



National Audit Office

REGULATORY IMPACT ASSESSMENTS AND SUSTAINABLE DEVELOPMENT



BRIEFING FOR THE ENVIRONMENTAL AUDIT COMMITTEE
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1 The House of Commons' Environmental Audit Committee (EAC) recommended that the National Audit Office (NAO) carry out an analysis of recent Regulatory Impact Assessments (RIAs) to assess the extent to which they reflect a new requirement to consider environmental and social impacts. This briefing responds to the Committee's request.

2 Since their introduction in 1997, primarily as a tool for assessing economic impacts on business, RIAs have developed to provide a framework for analysing the likely impacts of a policy change and the range of options for implementing it. They are required for any form of regulation, such as formal legislation, codes of practice or information campaigns, which has any impact, whether it be social, environmental or economic, on business, the public sector or the voluntary sector.

3 The UK Sustainable Development Strategy highlights the role that RIAs can play in appraising policies against sustainable development principles.¹ Between April 2004 and April 2005 some 200 RIAs were produced by government departments; this review is based on a sample of 10 RIAs that related to policies with likely significant social and environmental impacts.

4 **RIAs have some potential strengths as a means to inform and influence policy making, and to facilitate the consideration of sustainable development concerns in new policy.** The RIA process is now well established in Whitehall and is intended to cover all major policy development; there is a network of specialists in the Cabinet Office and departments to support and enforce good practice; departmental compliance with requirements is high; the process can influence policy at all stages from initial idea through to implementation; the process is transparent, being in the public domain at key stages; and finally, good policy making and sustainable development share some common principles.

5 **But RIAs also suffer from some limitations.** Some RIAs deal only with certain aspects of a policy, which inhibits their potential to assess sustainable development concerns. And too often RIAs are used to justify decisions already made rather than an ex ante appraisal of policy impacts. If RIAs are to fulfil their role to inform and challenge policy-making, they should be started early in the decision-making process, and involve wide-ranging consultation with key stakeholders, including other government departments where appropriate.

¹ In this briefing we take our understanding of sustainable development from the Government's 1999 and 2005 Sustainable Development Strategies i.e. to include economic, environmental and social issues, as well as cross-cutting principles such as taking a long-term perspective.

6 Our review of 10 recent RIAs found that most did not handle sustainable development concerns well. Few identified all social or environmental impacts that they might have been expected to cover. Social and environmental impacts were often not analysed in sufficient depth. And the variable presentation of RIAs made it difficult to see if and how sustainable development issues had been considered. There is a learning curve in any process and the NAO, in its broader work on RIAs², has found that departmental practice has improved over time. Our sample was drawn from RIAs published in the year after the requirement to explicitly consider environmental and social impacts was introduced, so for some it was early days. If departments increase their capacity and expertise, we might expect the consideration of sustainable development issues to improve.

7 An important question, however, is whether to persist with RIAs as the key vehicle for incorporating sustainable development into policy making. On the one hand, sustainable development may be difficult to incorporate in a process dominated by economic and quantifiable impacts. On the other hand, it is early days and practice may improve, and it has to be asked if there is an alternative or better way of integrating the economic, social and environmental impacts into policy making. **In the absence of a viable alternative to RIAs, we have concentrated on recommendations to improve the current system.**

8 There is more that can be done to improve the way sustainable development is dealt with in RIAs. Better guidance and training would help. The Cabinet Office could strengthen its scrutiny of sustainable development. A more consistent style and standard of presentation would also demonstrate that sustainable development issues have been addressed and taken into account.

² Evaluation of Regulatory Impact Assessments Compendium Report 2003-04 (HC 358) and 2004-05 (HC 341).

SUSTAINABLE DEVELOPMENT IN REGULATORY IMPACT ASSESSMENTS

Introduction

1.1 The House of Commons' Environmental Audit Committee (EAC) has a longstanding interest in how sustainable development is incorporated into the policy making process. In April 2004 Regulatory Impact Assessments (RIAs) subsumed a dedicated sustainability appraisal tool – Integrated Policy Appraisal – to become the principal appraisal process for sustainable development in policy-making. In its seventh report of 2005, however, the Committee expressed concern that the fundamental structure of RIAs³ and associated guidance was “ill-suited to the overriding need for policy makers to be able to balance environmental impacts against social and economic impacts and to assess the extent of any trade-offs which need to be made”. EAC recommended that the National Audit Office (NAO) carry out an analysis of recent RIAs to assess how they have responded to the change in procedures requiring explicit consideration of environmental and social impacts. This briefing responds to the Committee's request.

1.2 Our review was based on a sample of 10 RIAs published since the guidance changed in April 2004, chosen on the basis that they relate to policies with likely environmental and social impacts (see Figure 1).⁴ We assessed this sample against Better Regulation Executive guidance on RIA development. We invited an expert panel to assess each RIA against the sustainable development issues they would have expected to feature in them. We also surveyed the RIA team in each department producing RIAs, about the arrangements in place and their views of the process.

1.3 This work on sustainable development in RIAs complements the NAO's main programme of work on RIAs; in December 2002 the Cabinet Secretary invited the Comptroller and Auditor General, the head of the NAO, to undertake an annual evaluation of a sample of RIAs.⁵ The first report was published in March 2004 and this is now an annual publication.

1.4 At the time of writing, the Better Regulation Executive is reviewing the future of RIAs, and considering options for improving their usefulness in policy making. The results of our analysis, and the Committee's consideration of it, should contribute to that review.

RIAs have potential strengths as an appraisal tool

They are well established in government

1.5 Since their introduction in 1997, primarily as a tool for assessing economic impacts on business, RIAs have developed to provide a framework for analysis of the likely impacts of a policy change and the range of options for implementing it. In the process the scope of the RIA has expanded; it is now designed to evaluate the full range of economic, environmental and social costs and benefits of a policy proposal. This includes for example, an assessment of the impacts on small businesses and competition, as well as incorporating tests such as Health Impact Assessment and Rural Proofing (see Figure 2 on page 6). RIAs are required for any form of regulation, such as formal legislation, codes of practice or information campaigns, which has any impact, whether it be social, environmental or economic, on business, the public sector or the voluntary sector.

³ EAC Seventh Report (13 April 2005) *Pre-Budget 2004 and Budget 2005: Tax, Appraisal, and the Environment*.

⁴ Our sample includes RIAs from the following departments: Department of Environment, Food and Rural Affairs (DEFRA); Department for Transport (DfT); Department of Trade and Industry (DTI); Office of the Deputy Prime Minister; Department of Health.

⁵ *Evaluation of Regulatory Impact Assessments Compendium Report 2003-04 (HC 358) and 2004-05 (HC 341)*.

1 RIAs covered by our examination

<p>Biofuels Labelling Department for Transport (DfT)</p>	<p>This RIA addressed a policy to comply with a particular article of the European Directive on the labelling of biofuels</p>
<p>Business Improvement Districts Office of the Deputy Prime Minister (ODPM)¹</p>	<p>This RIA accompanied a Statutory Instrument which prescribes the detailed arrangements for setting up and maintaining a Business Improvement District in an area.</p>
<p>Crossrail DfT</p>	<p>The RIA assesses the need for primary legislation to implement Crossrail, a new railway connecting existing track to the west and east of London.</p>
<p>The Electricity and Gas Energy Efficiency Obligations (EEO) Order 2004 Department for Environment Food and Rural Affairs (DEFRA)</p>	<p>This RIA describes a proposal to set targets for electricity and gas suppliers to increase domestic energy efficiency in order to alleviate fuel poverty and reduce carbon dioxide emissions.</p>
<p>Renewables Obligation Order 2005 Department of Trade and Industry (DTI)</p>	<p>This RIA assesses the impact of proposed changes to the Renewables Obligation Order, including measures to make it function more effectively, allowing for tradability of certificates issued under the Renewables Obligation with those issued under the Northern Ireland Renewables Obligation, and extending the levels of the Renewables Obligation beyond 2010 to 2015.</p>
<p>Water Fluoridation Department of Health</p>	<p>This RIA accompanies a statutory instrument to outline the level of consultation required by a Strategic Health Authority before it compels a water supplier to add fluoride to the water supply, and give indemnities to water undertakers and water suppliers.</p>
<p>Work and Families DTI</p>	<p>This RIA accompanies the Work and Families Bill, which introduces a package of measures designed 'to give children the best start in life'. The measure we considered is to extend the period of statutory maternity and adoption payments from 26 to 39 weeks.</p>
<p>Environmental Impact Assessment DEFRA</p>	<p>This RIA accompanies a Statutory Instrument transposing two requirements of the EU 'Environmental Impact Assessment' Directive, and was at partial RIA stage at the time of our review. This introduces new rules on restructuring of rural land holdings, and a proposal is to introduce thresholds before environmental assessments are necessary.</p>
<p>Food Industry Sustainability Strategy DEFRA</p>	<p>This partial RIA² assesses a proposal to introduce a voluntary sustainability strategy for the whole of the food and drink industry. This would cover all aspects of food processing and retail once food leaves the farm on which it is grown.</p>
<p>Lorry Road User charge DfT, HM Treasury and HM Revenue and Customs</p>	<p>This partial RIA accompanies a proposal to introduce charges to foreign lorry operators using British roads.</p>

Source: National Audit Office

NOTE

- 1 In May 2006, the Department for Communities and Local Government (DCLG) replaced ODPM.
- 2 At the time of writing this review, DEFRA had not published the final RIA on this proposal.

2 The Scope of RIAs

BRE guidance suggests that a final RIA should set out:

- the **purpose** and **intended effect** of the policy proposal;
- a range of **options** for achieving the policy objective (including a do-nothing option);
- identify who is affected, including the business sectors and groups on which there may be a disproportionate impact;
- compare the benefits and costs for each option considered in the partial RIA;
- consider and record separately the 'other' costs and benefits: not just those to the public sector, firms, charities and the voluntary sector but also to consumers/individuals and to the economy at large, taking account of the economic, social and environmental effects;
- the results of **consultation**;
- the impact on **small firms** and **competition**; and
- arrangements for: enforcement, sanctions and monitoring of the policy; an implementation and delivery plan; and post-implementation review.

Source: Better Regulation Executive

1.6 The RIA process is supported by a network of regulation specialists within government.

- The Better Regulation Executive (BRE), part of the Cabinet Office, is responsible for the RIA process across Whitehall. BRE provides guidance to departments, monitors departmental compliance with RIA requirements, is available for consultation on matters of RIA practice, and gets involved in any RIAs judged to be significant in terms of established criteria.
- Within each department, a Better Regulation Unit (BRU) co-ordinates RIAs, provides guidance and assistance to teams involved in regulation, and is responsible for liaison with BRE.

1.7 Departmental compliance with the requirement to produce a RIA for all significant legislative changes is very high. BRE's regular exercises to establish departmental compliance with RIA requirements have found that the rate of compliance is consistently over 90 per cent with 100 per cent compliance in November 2004 and June 2005.

RIAs should be prepared for most policy development

1.8 BRE guidance advises that RIAs should be produced for any policy proposal that has an impact on business, charities or the voluntary sector, and that an initial RIA should form part of any policy proposal to Ministers. RIAs would not normally be expected to accompany high level, strategic papers which outline the general direction and intent of a policy, but would be expected if these proposals were supported or complemented with proposed actions or measures that will lead to impacts on business, charities or the voluntary sector. Virtually all White Paper policy statements and Green Paper consultations fall into this latter category. Therefore, despite their name, RIAs are undertaken for government interventions beyond regulation, such as new fiscal measures and legislative arrangements for market mechanisms.

1.9 RIAs are primarily concerned with domestic UK policy changes. Foreign policy and aid decisions are not usually subject to the RIA system; the Department for International Development produces very few RIAs. RIAs are not prepared for lower-level policy making and implementation. For example RIAs are not required for local government plans and programmes, which are more likely to be captured by Strategic Environmental Assessment. Direct expenditure on individual projects such as road building and flood management, are covered by Environmental Impact Assessment regulations rather than RIAs.

RIAs can influence at several stages in the policy-making process

1.10 **Figure 3** shows how the RIA process involves four stages, providing opportunities to both influence and document policy-making at key points in the policy development process. Thus, in theory, the RIA process provides an ideal way to ensure that sustainable development considerations are taken into account in policy making. The RIA process is also transparent: the partial and final RIAs are in the public domain, for all to see, whilst the final RIA also provides a means to demonstrate to Parliament that proper procedures have been followed.

3 The four stages of RIAs

Initial RIA: This forms part of the submissions seeking Ministerial agreement to a proposal. It should be undertaken at the outset of a new policy and may involve initial discussions with stakeholders though it is not likely to have much detail.

Partial RIA: This builds on the Initial RIA through research and discussions with affected stakeholders. It must accompany the formal public consultation for proposals. It should set out the alternative ways of meeting the policy objective, based on a consideration of options.

Full RIA: The Department draws on the results of the consultation process and further research to produce the full RIA. It should include a department's estimates of the problem, benefits, costs and uncertainties. It is submitted to the relevant Minister who is required to sign it to state that the benefits of the proposal(s) justify the costs.

Final RIA: The document signed by the Minister is known as the Final RIA. This is submitted to Parliament if it accompanies a Bill or Statutory Instrument.

The timetable for this process varies significantly from case to case; the Cabinet Office requires a minimum 12 week consultation period, but there is no upper limit.

Source: National Audit Office

The RIA process and sustainable development share some important principles

1.11 RIAs consider economic, environmental and social costs and benefits, whereas other ex ante appraisal tools such as Strategic Environmental Assessment⁶ and Environmental Impact Assessment⁷ tend to focus predominantly on environmental issues. RIAs therefore have the potential to play an important role in encouraging integrated decision making, which is a key feature of sustainability.

1.12 If RIAs are carried out according to BRE's guidance to departments, they will incorporate many of the principles in the government's 2000 and 2005 Sustainable Development Strategies. For example, three important principles in both strategies have been:

- taking account of all costs and benefits;
- evidence based-policy making; and
- stakeholder consultation.

The BRE guidance makes it clear that a good RIA should incorporate these principles.

⁶ Required by an EU directive for "plans and programmes", such as local transport plans and regional waste strategies.

⁷ Required under planning legislation for development or construction projects with significant environmental effects.

⁸ *Evaluation of Regulatory Impact Assessments Compendium Report 2003-04 (HC 358) and 2004-05 (HC 341).*

RIAs also have limitations

Some RIAs are scoped in ways which preclude or inhibit discussion of sustainable development concerns

1.13 Some of the RIAs in our sample had a narrow scope or definition, sometimes dealing with a technical detail rather than the substance of a new policy. As a result, there was little or no discussion or cross-reference to the wider environmental and social impacts of the new policy. Examples are shown in **Figure 4 overleaf**. While it is good practice for RIAs to be clear, concise and specific (and hence we assessed RIAs in our sample only on the basis of social and environmental issues relevant to their given scope), if each RIA only deals with small aspects of a policy there is risk that the fundamental issues of a policy are never fully addressed. If RIAs are to fulfil their role of providing transparency and a full evidence base to the Ministers, RIAs with a limited scope should link to, and ideally summarise, any broader impact assessments to provide reassurance that the wider social and environmental impacts of the policy are appraised elsewhere. One way to achieve this is for a narrow RIA to refer to a "framework" RIA in which these wider matters are addressed. Full consultation with the public and other government departments can also help to highlight where there are wider issues for consideration; there is also the potential for other government departments to play a role in scrutinising RIAs on this basis.

RIAs are too often used to justify rather than appraise and inform policy

1.14 Our previous reports⁸ on RIAs across government have shown a need to improve the way RIAs are used to appraise the introduction of regulatory proposals. We have highlighted that RIAs are not always integrated fully into the policy-making process and so are unable to fulfil their potential to inform and challenge policy-making. RIAs may be started late in the policy-making process and therefore have only limited relevance to the outcome of policy, though nevertheless serve as an important communication tool. Others have no impact on policy-making and are produced merely because there is an obligation on departments to do so.

4 RIAs in which the scope inhibited discussion of social and environmental impacts

Crossrail

This RIA focuses on whether the best legal way to proceed with Crossrail would be a hybrid bill or through existing legislation. The RIA does mention that the main environmental and social impacts of Crossrail are covered in other impact assessments (an Environmental Impact Assessment and a review of the business case) though it would help if the RIA provided a summary of their findings.

Water Fluoridation

This RIA has a confused scope, setting narrow objectives concerning some aspects of whether to indemnify the water companies which fluoridate water, but the RIA proceeds to examine (in part) the wider issue of dental health, which we might expect to find in a framework RIA.

Biofuels Labelling

This RIA assesses a policy proposal to comply with a particular article of the European Directive on biofuels, which imposes a requirement that biofuel blends in excess of five per cent should be clearly labelled at the point of sale. In doing so, this RIA focuses only on informing consumers to ensure they did not void their vehicle's warranty. It does not cross refer to a framework RIA on the Biofuels Directive. It does not consider wider social and environmental issues.

Source: National Audit Office

1.15 For example we identified three factors that limit the influence of RIAs on policy:

- some RIAs are produced after important decisions have been made;
- some RIAs deal with the implementation of European Union Directives. In such cases, many of the measures have already been decided and the UK and other Member States are obliged to implement them; and
- some RIAs are produced to update aspects of the existing policy, whilst leaving the rest of the policy unchanged.

Nevertheless even in these cases departments can derive benefit from producing RIAs. Regardless of their influence on policy, RIAs fulfil a vital communication role. In the case of implementation of EU directives, for example,

departments still need an overall assessment of the costs and benefits and a benchmark for follow-up in later years to monitor implementation and progress.

1.16 A forthcoming NAO report evaluates the extent to which departments are embedding impact assessment into their processes and culture.

Sustainable development was not well handled in most of the RIAs we examined

1.17 To test the degree to which sustainable development featured in recent RIAs, we examined 10 RIAs published since April 2004.⁹ We expected the RIAs in our sample to follow the BRE guidance on assessing social and environmental impacts. That guidance requires that RIAs should:

- **identify** all impacts;
- provide **analysis** on each impact that is proportionate to the likely impact, but rigorous enough to inform decision making; and
- **present** all costs and benefits clearly.

1.18 We also assessed the RIAs in our sample against the key principles of the government's 1999 and 2005 Sustainable Development Strategies.¹⁰ Although BRE guidance does not explicitly refer to the Sustainable Development Strategy, this is a cross-government strategy which applies to all policy-making. The 2005 Sustainable Development Strategy highlights the importance of appraising policies against the principles of sustainable development and the role that RIAs can play in doing so.

1.19 **Figure 5** summarises the results of our examination against BRE guidance on identifying, analysing and presenting environmental and social costs and benefits. We found a very mixed picture. All of the RIAs had some positive features, but only one RIA (on the Electricity and Gas (Energy Efficiency Obligations) Order 2004) demonstrated all aspects of good practice. A list of the RIAs in our sample is provided in Appendix 1, together with examples of how they treated relevant environmental and social issues. We discuss the main results of our analysis in the rest of this section.

⁹ Three of the RIAs in our sample (on the Environmental Impact Assessment Regulations (Rural land holdings and uncultivated land for agriculture); the Food Industry Sustainability Strategy; and the Lorry Road User Charge) are partial RIAs at the time of writing, and are assessed accordingly; we took account of the fact that a department's estimates of the problem, benefits, costs and uncertainties are likely to be less developed than in a final RIA.

¹⁰ Given that our sample includes RIAs produced before and after the Government launched a new Sustainable Development strategy in March 2005, we applied only the principles common to the two strategies. The 2005 is not a departure from the 1999 strategy but rather a simplification of it: the differences are in emphasis and presentation.

5 Performance of the RIAs in our sample, against BRE guidance on social and environmental costs and benefits

RIA code	BL	BID	CR	EEC	ROO	WF	W&F	EIA	FISS ¹	LRU
Identification ²	-1	-1	2	2	-1	-1	1	1	2	-1
Analysis ³	-2	-2	-1	2	-1	-2	1	-1	-1	-2
Presentation	1	1	1	2	1	1	2	2	-1	1

Key: 2 Good practice 1 Some good points but room for improvement -1 Some weak elements -2 Poor practice

Criteria for assessment: *Identification:* does the RIA identify the social and environmental costs and benefits?; *Analysis:* does the RIA provide analysis on each impact that is proportionate to the likely impact, but rigorous enough to inform decision making?; and *Presentation:* does the RIA present all costs and benefits clearly?

Key to RIA codes: *Full RIAs:* BL: Biofuels Labelling; BID: Business Improvement Districts; CR: Crossrail; EEC: The Electricity and Gas (Energy Efficiency Obligations) Order 2004; ROO: Renewables Obligation Order; WF: Water Fluoridation; W&F: Work and Families. *Partial RIAs:* EIA: Environmental Impact Assessment Regulations (Rural land holdings and uncultivated land for agriculture); FISS: Food Industry Sustainability Strategy; LRU: Lorry Road-User Charge.

Source: National Audit Office

NOTES

1 The final RIA on the Food Industry Sustainability Strategy was not published at the time of writing this review, but DEFRA told us that it addresses many of the weak presentational and analytical elements in the partial RIA.

2 As noted previously, some of the RIAs in our sample had a narrow or confused scope which inhibited or precluded discussion of social and environmental issues relevant to the wider policy. To aid the clarity of our analysis, however, the marks in this table do not penalise RIAs for doing so, but only assess how the RIA treated environmental and social issues relevant to the given scope.

3 Similarly, to avoid criticising a RIA twice for the same mistake, the marks for analysis only assess how the RIAs treated the environmental and social impacts they identified.

Few RIAs identified all social or environmental impacts

1.20 Most RIAs in our sample made some reference to either social or environmental impacts. However, in many cases the RIAs did not provide a full enough description to make it clear the Department had considered all the potential impacts. An example is shown in **Figure 6**.

Environmental and social impacts were often not analysed in sufficient depth

1.21 An analysis of the key costs and benefits of a proposal is the central component of the RIA. The information and analysis on the costs and benefits in the RIA should be proportionate to the likely impact but be rigorous enough to inform decision making. The BRE guidance describes three stages in the robust analysis of costs and benefits:

- full description;
- quantification; and
- monetisation.

6 RIA that did not identify an environmental impact

Biofuels Labelling

This RIA does not discuss the effect that different types of labelling might have on take-up of biofuels and thereby on the impact on carbon dioxide levels. For example, one of the options in the RIA is to label biofuels with a 'warning' sign; the RIA does not provide evidence that the Department considered that a label of this type might discourage take-up of biofuels, and so limit their role in reducing carbon dioxide emissions from transport. It does not make clear whether the Department considered ways to mitigate this effect, for example, by including information about the environmental benefits of biofuels on these labels.

Source: National Audit Office

1.22 The guidance advises departments to show costs and benefits as monetary values wherever possible, in order to facilitate the direct comparison of different impacts. This is usually straightforward where prices for goods and services are involved. It is more difficult for many environmental and social costs and benefits. Some of the techniques the BRE guidance recommends for doing so are:

- surveys that 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);
- for valuing life/health, departments can use estimates of the value of a statistical life, or the cost to the NHS of treating the illness; and
- for valuing time, departments can use wages multiplied by the hours saved.

1.23 The guidance also says that where monetisation is not appropriate, quantification can give a good indication of scale. For example, departments might include such quantified estimates as the percentage fewer tonnes of a pollutant being emitted to the atmosphere, or the number of lives saved. There is likely to be uncertainty with such estimates of the quantitative or monetary value of such estimates; where this is the case, departments should make this clear and spell out the assumptions used to arrive at the estimates. Departments should also consider presenting a range of values for their estimates and stating whether this represents extreme values or the most likely outcomes. Where neither quantification nor monetisation is possible, impacts should be described qualitatively.

1.24 However, amongst experts, both academics and practitioners in the field, there is disagreement on whether environmental and social costs and benefits can be, or indeed should be, quantified and monetised. Some items are inherently difficult to evaluate and the calculations may contain a high level of subjectivity and uncertainty.

1.25 Our findings as shown in Figure 5 suggest that departments are finding it difficult in practice to analyse environmental and social impacts. Five of the 10 RIAs we examined gave poor quality analysis of environmental and social impacts. **Figure 7** gives examples where the quality of the analysis could have been improved, while **Figure 8** provides an example of the one RIA in our sample that demonstrated best practice.

1.26 More than half (nine out of 16) of BRUs we consulted agreed that the BRE guidance “is of a reasonable quality but its usefulness in assessing these costs and benefits is limited”. No department said the guidance was “not helpful”.

7 RIAs in which there was scope to provide a fuller analysis of social or environmental impacts

Water Fluoridation

This RIA identifies that dental disease has a social cost because it causes children to miss time off school, but it does not quantify how many children might be affected in this way, nor give an estimate of the monetary cost this imposes on society, for example in terms of the cost to parents who might have to take time off work. The RIA identifies that there is a concern that there are risks to overall health from fluoridated water but does not give a full explanation of the scientific evidence.

Work and Families RIA

This RIA accompanies the Work and Families Bill, which introduces a package of measures designed ‘to give children the best start in life and parents more choice about how to balance their work and family responsibilities’. We considered how the RIA assesses the measure to extend the period of statutory maternity and adoption payments from 26 to 39 weeks.

This RIA identifies a number of social benefits with this measure, such as the potential improvements to the quality of life of the mother and partner, and longer term benefits to children and the rest of society. The RIA states that ‘the evidence confirms the value of consistent one-to-one care in the first year of a child’s life’, but does not give the detail to support this claim, nor describe what the nature of these benefits might be.

Source: National Audit Office

8

RIA with strong analysis of environmental impacts

The Electricity and Gas (Energy Efficiency Obligations) Order 2004

The energy efficiency obligation (2004) sets targets for electricity and gas suppliers to increase domestic energy efficiency in order to alleviate fuel poverty and reduce carbon dioxide emissions.

The RIA gives a quantitative estimate for carbon dioxide emissions saved by the policy proposal (about 0.7 million tonnes of carbon per year in 2010) and explains how this value is calculated. Using a figure for the social cost of carbon, it also translates this carbon saving to a monetary value of around £24m–£95m a year.

This RIA also includes the following paragraph which gives a good qualitative explanation of the importance of reducing carbon dioxide and greenhouse gases:

“Man-made emissions of carbon dioxide and other greenhouse gases are accumulating in the atmosphere and starting to change our climate. There is now strong scientific evidence that climate change is happening and that it is being accelerated by human activity – notably carbon dioxide released by burning fossil fuels such as coal, oil and gas. This is now acknowledged to have a serious impact including severe flooding, droughts and storms with high economic, human and environmental cost both nationally and internationally, particularly in developing countries.”

Source: National Audit Office

The presentation of most RIAs made it difficult to see if and how sustainable development had been considered

1.27 There are two aspects of good practice in RIA presentation that are important for social and environmental impacts:

- The first is the suggestion in BRE guidance that information on costs and benefits, and sectors and groups affected, is presented in a summarised form. A good way to do so is in the form of a summary table that brings together information on environmental, social and economic costs and benefits, for clarity and ease of comparison (see **Figure 9 overleaf for an example**). This is also important because there is no other mechanism within the RIA for presenting trade-offs or synergies. However, only three of the 10 RIAs in our sample included a summary table.

- The second, which is not contained in the BRE guidance, is the provision of a null response if there are no social or environmental impacts. Although the RIA process should not become a ‘tick box’ exercise, the final RIA document is more transparent if it includes enough information to explain when an RIA has considered environmental and social impacts but not included them because it considered them to be immaterial or irrelevant. Also, the discipline of explicitly stating a null response encourages departments to think about the completeness of their analysis. Only one of the seven RIAs that did not identify any environmental impacts gave an explicit null response. Neither of the two RIAs that did not mention social impacts gave an explicit null response.

Some principles of sustainable development were less evident or under-treated in most RIAs

1.28 Taking full account of social and environmental costs and benefits, where appropriate, is a necessary condition for a RIA to reflect sustainable development, but it is not sufficient; both the 1999 and the 2005 sustainable development strategies define sustainable development to also include some important cross-cutting principles.

1.29 One such cross-cutting principle is evidence-based policymaking. Six RIAs in our sample showed a poor performance on this front by not setting clear objectives or by not assessing appropriate options including a do-nothing option, or both. However, another important aspect of evidence-based policy-making, consultation, was strong in our sample, with eight RIAs meeting most or all aspects of good practice.

1.30 None of the RIAs referred to the UK sustainable development strategy and none explicitly referred to cross-cutting sustainable development principles such as the ‘polluter pays principle’¹¹, the ‘precautionary principle’¹², taking a long-term perspective, and integrating social, economic and environmental benefits. Where a policy proposal implicitly took account of these principles, the RIAs in our sample did not always make clear whether the department had fully and systematically compared the options on this basis. **Figure 10 overleaf** gives some examples.

11 The **polluter pays principle** suggests that environmental and social costs should fall on those who impose them. It is a way of allocating environmental costs fairly and of providing disincentives to polluting or wasteful activities.

12 The **precautionary principle** says that if the consequences of an action are unknown, but are judged to have some potential for major or irreversible negative consequences, then it is better to avoid that action. Similarly, it advises against inaction if delay would have a similar negative result.

9 Example of good use of a summary table

The **Work and Families** RIA contains a table of the costs and benefits of the proposal to extend maternity leave, which allows the economic and social impacts to be compared easily:

Description	Additional Costs	Benefits
1. Extend SMP from 26 weeks to 39 weeks	Additional costs: to Exchequer: £276 m/yr. Direct cost to employers (net): £20m/yr Indirect cost (cost of absence) to employers: £22m-£36m/yr	The child will benefit from greater support for parents to stay at home. Parents will benefit from being able to spend more time with their children and mothers will have more choice about when they return to work, as well as having longer to secure other childcare arrangements. For employers, the estimated reduction in recruitment costs as a result of increasing the number of mothers staying on after return to work is: £13.2m/yr
2. Extend MA from 26 weeks to 39 weeks	implementation costs: negligible. Additional costs: to Exchequer: £93 m/yr.	
3. Extend Statutory Adoption Pay - initially from 26 weeks to 39 weeks	Additional costs: to Exchequer and to employers: negligible.	
Source: DT/DWP estimates		

Source: *Work and Families RIA*

NOTES

- SMP: Statutory Maternity Pay.
- MA: Maternity Allowance.
- SAP: Statutory Adoption Pay.

10 RIA and cross-cutting sustainable development principles

Business Improvement Districts

The overall aim of Business Improvement Districts (BIDs) is to provide local businesses (and local authorities) with a greater say in the improvements undertaken in their area and give them the opportunity to work together to put in place these projects which businesses fund through a levy.

The Department told us that BIDs, by their nature, may lead to improvements in the quality of the local environment, however, this RIA does not evidence whether the Department has considered how it might integrate environmental, economic and social considerations in the arrangements for business improvement districts. For example, the RIA could have included information on whether the Department had considered ways to promote environmentally friendly projects through incentives in the rating structures, tax relief, or even through setting this as a criterion for local authority funding.

Source: *National Audit Office*

Lorry Road User Charge

The objective of this Regulation is ‘to ensure that all lorries using UK roads, regardless of nationality, contribute on a fair and equal basis to the costs that they impose’.

This partial RIA includes some qualitative analysis of how the polluter pays principle might apply; it recognises that a lorry road-user charge might be tailored to reflect the different environmental costs imposed by different types of vehicles/forms of transport. However, the reference to social and environmental issues is often abstract. The RIA recognises that quantified costs and benefits will need to be developed over time; it would have been helpful to include estimates at this stage.

There are steps which could improve the way sustainable development is considered in RIAs

1.31 Our analysis above shows that most RIAs in our sample did not succeed in reflecting relevant sustainable development issues: either sustainable development concerns were not addressed or if they were addressed they did not find their way into RIA documentation. So there is room for improvement if RIAs are to develop fully into a satisfactory tool which incorporates and demonstrates sustainable development thinking.

1.32 There is a learning curve in any process and the NAO, in its broader work on RIAs¹³, has found that departmental practice has improved over time; for example consultation is now better than it was. It is only since April 2004 that RIAs have been required to include sustainable development issues and our sample was drawn from RIAs published in the following year; so for many it is early days yet. If departments increase their capacity and expertise, we might expect the consideration of sustainable development issues to improve.

1.33 Some might argue that RIAs will never be capable of bearing the weight that has been applied to them: as we describe above, sustainable development is just one of several dimensions which have been added to the RIA process since their beginnings in 1997, and RIAs may struggle to do justice to each of these dimensions. But it seems likely that RIAs – in some shape or form – will remain the prime vehicle for informing and presenting policy making, at least in the field of regulation. Even if they were to be abandoned, a similar tool would need to be re-invented since there would still be a need for a tool to encourage consideration of economic, social and environmental costs and benefits.

1.34 Our emphasis, therefore, is on improving the RIA process. Below we highlight ways in which this might be done.

Guidance to officials could be improved

1.35 Better Regulation Executive Guidance is an important way to provide advice to departments on sustainability issues. However, the majority of departments responded to our questionnaire by saying “the guidance is of a reasonable quality but its usefulness in assessing environmental and social costs and benefits is limited”.

1.36 The guidance could do more to draw attention to sustainable development issues. For example:

- on-line and written guidance could link or refer directly to the government’s Sustainable Development Strategy and its key principles;
- guidance could do more to emphasise the importance of achieving economic, environmental and social impacts at the same time. A ‘Stretching the web’ tool developed by Department for Environment Food and Rural Affairs (Defra) is a useful example of how to help policy-makers think this through, though it does need to be supported by a full underlying analysis. (see Figure 11 overleaf);
- the guidance on social impacts could be more concise, better co-ordinated and more closely linked to RIAs¹⁴; and
- the guidance could provide more worked examples on how to assess environmental and social costs and benefits, particularly giving examples of how to quantify and monetise these impacts where appropriate.

Officials involved in the production of RIAs need more training on sustainable development

1.37 Training is another way to improve officials’ understanding of how sustainable development can be incorporated into policymaking and, where possible, RIAs. The majority of departmental BRUs told us that a lack of resources, such as staff or training, restricts their ability to ensure RIAs fully consider sustainable development.

¹³ *Evaluation of Regulatory Impact Assessments Compendium Report 2003-04 (HC 358) and 2004-05 (HC 341).*

¹⁴ The extant web-guidance on social impacts provides links to a number of different websites maintained by different departments. These are of varying quality, are not always kept up to date, and do not link well to each other.

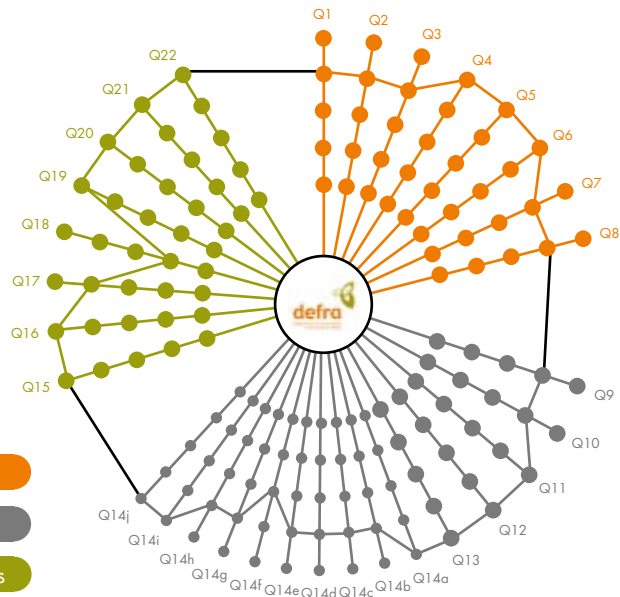
11 Defra's stretching the web tool

The web is a simple graphic, based on the RIA, to help Defra policymakers integrate sustainable development considerations into policymaking. Each question in the costs and benefits checklist of the BRE guidance becomes a 'spoke' of the web. The joining strands are created by joining up the self-assessed 'score' for each question, from -2 (very negative impact) to +2 (very positive impact).

The RIA is intended to help policy-makers to think of sustainable development as 'stretching the web' – mitigating negative impacts, and increasing positive impact's rather than as a trade-off' or 'balance' between economic, environmental and social impacts.

COLOUR KEY

- Economic impacts
- Social impacts
- Environmental impacts



Source: Department for Environment Food and Rural Affairs 'Think sustainable' web pages

1.38 Only three departmental BRUs responded to our questionnaire to say they provide training on sustainable development to officials involved with the production of RIAs, though a further 11 intend to do so. The BRE does not currently offer training on sustainable development to the BRUs.

1.39 The National School of Government, which is also part of the Cabinet Office, offers training courses on the principles of sustainable development; these could be expanded to relate directly to RIAs.

The Better Regulation Executive could improve its scrutiny of RIAs

1.40 BRE is responsible for ensuring that departments comply with the RIA process. For many RIAs, the BRE input is limited to published guidance and offering ad hoc advice to departmental BRUs and directly to policy makers if requested. However, the criteria for triggering BRE's direct involvement in a RIA are based

primarily on economic considerations rather than sustainable development. The BRE gets involved directly with a particular RIA if the policy contains 'significant measures' defined as costing more than £20 million; if the issue has high media topicality or sensitivity; if there is a Better Regulation Commission report or interest in the policy area; or if there is likely to be a disproportionate impact on a particular group. These criteria ensure that BRE gets directly involved with RIAs on policies with significant economic issues, but it does not give social and environmental issues the same weight.

1.41 Each department has a nominated contact within the BRE and it is this contact's responsibility to provide a challenge function within the RIA process. The BRE will point out errors and weaknesses in the RIA but they will not assess it for completeness, nor do BRE officials have specialist sustainable development expertise, and thus any omissions or errors relating to sustainable development will not necessarily be picked up.

REGULATORY IMPACT ASSESSMENTS IN OUR SAMPLE

Biofuels Labelling

Department for Transport

A policy proposal to comply with a particular article of the European Directive on biofuels, which imposes a requirement that biofuel blends in excess of five per cent should be clearly labelled at the point of sale. This is to protect consumers from unknowingly filling their vehicles with fuel that may be unsuitable for their vehicle and that could invalidate their warranty. The overarching objective of the Biofuels Directive is to reduce carbon dioxide emissions and reduce reliance on external energy sources.

Business Improvement Districts

Office of the Deputy Prime Minister

The overall aim of Business Improvement Districts (BIDs) is to provide local businesses (and local authorities) with a greater say in the improvements undertaken in their area and give them the opportunity to work together to put in place these projects which businesses fund through a levy. The Local Government Act (2003) established the statutory framework for BIDs; this RIA accompanies the Statutory Instrument which prescribes the detailed arrangements for setting up and maintaining a BID in an area.

Crossrail

Department for Transport

The RIA assesses the need for primary legislation to implement Crossrail, a new railway connecting existing track to the west and east of London via a tunnel through central London. It considers whether it would be better to use existing legislation, or to introduce a hybrid bill.

The Electricity and Gas Energy Efficiency Obligations (EEO) Order 2004

Department for Environment, Food and Rural Affairs

The energy efficiency obligation (2004) sets targets for electricity and gas suppliers to increase domestic energy efficiency in order to alleviate fuel poverty and reduce carbon dioxide emissions. Suppliers would meet their targets by encouraging and assisting domestic consumers to take up energy saving measures. The obligations proposed in this RIA are a successor to the energy efficiency obligations established in 2001.

Renewables Obligation Order 2005

Department of Trade and Industry

The Renewables Obligation requires licensed electricity suppliers to source specified percentages of the electricity they supply from renewable sources. For each MegaWatt hour of renewable electricity they generate, they receive a Renewable Obligation Certificate (ROC). If suppliers do not present the required number of certificates by the end of a period, they pay a buy-out fee; this fund of buy-out payments is then re-distributed to the Certificate holders. The objective of this RIA is to assess the impact of proposed changes to the Renewables Obligation Order, including the measures to make it function more effectively, allowing for tradability of certificates issued under the Renewables Obligation with those issued under the Northern Ireland Renewables Obligation in the present scheme, and extending the level of the Renewables Obligation beyond 2010 to 2015.

Water Fluoridation

Department of Health

This RIA accompanies a statutory instrument which amends the Water Industry Act to outline the level of consultation required by a Strategic Health Authority (SHA) before it compels a water supplier to add fluoride to the water supply, and give indemnities to water undertakers and water suppliers.

Work and Families

Department of Trade and Industry

This RIA accompanies the Work and Families Bill, which introduces a package of measures designed 'to give children the best start in life and parents more choice about how to balance their work and family responsibilities'. The measure we considered is to extend the period of statutory maternity and adoption payments from 26 to 39 weeks.

Environmental Impact Assessment (Partial RIA)

Department for Environment, Food and Rural Affairs

This is a partial RIA which accompanies a Statutory Instrument (SI) transposing two requirements of the EU 'Environmental Impact Assessment' (EIA) Directive 85/337/EEC. The SI introduces new rules on restructuring of rural land holdings, so that land managers of certain large-scale projects will need permission from the regulator (Natural England) before they can proceed. The SI will also replace existing rules on environmental assessments projects which use uncultivated land and semi-natural areas for intensive agricultural purposes; the proposal is to introduce thresholds before environmental assessments are necessary.

Food Industry Sustainability Strategy (Partial RIA)

Department for Environment, Food and Rural Affairs

This is a partial RIA on a proposal to introduce a voluntary sustainability strategy for the whole of the food and drink industry. This would cover all aspects of food processing and retail once food leaves the farm on which it is grown.

Lorry Road User charge (Partial RIA)

Department for Transport, HM Treasury and HM Revenue and Customs

This partial RIA accompanies a proposal to introduce charges to foreign lorry operators using British roads. The objective is 'to ensure that all lorries using UK roads, regardless of nationality, contribute on a fair and equal basis to the costs that they impose'. It aims to address the potential for lorries registered overseas to avoid completely any charge for using British roads, while British lorries tend to do so by paying vehicle excise and fuel duty.

Treatment of environmental and social costs and benefits

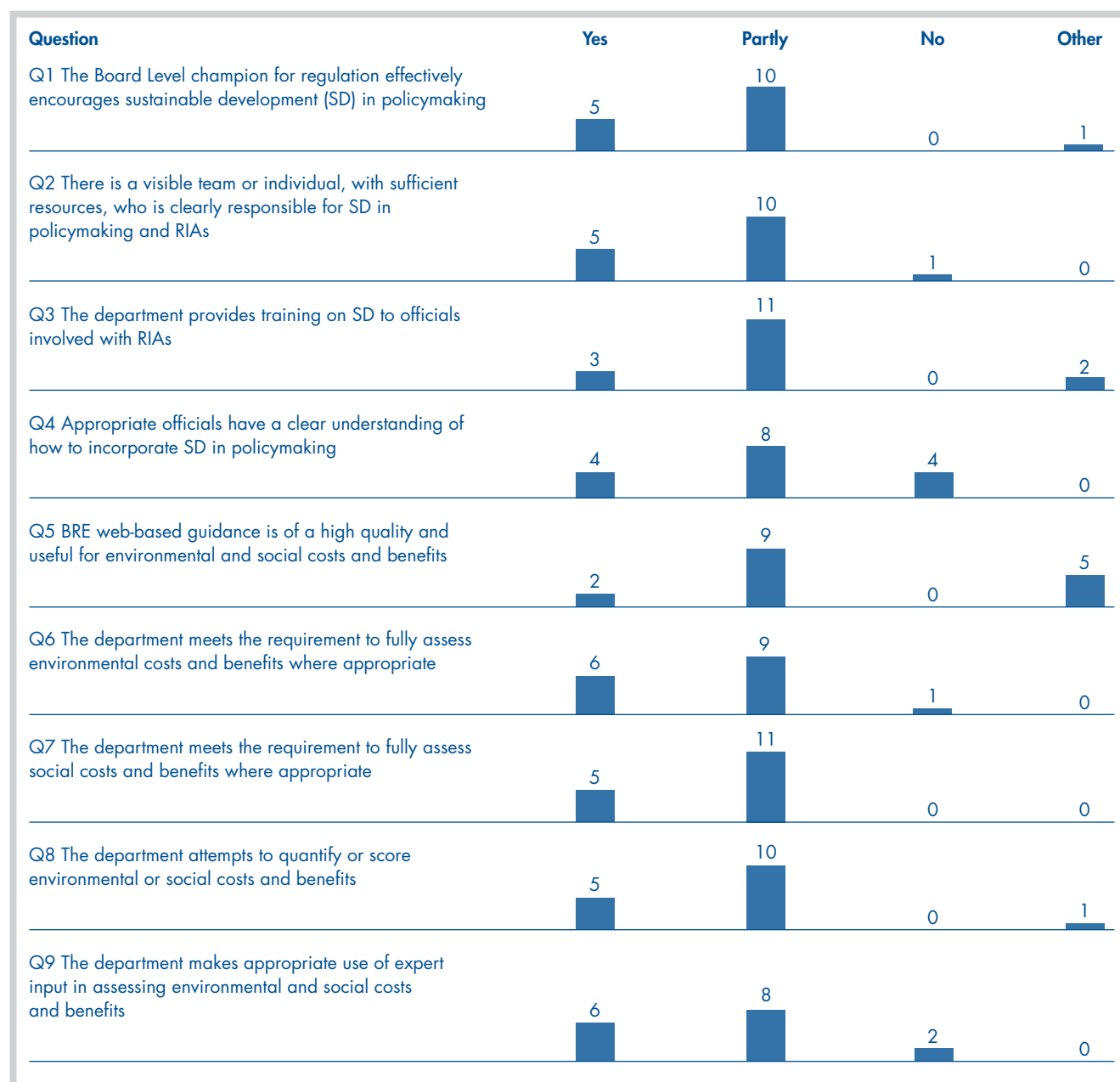
RIA	Environmental and social issues viewed as relevant ¹	Within scope of the RIA ²	Identified	Explanation of significance		
				Described	Quantified	Monetised
Business Improvement Districts	Opportunity to contribute to urban regeneration	✓	✓	✓	x	
	Effect on local democracy	✓	x			
	Potential for environmental benefit	?	x			
Crossrail	Biodiversity and heritage impacts	x				
	Employment opportunities	x				
	Costs for landowners	✓	✓	✓	x	
	Public participation	✓	✓	✓	x	
Electricity Gas (EEO) 2004	Greenhouse gas emissions	✓	✓	✓	✓	✓
	Impacts on income groups	✓	✓	✓	✓	✓
Labelling Biofuels	Displacement of food production	?	x			
	Redevelopment of rural areas	?	x			
	Greenhouse gas emissions	✓	✓	x		
Renewables Obligation Order	Greenhouse gas emissions	✓	✓	x		
	Impacts on income groups	✓	✓	x		
Water Fluoridation	Dental health benefits	?	✓	✓	x	
	Impacts on income groups	?	✓	✓	x	
	Health risks	?	x			
Work and Families	Quality of life benefit to parent/carer	✓	✓	✓	x	
	Health benefit to child	✓	✓	x		
	Potential to increase tension in the workplace	✓	✓	✓	x	
EIA regulations ³	Impact on availability of green space	✓	x			
	Biodiversity impacts	✓	✓	✓	✓	x
	Impact on rural communities	✓	✓	✓	x	
Food Industry Sustainability Strategy	Greenhouse gas emissions	✓	✓	✓	x	
	Waste	✓	✓	✓	x	
	Health and Safety of workers	✓	✓	✓	x	
Lorry Road User Charge	Congestion	✓	✓	✓	x	
	Air quality	✓	✓	✓	x	
	Greenhouse gas emissions	✓	✓	✓	x	
Key:	Yes ✓	Partially ✓	No x	Indirectly/open to question ?		

NOTES

- As identified by our expert panel.
- This column demonstrates how in our sample had a narrow or confused scope which inhibited or precluded discussion of social and environmental issues relevant to the wider policy. To aid the clarity of our analysis, however, our assessment of each RIA does not penalise RIAs for doing so, but only assesses how the RIA treated environmental and social issues relevant to the given scope.
- (Rural land holdings and uncultivated land for agriculture).

APPENDIX 2

SURVEY OF DEPARTMENTAL REGULATION TEAMS



NOTE

We sent our survey to the better regulation unit, or better regulation contact in all Whitehall departments for whom the Cabinet Office has a better regulation contact, namely: Department for Constitutional Affairs, Department for Education and Skills, Department for Environment Food and Rural Affairs, Department for Transport, Department for Work and Pensions, Department for Culture Media and Sport, Department of Health, Department of Trade and Industry, Foreign and Commonwealth Office, HM Revenue and Customs, HM Treasury, Home Office, Ministry of Defence, Office of the Deputy Prime Minister, Food Standards Agency, Health and Safety Executive. (For RIA purposes Cabinet Office treats HSE and FSA as Whitehall departments) We presented our survey in the form of a set of McKinsey style assertions; for each question we asked the respondent to circle the most appropriate statement. These statements correspond to the questions and answers above. 'Other' indicates a null or not applicable response, or on one occasion, where a respondent circled more than one response.

