs of regulation comes from businesses preparing for inspections from various different government related organisations. In terms of EU regulation, the Review has found that sometimes UK inspections or enforcers expect over-compliance with EU legislation, so this review also looks at how enforcement agencies can understand the obligations in EU law better so that they do not add unnecessary burdens on business.

Alternatives to Regulation: The policy of the UK government is that regulation is a last resort. All other options like: doing nothing at all; improving information or education; self-regulation; economic instruments; or behavioural change initiatives should be considered before formal regulation is introduced. Alternatives to regulation must be included as viable options in RIAs. The UK also pushes for alternatives to regulation in negotiations for EU legislation.

Reducing regulation on small businesses: Since 2011 the UK government introduced a freeze on any new regulation affecting businesses with fewer than ten employees. This policy will last until 2015 and is aimed at helping growth of the country's smallest businesses. The UK negotiating position in the EU is push for similar exemptions for the smallest businesses to new EU legislation. Again, the RIA is used as the evidence base for such negotiations.

Reducing the cost of EU legislation: The UK government is particularly keen to see a reduction in the cost of existing and new legislation introduced at the EU level. The UK is focussed on a number of EU wide initiatives such as: better quality impact assessments produced for all EU legislative proposals; an annual statement of net cost to business from EU proposals; a commitment from the Commission to reduce burdens on business similar to the 'one-in, one-out' policy in the UK; a standard template for Commission RIAs; and better independent scrutiny of RIAs produced by the Commission.

Governance of Regulatory Initiatives in the UK

There is robust governance of regulatory initiatives in place in the UK. This ranges from guidance on RIAs; independent scrutiny of RIAs; and collective ministerial agreement of regulatory proposals. All parts of

the UK's formal governance of regulatory proposals have a similar aims - to ensure that any regulatory policy response is proportionate and justified and has had appropriate levels of analysis on the costs, benefits, risks and options.

RIA guidance documents: the UK government produces guidance on how to produce an RIA; a mandated template for each RIA; and for European legislation there is an additional requirement to complete a checklist for analysis for EU proposals. More information on these documents can be found in the further reading section of this report.

Better Regulation Executive: There is a unit of civil servants in the UK which has the sole focus of designing, implementing and enforcing regulatory policy, including RIAs and public consultations. It is a unit comprising of around 60 people and is situated in the Department for Business, Innovation and Skills but has a cross-government remit on regulation.

Regulatory Policy Committee: The Regulatory Policy Committee provides independent scrutiny of proposed regulatory measures put forward by government. It was formed in 2009 and its role was strengthened in 2011. The organisation reviews evidence and analysis supporting new regulatory proposals prior to final ministerial decisions, to ensure that when ministers make decisions on proposed new regulations, they do so against the background of a robust, evidence-based policy making process. Members of the Committee are independent, high profile people from business, trade union and academia.

Reducing Regulation Cabinet Committee: This is a committee of the UK Cabinet of government. The ministers on the Committee decree on regulatory policy. No new regulation can be made law in the UK without approval from this Committee.

European Affairs Cabinet Committee: In addition to agreement from the Reducing Regulation Committee, if a new regulatory proposal originates from the EU then ministers on the European Affairs Cabinet Committee must also give approval.

The UK's approach to EU Legislation

The UK government has developed a set of guiding principles for EU legislation, which were published in 2011. These principles are the government's approach to EU measures, aimed at maximising the UK's influence in Brussels and ending the 'gold-plating'¹ of EU legislation in the UK. Every policy official or government minister who negotiates on behalf of the UK in EU institutions will be mindful of the following five overarching principles:

1. The Government's approach is to look at the cumulative impact of new EU measures.
2. Wherever possible, the Government will argue for alternatives to regulation at European level, drawing on behavioural science insights.
3. The Government will engage with the European Commission before it has adopted proposals to increase UK influence on the drafting of legislative proposals.
4. The Government will build alliances with other Member States and relevant MEPs and other EU-level stakeholders to increase the UK's effectiveness in negotiations.

¹ Gold-plating refers to the perceived over-implementation of the requirements set out in EU legislation.

5. The impact on the UK of the proposed legislation must be analysed from the outset of negotiations – this is done through the production of regulatory impact assessments.

Once legislation has become law in the EU, the UK also has a set of principles for transposing the legislation into UK regulation:

- Ensure that (save in exceptional circumstances) the UK does not go beyond the minimum requirements of the measure which is being transposed;
- Wherever possible, seek to implement EU policy and legal obligations through the use of alternatives to regulation;
- Endeavour to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts;
- Always use ‘copy out’ for transposition where it is available, except where doing so would adversely affect UK interests e.g. by putting UK businesses at a competitive disadvantage compared with their European counterparts. If departments do not use copy out, they will need to explain to the ‘Reducing Regulation Committee’ of Cabinet ministers the reasons for their choice;
- Ensure the necessary implementing measures come into force on (rather than before) the transposition deadline specified in a directive, unless there are compelling reasons for earlier implementation; and
- Include a statutory duty for Ministerial review every five years.

The UK government has also produced transposition guidance for lawyers and policy-makers on ‘How to Implement European Directives Effectively’, which is also referenced at the end of this report. It gives practical advice and steers for how the UK should implement EU legislation at a national level. It covers areas like avoiding over-implementation (‘gold-plating’); parliamentary scrutiny; consultation and legal transposition.

Case studies of UK experience in using RIAs at the EU level

To demonstrate where the UK has used RIAs for EU legislation, the report looks at three recent examples. In all three case studies, the RIA has formed an integral part of the UK’s negotiation position in EU discussions and also for public consultations within the UK on how to best implement requirements once the EU Directives have been agreed.

Waste Electrical and Electronic Equipment Directive: The aim of this Directive is to improve the efficiency and effectiveness of the original WEEE Directive by further reducing environmental damage and harm to human and animal health caused by the disposal of electrical and electronic equipment when it becomes waste. The UK government was required to transpose the Directive into UK law so to avoid infraction proceedings against the UK, but the government wants to implement the changes in the least burdensome as possible to business – particularly for producers and treatment facilities. Different options were assessed in the UK RIA to consider whether and how to reform the electrical and electronic equipment waste system in the UK. The RIA provided essential analysis that was used in the ministerial decision making process. The public consultation on the RIA closes at the end of June 2013, but proposes that the waste system should be reformed in the UK to help meet EU requirements, whilst making it easier for UK businesses to comply with requirements.

Simpler financial reporting for micro-entities: the UK's proposal to implement the 'Micros Directive':

The European Union has recently defined a new category of company, the “micro-entity”. Micro-entities are very small companies with limited resources to comply with demanding regulatory requirements. The UK government has been pushing for micro businesses to be exempt from some EU legislation for some time so that regulatory requirements do not put them out of business. The Micros Directive provides an exemption micro-entities from certain financial reporting requirements. The Micros-Exemption takes the form of a Member State option to exempt micro-entities from certain obligations that may impose unnecessarily onerous administrative burdens. The UK RIA supported the objectives of this EU Directive.

Safety of Toys Directive: The objective of the Directive is to enhance the level of safety of toys while maintaining the smooth functioning of the internal market for toys. In this instance, the transposition into UK law used ‘copy-out’ from the original Directive to avoid gold-plating or over-implementation. The public consultation on the analysis in the RIA led to ten responses from businesses and as a result of these responses, the UK government recalculated the costs to business and the implementing regulations were clarified and simplified.

Key lessons learnt from the UK perspective

1. **Start RIAs as early as possible** – an RIA should not be a retrospective justification for a policy decision, it should be an evolving document which informs policy development through all stages.
2. **Don't over-complicate the information requirements in RIAs** – if the RIAs are too long and include too much information the quality suffers and the usefulness wanes. The UK has recently cut down the RIA template to just 3 pages and focuses on costs, benefits, risks and objectives of a policy.
3. **RIAs are the evidence base for your negotiating position in the EU** – the RIA can inform both the UK negotiation position and also the production of the Commission's RIA.

Further reading

There are several other sources which provide more detail on the issues covered in this paper. Links are provided below.

UK RIA guidance

- Guidance on when to do a RIA, August 2011: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31607/11-1111-impact-assessment-guidance.pdf
- Toolkit on how to do an impact assessment, August 2011: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31608/11-1112-impact-assessment-toolkit.pdf
- Template for all UK RIAs: <https://www.gov.uk/government/publications/impact-assessment-template-for-government-policies>

UK Policy Initiatives to Reduce Regulation

- The Better Regulation Executive's website: <https://www.gov.uk/government/policy-teams/better-regulation-executive>
- The Red Tape Challenge website: <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>
- Focus on Enforcement website: <http://discuss.bis.gov.uk/focusonenforcement/>

UK's Approach to EU Legislation

- Transposition guidance - how to implement European Directives effectively, April 2013: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185624/bis-13-775-transposition-guidance-how-to-implement-european-directives-effectively.pdf
- Guiding principles underlying the UK government's approach to implementing EU measures, April 2013: <https://www.gov.uk/government/publications/guiding-principles-for-eu-legislation>
- Checklist for analysis of EU proposals: <https://www.gov.uk/government/publications/checklist-for-impact-assessments-on-eu-policies>
- The 10 point plan for EU Smart Regulation: call by 13 EU member states, including the UK, on the European Commission to advance the agenda on smart regulation, and to reduce the overall EU regulatory burden, November 2012: <https://www.gov.uk/government/publications/10-point-plan-for-eu-smart-regulation>

Case studies of UK experience in using RIAs at the EU level

- Waste Electrical and Electronic Equipment Directive – the UK RIA, January 2013: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/186971/bis-13-763-impact-assessment-of-recast-directive-2012-19-eu-on-waste-electrical-and-electronic-equipment-weee.pdf
- Simpler financial reporting for micro-entities: the UK's proposal to implement the 'Micros Directive' – the UK public consultation and RIA, February 2013: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/86259/13-626-simpler-financial-reporting-for-micro-entities-consultation.pdf
- Safety of Toys Directive – the UK public consultation and RIA, July 2011: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31812/11-1095-safety-of-toys-government-response-european-directive.pdf