Theme of the Book

This book is intended to increase knowledge and understanding of the international trend towards the use of Regulatory Impact Assessment (RIA) as a tool for regulatory reform and better policy making. The book details the international experience of RIA, derived from country case studies and cross country comparative analyses for developed, developing and transitional economies.

The implications for businesses is considered with the clear message that: “managers should get fully involved in the consultation process to ensure such regulations are both necessary and reflective of economic and social needs.”
Key Learning Points

• RIA requires government departments to consult with affected interests before new regulations are introduced. But too frequently departments receive very few responses from business.

• RIA provides the opportunity for business to input into the regulatory process and thereby ensure that regulation is restricted to where it is really needed and produces net economic, social and environmental benefits.

• Managers should understand and become knowledgeable about RIA so as to learn how best to influence the process. The need to address the burdens imposed by the regulatory state is too great to allow the opportunity offered by RIA to pass us by.

• RIA is a relatively new concept and experience, and in most countries it is characterised by an ongoing process of adaptation, learning and improvement. At the same time, the evidence confirms a common purpose to integrate RIA into the policy making process.

• The aim is to raise the quality of the regulatory environment and in this way contributing to society’s goal of economic, social and environmental benefits.

• Typically, RIA will involve a number of tasks to be carried out at each stage of the process:
  o A description of the problem and the objective of the proposal.
  o A description of the options (regulatory and non-regulatory)
for achieving the objective.

- An assessment of the significant positive and negative impacts, including an assessment of the incidence of the benefits and costs on consumers, business, and other interests groups.

- A consultation process with stakeholders and other interested parties.

- A recommended option, with explanation of why it has been selected.
Introduction

The potentially damaging effects on economic growth resulting from excessive government regulation have attracted increasing attention from policymakers in recent years. Starting with the Reagan administration in the United States and followed by the Thatcher government in the UK, a rapidly growing number of governments around the world have adopted measures to improve the quality of both existing regulations and proposals for new regulations.

A core component of these programmes for regulatory reform is regulatory impact assessment (RIA). 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.

Aim of the Book

The aim is to provide a comprehensive account of the principles and practice of RIA.

The rapid spread of RIA has been an important part of the more general process of public sector management reform and better governance. By requiring a systemic examination of the consequences of regulatory choices, RIA is seen as a tool for strengthening evidence-based policy-making. It also contributes to the core principles of good governance, by increasing the transparency and accountability of political decisions on the choice of regulatory measures and policies.
The standard characteristics of the RIA approach to regulatory decision making are explained, together with a discussion of the principles relating to quality evaluation of RIA processes.

There is a strong comparative dimension to the analysis, detailed case studies draw from developed, transitional and developing countries. Besides describing the system of RIA in a range of different economic and political environments and contexts, the case studies also provide an analysis of the factors that have influenced the adoption of RIA and an evaluation of the results of the particular RIA system in practice.

What is RIA?

RIA was originally conceived as an instrument for identifying the costs of regulation on the business sector, which would be followed by a process of de-regulation aimed at reducing the regulatory ‘burden’ on the private sector and thereby improving competitiveness. Over time, however, the definition and purpose of RIA have been refined and widened:

- The public objectives to which regulation can contribute have been widened beyond the single objective of private sector competitiveness. Typically, RIA will now consider the potential or actual impacts (positive and negative) of a regulatory measure in terms of the three pillars of sustainable development, namely, economic, social and environmental.
This broadening of the definition and coverage of RIA has been mirrored at the level of regulatory reform by the shift in focus from ‘less regulation’ to ‘better regulation’.

**The Regulatory Impact Assessment (RIA) Approach to Policy Making**

‘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 complying with regulations.

Regulatory impact assessment (alternatively referred to as *regulatory impact analysis* or *impact assessment*) 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.

**Origins of RIA**

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 US economy (Anderson, 1998). 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).

**A Definition of RIA**

There is no single or generally agreed definition of regulatory impact assessment or of the ‘regulations’ that are covered by RIA.

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). Regulation, therefore, extends beyond sector-specific regulation to include any government measure that affects individual or group behaviour. With this broader definition of ‘regulation’, RIA is perhaps better understood as a tool of public policy analysis, which contributes to better policy selection.

**Process Contribution of RIA**

- By providing a methodological framework of rational policy selection, RIA allows for the outcomes (ex ante or ex post) to assessed against the goals that are set for regulatory systems. 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;
- transparency in decision-making (Parker, 2002).

The Purpose of a RIA

The purpose of a 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 also involves 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 recognise, however, that RIA, even when operated well, is not a tool which substitutes for decision-making. Rather, it should be seen as an integral part of the policy making which...

“aims to raise the quality of debate and therefore the quality of the decision-making process.” (Kirkpatrick and Parker, 2004).

As Jacobs (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.’

**Typically, RIA will Involve**

A number of tasks are typically carried out at each stage of the process:

• A description of the problem and the objective of the proposal.

• A description of the options (regulatory and non-regulatory) for achieving the objective.

• An assessment of the significant positive and negative impacts, including an assessment of the incidence of the benefits and costs on consumers, business, and other interests groups.

• A consultation process with stakeholders and other interested parties.

• A recommended option, with explanation of why it has been selected.
This framework, which is common to most RIA procedures, should not be interpreted as advocating a ‘one-size-fits-all’ best practice approach to regulatory assessment. Rather, it should be viewed as a guide to developing a RIA system that meets the particular needs and resource constraints of an individual country.
Practical Lessons from Experience to Date

The process of adapting the general framework to meet country-specific requirements can be informed by a number of practical lessons drawn from the experience of countries that have implemented some form of RIA.

1. Government needs skills development in 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 may 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.

2. Consultation procedures should be extended

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 minimise these costs is to prioritise 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.

3. Requirement for Cross Government Support for RIA

Third, RIA needs to be championed across government if it is to be used consistently and become a normal feature of regulatory policy making. It therefore needs clear and powerful political support within government if it is to overcome bureaucratic and political inertia. More generally, to achieve these improvements in regulatory governance may require a cultural change within government, involving more open policy-making as part of a broader process of governance reform.

4. “Regulatory capture” by Special Interest Groups needs to be confronted

Finally, RIA must also confront the possibility of “regulatory capture”. In practice, the nature and content of regulation may 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.
Evaluating the Quality of RIA

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. The Better Regulation Task Force was established as an independent advisory body in 1997 to advise government on regulatory issues, supported by a Regulatory Impact Unit located in the Cabinet Office. 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.

UK Evidence

In January 2006 the UK government established the Better Regulation Commission (BRC), which has taken over from the Better Regulation Task Force (BRTF) to provide independent advice to government about new regulatory proposals, and to review the government's overall regulatory performance (Parker, 2006). Alongside the BRC operates the Better Regulation Executive (BRE) within the Cabinet Office, which was established in May 2005. This is tasked with promoting the Government's better regulation agenda. The BRE also takes forward the work previously carried out by the Regulatory Impact Unit.
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), 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, 2002).

In June 2005, the Commission issued new impact assessment Guidelines which began to be implemented in August 2005 (EC, 2005a). The new Guidelines are to be applied to all items on the Commission’s Work Programme, covering regulatory proposals, White Papers, expenditure programmes and the negotiating of international agreements. In addition, the Commission may decide, on a case by case basis, to carry out an impact assessment of a proposal which does not appear on the Work Program.
Ex post evaluation can support better regulation policy if the results and lessons for improvement are used to inform the design and implementation of future regulatory proposals. Also, if the evaluation results are accessible by external stakeholders, the policy-makers can become more accountable for their regulatory decisions.

**Evaluation at the Outcome Level**

This 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 content and output approaches that has been discussed above. 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 challenge of attribution becomes even more evident if the evaluation is extended from outcomes to impacts in terms of the broad goal of sustainable development.

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 growth in RIA practice has been accompanied by increasing recognition of the importance of establishing procedures for monitoring and ex post evaluation.
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, 2002b, 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.

**A Common Limitation of most RIA Systems**

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.
And Finally

The cost of regulation is spiralling. Manufacturing, financial services and even small businesses are struggling to keep pace with the time consuming and financially burdensome cost of new legislation and regulation required by both national government and international bodies such as the European Union. RIA is a valuable means to assess the impact.
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