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**DEVELOPING AND APPLYING
REGULATORY IMPACT ASSESSMENT
METHODOLOGIES IN LOW AND
MIDDLE INCOME COUNTRIES**

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DEVELOPING AND APPLYING REGULATORY IMPACT ASSESSMENT METHODOLOGIES IN LOW AND MIDDLE INCOME COUNTRIES

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SUMMARY

Regulatory Impact Assessment (RIA) is used to assess the likely consequences of proposed regulations, and the actual consequences of existing regulations, to assist those engaged in planning, approving and implementing improvements to regulatory systems. It is currently used, to a varying extent, by approximately two-thirds of OECD Member countries but its adoption in low and middle income countries is more recent and limited.

One of the research objectives of the new Centre on Regulation and Competition (CRC) is to develop an appropriate RIA methodology and to apply this in a sample of poor countries. The purpose of this paper is, as a 'think piece', to help in clarifying such matters as: the nature and principal characteristics of the RIA methodology to be followed; the scope etc. of its subsequent practical application; and other RIA-related, supporting activities to be undertaken, such as awareness raising and capacity strengthening.

Part 1 contains a review of existing RIA methodologies and experience in their use. It examines the origins and evolution of RIA in both developed and developing countries, the different types of measures submitted to RIA, and the rationale for using RIA as an instrument for regulatory reform. It summarises the main features of RIA guidance from a number of countries, identifies the main stages to be followed in the RIA process and notes some deficiencies in current procedural practice. It also highlights the importance of 'institutional endowment' and broader issues of regulatory governance in influencing the effectiveness and most appropriate form of RIA in any particular country. The main assessment methods used in RIA are identified and some deficiencies in their scope and practical applications are noted. The methods used to assess the performance of RIA systems, and their findings are reviewed. The review concludes by considering whether OECD 'best practices' are transferable, in their present form, to low and middle countries, and reaches a 'mixed' conclusion.

Part 2 uses the main findings from Part 1 as a basis for constructing proposals for the subsequent development and application of RIA methodologies appropriate to developing countries. First, the main Part 1 findings are summarised, section by section, so far as they are relevant to the developing country situation. Then proposals are made on the ways in which these should help to shape the development of the proposed RIA methodology. It is emphasised that these proposals are provisional and should be submitted for comment to regional partners in developing countries and international RIA experts, before the proposals are finalised and the preparation of the methodology commences.

INTRODUCTION

Regulatory Impact Assessment (RIA) is used to assess the likely consequences of proposed regulations, and the actual consequences of existing regulations, to assist those engaged in planning, approving and implementing improvements to regulatory systems. Its origins, as a formal system of assessment, can be traced back to the mid-1970s and it is currently used, in one form or other, by approximately two-thirds of OECD Member countries (Jacobs, 2002). Its adoption and use in low and middle income countries, so far, have been much more limited and recent, though it is claimed the resulting development benefits could be very substantial (Guasch and Hahn, 1997).

The overall mission of IDPM's new Centre on Regulation and Competition (CRC) is to improve "understanding of the ways in which regulation policy and competitive processes can be made more effective instruments for ensuring a pro-poor growth outcome for market-led development strategies. The intended impact of the Centre's research and capacity-building activities is improved design and implementation of regulation and competition policy" (Business Plan, p. 16).

One of the Centre's main research objectives is as follows:

"To encourage the development of more effective methods for appraising regulatory and competition options. The initial stage will use a regulatory impact assessment approach to policy appraisal and evaluation, which allows for the integrated assessment of the economic, social, environmental and developmental costs and benefits of regulatory policy initiatives" (Business Plan, p. 18).

"A regulatory impact assessment methodology will be developed and used as a broad framework within which to present and assess the existing economic regulatory environment in a representative sample of poor countries. The RIA approach will be used to assess the impact of regulatory change on economic growth, and on other dimensions of sustainable development, including environmental protection and social justice, particularly in the form of poverty reduction" (Business Plan, p. 24).

This paper is intended to provide a ‘think piece’ to help in clarifying such matters as: the nature and principal characteristics of the RIA methodology to be followed; the scope, etc. of its subsequent practical application; and the other RIA-related activities to be undertaken relating to awareness raising, capacity strengthening etc.

The paper is divided into two main parts:

Part 1: Review of Existing RIA Experience

Part 2: RIA Methodologies for use in Developing Countries

CRC's overall research programme contains three thematic research programmes, relating to Regulation, Competition and Regulatory Governance respectively, and each is supported by a common Capacity Building programme. The development and application of an RIA methodology is incorporated into the Regulation programme but is also expected to contribute to, and draw benefit from, activities undertaken within the other three programmes.

PART 1: REVIEW OF EXISTING RIA EXPERIENCE

1.1 Introduction

The purpose of this review is to evaluate existing RIA methodologies and experience, primarily from the perspective of their potential relevance in developing country conditions. The review covers:

?? Origins of RIA and its evolution in high income and middle-low income countries (1.2)

?? Types of measures submitted to RIA (1.3)

?? Rationale of RIA as an instrument of regulatory reform (1.4)

?? RIA guidance in selected countries (1.5)

?? RIA process, regulatory reform and good governance (1.6)

?? RIA methods (1.7)

?? Performance of RIA systems (1.8)

?? OECD 'best practices' and their relevance to developing countries (1.9).

1.2 Origins and evolution of RIA

Formalised arrangements for RIA originated in the United States, under the Ford administration, in 1975 and have evolved, at intervals, thereafter (Anderson, 1998; Morrall, 2001). Quite possibly, some less formalised, internal procedures pre-date 1975. This formal initiative was a 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). Concerns over the 'regulatory burden', particularly for smaller-scale businesses, have continued but the more questionable causal link with inflationary pressures has not been pursued. Over time, there has also been a broadening of the scope of assessments to consider all types of significant regulatory costs and benefits (i.e. not only costs falling on the business sector), accompanied by an emphasis on the role of economic analysis in the assessment of these costs and benefits. Executive Order 12044, issued during the Carter administration, required that executive branch agencies prepare regulatory analyses for all major rules and select the most effective

alternative for dealing with the problem which each was addressing. The Reagan administration issued a new Executive Order (No. 12291) in 1981, which required that each RIA for a major rule should include a cost-benefit analysis and agencies were directed to select the alternative that imposed the least cost on the economy. Under the Clinton administration, this was modified in 1993 by Executive Order 12866, basically to include more non-quantifiable costs and benefits. These provisions were still in force in May 2001. However, changes were envisaged under the Bush administration, including further efforts to strengthen the quality of RIAs, putting more emphasis on risk assessment and the quality of information collection (Morrall, 2001; OMB, 2001).

The adoption of formalised RIA arrangements in other countries has been most evident, to date, in higher income (and some middle income) Member countries of OECD. According to OECD sources and based on self-reporting country data, only two additional countries (Canada and Finland) were using RIAs by 1980, but this number had increased to include a further seven countries (Australia, Germany, Japan, Netherlands, Norway, Sweden and the United Kingdom) by the mid-1980s (OECD, 1996a). In March 1995, the Council of the OECD adopted a Recommendation on Improving the Quality of Government Regulation, which made reference to the use of RIA (OECD, 1995) and in 1997, ministers of Member countries endorsed the OECD Report on Regulatory Reform, which recommended that governments “integrate regulatory impact analysis into the development, review, and reform of regulations” (OECD, 1997). Jacobs (2002) reports that more than half of OECD countries had adopted RIA programmes by 1996 and that 20 out of 28 OECD countries were using RIA, in some form, by 2001. In June 2001, the Gothenburg European Council called for ‘mechanisms to ensure that all major policy proposals [at the EU level] include a sustainability impact assessment covering their potential economic, social and environmental consequences’, to be developed within a Framework for Better Regulation. This is being presented to the Seville European Council in June 2002, and it is proposed that an SIA system should be in place within the European Commission by end 2002 (Wilkinson, 2002). Hitherto, RIA provisions and practice at the European level have been lagging behind those in a number of the Member States (Ballantine, 2001; Pelkmans et al., 2000).

Though this indicates a substantial extension of formal RIA arrangements within OECD countries over the last two decades, it does not capture the variability between countries in the scope of their application, in their requirements or in the assessment criteria they use. Nor does it indicate how effectively these diverse arrangements are applied in practice. The divergence between what OECD documentation describes as ‘best practices’ (OECD, 1997b) and actual current practice is, as reviewed in subsequent sections, quite considerable in a number of Member countries (see, OECD, 1999-).

A parallel review of RIA documentation relating to low and middle income countries has not yet been completed but, so far, it would seem that the available literature, relating to formal RIA arrangements, is quite sparse. Possible explanations for this are that formal RIA systems have not yet been developed in most of these countries, that their development is recent, that their implementation and practice has not yet been sufficiently researched and documented and/or such documentation as exists is mainly contained within country-level grey literature which has not yet sufficiently reflected in the international RIA literature.

The first category of countries for which some RIA documentation exists covers those middle income countries, which are Members of OECD, and for which Regulatory Reform Reviews have already been completed. Mexico (OECD, 1999a) and Korea (OECD, 2000a) provide two illustrations of these. Both countries have made formal provisions for RIA. In the case of Mexico, this was realised through the 1996 amendments to its Federal Administrative Procedure. In the case of Korea, provision was initially made in the President's Commission on Administrative Reform in 1993 and, then, in the Basic Act on Administrative Regulations in 1997. In both cases, the OECD Reviews noted that there was insufficient experience of their implementation to judge how successful and effective these provisions might be. However, they did mention that, whilst both contained a significant number of valuable provisions, assessed against the benchmark of OECD 'best practices', they were also likely to experience, initially, some serious implementation problems. These were due to a range of factors including: deficiencies in the existing regulatory framework within which RIA must function, institutional and skill deficiencies, and the absence of a tradition of transparency in regulatory assessments and reviews.

A second category of countries for which some RIA documentation may exist is the low and (mainly) middle income countries which are members of APEC (Asia-Pacific countries) and which participate in the APEC-OECD Co-operative Initiative on Regulatory Reform. Those countries, which participated in the First Workshop, in September 2001 (APEC-OECD, 2001) included: Chile, China, Indonesia, Korea, Malaysia, Peru, Philippines, Thailand and Vietnam. The Second Workshop, held in Mexico in April 2002, selected 'Building institutions for a successful RIA programme' as one of its two major themes. The findings of this second workshop were not available when this paper was being drafted (June 2002).

A third group of country studies are those undertaken by SIGMA (Support for Improvement in Governance and Management in Central and Eastern Europe) which is a joint initiative of OECD and the European Commission. These studies include helpful advice, based largely on OECD experience, but contain only limited reference to CIT experiences and their views on RIA (SIGMA, 1994; 1997; 2001). SIGMA, 1997 (pp. 10-17) contains a useful summary of the experience of three Baltic States

(Estonia, Latvia and Lithuania) in using impact assessments of proposed laws and regulations, how these differ from OECD experiences and the circumstances in which assessments are undertaken. In Latvia, a system was introduced in 1996 for the Chancellery to compile the opinions of relevant senior Government officials concerning: the consistency of proposed legislation with existing laws, its budgetary and economic consequences; funding; and impacts on compliance with international agreements. It was noted by Latvian participants that the system did not yet work very well and that, in particular, reviews of economic and budgetary repercussions were rarely carried out satisfactorily (p. 10-11). In Estonia, it was also noted that ‘despite a formal requirement that each bill be accompanied by an analysis of its economic and social impact, in practice compliance with this was rare’.

Additional information relating to the use of RIA in certain other countries in transition is available for those which are now Member countries of OECD and have been subject to a Regulatory Reform Review (i.e. Czech Republic, Hungary and Poland). However, these middle income countries, which are also European Union accession countries, are not typical of all CIT countries. Cherp has examined the regulatory provisions for, and practices of, environmental assessment (EA) in 26 CITs and found major differences between the accession countries (mainly in Central Europe) and the much poorer and less stable countries located in the Caucasus, Central Asia and the Balkans (Cherp, 2001a; 2001b). He emphasises that, in all these cases, the reform of their EA systems needs to be context-sensitive and ‘in gear’ with their political and economic transition.

The least information, relating to RIA provisions and practice, is available for the poorest countries, particularly in Africa, Asia and the Middle East. Relatively more information exists on certain forms of regulatory reform, notably involving privatisation, deregulation and other types of liberalisation (see, for example, Parker, 2001; CUTS, 2000). However, this literature largely focuses on competition and privatisation law and its likely effects, and it does not appear to link up, at all closely, to the literature on regulatory impact assessment as a tool for broader regulatory reform. The possible synergies, from bringing these two forms of research closer together, needs to be explored further.

One specific, African example of the recommended use of RIA is to be found in the Kenyan Better Regulation Guide (Ministry of Labour and Human Resource Development, undated). This guide was prepared by the Deregulation Unit within the Ministry of Labour and with the assistance of the Enterprise Development Programme within DFID. It reflects, in certain respects, the OECD ‘Best Practices’ approach (OECD, 1997b) and the UK Guide to Regulatory Impact Assessment (Cabinet Office, 2002). At present, it is not clear whether the use of this guide is mandatory or, indeed, how far it is being applied in practice. The extent to which other bilateral aid agencies and development banks

(e.g. World Bank, Asian Development Bank, African Development Bank) are also supporting initiatives to promote the use of RIA in developing countries needs to be investigated.

1.3 Types of measures submitted to RIA

Which ‘regulations’ are to be covered by regulatory impact assessment? The OECD definition of ‘regulation’, shown in Box 1, is relatively broad. It covers all instruments (economic, social, environmental, administrative) setting ‘requirements’ on enterprises and citizens, including laws, formal and informal orders and subordinate rules of all levels of government. However, SIGMA 2001 (p. 8) extends the concept of impact assessment further to include both regulatory and other types of policy instruments, i.e.

?? regulatory instruments: including rules, prohibitions, licences, etc.

?? financial instruments: including subsidies, taxes, and tax deductions, user fees, and certain types of budgetary expenditure.

?? information and other instruments: including advertising campaigns, information booklets, use of Internet, etc.

The logic of using this broader concept of ‘policy’ instruments is, partly, that policies may precede and shape regulations but, also, RIA may involve comparing regulatory and non-regulatory options when assessing which is the ‘best’ option to adopt. However, some caution against this extension in impact assessment, partly because regulations and policies may be of a different character and partly because of the additional assessment burden this may create.

Box 1 What is Regulation and Regulatory Reform?

There is no generally accepted definition of regulation applicable to the very different regulatory systems in OECD countries. In the OECD work, regulation refers to the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulations include laws, formal and informal orders and subordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers. Regulations fall into three categories:

?? Economic regulations intervene directly in market decisions such as pricing, competition, market entry or exit. Reform aims to increase economic efficiency by reducing barriers to competition and innovation, often through deregulation and use of efficiency-promoting regulation, and by improving regulatory frameworks for market functioning and prudential oversight.

?? Social regulations protect public interests such as health, safety, the environment, and social cohesion. The economic effects of social regulations may be secondary concerns or even unexpected, but can be substantial. Reform aims to verify that regulation is needed, and to design regulatory and other instruments, such as market incentives and goal-based approaches, that are more flexible, simpler, and more effective at lower cost.

?? Administrative regulations are paperwork and administrative formalities – so-called ‘red tape’ – through which governments collect information and intervene in individual economic decisions. They can have substantial impacts on private sector performance. Reform aims at eliminating those no longer needed, streamlining and simplifying those that are needed, and improving the transparency of application.

?? Regulatory Reform is used in the OECD work to refer to changes that improve regulatory quality, that is, enhance the performance, cost-effectiveness, or legal quality of regulations and related government

formalities. Reform can mean revision of a single regulation, the scrapping and rebuilding of an entire regulatory regime and its institutions or improvement of processes for making regulations and managing reform. Deregulation is a subset of regulatory reform and refers to complete or partial elimination of regulation in a sector to improve economic performance.

Source: OECD Report on Regulatory Reform (1997)

In contrast to the broader, conceptual interpretations of ‘regulation’ mentioned above, the legal / administrative definitions of ‘regulation’ used in practice, within individual countries, vary greatly but are frequently much narrower in scope. Comparative information on the coverage of RIA systems in a sample of different countries, which illustrates this, is contained in Jacobs (1997) and Hopkins (1997).

RIA provisions may be limited in their application according to:

- ?? the levels of administration – for example, federal, regional and/or local levels of administration
- ?? the levels of the regulatory measure – for example, primary and/or secondary legislation
- ?? the type of measure – rules, financial instruments, policies etc.
- ?? the sectors to which the measures apply (economic, social, environmental) or which they affect (e.g. business or small business sector).

There are a number of possible reasons why the scope of RIA provisions may be restricted in these ways. These include, inter alia:

- ?? governments may wish, for their own political or institutional reasons, to exclude certain types of policies or regulations from assessment
- ?? opposition from parliament, particular ministries and/or levels of government may lead to exclusion of some other types of policies or regulations in order to gain approval for the remainder
- ?? a preference, for practical reasons, to proceed on a step-by-step basis, extending the scope of RIA provisions as assessment experience and capacities expand.

The first two reasons are difficult to defend where they are only used to promote particular stakeholder interests relative to others in the country. They could threaten the long-term viability (and credibility) of RIA and regulatory reform, especially at times when the balance of political power in a country changes. From a longer-term perspective, these kinds of selectivity in scope should be minimised, though they can rarely be eliminated.

The third reason is more defensible and could be particularly important in low and middle income countries which have limited regulatory assessment capacities. However, it is important to choose non-discriminatory criteria when reducing assessment requirements to match assessment capacities. This might be better done in other ways: for example, using screening and scoping procedures (see

1.6) to focus the available assessment capacities on the most important policies and regulations and their most significant impacts.

1.4 Rationale of RIA as an instrument of regulatory reform

The formal case for regulation, and for regulatory reform, arises from one or more of the following concerns: market failure, equity failure or regulatory failure (Guasch and Hahn, 1997; OMB, 2002).

?? Market failure A major justification for intervening in a market system is because of failures due to the presence of externalities, natural monopoly, market power, and inadequate or asymmetric information. The optimal intervention is one which fully corrects this failure, if this is feasible, and/or maximises the net social benefit from the intervention. This is the ‘efficiency’ case for intervention. An intervention may pass the ‘efficiency’ test but fail an ‘equity’ test (see below) where those benefiting are unable or unwilling to compensate those losing from the intervention and there is an undesired change in the distribution of income and wealth.

?? Equity failure In this case, intervention is justified where it corrects an inequitable distribution of income and wealth, assuming that it does not have a significant adverse effect on the efficient allocation of resources. This is the ‘equity’ case for intervention.

?? Regulatory failure In this case, a new (or revised) regulation is justified where the existing regulation is failing to satisfy one or both of the above tests and the replacement measure will result in a positive net benefit and/or in a more favourable distribution of income and wealth.

The role of RIA is, as indicated in Box 2, decision-informing not decision-making. It is used to assess the likely consequences of proposed regulatory reforms (and of alternatives to these) and the estimated consequences of existing regulatory systems, to assist those involved in planning, approving and implementing reforms. Therefore, it needs to supply information relating to the efficiency and equity effects of regulations. This may involve, in a suitably simplified form;

?? assessing the likely (or estimated) main benefits and costs associated with each option investigated; and

?? indicating how these benefits and costs may be distributed between different groups of stakeholders.

The same assessment information may also be used to indicate the extent to which proposed or actual regulatory reforms contribute to the attainment of international development goals and targets for poverty reduction and sustainable development.

The components of these benefit and cost estimates may be presented in different forms (quantitative and qualitative, physical and monetary) and be subject to varying degrees of uncertainty. The methods by which estimates are derived and can be used for decision-informing purposes are discussed in Section 1.7.

Box 2 What is Impact Assessment?

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

Source: SIGMA, 2001, p. 10.

In practice, the objectives of regulatory reform programmes may not be expressed in such fundamental terms as stated above. In some cases, they focus on narrower and more specific objectives (e.g. reducing the number of existing regulations, reducing the quantity of red-tape, reducing the fiscal burden etc.). In part, this is because of a felt need to simplify the goals of regulatory reforms to make them better understood by major stakeholders and partly to simplify their assessment. At the same time, this narrowing of goals can lead to a distortion in the assessment criteria which are used in RIAs and a consequential distortion in the regulatory reforms which are then approved and implemented. One of the challenges to be faced is how the efficiency and equity goals of regulatory reform programmes can be most simply and effectively incorporated into RIA practice in low and middle income countries, without distorting these programmes.

Though RIA is a potentially important instrument of regulatory reform, it is not the only requirement for regulatory reform and good governance. Other important requirements, which interact with RIA and may strongly influence its effectiveness, include:

- ?? strengthening regulatory management systems to promote good governance
- ?? ensuring legal and technical quality in regulatory proposals, and in communicating and codifying regulations
- ?? bringing about attitudinal and other ‘cultural’ changes among regulators, politicians, stakeholders and other potential participants in regulatory reform.

Reviewers of an earlier draft of this paper have also highlighted the following:

- ?? RIA may not function satisfactorily in countries, which have not sufficiently developed the rule of law, possess appropriate administrative capacities or lack experience in appraising new developments.
- ?? It is important to identify, in advance of its adoption, the necessary supporting mechanisms for RIA, which might include a strong legislative base, effective links to political and administrative authority, and independent expert quality assurance.
- ?? Equally, it is important to pay close attention to the sequencing of the pre-conditions for effective RIA, regulatory reform and good governance. It is not only a matter of providing the appropriate individual ingredients, but doing so in the most appropriate order.

Certain of these broader influences on regulatory reform and good governance, and on the effectiveness of RIA, are examined further in the latter part of section 1.6.

1.5 RIA guidance in selected countries

In 1995, the OECD Council passed a Recommendation on Improving the Quality of Government Regulation (OECD, 1995) which contained the following ten questions that policymakers should ask about any proposed regulation (and, with adaptation, about existing regulations (see Box 3).

Box 3 OECD Regulatory Quality Checklist

- ?? Is the problem, to be addressed correctly defined?
- ?? Is the government action justified to deal with this problem?
- ?? Is regulation the best form of government action?
- ?? Is there a legal basis for regulation?
- ?? What is the appropriate level(s) of government for this action?
- ?? Do the benefits of regulation justify the costs?
- ?? Is the distribution of effects across society transparent?
- ?? Is the regulation clear, consistent, comprehensible and accessible to users?
- ?? Have all interested parties had the opportunity to present their views?
- ?? How will compliance be achieved?

This checklist forms part of OECD ‘best practice’ guidance which, in turn, reflects RIA guidance in those OECD Member countries with most RIA experience, but also contributes to shaping RIA guidance in OECD countries more generally. Other elements of OECD ‘good practice’ guidance are discussed in section 1.8. The remainder of this section contains summary descriptions of RIA guidance provided in a number of English speaking Member countries (USA, Canada, Australia, United Kingdom) and in Kenya. The summaries focus primarily on the assessment approach and

criteria (e.g. relating to 'efficiency' and 'equity') which are recommended. Later sections consider the assessment process to be followed (1.6) and the more specific assessment methods to be used (1.7).

United States of America (OMB, 2002)

1. *Statement of Need* The analysis should establish the need for the proposed action in terms of addressing a significant market failure or, failing this, of other compelling public need such as improving governmental processes or addressing distributional concerns.
2. *Examination of Alternative Approaches* The agency should consider the most important alternative approaches to the problem and provide the agency's reasoning for selecting the proposed regulatory action over such alternatives.
3. *Analysis of benefits and costs* The benefits and costs of each alternative should be measured against the 'no action' alternative. To the fullest possible extent, benefits and costs should be expressed and compared in discounted constant dollars. Where monetisation is not possible for certain elements, other quantitative and qualitative characterisations of these should be provided. Cost-effectiveness analysis also should be used where possible to evaluate alternatives.
4. *Analysis of distributional effects and equity* Where distributive effects are thought to be important, the effects of various regulatory alternatives should be described quantitatively to the extent possible, including their magnitude, likelihood, and incidence of effects on particular groups. Information should also be presented on the streams of benefits and costs over time in order to provide a basis for judging intertemporal distributional consequences.

Canada (Government of Canada, 2002)

The Government of Canada's Guide to the Regulatory Process states 'it must be demonstrated that a regulatory proposal maximises the net benefit for Canadian society'. This entails a demonstration that:

- ?? the benefits of the regulation outweigh the costs to Canadians;
- ?? the regulatory program is structured in such a way that the difference between the benefits and costs is the greatest possible; and
- ?? the net benefits of the chosen regulatory action are greater than the net benefits accruing from any other regulatory or non-regulatory alternative.

Additionally, it is stated that the impact assessment should assess:

- ?? the economic, social, environmental and health impacts of the proposal on Canadian society;
- ?? distributional impacts (fairness and equity implications) of the proposal; and
- ?? impacts that may affect a region, business and trade, and competitiveness.

Australia (Commonwealth of Australia, 1995; Council of Australian Governments, 1997)

The Commonwealth and the Council have similar goals and use similar assessment criteria. Both require broad cost-benefit or cost-effectiveness analyses and give consideration to distribution effects.

“Cost-benefit analysis is only a guide in decision-making as it focuses only on the allocative effects of proposals. It, alone, cannot provide a definitive answer to which is the best proposal to adopt as society has a wide range of goals to pursue in addition to allocating resources efficiently. Thus the CBA is not the sole input to decision-making. Issues of equity, cultural and social significance, as well as political considerations, all have influence on decisions” (quoted in Hopkins, 1997, p. 144).

“Distributional implications can be obscured by the aggregating character of the cost-benefit process. Analysis should include all the information available to ensure that decision-makers are aware both of the identity of the groups likely to gain or to lose as a result of government action, and of the nature and size of the gains and losses. The information should be carefully presented, most usefully in the form of a distributional incidence chart or matrix” (Council of Australian Governments, 1997, Cost-benefit annex).

United Kingdom (Cabinet Office, 2002; National Audit Office, 2001)

Good Policy-Making: A Guide to Regulatory Impact Assessment indicates that a full RIA should undertake the following:

- ?? Identify the objectives of the regulatory proposal.
- ?? Assess the risks which the proposed regulation is addressing.
- ?? Identify and compare the benefits and costs for each option.*
- ?? Summarise who, or what sectors, bear these costs and benefits and any issues of equity or fairness which these raise.
- ?? Outline the impact on small firms and any measures for helping them to comply.
- ?? Set out the proposed arrangements for securing compliance with each of the proposed options.
- ?? Explain how the proposal will fit with existing regulatory requirements.
- ?? Provide a summary of the results of the consultation exercise, responses received and how the RIA has changed.
- ?? Indicate how implementation will be monitored and evaluated.

* The relevant Government Ministers are expected to ‘sign off’ the RIA with a statement that, in their opinion, ‘the benefits justify the costs’.

Kenya (Ministry of Labour and Human Resource Development, undated)

According to the Better Regulation Guide, an RIA document should cover the following:

- ?? The purpose and intended effect of the regulation (i.e. the issue to which it is addressed and the objective it serves).
- ?? The options identified for dealing with the issue, and any concerns of equity or fairness which they raise.
- ?? The benefits (and disbenefits) of each option, and the beneficiaries.
- ?? The compliance costs on business and the administration costs on government.
- ?? Results of consultations.
- ?? Summary – for each option, a list and comparison of the costs and benefits, and a summary of the advantages and disadvantages for different stakeholders; a summary of any issues of equity and fairness; a recommendation on the proposed regulation.

All of the RIA guidance, reviewed above, contains requirements relating to the assessment of benefits and costs (i.e. relevant to the efficiency objective) and to the distribution of these impacts (i.e. relevant to the equity objective). However, there are important differences in emphasis and detail in the ways these are handled in the guidance. Some seem to place greater emphasis on efficiency than equity, and on the quantified comparison of monetised costs and benefits (see, for example, the USA guidance compared with that published for Australia and Kenya). In addition to cost-benefit analysis, a number of RIA guides also mention other forms of analysis which may implicitly assume narrower regulatory reform goals and assessment criteria. These include cost effectiveness analysis, compliance cost analysis, business impact analysis and fiscal impact analysis (see Box 4 for further details).

When developing RIA methodologies for application in low and middle income countries it is worth considering:

- ?? the balance to be struck between efficiency and equity criteria, and between the quantified, overall comparison of monetised costs and benefits and simpler, quantitative and qualitative comparisons of positive and negative impacts, expressed in different units; and
- ?? the use to be made of similar forms of analysis which assume narrower goals and assessment criteria than the efficiency and equity criteria favoured above.

Box 4 Different forms of analysis used in RIA

Cost-benefit analysis is appropriate to addressing efficiency concerns in regulatory reform but can be demanding in its technical and data requirements. It is not, of itself, well adapted to address equity issues but it may be modified and extended to address these.

Cost-effectiveness (or 'cost-output') analysis may be regarded as a partial form of CBA. It does not convert benefits into monetary terms but may evaluate them using other measures e.g. degree of risk reduction, number

of lives saved, etc. CEA is most useful when the range of realistic alternatives is confined to different means of achieving similar outcomes.

Compliance cost analysis is narrower still in scope, as it does not attempt to quantify benefits at all and focuses on costs which are generally easier to estimate. Compliance cost approaches are of particular help where the over-riding concern is whether the projected cost burden is feasible, proportionate or reduced to the minimum.

Business (or small business) impact analysis is a partial variant of compliance cost analysis. It focuses on the costs to a particular sector, whether business generally, or SMEs in particular. It does not capture costs to consumers, governments or other non-business groups. This is often used where the key concern of regulatory reform policy is limiting or reducing business impacts.

Fiscal (or budgetary) impact analysis is also a partial compliance cost analysis, which only considers the budgetary implications for government of the regulatory proposal. It may be particularly useful where a potentially high cost compliance and enforcement strategy is a key element of a proposal, or where multiple levels of government will bear costs.

Source: Based on Deighton-Smith (1997) p. 224 (Box 6).

1.6 The RIA process, regulatory reform and good governance

This section examines:

- ?? the relationship between the RIA process and the regulatory development process within which it functions; and
- ?? the wider relationship between the RIA system and regulatory reforms to promote good governance.

Integration of RIA into the regulatory development process

RIA is both a process and a method of assessment; both elements need to be satisfactory if RIA is to be effective. The RIA process is examined in this section and RIA methods in the next section. There is a broad consensus on the basic requirements of an RIA process, which should ideally be met, and these are examined below. However, its detailed form will depend upon the structure of the regulatory development process within which the regulatory proposal is formulated, approved and implemented. This regulatory process is context-specific i.e. it varies between countries and may also differ between different types of regulation within the same country.

It is important that the main stages in the regulatory development process are well understood for each regulatory proposal to be submitted to RIA. A detailed example of the main stages involved in developing Governor-in-Council regulations for the Government of Canada, and the main tasks to be undertaken at each stage, is provided in Government of Canada, 2002. Further examples can be found in other country guidance documents.

Using 'best practice' RIA experience in OECD countries as a guide, it is possible to identify a number of broad features of a satisfactory RIA process (OECD, 1997b).

1. RIA should commence at the earliest feasible stage in the preparation of a new regulatory proposal and should not be delayed until the proposal is near to being finalised. RIA preparation and application should be fully integrated into the appropriate stages of the regulatory development process.
2. Provision should be made for screening regulatory proposals to determine which require an RIA and the type of level of assessment to which each should be submitted. This assists in keeping the volume of RIA-related work within acceptable limits and ensuring that assessment resources are mainly allocated to proposals likely to give rise to more significant impacts.
3. Provision should be made for a short scoping study which specifies the terms of reference for the assessment (covering the options to be assessed, the impacts to be investigated and the assessment methods to be used). Scoping (initially developed for use in EIAs after NEPA, 1969) is a logical extension to screening and serves a similar purpose i.e. it focuses the assessment on the potentially most important options and impacts and the use of the most cost-effective assessment methods. The resulting scoping report should also indicate how responsibilities for completing the RIA are to be allocated (for example, within the government department proposing the regulation, with external consultancy assistance, etc.).
4. Provisions should also be made for the findings of the RIA study, and the report based on these, to be available for comment and review. Importance is attached to this provision, not only to gather expert advice and opinion, but also to promote the quality and objectivity of the assessment, the transparency of the assessment process and the commitment of interested stakeholders to the effectiveness of the regulatory development process. Among the issues to be resolved is whether the RIA report should be reviewed outside the government department in which it has been prepared (e.g. by a review group drawn from other government departments, by a central regulatory unit within government or by a unit independent of government).
5. Provision should be made to use the findings of the RIA report, and of the reviews and consultations based upon it, for regulation approval purposes and for specifying the monitoring, ex-post evaluation and post-auditing studies that should be undertaken of its implementation. This is a critical opportunity to secure the integration of the RIA findings into decision-making within the regulatory development process.

6. Provision should also be made, in the light of the above, to comply with the monitoring, evaluation and post-auditing requirements and to take any follow-up action that may be appropriate in the light of their findings. This, also, is critical to ensure that the RIA triggers remedial action where the regulation is not satisfactorily implemented or has unexpected effects.

(Some reviewers are cautious about the inclusion of monitoring, *ex post* evaluation and post-auditing requirements in the RIA process. They mention that there is only limited evidence, to date, of successfully implemented *ex post* regulatory programmes, that their introduction may face political and administrative resistance and that they may raise overall RIA requirements to an excessive level. At the same time, there are believed to be significant, RIA related, implementation problems, which, in the case of other forms of impact assessment, have led to the strengthening of their *ex post* evaluation requirements [Goodland and Mercier, 1999].)

The extent to which the RIA process and procedural ‘best practice’ requirements, mentioned above, are met in those countries with existing RIA arrangements, is variable. There are differences between countries in their status (mandatory or advisory), their scope of coverage, and in the level of detail and precision with which particular requirements are specified. A number of country guidelines and procedures recommend that RIA should start early in the regulatory planning process and they establish screening procedures to select those regulatory proposals which require assessments at different levels or of different kinds. On the whole, scoping procedures seem to be less well developed. Provisions relating to the transparency of the RIA process, and for external consultation and review, are less well developed in a number of countries and this is reflected in consultation practice. This is especially problematic in countries where transparency and broadly-based stakeholder and public participation are not yet well embedded in regulatory systems and RIA is, in effect, thrust into a pioneering role in trying to establish such conditions. The integration of RIA study and consultation findings into decision-making on regulatory proposals is often nominally, at least, a formal requirement or recommendation. However, because of the rather general way in which this may be worded and because of the possible deficiencies at earlier stages in the RIA process, its application seems often to be less effective than ‘best practice’ would require. Specific commitments to monitoring, ex-post evaluation, post-auditing and follow-up corrective action are not often found. General encouragement for these broad types of actions may be provided but firm evidence of ‘good practice’ is limited.

It is worth re-emphasising that the limitations described above are not, fundamentally, of a methodological or technical nature, nor due to lack of data or expertise. Such difficulties do exist, as described in the next section, However, even if overcome, these process, institutional and procedural

shortcomings would, in the absence of further action, remain and cause RIA to be a less effective instrument of regulatory reform.

The relationship between RIA systems, regulatory reform and good governance

As previously stated (see Section 1.4), RIA is one of a number of instruments of regulatory reform and good governance and their interdependencies need to be sufficiently understood. In order to clarify further RIA's role, and its relationship to other instruments of reform, it is necessary to make explicit, as Radaelli and others have suggested, the nature of the overall policy process by which regulatory reform takes place (Radaelli, 2002 forthcoming). At least three different theories of regulatory change can be distinguished, which are relevant in this context:

- ?? *Rational-synoptic and technocratic theories* These theories, which appear to have influenced a number of RIA studies, see the policy process as being linear. It commences with the identification of a regulatory problem but with insufficient information and analysis to resolve it. RIA produces the relevant information and analysis, which then enables the decision-maker to make the correct regulatory reform decision and achieve an overall improvement in governance. Thus RIA releases and guides a series of enabling and reforming forces (based on well-defined efficiency and equity criteria) which result in good governance. In its most simplified, and extreme, form the RIA 'process', as such, is unimportant whereas the correct application of appropriate RIA 'assessment criteria' is all-important.
- ?? *Behavioural theories* These theories characterise organisational behaviour in terms of bounded rationality, switching between goals, satisficing behaviour, simplified (and sometimes conflicting) decision rules, organisational adaptation and evolution. RIA still plays the role of information provider but it is less tightly packaged for use with well-defined decision criteria. The process itself, and those who participate in it, become of greater significance and are part of its own dynamic. As Radaelli suggests, "its [RIA's] potential is in terms of changing the system of interaction between the society, the public administration, and the decision-makers".
- ?? *Dominance theories* These theories emphasise the influence of the goals of the dominant stakeholders or political leaders on the regulatory reform process and on the role and form of RIA in facilitating this dominance. In one 'dominance' situation, RIA may focus on the goal of reducing the regulatory burden on business and, in another situation, on the goal of poverty reduction. Alternatively, RIA may be used as a centralising instrument within a national administration by emphasising its management role in checking all regulatory proposals for consistency with assessment criteria which have been previously endorsed by the stakeholder or political elite.

This list of alternative theories is only illustrative and, in practice, hybrid theories may also apply. A practical concern is the likely outcome if an attempt is made to introduce a form of RIA into a country which is incompatible with the realities of the policy process in that country. It may assist in improving the quality of the policy process but other, less favourable, outcomes may result, for example:

- ?? The RIA proposal is rejected or ‘watered down’ to remove its offending components.
- ?? The RIA proposal is adopted but its offending parts are not implemented.
- ?? The RIA proposal is adopted and implemented but it eventually becomes unworkable.

Thus, Radaelli claims, “rational-synoptic theories of the policy process lead to impact assessment systems which crash against the walls of administrative feasibility, lack of legitimacy and proliferation of instruments badly assimilated by civil servants and politicians” (Radaelli, 2002).

What are the implications to be drawn for future RIA studies in developing countries?

- ?? To some degree, RIA systems need to be ‘context-specific’ (i.e. sensitive to the conditions in the particular country in which they are to be applied), even if the underlying general principles of RIA systems are broadly similar.
- ?? RIA systems can contribute to improvements in regulatory systems but the assimilation of such changes takes time and progress may be surer if some changes are made on a ‘step-by-step’ basis.

1.7 RIA assessment methods

Three types of documentation, of relevance to RIA assessment methods, may be distinguished:

- ?? RIA guidance documents which contain advice on types of assessment methods which might be used and, in some cases, on how to apply them.
- ?? Studies which have examined individual RIA reports to identify which assessment methods have actually been used and how satisfactorily they have been applied.
- ?? Other impact assessment studies which, though not necessarily directly related to RIA, describe methods which may be appropriate to its application.

Each of these is briefly reviewed below.

RIA guidance A comparative review of RIA guidance documents, used by twelve governments in seven OECD countries, has been undertaken by Hopkins (1997a, 1997b). The countries covered were Australia, Canada, Netherlands, Norway, Sweden, United Kingdom and USA. Additionally, updated RIA guides have been consulted, as part of this study, for Australia, Canada, Kenya, United Kingdom, USA, and countries in transition (SIGMA, 2001). In interpreting the findings, it is important to take into account that some of these guidance documents cross-refer to other documentary sources for

additional information (which have not been consulted) and that the scope of the RIA requirements, for which the guidance has been prepared, differs between countries.

?? Most RIA methodological guidance focuses primarily on the estimation of costs and benefits, with (but to varying degrees) a predisposition to quantification, monetisation and discounting, where feasible. Cost-effectiveness methods are presented in a number of cases, mainly as ‘second best’ alternatives. The chief exceptions to this cost-benefit orientation are provided by the Netherlands and Swedish guides. A number of guides make explicit reference to the need to assess social and environmental, as well as economic, impacts.

?? Most guides also mention that equity issues and distribution impacts are to be examined although this tends to be given less prominence than the assessment of costs and benefits. Also the methods by which this is to be undertaken are, on the whole, not well developed. The Victoria (Australia) guide states that “individual groups within society, who will be affected by the regulations, must be identified, and a broad indication of how they will be affected given”. In Tasmania (Australia), costs and benefits are to be shown separately for three stakeholder groups (and, possibly, for sub-groups) and a weighting scheme is to be applied in the case of qualitative impacts.

?? Guidance is not well-developed, in most cases, on assessing the direct and indirect impacts of a regulatory change prior to their incorporation into a cost-benefit or cost-effectiveness analysis. (This is sometimes described as ‘missing middle’ in the impact assessment literature.) Some guidance documents recommend using a ‘risk assessment’ (or ‘risk analysis’) for this purpose (Viscusi, 1997) but its meaning is sometimes not sufficiently clear and it is interpreted differently in different guides. In its narrow meaning, risk assessment is a technique to assist in assessing the likelihood of particular, identified outcomes occurring. However, it is often unstated in guidance documents how the outcomes themselves are to be identified. In the Kenyan Guide, the risk assessment takes on a much broader meaning:

“Risk assessment is a technique for considering the various risks associated with a particular situation, examining whether controls are necessary and, if so, what form they should take. A risk assessment must include an analysis of the costs and benefits of each option under consideration” (Ministry of Labour [undated] p. 4).

?? The Swedish Guide appears to be alone in recommending the use of ‘effect chains’ to clarify the relationship between a proposed regulation and its eventual economic, social and environmental outcomes, although both Jacobs (1997) and Deighton Smith (1997) make brief reference to

‘consequence chain’ analysis. This is probably similar to ‘cause-effect’ analysis and ‘causal chain’ analysis which are to be found in the general impact assessment literature (see below).

?? Options analysis does not seem to be developed much beyond the relatively straight- forward case involving use of the net present value criterion or simple trade-offs in cost-effectiveness studies. Other ways of simplifying complex impact information to assist in decision-making are not developed (see below).

?? Though consultation procedures, and the need for transparency, are mentioned in most guides, the use of consultation as an assessment method is not explored in any detail, with the partial exception of the OECD (2001) guide for countries in transition and OECD (2002, forthcoming). Particularly lacking, in most cases, is guidance on how to use consultation effectively as an assessment method in different socio-economic, and cultural settings.

?? The guidance documents reviewed, were mainly concerned with ex-ante RIA appraisals and, though a number make reference to the need for ex-post monitoring, evaluation and post-auditing, the methods by which these tasks might be undertaken are not developed.

RIA methods used in practice

Hahn et al. (2000) analysed the quality of forty-eight RIAs, produced by US agencies between 1996 and 1999. They were particularly interested in the quality of the economic analyses contained within these reports. They found examples of good assessment practice but also noted that:

- ?? agencies failed to discuss alternatives for 27% of the rules, and quantified the costs and benefits of alternatives for only 31% of the rules
- ?? net benefits were only estimated in 29% of cases
- ?? agencies rarely discussed and never quantified the macro-economic impacts of regulations
- ?? agencies often failed to use consistent analytical assumptions – only 10 out of 48 rules used a consistent dollar year, a consistent discount rate and a consistent estimate of benefits and costs.

The authors concluded “the agencies economic analyses generally did not provide adequate information about a proposed regulation to justify decisions to proceed with the regulation (p. 7).

The Hahn et al. study did not attempt to measure directly the quality of the underlying analysis.

However, the authors report that case studies prepared by other scholars suggest that many RIAs suffered from serious shortcomings, though some were of high analytical quality.

The OECD Reviews of Regulatory Reform in Member countries provide some additional information on experience in applying ‘best practice’ methods. Both the Korean and Mexican reports (OECD, 2000; OECD, 1999a) draw attention to some difficulties experienced in following recommended

practice relating to the use of cost-benefit analysis, transparency and broadly-based consultations. For example (in the case of Mexico):

“CBA requirements originally encountered major implementation problems ... CBA was often little more than a list of qualitative benefits and political considerations set against a description of minor transition costs. In effect, CBA became an extra layer in the paperwork process, rather than a guide to decision-making” (p. 158).

Later it is reported “The biggest problem for the Costs and Benefits Section of the RIA is that the quality of data is generally poor and thus a quantitative analysis of proposals is virtually impossible. Regulatory authorities are not asked to produce net benefit estimates for fear of creating additional incentives to distort already inadequate data” (p. 159).

The difficulties experienced in applying ‘best practice’ methods, both in high income countries, with relatively mature RIA systems and, more particularly, in middle income countries with newly established systems, deserve closer consideration. For example, does their solution lie in ‘trying harder’ (and providing the level of support to make this feasible) or are there more fundamental problems associated with the specification of ‘best practice’ that need to be addressed?

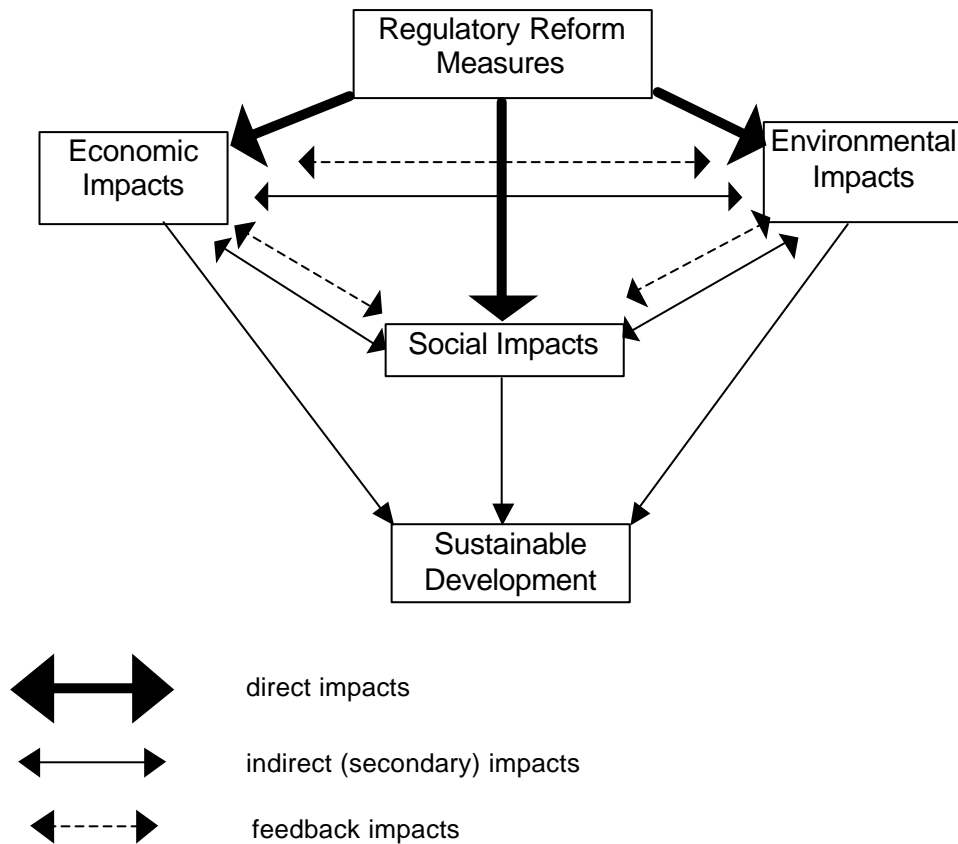
Other impact assessment studies The non-RIA literature on impact assessment methods is very extensive. Therefore, it is important to focus upon the sub-set of that literature which is most closely relevant to the application of RIA in developing country conditions. This is likely to cover methodological studies relating to integrated impact assessments (i.e. of economic, social and environmental impacts) undertaken at a strategic (local, regional, national or international), rather than a detailed (individual project) level of appraisal and evaluation. One study of this type, in which the author and others have been involved, has developed a methodology for the sustainability impact assessment of proposed WTO trade agreements (other studies, relating to different types of strategic actions, are described in Lee and Kirkpatrick, 2000). The documentation relating to this trade agreement study contains an extensive list of references to other studies on integrated, strategic level, impact assessments from which additional insights may be obtained (Lee and Kirkpatrick, 2001; Kirkpatrick and Lee, 2002).

The broad framework, within which this study was undertaken, is illustrated in a form adapted for RIA in Figure 1. It has the following features:

?? It covers economic, social and environmental impacts of regulatory change (proposed and actual) and the inter-relationships between these.

- ?? It uses screening and scoping methods and procedures to focus the analysis on key issues, options and significant impacts.
- ?? It establishes a limited number of economic, social and environmental indicators to record the likely 'outcomes' of the regulatory change. These are 'measured', quantitatively or qualitatively, in units considered by stakeholders and decision-makers, to be most appropriate for each indicator, having regard to the availability of data.
- ?? Causal chain analysis is used to clarify the main cause-effect links between the (proposed) regulatory change (and options) and its final (direct and indirect) economic, social and environmental outcomes.
- ?? The impact 'outcomes' are not collapsed into a single monetary net value. Results can be summarised and compared, using goals achievement matrices (Hill, 1968) and planning balance sheets (Lichfield, 1996), to assist decision-makers and consultees. The former, provides summary information on the contribution of the regulatory reform to its stated goals; the second contains a summary of the likely distributional effects, on stakeholders, of the reform.
- ?? Consultation is used as an assessment method, to provide information, expert judgement etc. as well as being part of the assessment process where stakeholder comments and opinions are invited and used. The details of how and when consultees participate is context-specific and should be determined on an individual country basis.
- ?? The technical methods chosen for an assessment need to be sensitive to the technical capacities, data and resources available, which can only be determined on a country basis. A 'decision tree' approach is recommended for use when constructing specific methodologies, tailored to the conditions of a particular country (Kirkpatrick and Lee, 2002).

Figure 1: Framework for an Integrated Assessment of the Impacts of Regulatory Reforms on Sustainable Development



Source: Adapted from Lee and Kirkpatrick, 2001

1.8 Performance of RIA systems

The case for using RIA turns, in the final analysis, upon its performance i.e. its achievements in facilitating regulatory improvements relative to the costs of its use. Seemingly, however, only limited systematic analysis has been undertaken on RIA performance, to date. This section examines how RIA performance might be assessed, presents some information on the assessment methods that have already been used and their findings, and concludes with some recommendations on further work.

The criteria for performance assessment need to be established at the outset. These should be set by reference to the goals of the RIA system in question and involve assessing the degree of success in achieving these. These goals may be expressed, in a restricted sense, as supplying relevant, quality information to decision-makers and stakeholders in the most suitable form for decision-making. However, in a broader sense, RIA may be regarded as an instrument of regulatory reform whose performance is to be judged in terms of the contribution it makes to meeting the goals, and realising

the benefits, from the regulatory reform process as a whole. This includes the contribution of RIA to improving decision-making processes; for example, by influencing the culture of the regulatory agencies and the nature of the policy development process. Both of these approaches are explored below.

The narrow interpretation of performance assessment comprises two elements:

- ?? assessing the quality of the RIA documentation provided to stakeholders and decision-makers (e.g. the quality of its contents; its relevance to the goals of regulatory reform; clarity and user-friendliness of its presentation);
- ?? assessing the effectiveness of the RIA process (e.g. the timing of its commencement; the timeliness with which it presents findings to decision-makers and stakeholders; the effectiveness of its consultation procedures; the transparency of the process; the effectiveness of its 'follow-up' procedures for monitoring, evaluation and post-auditing).

Some performance-related RIA studies have been completed, notably in the United States but also in certain other OECD countries, and some RIA performance information is contained in the OECD Regulatory Performance Reviews (e.g. Hahn et al., 2000; OMB, 2001; National Audit Office, 2001; OECD, 1999?). However, taken overall, systematic detailed studies of RIA performance are in limited supply and few if any, relate to performance in middle and low income countries.

Hahn et al. (2000), as previously indicated, examined the quality of the economic analysis, and treatment of alternatives, in a sample of RIAs prepared in the US, and found significant numbers of these to be deficient. They also identified important deficiencies in presentation. "Agencies often failed to present the results of their analysis clearly. Agencies provided executive summaries for only 56 per cent of the rules (p. 2) ... RIAs often bury specific economic information within a technical discussion of the health or environmental impacts, making it difficult to find a specific piece of information" (p. 6). Also, as previously mentioned, the Prime Minister's Office in Korea reported that 'the bulk of the RIA is still being conducted at a low level of sophistication' (OECD, 2000, p. 153) and, in the case of Mexico, "difficulties were experienced in following recommended practice relating to the use of cost-benefit analysis" (OECD, 1999, p. 158).

Evidence of systematic studies of the effectiveness of the RIA process is also sparse and the fragmented evidence available is not encouraging. Experience varies but examples are cited of RIA procedures which are not commenced sufficiently early, of a lack of transparency in the process, inadequate consultation of stakeholders, and deficiencies in follow-up during implementation. It is not uncommon to find evidence of poor quality implementation in other areas of impact assessment, particularly when first implementing impact assessment procedures. One of the

responses to this problem, in the case of environmental impact assessments, has been to strengthen quality controls by encouraging the use of quality review packages (Lee et al, 1999). In Mexico, a simple internal RIA grading system has been developed for each of 14 sub-components of the RIA to check and stimulate improvements in their quality (OECD, 1999, p.160).

Performance assessment in the broader sense (i.e. assessing the impact of RIA on regulatory reform and the benefits this brings) is more complex since it implies assessing:

- ?? the extent to which the resulting regulatory reform has contributed to goal attainment (e.g. through leading to improvements in efficiency and equity)
- ?? the extent to which RIA has contributed to the regulatory reform and, thereby, contributed to its beneficial effects.

In both cases, the challenge is to define the counterfactual situation (i.e. the situation, as it would be, in the absence of RIA) to provide the correct baseline for the performance assessment.

Different attempts have been made to shed some light on the broader-based estimate (more particularly of the overall impact of regulatory reform) but each is subject to conceptual or empirical shortcomings.

- ?? Assess the potential efficiency gains by estimating the existing welfare losses due to market and regulatory imperfections However the calculation of these welfare losses is open to dispute and a wide variation in estimates can result; not all market and regulatory imperfections are submitted to regulatory reform, and not all regulatory reforms realise their full potential benefits.
- ?? Assess whether the proposed reforms are consistent, in principle, with the goals of the reforms (e.g. improved efficiency and reduction in income inequality). At best, this may provide qualitative performance assessments of the proposed reforms but, in a 'second best' world (e.g. where the efficiency conditions are still not fully met) even this cannot be guaranteed.
- ?? Use simpler, crude performance indicators (e.g. the net change in the total number of regulations in force, or the change in the volume of regulatory paper work to be completed by small businesses). These indicators may be simpler to calculate and, where reform goals are narrowly defined, may be logically consistent. However, their use runs real risks of stimulating sub-optimal responses to wider efficiency and equity concerns, through their exclusive focus on lower-order objectives.

?? Aggregate the projected net benefit estimates derived from individual RIAs The reliability of these estimates will be influenced by:

- ?? the representativeness of the RIA samples upon which the aggregate estimates may have been based;
- ?? the quality and comprehensiveness of the impact predictions contained within the individual RIAs (for example, Hahn et al. (2000) report that most RIAs in the United States exclude the indirect, macro-economic effects of reforms);
- ?? discrepancies between the predicted and realised impacts of regulatory reforms. (A number of commentators mention a tendency, in some RIA studies, to exaggerate predicted benefits and/or make insufficient allowance for their incomplete realisation).

Assessing the likely benefits and costs of regulatory reforms is always going to be a challenging exercise but the discipline of doing this, if only at the level of their order of magnitude, is likely to be justified. Disentangling the separate contributions from each instrument of regulatory reform, to the overall reform impact, is more difficult and probably less necessary. The priority should be to ensure that RIA is making a cost-effective contribution to the overall regulatory reform effort .

In both respects, further work needs to be done in developing appropriate, practical methodologies for use in low and middle income countries. These developments should not only take account of existing OECD country experience in assessing the performance of RIA systems but also experience, in developed and developing countries, in assessing the quality and performance of other impact assessment systems (e.g. environmental assessment systems). Strengthening performance assessment and disseminating its findings should provide a stimulus and useful guide to needed improvements in RIA systems.

1.9 OECD ‘Best Practices’ and their relevance to developing countries

OECD regulatory reform studies contain different forms of guidance based on, or relating to, ‘best practice’. This section of the paper considers the basis of these ‘best practices’ and whether, and to what extent, they may be successfully transplanted in low and middle income country situations.

The ‘best practice’ studies to be considered from this standpoint include the following:

- ?? Regulatory Quality Checklist (in OECD, *Council Recommendation on Improving the Quality of Government Regulation, 1995*)
- ?? Good Practices for Improving the Capacities of National Administrations to Assure High-Quality Regulation (OECD, *Report on Regulatory Reform, 1997*)

- ?? Checklist of Quality Techniques for Regulatory Management (OECD, *Improving the Quality of Laws and Regulations*, 1994)
- ?? Performance Criteria for an RIA system (Deighton-Smith *Regulatory Impact Analysis: Best Practices in OECD Countries* in OECD, 1997)
- ?? Best Practices for Getting Maximum Benefit from RIA (Deighton-Smith, *Regulatory Impact Analysis: Best Practices in OECD Countries* in OECD, 1997)

The first is reproduced in Box 3 and the remainder in the Annex to this paper. Additionally, reference is made to OECD (2001) Improving Policy Instruments through Impact Assessment (SIGMA Paper 31), which contains guidance for Central and Eastern European countries, and Arrow et al. (1996) Ten Elements of High Quality Analysis, which is frequently cited in OECD and other RIA literature, and is also reproduced in the Annex.

There is little doubt that OECD ‘best practice’ RIA guidance has had a major influence on international thinking and approaches to RIA development and practice. At the same time, there is some uncertainty concerning the precise basis upon which these ‘best practices’ have been constructed and of the likely universality of their application (see, for example, Radaelli, 2002 forthcoming). The issues which are raised, which are inter-related, are the following:

1. What is the logical and/or empirical basis upon which best practices have been identified and defined? The answer is not readily identifiable from the OECD literature. Nor is this surprising given, as shown in section 1.8, the limited progress to date in assessing the performance of RIA systems in different countries. What is notable is that most published examples of RIA appear to relate to a limited number of English-speaking OECD countries (USA, Canada, UK and Australia) and certain northern EU countries. It is possible that their experiences and thinking have been a stronger influence in shaping best practices. To the extent that these are the more developed RIA systems this may seem justifiable, but to the extent that RIA has not made the same progress in other countries (e.g. in southern EU countries and elsewhere), this may suggest that this ‘best practice’ may be less appropriate in some country contexts. One way to verify or refute this is to better understand and explain the apparent lack of RIA progress in certain countries as a prelude to examining whether there are more appropriate RIA development paths for such countries to follow.
2. Are what Radaelli (2002, forthcoming) describes as ‘rational-synoptic and technocratic theories’ of the policy process, implicit in certain OECD ‘best practices’, and is this a potential source of conflict and non-compliance in RIA? He cites the modified approaches to RIA in two OECD countries – Netherlands and Australia – in elaborating his point,

“Networking and administrative co-operation are remarkable results of the Dutch experience. This has come at a cost, however. The cost of administrative consensus is a degree of vagueness in the instruments used for RIA ... In a sense, the trade-off is between inter-administrative co-operation and network building, on the one hand, and precision, effectiveness, and efficiency of the instruments, on the other. Australia is another case wherein the political and administrative assimilation of RIA has priority and the precision of the instruments comes second. The lesson is that the trade-off between assimilation and precision should be discussed by governments experimenting with the introduction of RIA” (p. 13).

This advice may have relevance to low and middle income countries outside the OECD.

3. To what extent are RIA ‘best practices’ country-specific? In previous sections of this paper, it has been emphasised that the effectiveness of RIA should not be analysed in a narrow, instrumental sense, but as an integral component of a regulatory reform process within a specific country’s regulatory system. Stern and Holder (1999), in referring to work by Levy and Spiller (1994) and North (1990), emphasise the need to devise regulatory mechanisms which correspond to a country’s ‘institutional endowment’. North characterises this ‘endowment’ in terms of: its legislative, executive and judicial institutions; its customs and broadly-accepted norms of behaviour; the character of contending social interests within its society; and the administrative capabilities of the nation and its institutions. ‘Institutional endowments’ vary greatly between countries. Given this, the authors stress the need to be clear, in the case of any country, about the underlying objectives and requirements of effective regulation (for which there may be some general guiding principles) but also to be flexible and creative about the institutional frameworks and forms by which these are to be realised. In a study for the Asian Development Bank, they developed an appraisal framework for regulatory systems and applied this in case study appraisals of the governance structure for 12 infrastructure industries across six developing Asian countries (Bangladesh, India, Indonesia, Malaysia, Pakistan and Philippines). They concluded:

“There is no clear evidence of convergence to any common solution, let alone to OECD ‘best practice’, either on the formal aspects of regulatory regimes or, as yet, on regulatory practice... It also remains unclear whether [these countries] will adopt the institutional framework associated with current international ‘best practice’, or whether they will produce new variants on regulatory practice, but with different types of institution” (p. 31).

4. Do low and middle income countries possess the institutional capacities to undertake and make effective use of RIAs at the level of sophistication implicit in OECD ‘best practice’ guidance – for example, do these countries have sufficient skilled and experienced staff and good quality data to apply the recommended assessment methods and to utilise the assessment findings within the regulatory reform process? The limited documentary evidence available suggests that they are likely to experience severe difficulties with some of the more technically-sophisticated methods of analysis and those that are very data demanding. Also, they may experience difficulties with some of the participative methods of information gathering and analysis where there is limited country experience in their use. If so, ‘best practice’ may need to be expressed in a more modest or flexible way, at least during the initial stages of RIA implementation.

The ways in which ‘best practice’ may need to be redefined, to make it more directly applicable in individual developing countries, can only be established after further investigation within the countries concerned, possibly with supporting guidance from elsewhere. A useful first step would be to take each of the guidance documents listed in this section of the paper and make an initial assessment of which elements of OECD ‘best practice’ guidance are most likely to be readily adaptable to meet developing country needs and which may require much greater modification. This approach is illustrated in Box 5 below. This leaves open, for the time being, the issue of which additional elements of guidance should be incorporated in order to make that guidance more effective for use in low and middle income countries.

Box 5 Some observations on the appropriateness of OECD ‘Best Practices’ Guidance to developing country conditions

- ?? Regulatory Quality Checklist (Box 3) Each of the ten quality questions in the checklist relates to a topic likely to be of relevance to RIA in any type of country. For the most part, the questions have been formulated in a way that allows some flexibility in the precise formulation of each of the ten assessment criteria. Possibly the relatively tight specification of Question 9 ‘Have all interested parties had the opportunity to present their views?’ could create difficulties in some countries.
- ?? Good Practices for Capacity Building to Assure High-Quality Regulation (A.1) These are also formulated in relatively general terms and, allow considerable flexibility in the detailed manner in which each is to be implemented.
- ?? Checklist of Regulatory Quality Techniques (A.2) This Checklist is more detailed and specific. It contains suggestions for the establishment of particular institutions (e.g. a central oversight body, a high-level advisory commission, a central economic analysis unit, public information offices etc.) which are, collectively, both resource-demanding and, in individual cases, potentially controversial. However, the accompanying text, in OECD (1994), does indicate that ‘This list of techniques is intended to provide a menu of ideas that may be adapted on a ‘case-by-case’ basis to suit particular needs’ (p. 12).
- ?? Performance Criteria for an RIA system (A.3) Mostly, the performance criteria are broadly described and likely to be relevant in most countries. In some cases, however, the criteria are expressed in more exacting terms than may be necessary for general application. Two examples are: ‘RIA must make maximum use, within cost constraints, of quantitative data and rigorous empirical methods’ (own emphasis); ‘Extensive consultation should inform RIA’ (own emphasis).
- ?? Best Practices for getting maximum benefit (A.4) These are mostly prepared in a clear but flexible manner, indicating where alternative interpretations are permissible (e.g. 4. Use a consistent but flexible analytical method). Two ‘best practices’ might create difficulties in some countries i.e. ‘A central body is needed to oversee the RIA process and ensure consistency, credibility and quality. It needs adequate authority and skills to perform this function’; and ‘9. Involve the public extensively. Interest groups should be consulted widely and in a timely fashion’. Interestingly, the second of these two ‘best practices’ was excluded from the version presented in SIGMA 31 (p. 20-21) which was prepared for Central and Eastern European countries.
- ?? Arrow principles: ten elements of high quality analysis (A.5) These principles, presented in OECD 1997 (p. 126-127), recommend a primary focus on estimating benefits and costs (and use of the net present value criteria) and a secondary focus on distributional consequences. Other principles specify how these assessments are to be made and their findings presented. This precise specification of RIA assessment criteria and their technical application is expected to create difficulties in a number of low and middle income countries, both in terms of political acceptability and in terms of the technical and data demands for its satisfactory application.

In summary, for the most part, the OECD ‘best practices’ guidance may not present major problems for low and middle income countries, provided it is expressed in a brief and flexible form. However, where it is formulated in greater and more demanding detail it may face more difficulties both in political acceptance and in terms of satisfactory application. This is more likely where:

- ?? it proposes the establishment of new institutions to manage, centrally, the performance of RIA systems

- ?? it contains detailed requirements for the adoption and detailed specification of CBA criteria and methods
- ?? it proposes extensive (public) consultation with stakeholders and transparency of the RIA process.

These conclusions are provisional and need to be tested through further ‘in-country’ investigation.

PART 2: RIA METHODOLOGIES FOR USE IN DEVELOPING COUNTRIES

2.1 Introduction

Part 2 of the paper draws together the main findings from Part 1 and uses these to construct proposals for the subsequent development and application of RIA methodologies appropriate to developing country conditions. This is undertaken within the framework of the CRC’s work programme, as summarised in the Introduction. Part 2 is structured as follows:

- ?? 2.2 contains a summary of the principal findings from Part 1
- ?? 2.3 draws provisional conclusions relating to the development of the proposed methodology.

2.2 Summary of Part 1 findings on existing RIA methodologies and experience

The principal findings of possible relevance to subsequent stages in the development of the proposed RIA methodology, are summarised below.

- ?? Over the past 25 years, there has been a considerable expansion in the adoption of formal RIA procedures in high income, OECD countries, though the scope and extent of their application are variable. In contrast, provisions for formalised RIA, and practical experience in its application, are currently limited in most low and middle income countries. This should be taken into account when formulating RIA proposals for these countries (1.2).
- ?? The types of measures, to which RIA procedures are applied, vary considerably between countries but there is a trend towards making their coverage more comprehensive (e.g. including government policies as well as major types and different levels of government regulations). Typically, RIAs are not confined to economic regulations but also cover social and environmental regulations (1.3).
- ?? The basic, theoretical case for regulation and regulatory reform rests on the presence of market failures, distributional concerns and/or regulatory failures, which imply the use in RIA of efficiency and equity assessment criteria. However, the role of RIA is seen as decision-

informing, not decision-making, both through ex-ante appraisals and ex-post evaluations of regulations. This may involve assessing, in a suitable form (see later):

?? the main benefits and costs associated with each option investigated;

?? the distribution of the benefits and costs between stakeholders.

Typically, economic, environmental and social impacts are covered in these assessments. In some countries, more narrowly-based RIAs may be undertaken which assess impacts on particular sectors (e.g. the business sector or the fiscal sector) (1.4).

?? The ‘state of the art’ of RIA methodology has been mainly influenced by those OECD Member countries which have developed their own RIA systems most fully and where academics have studied RIA most extensively. These mainly, but not exclusively, comprise a number of English-speaking, and some northern European, countries. Their experience and thinking has been distilled within their own RIA guides as well as contributing to the OECD ‘best practices’ guidance which has been particularly influential as an international template. Determining the extent to which this template is appropriate in low and middle income country conditions is of considerable importance to this RIA work programme (1.5)

?? RIA is both a process and a method of assessment; and both elements need to be satisfactory if RIA is to be effective. A number of broad features of an effective RIA process have been identified in the international literature. These include the need for an early commencement of the RIA process; adequate provision for screening, scoping and consultation; the integration of RIA findings into regulatory decision-making; and effective provision for the ex-post evaluation of regulation implementation. However, the extent to which these process requirements are met, and how satisfactorily they are applied, is variable. Therefore, the quality of both the assessment process and the assessment methods used, is an issue of concern. Additionally, there is the more fundamental question of the appropriateness of the above process requirements to developing country situations (1.6).

Whichever process and methodological requirements are to be set, they will need to be ‘in gear’ with the pre-conditions for effective regulatory reform in the country concerned (e.g. adequate provision for the rule of law, appropriate administrative capacities, appraisal capabilities etc.). Therefore, the development and application of appropriate RIA methodologies, for use in low and middle income countries, cannot be divorced from the identification and development of appropriate conditions of governance within which these methodologies are to be used.

- ?? The international literature on RIA methods also mainly originates from the RIA-active, OECD Member countries and has been distilled within the OECD ‘good practices’ documentation. Its characteristic features are:
- ?? most guidance is oriented towards ex-ante appraisal rather than ex-post evaluation
 - ?? most guidance focuses primarily on the estimation of costs and benefits
 - ?? most mentions equity issues and distribution impacts but the methods for analysing and presenting these are less well developed
 - ?? guidance is less well developed on analysing the cause-effect chains, which link a regulatory reform to its eventual costs and benefits
 - ?? similarly, guidance is relatively limited on the use of consultation and review, as an assessment method, as well as on the methods by which ex-post monitoring, evaluation and post-auditing may be undertaken (see, however, OECD [2002, forthcoming] for additional guidance on consultation).

Information relating to the quality of RIA method application is limited but indicates a number of problem areas, especially in countries with limited expertise, data shortages and assessment experience. The wider international literature on other forms of impact assessment methods and practice does not appear to have greatly penetrated into the RIA field, beyond the use of certain forms of economic analysis (1.7).

- ?? Relatively few comprehensive and systematic studies appear to have been undertaken of the impact of RIA systems in individual countries and virtually none appear to cover low and middle income countries. The form such performance studies might take has been explored in this paper. Strengthening this aspect of performance assessment is recommended to provide a stimulus to future improvements in RIA systems and practice (1.8).
- ?? The Part One Review concludes by re-visiting the issue of the relevance of OECD ‘best practices’ to RIA application in developing countries. Four questions are posed:
- ?? what is the logical and empirical basis upon which OECD ‘best practices’ have been identified and specified? Does this support or question their transference to other country types?
 - ?? Are the rational-synoptic and technocratic approaches to the policy process, which some claim are implicit in certain OECD ‘best practices’, a potential source of conflict and non-compliance in developing countries?
 - ?? Is ‘best practice’ RIA likely to be country specific (i.e. will it vary according to a country’s ‘institutional endowment’)?

?? Do low and middle income countries currently possess the institutional and other capacities to undertake RIAs at the level of sophistication implicit in OECD ‘best practices’ guidance?

The answers to these questions need to be tested through further ‘in-country’ investigations. However, the initial, provisional conclusion is that the brief, flexibly formulated, OECD guidance which has been reviewed, can be helpful to developing countries, without creating serious difficulties for them. However, more problems would be encountered if guidance is more detailed and prescriptive on such matters as:

- ?? the establishment of new, centralised institutions to manage the performance of RIA systems;
- ?? requirements for the adoption and detailed specification of CBA criteria and methods;
- ?? stringent requirements relating to consultations with stakeholders and to the transparency of the RIA process.

Further, much of the detailed specification of RIA guidance, whilst broadly consistent with these ‘best practices’ needs to be more context-specific, and for this reason should be formulated through major involvement of in-country expertise and stakeholder consultations (1.9).

2.3 Provisional conclusions relating to the development of the proposed methodology

The following provisional conclusions, based upon the Summary above, have been reached relating to the development of the RIA methodology during the next stage in the work programme. They are subject to revision, following consultations with regional partners and international RIA experts.

?? A strategic choice should be made between developing a methodology which will have a relatively narrow field of application and one which is more comprehensive but is capable of selective and simplified application in the first instance. The second approach seems preferable. It is consistent with the international trend to broaden the scope of RIA application; it reduces the risks inherent in partial assessments; and it reduces the likelihood of proliferation of different types of methodologies within the same country.

?? The RIA methodology should, in principle, be applicable to all types of policies and regulations, whether economic, social or environmental. Similarly, it should be applicable to both ex-ante appraisals and ex-post evaluations. The annual number of RIAs being undertaken within a country could be limited by screening procedures which exclude greater numbers of less significant actions from RIA requirements, during the transitional period of implementation.

- ?? Assessments should primarily serve efficiency and equity objectives rather than narrower, lower order objectives. They should take economic, social and environmental impacts into consideration. The benefits and costs of options should be assessed, as well as their distributional effects on different stakeholder groups. However, there should not be a general requirement to assess all of these effects in monetary or quantitative terms or to apply a specific decision rule, such as the net present value criterion, in order to prioritise options. The assumption is that RIAs should be transparent and decision-informing, and not decision-taking.
- ?? Provision should be made, in the case of ex-ante appraisals, for an early commencement of the RIA process and for appropriate use of screening, scoping and consultation procedures; the integration of RIA findings into regulatory decision-making; and for the subsequent ex-post evaluation of the implementation of regulations. Screening and scoping provisions should ensure that the volume of assessment activity is not excessive, relative to the resources available for this purpose, and that priority is given to assessing regulatory measures with the greatest potential impacts. Requirements relating to consultation and the transparency of the RIA process should be made effective but also be sensitive to the cultural and other circumstances of the country concerned. Consideration should be given to the elaboration of the stages in the ex-post evaluation of regulations and the means by which its findings are integrated into regulatory reform decision-making.
- ?? RIA methodology development should give consideration to those types of assessment methods which have been relatively neglected in previous RIA guidance documentation. These include relatively simple assessment methods and approaches used in scoping, causal chain analysis, data gathering and analysis (including the use of consultation methods), methods for simplifying the presentation of benefits, costs and their distribution to decision-makers and stakeholders (e.g. the use of goals-achievement matrices and planning balance sheets), and simple guidance on monitoring, evaluation and post-auditing. More specialised and advanced forms of methodological guidance (e.g. economic modelling, economic valuation of environmental impacts) should be produced separately for use by the specialists concerned, where available, in the circumstances where these methods are most appropriate. The provision of such guidance to non-specialists runs the risk of misapplication or, more generally, becoming a deterrent to RIA implementation.

Postscript

This paper was discussed by participants at the CRC's International Workshop on Regulation, Competition and Development: Setting a New Agenda, 4-6 September 2002, in Manchester. Based upon these discussions, it has been decided to carry out a major study on regulatory impact

assessment during the coming year. This will begin with a survey of RIA practice in developing countries, based on a short questionnaire, which is being distributed to individual experts in each country. This will be followed by a number of in-depth country studies, to be conducted in collaboration with CRC's overseas partner institutions. Updates on this RIA work will be published in future issues of News & Review, available on CRC's web site <http://idpm.man.ac.uk/crc/>. Those interested in assisting in this project, for example by completing the short questionnaire, should contact Colin Kirkpatrick colin.kirkpatrick@man.ac.uk.

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Annex: OECD ‘Best Practices’ Guidance

A.1 Good practices for improving the capacities of national administrations to assure high-quality regulation

The OECD Report on Regulatory Reform, welcomed by Ministers in May 1997, includes a co-ordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation.

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political levels.
2. Establish explicit standards for regulatory quality and principles of regulatory decision-making.
3. Build regulatory management capacities.

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Regulatory Impact Analysis.
2. Systematic public consultation procedures with affected interests.
3. Using alternatives to regulation.
4. Improving regulatory co-ordination.

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS (In addition to the strategies listed above)

1. Reviewing and updating existing regulations.
2. Reducing red tape and government formalities.

Source: OECD Report on Regulatory Reform, 1997.

A.2 Checklist of regulatory quality techniques

Managing Regulatory Systems

- ☒ Establish a system for tracking and registering existing laws and regulations, and for planning future laws and regulations
- ☒ Establish responsibility for improvement at the ministerial or prime minister’s level
- ☒ Establish a central oversight body
- ☒ Establish a high-level advisory commission
- ☒ Develop a standardised “checklist” for regulatory decision-making in the ministries
- ☒ Adopt an administrative procedure law
- ☒ Establish a system of regulatory analysis
- ☒ Establish mechanisms for public consultation and participation
- ☒ Conduct systematic reviews of existing regulations
- ☒ Promote cultural change within bureaucracies

Ensuring Public Consultation and Participation

- ☒ Publish an agenda listing the regulations being developed
- ☒ Establish general requirements for public consultation
- ☒ Establish notice and comment procedures

- ✂✂ Establish public hearing procedures
- ✂✂ Facilitate broad consultation through support of disadvantaged interests
- ✂✂ Require that decision-makers be informed of consultation results
- ✂✂ Set up advisory groups

Ensuring Legal and Technical Quality

- ✂✂ Clarify the authority to initiate laws and regulations
- ✂✂ Establish standards of legality
- ✂✂ Establish standards for quality of drafting
- ✂✂ Evaluate the substantive content of regulations
- ✂✂ Require implementation feasibility studies
- ✂✂ Establish regulatory process standards
- ✂✂ Establish centralised drafting, co-ordination, or review of legal texts

Assessing Costs and Economic Effects

- ✂✂ Require impact analysis of the costs and benefits of proposed laws and regulations
- ✂✂ Establish a central economic analysis unit
- ✂✂ Establish an economic analysis capability in regulatory programmes
- ✂✂ Integrate economic analysis into the legislative and regulatory process

Assessing Compliance and Implementation Requirements

- ✂✂ Include implementability and enforceability criteria in drafting directives for legal instruments
- ✂✂ Develop systematic compliance strategies
- ✂✂ Use an implementation assessment checklist
- ✂✂ Require explicit parliamentary consideration and approval of resources required for implementation
- ✂✂ Apply project planning and management techniques
- ✂✂ Educate and involve the decision-makers
- ✂✂ Organise training sessions for ministry staff on implementation assessment
- ✂✂ Strengthen common elements of regulatory system
- ✂✂ Ease implementation problems by slowing the pace of new regulation

Communicating and Codifying Laws

- ✂✂ Require that all legal requirements be comprehensible
- ✂✂ Require that amendments to existing laws and rules specify the changes that are being made
- ✂✂ Establish editorial review boards
- ✂✂ Publish national gazettes
- ✂✂ Prepare periodic codifications of laws and regulations
- ✂✂ Establish public information offices
- ✂✂ Establish intra-governmental workgroups

Source: OECD (1994) *Improving the Quality of Laws and Regulations*, pp. 14-15.

A.3 Performance criteria for an RIA system

1. **Systematic** RIA must be part of a larger system that supports core analytical requirements and ensures that the analysis is able to influence policy decisions.
2. **Empirical** RIA must make maximum use, within cost constraints, of quantitative data and rigorous empirical methods. This will maximise objectivity and comparability.
3. **Consistent but flexible** Analytical approaches must be broadly consistent to optimise overall results. However, analysts must retain sufficient flexibility to target scarce resources at the most important regulatory issues and fit the analysis to the issue at hand.
4. **Broadly applicable** RIA should be applied to as wide a range of policy instruments as possible. It should not be possible to avoid RIA by using a different instrument.
5. **Transparent and consultative** Extensive consultation should inform RIA. The results of RIA should, in turn, be widely available and the basis of decisions made clear.
6. **Timely** RIA should be commenced early in policy development and its results made available in time to influence decisions *before* they are made.
7. **Responsive** Effectiveness depends ultimately on how well decision-makers apply the insights of RIA. This requires that RIA address issues that are practical and connected to the current policy debate.
8. **Practical** RIA systems must not require infeasible resource commitments and must not impose unacceptable delays on decision-making.

Source: Deighton-Smith, Regulatory impact analysis: best practices in OECD countries in OECD (1997), op. cit. p.213.

A.4 Getting maximum benefit from RIA: best practices

1. **Maximise political commitment to RIA** Reform principles and the use of RIA should be endorsed at the highest levels of government. RIA should be supported by clear ministerial accountability for compliance.
2. **Allocate responsibilities for RIA programme elements carefully** Locating responsibility for RIA with regulators improves “ownership” and integration into decision-making. A central body is needed to oversee the RIA process and ensure consistency, credibility and quality. It needs adequate authority and skills to perform this function.
3. **Train the regulators** Ensure that formal, properly designed programmes exist to give regulators the skills required to do high quality RIA.
4. **Use a consistent but flexible analytical method** The benefit/cost principle should be adopted for all regulations, but analytical methods can vary as long as RIA identifies and weighs all significant positive and negative effects and integrates qualitative and quantitative analyses. Mandatory guidelines should be issued to maximise consistency.
5. **Develop and implement data collection strategies** Data quality is essential to useful analysis. An explicit policy should clarify quality standards for acceptable data and suggest strategies for collecting high quality data at minimum cost within time constraints.

6. **Target RIA efforts** Resources should be applied to those regulations where impacts are most significant and where the prospects are best for altering regulatory outcomes. RIA should be applied to all significant policy proposals, whether implemented by law, lower level rules or Ministerial actions.
7. **Integrate RIA with the policy-making process, beginning as early as possible** Regulators should see RIA insights as integral to policy decisions, rather than as an “added-on” requirement for external consumption.
8. **Communicate the results** Policy makers are rarely analysts. Results of RIA must be communicated clearly with concrete implications and options explicitly identified. The use of a common format aids effective communication.
9. **Involve the public extensively** Interest groups should be consulted widely and in a timely fashion. This is likely to mean a consultation process with a number of steps.
10. **Apply RIA to existing as well as new regulation** RIA disciplines should also be applied to reviews of existing regulation.

Source: Deighton-Smith, Regulatory impact analysis: best practices in OECD countries in OECD (1997), op. cit., p. 215.

A.5 The 1996 Arrow principles: ten elements of high quality analysis

1. Each analysis contains a useful comparison of favourable and unfavourable effects of proposed regulation, with
 - a) primary focus on estimates of overall benefits and costs, and
 - b) secondary focus on distributional consequences, that is, on
2. impacts on particular segments of society as well as on
 - a) ii) issues of equity within and across generations
3. The analysis relates these effects to those of practicable, alternative approaches, including more and less extensive requirements.
4. Scale and scope of analysis varies with the stakes involved and with the prospects that analysis can affect the regulatory outcomes.
5. Estimates of the regulatory cost stemming from any job or wage losses are based on whatever transition costs will be incurred from job switching, since regulation generally affects employment distribution across industries rather than total employment. In the rare cases where a particular regulation significantly affects total employment, regulatory cost estimates are of the net effect on workers, consumers and producers.
6. Emphasis is on incremental effects – effects expected relative to a clearly specified baseline, the situation likely in the absence of the regulation.
7. Effects are quantified to the extent practicable, using plausible ranges and best estimates reflecting expected values; any “margins of safety” are stated explicitly.
8. Qualitative factors are not subordinated to quantitative factors in situations where the former are recognised as being important, in which case they are fully characterised in the analysis. Potentially irreversible consequences are identified.

9. Analysis is subjected to external review, the extent of which varies with the importance of the decision. Such review may entail peer review conducted within government and/or by respected outside experts. Retrospective assessments of analyses should be under-taken periodically by independent researchers.
10. All analyses use the same common core set of assumptions such as the social discount rate, the value of reducing risks of accidents and premature death (expressed as number of life-years extended), and the value of other improvements in health. Where alternative values appear more suitable, the analyses indicate how outcomes differ from those that emerge using the common core values.
 - a) Future benefits and costs are discounted to present values using a range of discount rates chosen to reflect how individuals trade off current for future consumption rather than the rates of return on private investment.
 - b) Values used to monetise risk reductions are based on trade-offs that individuals can be observed making in voluntary transactions that yield small risk reductions at the expense of other amenities, goods or services.
11. A standard format is used to summarise each analysis, highlighting:
 - a) the net present value of benefits and costs of both the preferred and the main alternative options,
 - b) notable features of the stream of these benefits and costs,
 - c) key assumptions employed, with a list of factors that have and have not been quantified, and
 - d) incremental net benefits of each regulatory alternative.

Source: Arrow et al., 1996 (quoted in OECD, 1997, pp. 126-127).