



House of Commons  
Environmental Audit  
Committee

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# Regulatory Impact Assessments and Policy Appraisal

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**Third Report of Session 2006–07**

*Report, together with formal minutes, oral and  
written evidence*

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## The Environmental Audit Committee

The Environmental Audit Committee is appointed by the House of Commons to consider to what extent the policies and programmes of government departments and non-departmental public bodies contribute to environmental protection and sustainable development; to audit their performance against such targets as may be set for them by Her Majesty's Ministers; and to report thereon to the House.

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A list of Reports of the Committee in the present Parliament is at the back of this volume.

### Committee staff

The current staff of the Committee are: Mike Hennessy (Clerk); Sara Howe (Second Clerk); Richard Douglas (Committee Specialist); Oliver Bennett (Committee Specialist); Louise Smith (Committee Assistant); Caroline McElwee (Secretary); and Robert Long (Senior Office Clerk).

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### References

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. References to written evidence are indicated by page number as in 'Ev12'. number HC \*-II

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## Conclusions and recommendations

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1. In the absence of a viable alternative to Regulatory Impact Assessments (RIAs), the RIA process must be regarded as an appropriate, if far from ideal, platform for integrating sustainable development into policy decisions. However, if the RIA system is to prove an effective tool for achieving the aim of fully integrated consideration of environmental impacts a number of key changes will be required, not least to its structure and purpose. (Paragraph 11)
2. The problems and limitations set out by the National Audit Office (NAO) in its briefing document to the Committee need to be resolved and the RIA recognised as a valuable and necessary input into the decision-making process. This will only be achieved through a concerted commitment from above to establish RIAs as an essential factor in considering policy, complemented by improved training and guidance to facilitate the production of RIAs, improve their quality and promote the process amongst officials. This remedy, like many of the other more specific steps suggested by the NAO in its 2005-06 review of RIAs, is directly related to the actions required to promote and reinforce the consideration of sustainable development within the RIA process itself. (Paragraph 14)
3. We strongly believe that RIAs should be used as a tool for ensuring policies meet objectives that stretch beyond the economic sphere to embrace environmental concerns. The RIA process must be directly engaged in transferring the principles of sustainable development and integrated decision-making from rhetoric to reality, principles which are currently often neglected by the focus on minimising regulation. We believe that the changes proposed in this report would assist in achieving this aim. (Paragraph 16)
4. In the wake of the Stern Review, and the very real economic costs of inaction which it highlights, it is no longer viable to view environmentally-minded regulation as a straitjacket to industry. Especially in the case of the environmental technology and services industries, regulation can play a crucial supporting role. We reiterate the call made in our predecessor Committee's report for RIA guidance to be strengthened in order to ensure that RIAs adequately recognise and consider the contribution that would be made by a flourishing environmental industries sector. (Paragraph 22)
5. Regulation and policy are conceived with clear objectives in mind, and it is only to be expected that impact assessments initially concentrate on those areas which relate most directly to these objectives. Similarly, certain RIAs will necessarily be required to assess a crucial technical point in some detail. However, it must be ensured that the impact assessment grows to encompass all relevant issues, beyond this initial, limited scope. The principle adopted by the Better Regulation Executive (BRE) that an RIA should be proportionate to the risk posed by the policy idea should not preclude a reasonable examination of all possible impacts. The unsatisfactory level of assessment of the fundamental issues behind a policy is of particular concern for us, as it is often in the wider context that the sustainable development strategy is best evaluated, and most frequently neglected. (Paragraph 25)

6. We call for each RIA to include a compulsory assessment of the carbon impact of the policy concerned. This figure should be clearly displayed on the summary sheet for each RIA, and the document should make clear the context in which the significance of the figure should be gauged. However, we do not view an assessment of carbon emissions alone as an adequate illustration of the complex and wide-ranging field of environmental impacts, and call for guidance and training to make clear to officials the need to analyse and assess environmental impacts of all kinds, beyond the concerns of carbon and climate change (Paragraph 32)
7. All relevant environmental impacts must be identified and assessed within an RIA, including the economic and social costs of environmental damage. Environmental impacts cannot continue to be regarded as an isolated concern. Regulatory Impact Assessments must acknowledge that environmental damage has consequences for all spheres of development, and ensure this is presented clearly. (Paragraph 33)
8. We support the recommendation of the Sustainable Development Commission that the Public Service Agreement (PSA) targets of Government departments should include an overarching sustainable development objective. We feel that this would increase the prominence of sustainable development objectives throughout departments, and focus attention on RIAs as a means to ensure these aims are achieved. This would ultimately lead to improved systems and methods for taking account of sustainable development concerns as they came to occupy a necessarily higher-profile position within the decision-making process. (Paragraph 35)
9. We support the NAO's suggestion of requiring a null response for the assessment of environmental impacts to be included in each and every RIA. We feel that this will lead to a more complete standard of analysis and a culture whereby environmental impacts are viewed as an essential component of any assessment. (Paragraph 36)
10. In spite of the new emphasis on the economic cost of climate change in the wake of the Stern Review, we do not consider monetary totals alone as appropriate for adequately conveying the extent and coverage of all adverse environmental impacts. It is difficult to see how an appropriate monetary total could be arrived at which would adequately communicate the impact of species loss, or the consequences of climate change on a global scale, and it is unrealistic to expect officials carrying out RIAs to be able to achieve this. (Paragraph 42)
11. We believe that the RIA system as it stands must be reconsidered to ensure that non-monetised assessment can be successfully included, and that it also must be recognised as a standard and suitable form of assessment, rather than an undesirable last resort. We recognise that the field of quantifying and assessing environmental impacts is an expanding one, and that considerable effort is being directed into research towards developing new techniques. We do not, however, consider blanket monetisation to be a desirable or feasible objective of impact assessment. (Paragraph 45)
12. It is deeply unsatisfactory for environmental impacts to be omitted from an RIA purely because the structure does not easily permit the forms of assessment which may most suitably convey their importance, or because there is a reluctance among

officials to approach impact assessment in a non-monetised manner which is seen to contradict the conventions for RIAs. (Paragraph 46)

13. We continue to support the recommendation made by our predecessor Committee that, on the RIA summary sheet, environmental impacts should be broken down and categorised in non-monetary terms on a plus/minus 7 point scale. We believe that this will help to break the reliance on monetisation and will lead to a more effective communication of environmental impacts. We also urge the BRE to work more closely with academic groups and the private sector to investigate and consider techniques used successfully elsewhere for environmental assessment. (Paragraph 48)
14. It is vital that officials are provided with the expertise and support to ensure that any assumption acting as the basis for an impact assessment is as well-informed as possible. For this to happen officials must have clear and helpful guidance; the appropriate training and knowledge, in addition to access to more specialised expertise within the department; a thorough consultation programme; and a clear process of review, scrutiny and evaluation. (Paragraph 51)
15. Although we are in favour of a short summary sheet for the RIA document as recommended in our last report, we are concerned that an increasing reliance on short, monetisation-based summary sheets might lead to decisions being made without considering the full conflicts, assumptions and difficulties behind the figures, or indeed what the impacts actually mean. This is a particular problem for environmental impacts, which we believe are currently neglected on the summary sheet due to the emphasis on monetised figures and trading costs against benefits. (Paragraph 54)
16. We recommend that the RIA summary sheet should require a yes/no answer for each of the principles of sustainable development, and that a separate section prominent within the main body of the document (referenced from the summary sheet) covers the assessment behind each of these responses in more detail. Sustainable development can only be fully integrated into policy making if it is recognised as the definitive component for developing and reviewing impact assessments. (Paragraph 57)
17. We urge the BRE to consult with industry and academic groups on impact assessment best practice, concentrating on environmental impact assessment in particular. This opportunity to develop RIA best practice by drawing on varied and experienced sources should not be neglected. (Paragraph 59)
18. Better Regulation teams must have adequate resources to adapt to the rapidly rising quantity and complexity of RIAs, and to the new demands placed upon them as the RIA process comes under greater scrutiny. (Paragraph 59)
19. We are encouraged by the positive approach taken to consultation, as described by the NAO, but we feel the process needs to be strengthened to ensure that this good practice is extended consistently across different RIAs and departments. In particular, we would like to see the RIA guidance strengthened to emphasise the importance of consulting on environmental issues, given the support and insight this

could provide to officials struggling to assess intangible environmental impacts. We would also like to see the RIA guidance emphasise the role of the consultation process for discussing the merits of the RIA itself, rather than dwelling solely on prolonged discussion of the policy. We encourage the BRE to build relationships with key businesses and organisations implicated in and affected by environmental impacts, in order to provide RIA officials with a starting point for consultation on these matters. (Paragraph 64)

20. The current programme of training offered for RIAs seems inadequate given the often daunting nature of the task facing officials. We believe that those involved in producing RIAs at all levels should be engaged in a comprehensive and regular programme of training, focusing exclusively on RIAs. This training should be consistent between departments and should be compulsory. No official should be assigned to an RIA project without first having undergone the appropriate training. Given the particular difficulties in the area of environmental impacts, we recommend that training tackle this subject explicitly and at some length, dealing with the likely challenges officials may face, and how these could be overcome. Training of this type would also lead to a greater awareness of environmental impacts, improving the coverage of such issues in RIAs. (Paragraph 67)
21. We would like to see the RIA guidance provided by the BRE strengthened in terms of how it promotes and deals with sustainable development. We are concerned that sustainable development and environmental issues are rarely addressed directly or dealt with particularly prominently either in existing guidance or in that proposed by the recent BRE Consultation. We recommend that RIA guidance places strong emphasis on sustainable development issues, referring directly to the current sustainable development strategy and key principles. (Paragraph 70)
22. We encourage and support the development of a single, consolidated RIA Toolkit, as this would provide officials across government with an authoritative and consistent resource for assessing impacts. It would also reduce uncertainty and inconsistencies in the assessment of environmental impacts. (Paragraph 72)
23. A more thorough, rigorous and consistently enforced programme of review and scrutiny would help to ensure not only that the content and scope of RIAs was adequate, but also that minimum standards were met for the quality of analysis and calculation. This would be particularly important in the case of environmental impacts due to the frequently poor coverage and assessment of such impacts, as demonstrated in previous chapters. An improved review system could also help to counteract the variations in presentation and clarity highlighted by the NAO, thereby improving the transparency of the document. We therefore believe that a demanding new review process would be a key factor in developing, encouraging and reinforcing good practice of all kinds. (Paragraph 75)
24. We propose a system whereby all final RIAs are subject to review on the broad terms of content, scope, quality of analysis, clarity and presentation. We would expect training and guidance to provide officials with the skills and resources required to meet these conditions. We also recommend that the Government devise a procedure by which a policy could be identified as having an excessive environmental impact,

triggering an examination and re-evaluation of the policy idea with the objective of reducing this negative environmental impact. In such circumstances we would like to see firm support and advice provided to officials in order to bring the policy in line with sustainable development principles and initiatives before it proceeds to the next stage. We believe that this approach will help to ensure that sustainable development and environmental concerns receive adequate coverage and consideration in RIAs. (Paragraph 76)

25. We support the proposal for more substantial retrospective evaluation of the accuracy and suitability of the figures and methods used to calculate impacts. We believe that environmental impact assessment would particularly benefit from such retrospective scrutiny, given the uncertainty behind the techniques used to calculate environmental costs and benefits. We would also call for such a review structure retrospectively to evaluate the scope of impacts included in RIAs, as this could identify frequently neglected environmental impacts and ensure that they receive adequate attention in the future. (Paragraph 78)
26. We were disappointed to see that very little direct attention was paid in the BRE Consultation to addressing the problems raised in the NAO's briefing on the approach to sustainable development in RIAs. We would have thought that, given the timing and the tight focus of the NAO's analysis, the Consultation would have gone beyond acknowledging the problem by proceeding to make recommendations which directly addressed these issues. Sadly, other than general action intended to improve the overall quality of RIAs, we could not see any recommendation which directly tackled the problem of poor consideration of sustainable development issues. Consideration of sustainable development on the summary sheet has been limited to a yes/no response to the question "does the policy comply with sustainable development principles?". We consider this to be inappropriate and inadequate (Paragraph 81)
27. We are concerned that the steps taken in the Consultation document to decouple certain parts of the assessment may have marginalised environmental assessment and non-monetised analysis. All environmental and sustainable development assessment, whether the analysis is monetised, quantified, qualitative or descriptive, must be included in the main body of the assessment. Any move to decouple any part of environmental assessment represents a backward step and denies the increasing urgency of the challenge posed by climate change and other environmental issues. (Paragraph 85)
28. Technical changes to the structure and guidance of Regulatory Impact Assessments can only be truly effective if they are accompanied by commitment and enthusiasm for implementing the principles of sustainable development in all aspects of government. It remains to be seen whether the lasting results of the BRE Consultation will produce a new, fairer and more effective RIA system, as a crucial step in establishing the principles of sustainable development throughout government as a whole. (Paragraph 87)



## Introduction

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1. On 13 April 2005, our predecessor Committee issued a report into the 2004 Pre-Budget Report and the 2005 Budget which examined issues of appraisal and regulation, looking at Regulatory Impact Assessments (RIAs) in some depth. The report recommended that the National Audit Office (NAO) carry out an analysis, on the Committee's behalf, assessing how accurately departments were identifying and incorporating environmental concerns into RIAs.<sup>1</sup> The resulting NAO briefing document, published in May 2006, examined in detail the extent to which RIAs took account of sustainable development principles, and examined the potential of RIAs for advancing the sustainable development agenda.<sup>2</sup> The conclusions of the document persuaded the current Committee of the need to further pursue the issue, and we agreed to hold a short inquiry into RIAs in Autumn 2006.

2. The purpose of the inquiry was to establish what progress had been made since the predecessor Committee's report of April 2005, and to examine the issue of sustainable development and RIAs in more detail, building upon the assessment provided by the NAO. The inquiry was also intended to complement our continuing investigation of the Government's progress in 'greening' government and implementing the principles of sustainable development.

3. We launched the inquiry into RIAs on 24 July 2006, the same day that the Better Regulation Executive (BRE) launched its own consultation into the very same issue.<sup>3</sup> We received 12 memoranda from organisations including the Sustainable Development Commission and various academic groups. We also received an informal briefing from DTI officials and from the Impact Assessment Research Centre at the University of Manchester. Oral evidence was taken from the Environmental Industries Commission (EIC), Anglian Water Services Limited, the Office of Gas and Electricity Markets (Ofgem) and Friends of the Earth. We are grateful to all those who submitted evidence or appeared before us. We are particularly grateful to the NAO for its invaluable briefing document on the topic which provided us with a comprehensive and revealing insight into the consideration of sustainable development in RIAs.

## Background

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4. Our predecessor Committee's report of April 2005 described the sorry history of environmental assessment over the last decade. Following a failure to ensure departments

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1 Environmental Audit Committee, *Seventh Report of Session 2004-05, Pre-Budget 2004 and Budget 2005: Tax, Appraisal and the Environment*, HC 261 paragraph 68.

2 National Audit Office, *Regulatory Impact Assessments and Sustainable Development – Briefing for the Environmental Audit Committee*, May 2006, This document can be found at [http://www.nao.org.uk/publications/nao\\_reports/05-06/ria\\_sustainable.pdf](http://www.nao.org.uk/publications/nao_reports/05-06/ria_sustainable.pdf)

3 Better Regulation Executive, *The Tools to Deliver Better Regulation – A Consultation Document*, The document can be found at <http://www.cabinetoffice.gov.uk/regulation/documents/ria/pdf/consultation.pdf>

carried out their own separate environmental appraisals, and a move towards Integrated Policy Appraisal (IPA) which was both ill-conceived and poorly supported, environmental appraisal was finally subsumed into the Regulatory Impact Assessment in April 2004. The RIA process became the sole mechanism for assessing and comparing environmental impacts alongside social and economic considerations, and therefore represented a critical opportunity for the effective implementation of sustainable development principles.

5. The 2005 EAC report examined several key aspects of the RIA process, notably the adequacy of the guidance provided and the accuracy of the environmental costs and benefits included in RIAs. Several key factors were identified preventing the RIA process from adequately taking account of environmental impacts: a lack of emphasis on environmental concerns; guidance which was ill-suited to the complexities of balancing environmental factors with economic and social impacts; and a fundamental conflict arising from the origins of the process in seeking to minimise the impact of regulation.

6. The report made several recommendations for how the RIA process could be improved, including:

- the restructuring of the RIA system by inserting a higher strategic tier, which would be named the Strategic Impact Assessment (SIA), separately identifying economic, environmental and social impacts, and setting these out on a single page summary;
- shifting the emphasis for categorising impacts away from monetisation, using instead a plus/minus 7 point scale to present environmental impacts;
- ensuring that the policy's impact on greenhouse gas emissions is clearly highlighted and prioritised, and
- reassessing the appraisal process so that it takes greater account of strategic objectives and targets on environmental issues, including recognising the need to encourage the development of environmental industries.

7. The report also recommended that the NAO carry out an analysis of sustainable development in RIAs on the Committee's behalf. The NAO published its briefing document on the topic on 22 May 2006. The review was based on an analysis of 10 RIAs relating to policies with likely important social and environmental impacts, and reached the following main conclusions:

- RIAs do have a number of potential strengths for informing and influencing policy, in particular the fact that it is now a well-established process, with high levels of departmental compliance.
- The process suffers from a number of limitations: some RIAs do not consider all aspects of a policy, and often RIAs are used to justify policy rather than inform a decision.
- In its review of particular RIAs, the NAO found that coverage of environmental impacts was frequently limited both in terms of scope and in terms of the depth of

analysis: assessment of how successfully sustainable development issues had been considered was also complicated by variable presentation of RIAs.

- The briefing document recommended certain aspects which could lead to improved consideration of sustainable development in RIAs, namely better guidance and training, a strengthened scrutiny process, and a more consistent style and standard of presentation.

8. On the same day as we launched our inquiry, the BRE also launched its consultation into revising the RIA process.<sup>4</sup> In the consultation document the BRE agreed with a number of the NAO's conclusions, in particular that the current guidance was inadequate, and that RIAs are often completed too late in the policy-making process to inform key decisions. The consultation document proposed a number of changes intended to address these issues and others, such as transparency. However, environmental issues received only minimal and ambiguous coverage, something commented on by several of the memoranda submitted to us, notably that of Friends of the Earth.<sup>5</sup> The consultation closed on 16 October 2006.

9. It is against this background that we have conducted this short inquiry. The NAO briefing document produced for us has been invaluable in highlighting crucial issues in this area, and has confirmed many of the concerns expressed in the report of our predecessor Committee. The very fact that a consultation has been carried out by the BRE demonstrates that the Cabinet Office is also aware that the RIA process suffers from a number of limitations, yet the lack of any sustained focus on environmental concerns within that process is disheartening and the consultation consequently fails to address many of the issues raised in the 2005 report.

## The Purpose and Role of RIAs

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10. In its briefing document to us NAO suggested for consideration the question of whether RIAs should continue to be used as the key mechanism for incorporating sustainable development into policy appraisal.<sup>6</sup> It is certainly the case that the RIA process suffers from a number of flaws which are, at present, restricting adequate consideration of sustainable development issues. It would, however, be mistaken to disregard the potential strengths of the RIA process. Whatever its shortcomings, the system is well established within central government and departmental compliance is high. As such, RIAs offer a uniquely viable platform from which coordinated and widespread integration of sustainable development principles could be achieved. Although a freshly conceived

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4 Better Regulation Executive, *The Tools to Deliver Better Regulation – A Consultation Document*, The document can be found at <http://www.cabinetoffice.gov.uk/regulation/documents/ria/pdf/consultation.pdf>

5 The memorandum from Friends of the Earth is printed at Ev 27-30.

6 National Audit Office, *Regulatory Impact Assessments and Sustainable Development – Briefing for the Environmental Audit Committee*, May 2006, paragraph 7.

separate environmental assessment might be less restricted by the limitations of structure and origin currently afflicting RIAs, its very existence separate from the established RIA procedure would risk the marginalisation of environmental issues from the core decision-making process. Even if a decoupled assessment were explicitly referenced in an RIA, such a system would prevent the direct consideration of environmental concerns against social and economic impacts which is so crucial for effective sustainable policy-making in the long-term.

**11. In the absence of a viable alternative to Regulatory Impact Assessments (RIAs), the RIA process must be regarded as an appropriate, if far from ideal, platform for integrating sustainable development into policy decisions. However, if the RIA system is to prove an effective tool for achieving the aim of fully integrated consideration of environmental impacts a number of key changes will be required, not least to its structure and purpose.**

12. Our report examines several aspects preventing the effective consideration within RIAs of environmental concerns, such as guidance, scrutiny, and the difficulties of recognising and measuring environmental impacts. However, there are other matters even more fundamental to the RIA process which are in need of reappraisal. Crucially, the RIA process often fails to influence policy decisions, on environmental terms or otherwise. The latest review of RIAs carried out by the NAO found that:

"RIAs are often not used in the right way. The purpose of RIAs is not always understood; there is a lack of clarity in the presentation of the analysis; and persistent weaknesses in the assessments.[...] As a result, RIAs are only occasionally used to challenge the need for regulation and influence policy decisions - although they can still serve a valuable communications role, improving the transparency of departmental decision-making."<sup>7</sup>

13. Among the more specific factors contributing to this frequent marginalisation of the RIA system, the NAO identifies some policy makers' interpretation of the RIA process as a purely bureaucratic exercise, which is completed out of necessity, rather than as an integral part of policy making. In particular, the NAO's briefing for us on sustainable development in RIAs found that "too often RIAs are used to justify decisions already made rather than an ex ante appraisal of policy impacts."<sup>8</sup>

14. Any strengthening of the environmental aspect of the assessment will only be worthwhile if it forms part of a system that directly informs and influences policy decisions. Though a valuable part of their role, the fact that RIAs contribute to improved communication and transparency in policy-making is not enough unless the information presented in the assessment is actually considered when the relevant decision is made. **The problems and limitations set out by the National Audit Office (NAO) in its briefing**

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7 National Audit Office, *Evaluation of Regulatory Impact Assessments 2005-06*, HC 1305 of session 2005-2006 paragraph 6.

8 National Audit Office, *Regulatory Impact Assessments and Sustainable Development – Briefing for the Environmental Audit Committee*, May 2006, paragraph 5.

document to the Committee need to be resolved and the RIA recognised as a valuable and necessary input into the decision-making process. This will only be achieved through a concerted commitment from above to establish RIAs as an essential factor in considering policy, complemented by improved training and guidance to facilitate the production of RIAs, improve their quality and promote the process amongst officials. This remedy, like many of the other more specific steps suggested by the NAO in its 2005-06 review of RIAs, is directly related to the actions required to promote and reinforce the consideration of sustainable development within the RIA process itself.

15. The previous EAC report on this matter also questioned the underlying structure of RIAs, describing them as “ill-suited” to the balancing of environmental impacts against social and economic concerns given the historical origins of the process in minimising the impact of regulations.<sup>9</sup> Minimising regulation remains a key objective of the central RIA structure. The 'overview' section of the online guidance for policy-makers, gives the following definition for a Regulatory Impact Assessment:

"The RIA is a key tool in delivering better regulation. This supports the government's aim of only regulating when necessary and, when it is, to do so in a way that is proportionate to the risk being addressed, and to deregulate and simplify wherever possible."<sup>10</sup>

The recent Cabinet Office consultation on RIAs maintained a similar focus on minimising the regulatory burden, as expressed in the consultation document:

"The new Impact Assessment is aimed at focusing on whether regulation will impose an unnecessary burden on the private, public or third sectors."<sup>11</sup>

Although certain aspects of the consultation document, notably the approach towards sustainable development (see Chapter 8) are somewhat ambiguous, this statement is unequivocal in its meaning, and demonstrates that—for the purposes of the consultation at least – the focus of RIAs remains unchanged.

16. We believe that the fundamental purpose of RIAs needs to be directed away from this focus on minimising regulation. We are not opposing the principle of Better Regulation – the pursuit of clearer and better formulated regulation is undoubtedly necessary – but we are concerned that this venture too frequently focuses on reducing the regulatory burden at the expense of promoting rigorous analysis and harnessing the potential of well-conceived and effective regulation as a means to successfully implementing good policy. The RIA system, as it absorbs impact assessments of all kinds, has evolved far beyond its original role, yet in many instances it still remains wedded to its initial purpose of assessing

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9 Environmental Audit Committee, *Pre-Budget 2004 and Budget 2005: Tax, Appraisal and the Environment*, paragraph 54.

10 Better Regulation Executive Guidance for officials carrying out RIAs, *RIA Overview*. <http://www.cabinetoffice.gov.uk/regulation/ria/overview/index.asp>

11 Better Regulation Executive, *The Tools to Deliver Better Regulation – A Consultation Document*, p15. <http://www.cabinetoffice.gov.uk/regulation/documents/ria/pdf/consultation.pdf>

regulatory burden. The development of RIAs into the Government's central and wide-ranging assessment tool not only demands a wider purpose, but also provides the opportunity to influence policy-making in line with broader strategic aims. **We strongly believe that RIAs should be used as a tool for ensuring policies meet objectives that stretch beyond the economic sphere to embrace environmental concerns. The RIA process must be directly engaged in transferring the principles of sustainable development and integrated decision-making from rhetoric to reality, principles which are currently often neglected by the focus on minimising regulation. We believe that the changes proposed in this report would assist in achieving this aim.**

17. An overall improvement in the quality and use of impact assessments, along with a greater consideration of environmental issues will benefit not only the environment but industry itself. In evidence sessions both the EIC and Anglian Water expressed their keen interest in seeing an improvement made to the current system. More rigorous impact assessments in general will benefit industry by ultimately improving the quality of regulation and ensuring that regulation is established to meet a justified need. In oral evidence Anglian Water discussed several instances where regulation generated additional monetary and environmental costs because impacts had not been identified or properly analysed during the decision-making process. Paul Gibbs, Director of Wastewater at Anglian Water concluded that "with good regulation in place and the right regulation, it can actually lead to a longer-term reduction in costs."<sup>12</sup>

18. Even more urgent, following the Stern Review, is the need for industry and the economy to react to the challenges of climate change; not only to safeguard the environment but also to avert the massive economic consequences of inaction. Businesses like Anglian Water, in sectors which will be at the forefront of those affected by climate change, require comprehensive and supported environmental assessment throughout the policy-making process to minimise the need for costly adaptation to climate change in the future, as well as regulation for their industry which actively encourages sustainable action now. The Stern Report called for regulation to play its part in directing policy towards achieving overarching environmental objectives:

"the existence of market failures and barriers [...] mean that there are circumstances in which standards and regulations have an important role to play."<sup>13</sup>

19. On this topic, Jean Spencer, Regulation Director at Anglian Water, described to us her company's sustainable strategy for disposing of biosolid sludge, but explained that the scheme is currently sustained only through a voluntary code, and that regulation would be required to maintain and secure this sustainable route.<sup>14</sup> Strong and accurate environmental assessment is an essential factor in ensuring that regulation is developed which demands and supports sustainable actions, and which, by reducing environmental damage, lowers environmental costs to industry in the long-term.

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12 Q 43 [Mr Gibbs]

13 *The Stern Review Report on the Economics of Climate Change*- Part IV: Policy Responses for Mitigation, section 17.3 (p381).

14 Q 43 [Ms Spencer]

20. We also believe that regulation and impact assessment must take note of the need to support the environmental industries. The Stern Review identifies a number of key areas where regulatory measures can be more effective than relying on tax and trading instruments, among them to:

"...stimulate competition and innovation, by signalling policy intentions, reducing uncertainty and increasing scale in markets for outputs of technological innovation".<sup>15</sup>

However, in oral evidence to us Merlin Hyman, Director of the Environmental Industries Commission, reiterated the views expressed by Adrian Wilkes representing the EIC to our predecessor Committee's inquiry: that the environmental industries sector, reliant on regulation to create a sure market for its technology and services, is not receiving adequate attention within impact assessments. Although the sector is a growing one, employing approximately 400,000 people across 17,000 companies,<sup>16</sup> and crucial to the UK's environmental aspirations, it would seem that the previous EAC conclusion that RIAs "must adequately recognise the contribution which the creation of thriving environmental industries can make" remains a concern.<sup>17</sup> Although Mr Hyman acknowledged that a small number of RIAs had begun explicitly to mention the impact on the sector, it is clear that the question of a policy's impact on environmental industry is rarely accorded adequate attention or weight.

21. Mr Hyman communicated to us the example of the partial RIA for the Environmental Liability Directive, which includes only a limited assessment of the benefit to the environmental industries sector, and neglects the positive environmental effects this could achieve. The RIA states:

"A large proportion of the costs identified in this assessment will in turn be revenue for the environmental industry [...] there is unlikely to be a net gain to the economy [...] These expenditures are transfer payments from one sector to another. If there are external benefits in terms of technological development, then these could be considered as economic benefits of ELD but to the extent that this effect exists it is not quantified in this assessment."<sup>18</sup>

It is disappointing, especially for a Directive with such a clear environmental role, that the impact assessment fails to adequately acknowledge the long-term benefits (both economic

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15 *The Stern Review Report on the Economics of Climate Change- Part IV: Policy Responses for Mitigation*, section 17.3 (p381).

16 This is the figure provided by the DTI/DEFRA Environmental Industries Unit: <http://www.dti.gov.uk/sectors/environmental/index.html>

17 Environmental Audit Committee, *Pre-Budget 2004 and Budget 2005: Tax, Appraisal and the Environment*, paragraph 64.

18 The partial RIA for the Environmental Liability Directive can be found on pp.106-281 of the Consultation document on the implementation of the Directive produced by DEFRA in November 2006, available at <http://www.defra.gov.uk/corporate/consult/env-liability/consultation.pdf>

The Directive is intended to give effect to the 'polluter pays' principle by imposing liability for the prevention and remediation of environmental damage. The particular reference to environmental industries can be found in paragraphs E.66-E.67 on p140 of the document.

and environmental) from a thriving environmental industry and any consequent technological development. If this attitude is mirrored in other RIAs then this represents a missed opportunity for a comprehensive environmental strategy.

**22. In the wake of the Stern Review, and the very real economic costs of inaction which it highlights, it is no longer viable to view environmentally-minded regulation as a straitjacket to industry. Especially in the case of the environmental technology and services industries, regulation can play a crucial supporting role. We reiterate the call made in our predecessor Committee's report for RIA guidance to be strengthened in order to ensure that RIAs adequately recognise and consider the contribution that would be made by a flourishing environmental industries sector.**

## Coverage of Environmental Impacts

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23. A particular problem affecting the adequacy of RIAs, both in general terms and from an environmental perspective, is limited scope. One factor affecting the general scope of an RIA is the extent to which the impact assessment is integrated into the policy making process. As we have already seen, the NAO found that "too often RIAs are used to justify decisions already made rather than an ex ante appraisal of policy impacts"<sup>19</sup> and it is hardly surprising that any RIA reflecting only the decided policy option will fail to address wider issues. One area in particular where impact assessment can play a pivotal role in investigating different policy options is the application of the UK RIA procedure to EU Directives. In this case the RIA can take advantage of the room for manoeuvre provided in certain Directives in order to explore and highlight the merits of different policy options for their implementation. However, several organisations providing evidence to us expressed regret that RIAs are not used in this manner as often as hoped,<sup>20</sup> leading to the neglect of opportunities that may arise from alternative implementation strategies.

24. Officials carrying out RIAs are currently required to assess the impacts of a minimum of three policy options: a regulatory option, a non-regulatory option, and a "do-nothing" option, the latter being intended to provide "a baseline to compare other options against and [to clarify] the implications of not acting".<sup>21</sup> However, the NAO's annual assessment of RIAs for 2005-06 found that these additional scenarios were often omitted, resulting in RIAs where it was difficult to appreciate the net impact of the regulation.<sup>22</sup> This is an especially worrying omission from an environmental perspective, as it is frequently only when the consequences of inaction are made clear that action which might otherwise have

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19 National Audit Office, *Regulatory Impact Assessments and Sustainable Development – Briefing for the Environmental Audit Committee*, May 2006, paragraph 5.

20 This point was made variously by: the EIC (Qq 29-30); Anglian Water (see Q 38 [Ms Spencer, Mr Gibbs] and Ev 13); and Ofgem (see Q 100).

21 Cabinet Office guidance for officials on Regulatory Impact Assessments, *Chapter 4: Options* [http://www.cabinetoffice.gov.uk/regulation/ria/ria\\_guidance/options.asp](http://www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/options.asp)

22 National Audit Office, *Evaluation of Regulatory Impact Assessments 2005-06*, HC 1305 of session 2005-2006 paragraph 2.7

been considered optional is recognised as essential. We believe that an assessment of the "do-nothing" option, currently a recommended part of the RIA process, represents an essential baseline for measuring the likely effect of regulations.

25. The NAO reviews have also demonstrated that the scope of RIAs is often limited to very narrow aspects of a particular policy idea:

"Some of the RIAs in our sample had a narrow scope or definition, sometimes dealing with a technical detail rather than the substance of a new policy [...] While it is good practice for RIAs to be clear, concise and specific [...] if each RIA only deals with small aspects of a policy there is risk that the fundamental issues of a policy are never fully addressed."<sup>23</sup>

Such a shortcoming restricts the effectiveness of RIAs in general, but it is clear that sustainable development is particularly neglected whenever scope is limited in this way, especially the wider social and environmental impacts of the policy. Obviously, **regulation and policy are conceived with clear objectives in mind, and it is only to be expected that impact assessments initially concentrate on those areas which relate most directly to these objectives. Similarly, certain RIAs will necessarily be required to assess a crucial technical point in some detail. However, it must be ensured that the impact assessment grows to encompass all relevant issues, beyond this initial, limited scope. The principle adopted by the Better Regulation Executive (BRE) that an RIA should be proportionate to the risk posed by the policy idea should not preclude a reasonable examination of all possible impacts. The unsatisfactory level of assessment of the fundamental issues behind a policy is of particular concern for us, as it is often in the wider context that the sustainable development strategy is best evaluated, and most frequently neglected.**

26. The memorandum submitted to us by the Centre for Social and Economic Research on the Global Environment (CSERGE) at the University of East Anglia argues that the scope of RIAs is further restricted by a tendency to concentrate primarily on the areas of the impact assessment which relate closely to the work of the particular department, unit or official carrying out the RIA.<sup>24</sup> Although this is hardly surprising, it is another aspect which must be tackled in order to secure a wider and more balanced approach to impact assessment. Again, policy appraisal on environmental grounds is particularly at risk from such a trend: even though environmental problems and their consequences affect every aspect of government, responsibility for this issue is closely associated with a single department, DEFRA. CSERGE claim that this view of the environment as DEFRA's responsibility leads to a neglect of such issues in RIAs produced by other departments.<sup>25</sup> It is essential that all departments acknowledge and assess environmental concerns equally, in order for RIAs to fulfil their potential as instruments of integrated decision-making.

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23 National Audit Office, *Regulatory Impact Assessments and Sustainable Development – Briefing for the Environmental Audit Committee*, May 2006, paragraph 1.13

24 Ev 39

25 Ev 39

27. The NAO briefing on the use of sustainable development in RIAs presented a blunt verdict on the levels of inclusion of environmental issues. Its briefing, based on a review of ten recent RIAs which might have reasonably been expected to exhibit coverage of such issues, concluded that:

"Few identified all social or environmental impacts that they might have been expected to cover. Social and environmental impacts were often not analysed in sufficient depth. And the variable presentation of RIAs made it difficult to see if and how sustainable development issues had been considered."<sup>26</sup>

The same briefing also found that the sustainable development strategy was largely neglected by RIAs. From its selection of RIAs the NAO found that:

"None of the RIAs referred to the UK sustainable development strategy and none explicitly referred to cross-cutting sustainable development principles such as the 'polluter pays principle', the 'precautionary principle', taking a long-term perspective, and integrating social, economic and environmental benefits. Where a policy proposal implicitly took account of these principles, the RIAs in our sample did not always make clear whether the department had fully and systematically compared the options on this basis."<sup>27</sup>

We find it very disheartening that these factors were not discussed in these RIAs, as the RIA system should be one of the most valuable tools for integrating these sustainable development principles into policy.

28. It is apparent that environmental concerns are particularly vulnerable to problems of restricted scope. One reason for this is the fact that many negative environmental impacts result not directly from the policy or regulation itself, but from the additional measures taken by companies and other bodies in order to implement the policy. Jean Spencer of Anglian Water explained to us that the effects of implementation can even contradict the intentions of environmental regulation:

"What we are seeing is a vicious cycle: we see new regulations that require us to put in technological solutions which require intensive energy, chemicals, transport, that in themselves then cause the effects we are having to address in terms of water and environmental quality. All of those things have to be brought together."<sup>28</sup>

Such an experience betrays a lack of consideration at RIA level of impacts beyond the immediate objectives and consequences of a policy. The situation described by Anglian Water, where a policy with an ostensibly environmental objective actually inflicts further environmental damage as a consequence of the unanticipated and unassessed measures required to achieve this aim, is unsustainable and self-defeating in environmental terms. It also reveals the complexity of factors that must be considered when tackling environmental

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26 National Audit Office, *Regulatory Impact Assessments and Sustainable Development – Briefing for the Environmental Audit Committee*, May 2006, paragraph 6.

27 *Ibid.* paragraph 1.30

28 Q 36

issues. The impacts that result directly from a policy are undoubtedly the easiest to identify, and it is undeniably the case that as a policy appraisal moves into the realm of second and multiple order impacts these effects become not only harder to analyse and quantify, but also harder even to envisage, such can be the extent of the knock-on effects of a policy. However, in this speculative realm of second and multiple-order impacts, the manner in which companies may implement a policy and the consequences of this is one aspect that *can* be researched and established through consultation. It is therefore disappointing that this area which does indeed lend itself to a more thorough and accurate analysis does not seem to receive the attention it merits. Effective consultation, at the appropriate stage of the RIA process (i.e. when the policy is sufficiently clear for implementation procedures to be accurately envisaged and assessed) is the key point at which successfully to overcome these obstacles. In this way the many influences and constraints affecting the implementation of a policy can be understood, and its true impact better assessed.

29. Where environmental impacts are assessed, we are concerned that a lack of awareness of issues leads to the full weight of impacts being under-assessed, and some topics neglected entirely. A particularly crucial and topical area for all these considerations is the assessment of carbon. There is no doubt regarding the current prominence of carbon emissions over other environmental impacts, in the media and the political sphere, especially following the attention paid to this area by the Stern Review. Procedures and techniques for evaluating the extent and impact of carbon emissions are also relatively advanced in comparison with many other environmental impacts, and it is certainly one of the areas that lends itself more easily to quantified analysis, notably due to attempts to establish a valid carbon price through carbon trading schemes. Methods such as the social cost of carbon are recommended by the Treasury Green Book for policy appraisal, which directs officials to Treasury and DEFRA sources providing help to officials in calculating this value.<sup>29</sup>

30. As such, carbon is among the most accessible of environmental impacts for analysing and assessing in monetary terms, and perhaps one of the best understood. The April 2005 report of our predecessor Committee recommended that the impact on greenhouse gas emissions should be clearly highlighted and prioritised in impact assessments, in view of the urgent and extremely challenging situation with regard to cutting carbon emissions.<sup>30</sup> We continue to support this view. The EIC in particular expressed its support for a requirement for an assessment of the impact of the policy on carbon emissions, stating in its memorandum to the inquiry:

“Clearly a key part of an assessment of costs and benefits of the environmental impacts of policy proposals will be their impact on carbon emissions. It is inconceivable that Ministers and Parliament should not be presented with a clear

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29 See the *Treasury Green Book, Annex 2, Evaluating Environmental Impacts*, available at <http://greenbook.treasury.gov.uk/annex02.htm#valuing>—The associated footnote for the Social Cost of Carbon directs officials to the Treasury working paper *Estimating the Social Cost of Carbon Emissions* (which can be found at <http://www.hm-treasury.gov.uk/media/209/60/SCC.pdf>) and advises that “Defra can provide an associated guidance note on how to use these values in policy appraisal”.

30 Environmental Audit Committee, *Pre-Budget 2004 and Budget 2005: Tax, Appraisal and the Environment*, paragraph 55.

assessment of the impact of a policy on the issue that they have identified as the most important challenge we face.”<sup>31</sup>

31. However, we remain wary that the prominence of carbon and climate change in the public and political consciousness and the relative ease of calculating carbon impacts could lead to carbon being considered a catch-all environmental assessment whose inclusion in an RIA avoids the need to tackle other, less notorious issues, or those which prove trickier to calculate. While a carbon assessment figure will indeed represent the results of numerous different environmental impacts, it will not by any means represent all environmental impacts, nor will it demonstrate the full range of their consequences. Other impacts, including those such as biodiversity which are particularly difficult to quantify, must be assessed with due attention and accorded proportionate weight. Dr Michael Warhurst, Senior Campaigner at Friends of the Earth, expressed particular concern that the tendency to focus on the carbon and climate impacts of policies neglects their other environmental consequences and leads to final figures for environmental assessment that lack the necessary weight to convince policy makers.<sup>32</sup>

**32. We call for each RIA to include a compulsory assessment of the carbon impact of the policy concerned.<sup>33</sup> This figure should be clearly displayed on the summary sheet for each RIA, and the document should make clear the context in which the significance of the figure should be gauged. However, we do not view an assessment of carbon emissions alone as an adequate illustration of the complex and wide-ranging field of environmental impacts, and call for guidance and training to make clear to officials the need to analyse and assess environmental impacts of all kinds, beyond the concerns of carbon and climate change.**

33. It must also be ensured that the consequences of environmental costs are understood, rather than viewed in general vague terms as something undesirable but of little consequence to the overall picture. **All relevant environmental impacts must be identified and assessed within an RIA, including the economic and social costs of environmental damage. Environmental impacts cannot continue to be regarded as an isolated concern. Regulatory Impact Assessments must acknowledge that environmental damage has consequences for all spheres of development, and ensure this is presented clearly.** The ultimate approval of a Regulatory Impact Assessment currently requires the responsible minister to sign the final RIA declaring "I am satisfied that the benefits justify the costs". Without a full assessment of the environmental costs and benefits the final summary could present the minister with an erroneous picture, whereas an assessment covering all relevant environmental impacts and their consequences across sectors could tip the balance in favour of a more accurate decision closer in line with the principles of sustainable development.

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31 Ev 2

32 Q 111

33 In this case, the figure used by the Government for its assessments should be adjusted to reflect the calculations for the Social Cost of Carbon as proposed by the Stern Review, which produced a figure roughly three times the value of the current DEFRA figure of some £70 per tonne of carbon.

34. It is clear that the current requirement to assess environmental issues is not sufficiently demanding to ensure a full and thorough analysis of these impacts, nor does it ensure that those issues which are considered are adequately presented in the RIA, if at all. There are a number of ways in which this requirement could be strengthened. In oral evidence to us Ofgem made it clear that its statutory obligation to include environmental appraisal in its impact assessments had a significant effect on its perspective of RIAs and the impacts it considered. Sarah Harrison, Managing Director of Corporate Affairs at Ofgem, agreed that a similar arrangement for government departments would have a “part to play” in focusing policy makers on the importance of sustainable development issues.<sup>34</sup> The Sustainable Development Commission proposed more directly in its memorandum to us that government departments should be given an overarching sustainable development objective that is actively linked to their PSA targets, in order to provide a “clear line of accountability” for meeting sustainable development aims.<sup>35</sup>

**35. We support the recommendation of the Sustainable Development Commission that the Public Service Agreement (PSA) targets of Government departments should include an overarching sustainable development objective. We feel that this would increase the prominence of sustainable development objectives throughout departments, and focus attention on RIAs as a means to ensure these aims are achieved. This would ultimately lead to improved systems and methods for taking account of sustainable development concerns as they came to occupy a necessarily higher-profile position within the decision-making process.**

36. In its briefing document the NAO suggests that a null response should be required if the policy is deemed to have no social or environmental impacts:

“Although the RIA process should not become a ‘tick box’ exercise, the final RIA document is more transparent if it includes enough information to explain when an RIA has considered environmental and social impacts but not included them because it considered them to be immaterial or irrelevant. Also, the discipline of explicitly stating a null response encourages departments to think about the completeness of their analysis.”<sup>36</sup>

The sample of RIAs examined in the NAO’s briefing demonstrated that it was very rare for such a null response to be included in RIAs which did not discuss environmental impacts.<sup>37</sup> This is hardly surprising given that such an approach is not included in the guidance provided by the BRE. **We support the NAO’s suggestion of requiring a null response for the assessment of environmental impacts to be included in each and every RIA. We feel**

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34 Q 104

35 Ev 54

36 National Audit Office, *Regulatory Impact Assessments and Sustainable Development—Briefing for the Environmental Audit Committee*, May 2006, paragraph 1.27

37 The briefing found that “only one of the seven RIAs that did not identify any environmental impacts gave an explicit null response.” National Audit Office, *Regulatory Impact Assessments and Sustainable Development — Briefing for the Environmental Audit Committee*, May 2006, paragraph 1.27

**that this will lead to a more complete standard of analysis and a culture whereby environmental impacts are viewed as an essential component of any assessment.**

37. Both the NAO and Ofgem expressed concern about the quality of response that would emerge from an imposed requirement to consider environmental issues. Steve Smith, Managing Director of Markets at Ofgem, expressed particular concern in oral evidence that any compulsory section on sustainable development “will only be as good as the effort and energy that is put into doing that assessment” and reiterated the need for clear guidance coupled with a stronger commitment from above to ensure that officials possess the will and support to provide an assessment of value.<sup>38</sup>

38. There is admittedly a risk of developing a ‘tick-box’ mentality if officials are faced with seemingly superficial requirements, even though we do not consider a strict requirement for environmental assessment would be viewed in this manner. We believe that it is better to have a requirement of this type and risk encountering this kind of attitude, than for environmental assessment to remain marginalised or even neglected entirely. We also believe that with the appropriate training, guidance, support and leadership this requirement can play a pivotal role in establishing the full assessment and presentation of environmental impacts as an integral aspect of RIAs. It would also be vital to have a stricter review process to ensure that this requirement is adequately fulfilled.<sup>39</sup>

## Measuring Environmental Impacts

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39. It is not enough merely to ensure that environmental impacts are simply considered. Where environmental impacts are assessed in RIAs the accuracy of the assessment remains in question due to the particular challenge of calculating and presenting environmental impacts on an equal footing with economic concerns.

40. BRE guidance for officials producing RIAs currently advises the following approach for presenting impacts:

- “Costs and benefits **must be quantified** wherever possible.
- You must show costs and benefits as monetary values where this is possible. This will allow easier comparison between the costs and the benefits of each option. The **direct costs** of each section must be expressed as monetary values.

[...]

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38 Q 77 [Mr Smith]

39 Guidance and training are dealt with in greater detail in Chapter 6, while our proposals for the scrutiny of RIAs are covered in Chapter 7.

- Record costs and benefits in qualitative terms only when the above are not possible. Without quantification it will be less clear what the differences between the options are and whether the benefits of an option justify the costs.”<sup>40</sup>

41. Environmental assessment is often seemingly incompatible with the convention within RIAs for quantified, and above all monetised, analysis of impacts. Many environmental issues and impacts cannot easily be assigned a monetary value. Environmental impacts are also frequently unpredictable in their extent and scale, and their true consequences, positive or negative, may only become apparent over a lengthy period of time. Even the Treasury Green Book, in its examination of possibilities for evaluating a number of environmental impacts, acknowledges the complexities and uncertainties involved in calculating economic values for environmental damage.<sup>41</sup>

**42. In spite of the new emphasis on the economic cost of climate change in the wake of the Stern Review, we do not consider monetary totals alone as appropriate for adequately conveying the extent and coverage of all adverse environmental impacts. It is difficult to see how an appropriate monetary total could be arrived at which would adequately communicate the impact of species loss, or the consequences of climate change on a global scale, and it is unrealistic to expect officials carrying out RIAs to be able to achieve this.** The BRE guidance for RIAs suggests a number of methods for analysing difficult-to-quantify impacts. The particular example provided for environmental benefits is:

“**The environment** - you could use surveys that show people’s willingness to pay (how much people would pay for a clean river, fresh air or a national park) or their willingness to accept (how much people would be prepared to accept in compensation for suffering from pollution).”<sup>42</sup>

43. However, Steve Smith of Ofgem made clear to us the difficulties of such approaches in certain situations, and why a qualitative assessment can be invaluable:

“Possibly one of the most difficult ones we deal with is the whole issue of visual amenity with transmission lines and things like that. That still exercises a lot of thought within Ofgem, because you can go and do surveys of people who say to you, ‘I’d be willing to pay X not to have a line near my house’, but you are always a bit sceptical unless they are actually paying it! That is an area where we have had to think about qualitative as well as quantitative assessment.”<sup>43</sup>

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40 Better Regulation Executive Guidance for RIAs : *Quantification*  
[http://www.cabinetoffice.gov.uk/regulation/ria/ria\\_guidance/costs\\_and\\_benefits/quantification.asp](http://www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/costs_and_benefits/quantification.asp)

41 The *Treasury Green Book*, Annex 2, *Valuing Environmental Impacts* gives advice on covering many environmental impacts, and frequently begins each section by commenting on the ‘difficulty’ or ‘complexity’ of placing a value on these impacts – see <http://greenbook.treasury.gov.uk/annex02.htm#valuing>

42 Better Regulation Executive Guidance for RIAs, *Analysing the Benefits*  
[http://www.cabinetoffice.gov.uk/regulation/ria/ria\\_guidance/costs\\_and\\_benefits/analysing\\_benefits.asp](http://www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/costs_and_benefits/analysing_benefits.asp)

43 Q 94

44. These methods risk reducing environmental impacts to a level where the ultimate, wide-reaching consequences are lost, and a multi-faceted problem is expressed as a one-dimensional issue. Such trivialisation of environmental impacts can only undermine attempts to achieve a fair consideration of environmental issues against economic concerns which are both more adequately assessed in monetary terms and have greater resonance in this format. Our predecessor Committee's report of April 2005 expressed these same concerns, describing how the emphasis on monetisation in RIAs either leads to environmental impacts being omitted, or to an inadequate assessment of environmental impacts versus other, more easily monetised, factors:

“we believe that the emphasis throughout the RIA guidance [...] on quantifying in monetary terms environmental impacts is fundamentally mistaken and fails to take account of the overriding need to meet environmental policy objectives.”<sup>44</sup>

45. We continue to support this view. Although some witnesses to the inquiry, notably Anglian Water,<sup>45</sup> supported monetisation wherever possible on the grounds that—within the current RIA structure and guidance—this was the only way to ensure that environmental concerns were considered on an equal footing with other factors, **we believe that the RIA system as it stands must be reconsidered to ensure that non-monetised assessment can be successfully included, and that it also must be recognised as a standard and suitable form of assessment, rather than an undesirable last resort. We recognise that the field of quantifying and assessing environmental impacts is an expanding one, and that considerable effort is being directed into research towards developing new techniques. We do not, however, consider blanket monetisation to be a desirable or feasible objective of impact assessment.**

46. The NAO annual evaluation of RIAs for 2005-06 identified at least one RIA from its sample (the RIA for the Department for Transport's Railways Bill) where “the Department considered that a sensible quantification of costs and benefits was not possible. There were, however, no qualitative descriptions where quantification may have been difficult.”<sup>46</sup> Although this example did not relate to directly environmental impacts, it does illustrate the dependence on monetised assessment of impacts and the inability for many RIAs to successfully incorporate and even accept qualitative analysis. Environmental impacts are particularly at risk from such behaviour, and **it is deeply unsatisfactory for environmental impacts to be omitted from an RIA purely because the structure does not easily permit the forms of assessment which may most suitably convey their importance, or because there is a reluctance among officials to approach impact assessment in a non-monetised manner which is seen to contradict the conventions for RIAs.**

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44 Environmental Audit Committee, *Pre-Budget 2004 and Budget 2005: Tax, Appraisal and the Environment*, paragraph 53.

45 See, for example, Ev 10 and Ev 12.

46 National Audit Office, *Evaluation of Regulatory Impact Assessments 2005-06*, HC 1305 of session 2005-2006 Text Box 15, page 19.

47. We recognise that certain areas of environmental assessment such as greenhouse gas emissions and consequences to health lend themselves more easily to monetisation. In these instances it would be both desirable and appropriate to accompany a qualified form of analysis with a monetised assessment of the impact, in order to facilitate the comparison of different impacts on these grounds. We do not, however, believe that monetisation should ever constitute the sole method of illustrating an environmental impact, and call for any monetised impact to also be accompanied by a wider description of the consequences.

**48. We continue to support the recommendation made by our predecessor Committee that, on the RIA summary sheet, environmental impacts should be broken down and categorised in non-monetary terms on a plus/minus 7 point scale.<sup>47</sup> We believe that this will help to break the reliance on monetisation and will lead to a more effective communication of environmental impacts.** Where possible and appropriate a quantified or monetised assessment should be included alongside this rating, and all impacts should be suitably supported by background analysis and a descriptive assessment to ensure that the true consequences of the impact—beyond numbers—is understood. Monetisation should not be viewed as the only suitable form of assessment, or indeed as appropriate in all situations. Crucially, monetised impacts should not be viewed by decision makers as somehow more valid or significant than non-monetised values. **We also urge the BRE to work more closely with academic groups and the private sector to investigate and consider techniques used successfully elsewhere for environmental assessment.**

49. This difficulty in accurately assessing environmental impacts also goes some way to accounting for the neglect of environmental issues in RIAs. Environmental impacts may be identified but then not included in the RIA due to uncertainty over how accurately to assess and present them. In their oral evidence, both Ofgem and Anglian were keen to stress that inadequate analysis and assessment of environmental issues could well be attributed above all to the difficult and discouraging nature of such work, rather than a lack of awareness or a wilful refusal to consider environmental issues. Steve Smith of Ofgem related the difficulties experienced in carrying out their impact assessments:

“I do not think people are unwilling but it is the section they come to and think ‘Gosh, this is actually really difficult’, and it does not lend itself as well to the financial analysis you do in the other sections of the IA. I think it is all about the commitment you get from whoever is producing the document to do what would be the hardest part. [...] [I]n many of the policy issues we deal with it is the most difficult part to actually work out what the sustainability aspects of the proposal are.”<sup>48</sup>

50. Difficulties encountered when assessing impacts may also lead to assessments based on incorrect assumptions, the omission of crucial aspects of a particular impact, or poor presentation which does not adequately express the impact’s significance. The accuracy of the assumptions behind figures is a particularly crucial factor in determining the value of

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47 Environmental Audit Committee, *Pre-Budget 2004 and Budget 2005: Tax, Appraisal and the Environment*, paragraph 55.

48 Q 77 [Mr Smith]

an impact assessment. Any value for an impact assessment will necessarily be based on various assumptions, assigned values, estimations and predictions. Impact assessments are unavoidably a “best guess” rather than indicators of certainty, and current guidance quite rightly encourages officials to acknowledge this by highlighting any uncertainty, spelling out assumptions and presenting a range of values where appropriate.<sup>49</sup>

51. However, **it is vital that officials are provided with the expertise and support to ensure that any assumption acting as the basis for an impact assessment is as well-informed as possible. For this to happen officials must have clear and helpful guidance; the appropriate training and knowledge, in addition to access to more specialised expertise within the department; a thorough consultation programme; and a clear process of review, scrutiny and evaluation.**<sup>50</sup>

52. As we have seen, RIAs remain undeniably focused on cost-benefit analysis. This not only marginalises issues which do not easily lend themselves to monetisation, but also risks reducing the full worth of a policy to a narrow balancing of out-of-context figures. Simon Bullock, Economic Adviser at Friends of the Earth, expressed particular concern about the need to move from a purely cost-benefit approach to a more integrated style of assessment:

“one of the difficulties with cost benefit analysis generally is that it does reduce what should be political complex decisions to technical bureaucratic ones. [...]. By reducing everything to one figure, and the costs exceed the benefits, that hides that complexity.”<sup>51</sup>

53. It is precisely for this reason that any monetised figures need to be supported by qualitative or descriptive analysis, so that policy-makers can recognise the issues behind the figures. Similarly, it is essential that any assumptions used as the basis for figures are also clearly laid out in the document, so that the figures can be valued appropriately, and effectively challenged if necessary. BRE guidance currently recommends that policy makers assess impacts on three levels—a full description, quantification and monetisation. The NAO’s briefing on sustainable development in RIAs praised the impact assessment for the Electricity and Gas (Energy Efficiency Obligations) Order 2004, which set out environmental impacts under all of these categories.<sup>52</sup> However, it noted that this was the only RIA in its sample of ten which demonstrated good practice in this respect.<sup>53</sup> Many RIAs are therefore failing to describe environmental impacts adequately, leaving certain aspects ambiguous or entirely unexplained.

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49 Better Regulation Executive Guidance for RIAs, *Testing your Assumptions*  
[http://www.cabinetoffice.gov.uk/regulation/ria/ria\\_guidance/costs\\_and\\_benefits/testing\\_assumptions.asp](http://www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/costs_and_benefits/testing_assumptions.asp)

50 These aspects are dealt with in greater detail in Chapters 6 and 7 of this report.

51 Q 113

52 NAO briefing document for the Environmental Audit Committee – ‘Regulatory Impact Assessments and Sustainable Development’, May 2006, Text Box 8, p11.

53 *Ibid.* paragraph 1.25

54. Similarly, **although we are in favour of a short summary sheet for the RIA document as recommended in our last report,<sup>54</sup> we are concerned that an increasing reliance on short, monetisation-based summary sheets might lead to decisions being made without considering the full conflicts, assumptions and difficulties behind the figures, or indeed what the impacts actually mean. This is a particular problem for environmental impacts, which we believe are currently neglected on the summary sheet due to the emphasis on monetised figures and trading costs against benefits.**

55. We believe that one way to counteract this, and to reinforce the role of RIAs as a mechanism for implementing the overarching policy objective of sustainable development, would be to raise the profile of assessment against sustainable development on the summary sheet and throughout the document. After all, it must be remembered that the concept of sustainable development encompasses far more than simply environmental issues, even though the term is most often used in that context. As a set of principles embracing environmental, social and economic development, sustainable development represents the umbrella concept beneath which truly integrated policy decisions can be formed, and it must therefore be placed at the centre of impact assessment.

56. The consultation document produced by the BRE provides one mention of sustainable development on the summary sheet, whereby a simple “yes/no” answer is required for the question “Does the policy comply with sustainable development principles?”<sup>55</sup> Although we were encouraged to see a requirement to consider sustainable development, we were disappointed that it is so superficial. We believe that an answer of this type fails to acknowledge the different aspects of sustainable development, provide the Minister signing off the RIA with any concept of the nuances involved in reaching this conclusion, or present officials completing RIAs with any strict criteria for making such a claim.

**57. We recommend that the RIA summary sheet should require a yes/no answer for each of the principles of sustainable development,<sup>56</sup> and that a separate section prominent within the main body of the document (referenced from the summary sheet) covers the assessment behind each of these responses in more detail. Sustainable development can only be fully integrated into policy making if it is recognised as the definitive component for developing and reviewing impact assessments.<sup>57</sup>**

58. We are encouraged by the development of evaluation tools such as DEFRA’s ‘Stretching the Web’ tool which facilitate the comparison of different sectors of impact through pictorial means, shifting the emphasis from trading off monetised figures in a table

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54 Environmental Audit Committee, *Pre-Budget 2004 and Budget 2005: Tax, Appraisal and the Environment*, paragraph 55.

55 Better Regulation Executive, *The Tools to Deliver Better Regulation – A Consultation Document*, p23. <http://www.cabinetoffice.gov.uk/regulation/documents/ria/pdf/consultation.pdf>

56 The Sustainable Development Strategy sets out five principles of sustainable development: living within environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; using sound science responsibly; and promoting good governance. The Strategy states that for a policy to be sustainable it must appreciate all five principles. Further detail on the principles of sustainable development is available at <http://www.sustainable-development.gov.uk/what/principles.htm>

57 Scrutiny and review are discussed in more detail in Chapter 7.

to a consideration of the overall worth of the policy across all sectors.<sup>58</sup> We would ask the BRE to examine and develop these models with a view to introducing such tools in the RIA structure in the future.

## Consultation and Resources

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59. It has become clear to us during the course of this inquiry that the production of an RIA is a far from simple undertaking. Officials are faced with a diverse range of impacts and considerable uncertainty over what to include and how it should be calculated. As a result, it is crucial to provide policy makers with the best possible resources, to enable them to produce RIAs of the highest standard possible. We consider the three most important areas offering assistance to policy makers to be consultation, training and guidance, described in more detail shortly. However, a number of other factors also have a bearing on the resources available to policy makers, and we urge the BRE to take account of the following areas:

- Ensuring that specialist expertise already available within departments is located, publicised and made easily accessible to officials producing RIAs. The NAO review of RIAs called for departments to raise awareness of such expertise and to ensure that there is early input into impact assessments from these sources.<sup>59</sup>
- Developing best practice through consultation with industry. There is no need for the BRE to develop its impact assessment strategy in isolation, when impact assessment is a process widely undertaken in business and evaluated by academic bodies. Merlin Hyman of the EIC stated to us that “expert consultants [...] and academics are developing practice [...] there is enough good practice out there for it to be done a lot better than it is at the moment”.<sup>60</sup>

**We urge the BRE to consult with industry and academic groups on impact assessment best practice, concentrating on environmental impact assessment in particular. This opportunity to develop RIA best practice by drawing on varied and experienced sources should not be neglected.**

- The annual NAO review noted that the Better Regulation teams within departments are under increasing pressure due to the escalating numbers of RIAs<sup>61</sup> and pinched resources as a result of initiatives such as the Administrative Burdens

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58 An example of this DEFRA tool can be seen in Text Box 11 on page 14 of National Audit Office, *Regulatory Impact Assessments and Sustainable Development – Briefing for the Environmental Audit Committee*, May 2006.

59 National Audit Office, *Evaluation of Regulatory Impact Assessments 2005-06*, HC 1305 of session 2005-2006 page 7.

60 Q 14

61 National Audit Office, *Evaluation of Regulatory Impact Assessments 2005-06*, HC 1305 of session 2005-2006 paragraph 2 notes that around 200 ‘Final’ RIAs were produced by Government departments last year. As an example of the escalating numbers of RIAs, the Home Office produced eight final RIAs in 2001, but 60 in 2005 (*Ibid.* paragraph 3.9)

Reduction initiative.<sup>62</sup> These teams “play a vital role in raising awareness of the need for impact assessment and assessing the quality of RIAs”<sup>63</sup> and are, as such, crucial to many of the areas identified within this report as in need of improvement, especially in supporting officials and promoting best practice.

As such, **Better Regulation teams must have adequate resources to adapt to the rapidly rising quantity and complexity of RIAs, and to the new demands placed upon them as the RIA process comes under greater scrutiny.** We have already described how the RIA process has rapidly expanded far beyond its original highly specific origins, and the resources provided to the BR teams must reflect this step change.

## Consultation

60. Consultation is an invaluable resource for officials carrying out RIAs. The NAO annual review of RIAs for 2005-06 sets out various benefits of consultation, such as gathering the views of stakeholders; opening up thinking to external challenge; helping to identify unforeseen problems and helping to increase the robustness of costs and benefits.<sup>64</sup> Consultation is of particular value when considering environmental impacts, as these can be difficult to identify and evaluate. Private companies, public bodies and other organisations can provide the expertise and experience required to ensure that environmental impacts are considered accurately, and that the impact assessment is grounded in practical realities rather than vague theoretical situations. In the words of Martin Silcock, Strategy Manager at Anglian Water, consultation is crucial for “realising that there are decisions which are made lower down the tree, if you like, that will impact the conventional outcomes” and ensuring these are taken into account during the impact assessment.<sup>65</sup>

61. The current guidance on consultation recommends a wide consultation process, beginning early and continuing throughout the process. The guidance also lists suggested consultees and provides advice on planning a consultation.<sup>66</sup> The NAO’s annual review of RIAs for 2005-06 described the consultation process as a “consistent strength” of RIAs.<sup>67</sup> One approach with which the NAO was particularly impressed was that taken by the Immigration and Nationality Directorate at the Home Office which initiated a scheme to improve relations and build partnerships with key stakeholders.<sup>68</sup> Good and consistent

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62 *Ibid.* paragraph 3.6 demonstrates the pressures of expectations and funding facing departments, and the choices that must be made: “The resourcing of central teams is a matter of departmental priority and there is no straightforward measure of the appropriate level of resources. The size of teams reflects the level of involvement in regulatory issues, the workload and nature of the department. Departments were not given additional funding to respond to the increased pressures created by the Administrative Burdens work and it has been up to departments to allocate what they consider to be appropriate in this area.”

63 *Ibid.* paragraph 3.9

64 *Ibid.* paragraph 2.8

65 Q 61 [Mr Silcock]

66 Better Regulation Executive Guidance for Officials – *Consultation*  
[http://www.cabinetoffice.gov.uk/regulation/ria/ria\\_guidance/consultation.asp](http://www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/consultation.asp)

67 National Audit Office, *Evaluation of Regulatory Impact Assessments 2005-06*, HC 1305 of session 2005-2006 paragraph 2.9

68 *Ibid.* paragraph 2.11

relations of this type facilitate consultation and would be of benefit to officials carrying out RIAs.

62. However, this positive overview of the RIA consultation process was not shared by the Centre for Social and Economic Research on the Global Environment (CSERGE) at the University of East Anglia, whose studies revealed a number of interesting points:

- “Consultation processes did involve the ‘main players’, though this was often principally industry rather than non-governmental organisations and the voluntary sector.” [...]
- “Differences in stakeholder positions were more often than not unresolved by the RIA, with most comments made on the policy rather than on the RIA, reinforcing a perception that RIA is little more than a formulaic box-ticking exercise.” [...]
- “In some of the cases we studied, consultation came so late in the policy development process, the process appears little more than an attempt to legitimise or communicate decisions.”<sup>69</sup>

63. This indicates that there may be inconsistencies regarding the quality and breadth of consultation conducted. Also, given the neglect frequently experienced by environmental impacts in other parts of the RIA process, it would not be inconsistent to postulate that environmental impacts and relevant stakeholders may receive less attention than economic impacts and their concerned parties.

**64. We are encouraged by the positive approach taken to consultation, as described by the NAO, but we feel the process needs to be strengthened to ensure that this good practice is extended consistently across different RIAs and departments. In particular, we would like to see the RIA guidance strengthened to emphasise the importance of consulting on environmental issues, given the support and insight this could provide to officials struggling to assess intangible environmental impacts. We would also like to see the RIA guidance emphasise the role of the consultation process for discussing the merits of the RIA itself, rather than dwelling solely on prolonged discussion of the policy. We encourage the BRE to build relationships with key businesses and organisations implicated in and affected by environmental impacts, in order to provide RIA officials with a starting point for consultation on these matters.**

## Training

65. It has become clear to us during the course of this inquiry that RIAs present considerable challenges to the officials preparing them. Effective training is therefore crucial if an accurate and comprehensive RIA is to be produced. Training is especially

important in the case of environmental impacts, given the ‘difficult’ nature of the field. Decent training will provide officials with both the awareness to cover environmental concerns and the knowledge accurately to assess them, without becoming disheartened by the challenge.

66. Evidence from the NAO leads us to believe that the current system of training is inadequate. Discussing RIAs in general, the NAO annual review of RIAs for 2005-06 stated that:

“All departments provide some form of training on better regulation although the focus and content varied wildly. [...] The lack of a consolidated course has [...] made it more difficult to disseminate information about BRE initiatives [...] The provision of training is not coordinated between departments and there appears to be much ‘re-inventing of the wheel’. The Better Regulation Executive offers a training programme but only provides this when asked to do so.”<sup>70</sup>

If the outlook for general RIA training is bleak, the provision of training specifically targeting sustainable development in RIAs is even less promising. The NAO briefing document on sustainable development in RIAs notes that Better Regulation Units within departments are not currently offered training on sustainable development by the Better Regulation Executive.<sup>71</sup> The briefing also states that “the majority of departmental BRUs told us that a lack of resources, such as staff or training, restricts their ability to ensure RIAs fully consider sustainable development.”<sup>72</sup>

**67. The current programme of training offered for RIAs seems inadequate given the often daunting nature of the task facing officials. We believe that those involved in producing RIAs at all levels should be engaged in a comprehensive and regular programme of training, focusing exclusively on RIAs. This training should be consistent between departments and should be compulsory. No official should be assigned to an RIA project without first having undergone the appropriate training. Given the particular difficulties in the area of environmental impacts, we recommend that training tackle this subject explicitly and at some length, dealing with the likely challenges officials may face, and how these could be overcome. Training of this type would also lead to a greater awareness of environmental impacts, improving the coverage of such issues in RIAs.**

## Guidance

68. The main tool assisting officials to complete RIAs effectively is the guidance produced by the BRE and available online.<sup>73</sup> We believe that the current RIA guidance needs to be

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70 National Audit Office, *Evaluation of Regulatory Impact Assessments 2005-06*, HC 1305 of session 2005-2006 paragraphs 3.14-3.17

71 National Audit Office, *Regulatory Impact Assessments and Sustainable Development – Briefing for the Environmental Audit Committee*, May 2006, paragraph 1.38

72 *Ibid.* paragraph 1.37

73 The main menu for this guidance can be found on the web pages of the Better Regulation Executive at: [http://www.cabinetoffice.gov.uk/regulation/ria/ria\\_guidance/index.asp](http://www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/index.asp)

improved upon, firstly in order to correct the “general lack of consistency in the analysis undertaken and the presentation of results” as remarked upon by the NAO in their annual review of RIAs for 2005-06,<sup>74</sup> and secondly to improve the approach to environmental concerns and sustainable development. The NAO’s briefing for us found that “more than half (nine out of 16) of BRUs we consulted agreed that the BRE Guidance ‘is of a reasonable quality but its usefulness in assessing these [sustainable development] costs and benefits is limited’.”<sup>75</sup>

69. Guidance represents a valuable channel for ensuring best practice and changes in the RIA process are cascaded down to officials at the moment of compiling an RIA. It is also the most valuable tool for successfully reinforcing the consideration of environmental impacts in RIAs. A requirement to include such impacts is worthless if officials do not possess the skills and support adequately to identify and assess environmental concerns. Unless guidance devotes considerable attention to these areas any requirement risks being greeted as a ‘tick-box’ exercise whereby analysis is carried out as a formality, rather than in a considered and thoughtful manner. Guidance on this topic should acknowledge the difficulties faced by policy-makers and facilitate this task as far as is possible. It should also make clear to officials the standards they are expected to reach in terms of scope, analysis and presentation, and should provide the information and support necessary to ensure these standards are reached.

**70. We would like to see the RIA guidance provided by the BRE strengthened in terms of how it promotes and deals with sustainable development. We are concerned that sustainable development and environmental issues are rarely addressed directly or dealt with particularly prominently either in existing guidance or in that proposed by the recent BRE Consultation. We recommend that RIA guidance places strong emphasis on sustainable development issues, referring directly to the current sustainable development strategy and key principles.** In such a way the guidance should promote and reinforce understanding amongst officials that a policy or regulation should seek to achieve benefits across all sectors; economic, social and environmental, and that these three areas should be viewed in an integrated manner rather than as distinct, opposed domains.

71. The analysis and quantification of environmental impacts is one area where clear, consistent guidance is considerably lacking. Current guidance provides some general indications of how this should be achieved, and also links to the relevant section in the Treasury Green Book,<sup>76</sup> but there is no consolidated, RIA-specific resource covering this difficult area. Given the difficulties faced by officials when assessing environmental impacts we are concerned that this rather diffuse approach creates confusion and uncertainty, and we believe a firmer guiding hand is required.

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74 National Audit Office, *Evaluation of Regulatory Impact Assessments 2005-06*, HC 1305 of session 2005-2006 paragraph 11

75 National Audit Office, *Regulatory Impact Assessments and Sustainable Development – Briefing for the Environmental Audit Committee*, May 2006, paragraph 1.26

76 This section can be found at <http://greenbook.treasury.gov.uk/annex02.htm#valuing>

72. The BRE consultation document proposed an RIA Toolkit, which was intended to provide “detailed guidance on more technical issues—for example information on how to establish competition effects—which is likely to be of particular interest to economists and other analysts working as part of the policy team.”<sup>77</sup> Given that this Toolkit was still being developed, it was unfortunately not available to view with the consultation document. **We encourage and support the development of a single, consolidated RIA Toolkit, as this would provide officials across government with an authoritative and consistent resource for assessing impacts. It would also reduce uncertainty and inconsistencies in the assessment of environmental impacts.** However, there are several factors which we hope to see included in the Toolkit:

- In addition to assistance on the quantification and monetisation of impacts, the Toolkit should also advise officials on methods for assessing impacts through qualitative analysis and descriptions, as well as the preferred presentation and format for this. The Toolkit should acknowledge and promote the need for different forms of analysis, and help officials to decide what form(s) of assessment would be suitable for each impact. This should help to ensure that environmental impacts are dealt with in the appropriate manner.
- The figures and methods agreed in the Toolkit should be applied cross-departmentally to ensure consistency and prevent officials from selecting the techniques which may suit their particular agenda. In its memorandum the Sustainable Development Commission called for DEFRA and the BRE to work together on the RIA guidance and Toolkit, and for all departments to “sign up to agreed valuations, methodologies and discount rates”.<sup>78</sup> We support this recommendation, as we believe that greater consistency across departments would improve the standard of environmental assessment and would overall increase the profile of environmental concerns in RIAs. This would also aid officials by presenting them with a clear strategy for evaluating environmental impacts.
- We believe that the Toolkit should provide thorough worked examples, in order to clearly demonstrate to officials how particularly difficult areas of assessment should be tackled.
- Given the constant research into assessment, we would like to see the Toolkit evaluated and updated regularly, taking into account new developments in the field of impact assessment and identifying appropriate new assessment models.

73. More generally, there are several key recommendations we have made earlier in this report, regarding RIA guidance, which it is appropriate to reiterate here:

- Guidance should communicate to policy-makers the benefits of a thriving environmental industries and services sector, and ensure that this factor receives adequate consideration.

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77 Better Regulation Executive, *The Tools to Deliver Better Regulation – A Consultation Document*, p14

78 Ev 55

- Guidance should promote the consistent presentation of RIAs within a single template, in order to maintain a clear structure and improve the accessibility of RIAs.
- Guidance should emphasise the importance of extending the consultation process to consult equally on environmental impacts and with those parties particularly involved in and affected by the environmental consequences of the implementation of the policy.
- Guidance should reiterate to officials a requirement of including a “do-nothing” option, and provide the information necessary for this part of the assessment to be understood and adequately completed.
- Guidance should also reiterate a requirement to include a “null response” for environmental impacts, if there are deemed to be no such consequences of the policy. This is crucial in order to demonstrate that environmental impacts have been considered.
- Guidance should underline the importance of considering the full range of environmental impacts, advising officials that carbon, whilst remaining a crucial issue, is only one aspect of a wide spectrum of environmental concerns.

## Scrutiny and Review

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74. In a private briefing to us, and reinforced in their memorandum, Colin Kirkpatrick and Clive George from the Impact Assessment Research Centre at the University of Manchester identified the lack of thorough scrutiny and review of RIAs as the single greatest factor influencing the poor quality of analysis of environmental impacts.<sup>79</sup> Similar concerns over inadequate review structures were also expressed by Merlin Hyman of the EIC, who identified as one of the key problems affecting RIAs “the lack of enforcement by the Cabinet Office of the environment, social, sustainable development principles when they assess RIAs in the first place”.<sup>80</sup> The NAO’s briefing found that assistance from the Better Regulation Executive, responsible for ensuring the compliance of RIAs, is normally “limited to published guidance and offering ad hoc advice... the BRE will point out errors and weaknesses in the RIA but they will not assess it for completeness, nor do BRE officials have any specialist sustainable development expertise”.<sup>81</sup> In addition, the criteria triggering the BRE’s involvement in the process are limited and based almost entirely on economic considerations, meaning that RIAs with potentially significant environmental and social

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79 Ev 59-60

80 Q 22

81 National Audit Office, *Regulatory Impact Assessments and Sustainable Development – Briefing for the Environmental Audit Committee*, May 2006, paragraph 1.40-1.41

issues may not be subjected to this intervention.<sup>82</sup> The NAO's annual review of RIAs for 2005-06 also assessed the challenge function provided to RIAs by the departmental Better Regulation teams, and found that although all teams undertook some form of review, "the extent and depth of this challenge differed markedly."<sup>83</sup>

**75. A more thorough, rigorous and consistently enforced programme of review and scrutiny would help to ensure not only that the content and scope of RIAs was adequate, but also that minimum standards were met for the quality of analysis and calculation. This would be particularly important in the case of environmental impacts due to the frequently poor coverage and assessment of such impacts, as demonstrated in previous chapters. An improved review system could also help to counteract the variations in presentation and clarity highlighted by the NAO, thereby improving the transparency of the document.<sup>84</sup> We therefore believe that a demanding new review process would be a key factor in developing, encouraging and reinforcing good practice of all kinds.**

**76. We propose a system whereby all final RIAs are subject to review on the broad terms of content, scope, quality of analysis, clarity and presentation. We would expect training and guidance to provide officials with the skills and resources required to meet these conditions. We also recommend that the Government devise a procedure by which a policy could be identified as having an excessive environmental impact, triggering an examination and re-evaluation of the policy idea with the objective of reducing this negative environmental impact. In such circumstances we would like to see firm support and advice provided to officials in order to bring the policy in line with sustainable development principles and initiatives before it proceeds to the next stage. We believe that this approach will help to ensure that sustainable development and environmental concerns receive adequate coverage and consideration in RIAs.**

77. We believe that, in addition to tightened review of individual RIAs, a more thorough review programme is required for the RIA process as a whole. The NAO, in its annual review of RIAs for 2005-06 found departments undertake only "limited efforts to evaluate the impact of legislation after it came into force", with "no systematic feedback on the robustness of assumptions used in the RIA."<sup>85</sup> Any such process would be particularly effective for addressing concepts which appear to be consistently misrepresented in impact assessment, either due to inadequate analysis techniques or embedded preconceptions. Merlin Hyman of the EIC told us his belief that "on the whole they [RIAs] greatly underestimate the costs of environmental policies and often underestimate the benefits of

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82 *Ibid.* paragraph 1.40. According to the briefing "the BRE gets involved directly with a particular RIA if the policy contains 'significant measures' defined as costing more than £20 million; if the issue has high media topicality or sensitivity; if there is a Better Regulation Commission report or interest in the policy area; or if there is likely to be a disproportionate impact on a particular group."

83 National Audit Office, *Evaluation of Regulatory Impact Assessments 2005-06*, HC 1305 of session 2005-2006 para 3.12

84 National Audit Office, *Regulatory Impact Assessments and Sustainable Development – Briefing for the Environmental Audit Committee*, May 2006, paragraph 6. The NAO found that their review was complicated by the fact that "the variable presentation of RIAs made it difficult to see if and how sustainable development issues had been considered".

85 National Audit Office, *Evaluation of Regulatory Impact Assessments 2005-06*, HC 1305 of session 2005-2006 paragraph 1.17

them.”<sup>86</sup> This is the type of problem which a wider retrospective review of RIAs could help to identify and address.

**78. We support the proposal for more substantial retrospective evaluation of the accuracy and suitability of the figures and methods used to calculate impacts. We believe that environmental impact assessment would particularly benefit from such retrospective scrutiny, given the uncertainty behind the techniques used to calculate environmental costs and benefits. We would also call for such a review structure retrospectively to evaluate the scope of impacts included in RIAs, as this could identify frequently neglected environmental impacts and ensure that they receive adequate attention in the future.**

## The BRE Consultation

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79. The BRE consultation *The Tools to Deliver Better Regulation—Revising the Regulatory Impact Assessment* closed on 16 October 2006. The consultation document acknowledged many of the failings of RIAs as highlighted by the NAO in their annual reviews, and proposed a series of changes for making the system more workable for officials, and effective in directing policy. The objectives of the consultation were:

- “to embed Regulatory Impact Assessments at the heart of policy making;
- to improve the quality of the economic and other analysis that underpins policy making;
- to increase the transparency of the analysis underlying policy options.”<sup>87</sup>

80. There were many aspects of the consultation which we found encouraging, not least the very fact that the system had been recognised as sufficiently flawed to require a substantial rethink and accompanying consultation. Among other things, the consultation document acknowledged shortcomings in the training provided to staff, admitted that many RIAs are not produced until a late stage in the policy formulation process, and recognised the need to improve the transparency of the document through a new template. In particular, we were encouraged by the acknowledgment that the current guidance for RIAs is confusing and lacks focus, and we welcome the proposal to introduce an Impact Assessment Toolkit to assist officials in the more technical aspects of assessing impacts. We were, however, somewhat concerned at the determination to substantially reduce the length of the guidance,<sup>88</sup> given that we had called for the guidance to be expanded in several areas in order to provide extra certainty and assistance to officials. Until the Toolkit is produced it

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86 Q 23

87 These are the objectives stated on the main web page for the consultation, available at <http://www.cabinetoffice.gov.uk/regulation/ria/consultation/index.asp>

88 Better Regulation Executive, *The Tools to Deliver Better Regulation—A Consultation Document*, p14 <http://www.cabinetoffice.gov.uk/regulation/documents/ria/pdf/consultation.pdf>

will be difficult to assess the approach the BRE has taken on this matter, but we hope that the Toolkit will be comprehensive enough not only adequately to complement the streamlined guidance, but also to provide more practical and thorough advice to policymakers than is currently readily available.

81. However, **we were disappointed to see that very little direct attention was paid in the BRE Consultation to addressing the problems raised in the NAO’s briefing on the approach to sustainable development in RIAs. We would have thought that, given the timing and the tight focus of the NAO’s analysis, the Consultation would have gone beyond acknowledging the problem by proceeding to make recommendations which directly addressed these issues. Sadly, other than general action intended to improve the overall quality of RIAs, we could not see any recommendation which directly tackled the problem of poor consideration of sustainable development issues. Consideration of sustainable development on the summary sheet has been limited to a yes/no response to the question “does the policy comply with sustainable development principles?”. We consider this to be inappropriate and inadequate.**

82. Two aspects of the BRE consultation document have given us particular cause for concern and also aroused some criticism in the memoranda submitted to us. Firstly, the continuing focus on monetisation. Although the draft guidance released with the consultation document has allowed for other quantitative and qualitative assessment when monetisation is deemed impossible, it still urged officials to aim for monetisation.<sup>89</sup> We believe that some environmental impacts are often best expressed in non-monetised terms, and we are concerned that any non-monetised assessment would be likely to be marginalised in the structure proposed by the consultation document. The draft summary template attached to the consultation has only provided a small area where non-monetised data could be presented: a 250 word summary box which is unlikely to allow descriptive assessment to be considered either in adequate detail or on an equal footing alongside the tabulated monetised data.<sup>90</sup>

83. Beyond the lack of provision on the summary sheet for non-monetised data, further concern is raised by the prospect of non-monetary assessments being decoupled from the main body of the Impact Assessment. In spite of maintaining that “all costs and benefits will continue to be represented in the Impact Assessment” the consultation document has stated that:

“[t]he current Regulatory Impact Guidance suggests that a number of other assessments, covering areas such as sustainable development, health, older people and devolved countries should be used as a framework for the costs and benefits section of Regulatory Impact Assessments.

As a result, these assessments are sometimes carried out as part of the Regulatory Impact Assessment. In the nature of these assessments, costs and benefits are

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89 *Ibid.* pp.27-28

90 *Ibid.* p22.

difficult to quantify and are normally addressed through a descriptive approach. The Government believes that this contributes to the Regulatory Impact Assessment as a whole being seen as a descriptive rather than analytical tool.

The Government reaffirms the importance of these impact assessments [...] however it believes that they should in future be free-standing rather than form part of the new Impact Assessment [...] All costs and benefits will continue to be represented in the Impact Assessment. When, for example, the Race Equality Impact Assessments identifies cost of benefit these should be included.”<sup>91</sup>

84. Although this statement remains ambiguous—it is not entirely clear to what extent sustainable development assessment is intended to be decoupled—we are concerned that such an approach has not only possibly marginalised non-monetised assessment to the point of exclusion, but has also implied that crucial environmental arguments may be neglected. If the descriptive assessments included in such tests have been deemed inappropriate for transferral into the main RIA document, then their value as an assessment and their role in communicating sustainable development issues will be lost. As we have already stated, we do not believe that the decoupling of assessments is appropriate for environmental matters, as removing them from the main body of the assessment would only marginalise them further. Such decoupling would go entirely against the Government’s commitment to place sustainable development and environmental concerns at the very heart of policy making, and would reduce the Impact Assessment process to an exercise in the balancing of economic figures, to the utter detriment of integrated decision making.

**85. We are concerned that the steps taken in the Consultation document to decouple certain parts of the assessment may have marginalised environmental assessment and non-monetised analysis. All environmental and sustainable development assessment, whether the analysis is monetised, quantified, qualitative or descriptive, must be included in the main body of the assessment. Any move to decouple any part of environmental assessment represents a backward step and denies the increasing urgency of the challenge posed by climate change and other environmental issues.**

86. Although RIAs have proved to be a flawed process and have struggled effectively to integrate the assessment of sustainable development issues, we believe that they have a vital role to play in fulfilling the Government’s 1997 manifesto pledge that “concern for the environment will be put at the heart of policy-making”. Without directly addressing the shortcomings of RIAs in assessing environmental impacts, it is difficult to see how the government will achieve the Prime Minister’s declaration at the United Nations back in 1997, that “we must make the process of government green. Environmental considerations must be integrated into all our decisions, regardless of sector. They must be in at the start, not bolted on later.”<sup>92</sup> RIAs have the potential to drive a change in attitude to policy making across Government. We strongly believe that the adoption of the

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91 *Ibid.* p17

92 Speech to the UN General Assembly, 1997. The text is at <http://www.number-10.gov.uk/output/Page1045.asp>

recommendations included in this report would move the RIA system towards a position where it would be better suited to respond to the urgency of the environmental cause.

87. However, **technical changes to the structure and guidance of Regulatory Impact Assessments can only be truly effective if they are accompanied by commitment and enthusiasm for implementing the principles of sustainable development in all aspects of government. It remains to be seen whether the lasting results of the BRE Consultation will produce a new, fairer and more effective RIA system, as a crucial step in establishing the principles of sustainable development throughout government as a whole.**

## Formal minutes

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**Tuesday 27 February 2007**

Members present:

Mr Tim Yeo, in the Chair

Mr Martin Caton  
Mr David Chaytor

Mr David Howarth  
Dr Desmond Turner

The Committee deliberated.

Draft Report (Regulatory Impact Assessments and Policy Appraisal), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph. Paragraphs 1 to 87 read and agreed to.

*Resolved*, That the Report be the Third Report of the Committee to the House.

*Ordered*, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

*Ordered*, That the Chairman do make the Report to the House.

The Committee deliberated.

[Adjourned till Tuesday 6 March 2007 at 10am]

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## Witnesses

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### Tuesday 31 October 2006

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<b>Mr Merlin Hyman</b> , Director, The Environmental Industries Commission, and <b>Mr Stephen Billington</b> , Divisional Managing Director of Enviros.	Ev3
<b>Mr Paul Gibbs</b> , Director of Wastewater, <b>Ms Jean Spencer</b> , Regulation Director, and <b>Mr Martin Silcock</b> , Strategy Manager, Anglian Water Services Limited.	Ev14

### Tuesday 7 November 2006

<b>Mr Steve Smith</b> , Managing Director, Markets and <b>Ms Sarah Harrison</b> , Managing Director, Corporate Affairs, Office of Gas and Electricity Markets.	Ev21
<b>Mr Simon Bullock</b> , Economic Adviser and <b>Dr Michael Warhurst</b> , Senior Campaigner, Friends of the Earth.	Ev30

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3 Environmental Industries Commission	Ev1
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# Oral evidence

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## Taken before the Environmental Audit Committee

on Tuesday 31 October 2006

Members present:

Mr Tim Yeo, in the Chair

Colin Challen  
Tim Farron  
David Howarth  
Mr Nick Hurd

Dr Desmond Turner  
Mr Edward Vaizey  
Joan Walley

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### Memorandum submitted by the Environmental Industries Commission (EIC)

Thank you for the opportunity to provide evidence to this inquiry.

#### 1. THE ENVIRONMENTAL INDUSTRIES COMMISSION (EIC)

EIC was launched in 1995 to give the UK's environmental technology and services industry a strong and effective voice with Government.

With over 310 Member companies EIC has grown to be the largest trade association in Europe for the environmental technology and services (ETS) industry. It enjoys the support of leading politicians from all three major parties, as well as industrialists, trade union leaders, environmentalists and academics.

#### 2. INTRODUCTION

EIC has been in dialogue with Cabinet Office, Treasury, Defra and DTI over the past two years over the Regulatory Impact Process and how it accounts for environmental issues.

We have expressed concern that the economic costs of pollution, for example to the health service and to other industries, are not properly included in cost benefit analysis. We have also pointed out that the benefits to the environmental industry, in driving innovation and exports, of the market created by high environmental standards is rarely included in Regulatory Impact Assessments.

EIC gave written and oral evidence to the previous EAC inquiry into Regulatory Impact Assessments and we therefore welcome this inquiry and the opportunity to contribute.

#### 3. THE HISTORY OF ASSESSING THE ENVIRONMENTAL IMPACTS OF POLICIES

Since 1997, the Government has committed itself to assess the environmental impacts of all new policies. The Prime Minister stated that "Environmental issues must be integrated into all our decisions . . . They must be in at the start, not bolted on later." (Speech to the UN General Assembly, 1997.)

The sorry history of the implementation of this commitment was set out in the Environmental Audit Committee report of April 2005 "Pre-Budget 2004 and Budget 2005: Tax, Appraisal, and the Environment".

For example in 2001 Green Ministers Report stated that "it is somewhat disappointing that, despite promotion of environmental appraisal, inclusion in the Policy Makers Checklist and screening systems put in place by departments, relatively few departments beyond DETR have produced published environmental appraisals."

Having failed to get departments to carry out separate environmental appraisals, the Government instead suggested that the emphasis was increasingly moving towards Integrated Policy Appraisal (IPA). With no clarity as to who was responsible for IPA it was not surprising that there was little take up and in April 2004 the Government merged the IPA approach into the Regulatory Impact Assessment. The RIA process has therefore become the primary and indeed only vehicle for assessing environmental alongside social and economic impacts of policies.

The National Audit Office published in May of this year a report on progress with this new approach "Regulatory Impact Assessments and Sustainable Development" which concluded "Our review of 10 recent RIAs found that most did not handle sustainable development concerns well. Few identified all social or environmental impacts that they might have been expected to cover. Social and environmental impacts were often not analysed in sufficient depth. And the variable presentation of RIAs made it difficult to see if and how sustainable development issues had been considered".

The failures of Regulatory Impact Assessments in the UK with regard to sustainable development are mirrored in the EU. The weaknesses in EU Impact Assessments were set out in report published in 2004 by the Institute for European Environmental Policy "Sustainable Development in European Commission Impact Assessments in 2003".

#### 4. INQUIRY QUESTIONS

##### *Questions 1 & 4*

*"Should RIAs continue to be seen as the key vehicle for appraising policies against sustainable development principles, given the serious weaknesses that the National Audit Office review highlights? Is there a better way to ensure environmental, social and economic impacts are incorporated into policy-making?"*

*"How can the Better Regulation Executive improve its scrutiny of RIAs to ensure that sustainable development issues are adequately incorporated into each appraisal?"*

Since the requirement to assess policies against sustainable development principles was brought into RIAs it has been done badly. However before that it was rarely done at all. There is a danger, therefore, that taking it out of this process will be a step backwards.

However, whether assessment of policies against sustainable development principles is done in or out of Regulatory Impact Assessments the key issue as to the level of compliance is a clear and powerful champion within Government. EIC, therefore, believes a Cabinet Office Sustainable Development Unit should be established and given a remit to ensure compliance with assessment of policies against sustainable development principles.

##### *Question 2*

*"If RIAs are seen as the best solution, what steps are being taken to address these weaknesses?"*

Currently the new Cabinet Office proposals send a signal that assessing the costs and benefits of the impact of policies on the environment will be a low priority. This is despite the political priority of these issues and National Audit Office findings on the limitations of current approaches.

EIC recommends that the new Cabinet Office Regulatory Impact Assessment procedure should place an increased emphasis on assessing the costs and benefits of the environmental impacts that will result from policy proposals.

To achieve this there needs to be clear guidance for policy makers about how to go about including these costs and benefits. The costs of pollution are a classic case of market failure. Pollution costs are not borne by the polluter but by other parts of society including the health service, the clean up costs for other parts of the economy (such as the water industry having to clean up water from watercourses for drinking water supply), increased insurance premiums due to more extreme weather events etc.

There is some guidance on cost benefit analysis of environmental impacts in existing Regulatory Impact Assessment guidance from the Cabinet Office. However if this is superseded by the new system it is not clear what existing guidance will be used to calculate these costs, or what new guidance produced and in what format.

EIC recommends that the Cabinet Office provides new guidance for assessing the costs and benefits of the environmental impacts that will result from policy proposals.

Clearly a key part of an assessment of costs and benefits of the environmental impacts of policy proposals will be their impact on carbon emissions. It is inconceivable that Ministers and Parliament should not be presented with a clear assessment of the impact of a policy on the issue that they have identified as the most important challenge we face.

EIC recommends that the Regulatory Impact Assessment procedure includes a requirement for an assessment of the impact of the policy on carbon emissions and that is included in any summary provided.

The Government's Sustainable Development Strategy sets out five principles for the UK Government and states *"These principles will form the basis for policy in the UK. For a policy to be sustainable, it must respect all five of these principles . . . Any trade-offs should be made in an explicit and transparent way."*

To fulfil this goal, in addition to assessing the direct economic costs and benefits of policy proposals on the environment, an Impact Assessment needs to provide a clear review of how a policy measures up against these five principles.

EIC recommends that Regulatory Impact Assessments include a specific requirement to assess all policies in clear and structured format against the goals of the Government's Sustainable Development Strategy and to summarise this on the one page summary form.

October 2006

*Witnesses:* **Mr Merlin Hyman**, Director, The Environmental Industries Commission, and **Mr Stephen Billington**, Divisional Managing Director of Enviro, gave evidence.

**Q1 Chairman:** Welcome. Thank you for coming in. We are glad to see you again. You were here before one of our predecessor committees in the last Parliament, I think, discussing this very issue. Perhaps for people like me, including the members, who were not on that committee, I wonder if you would like to say how you think the situation has moved on, if very much, in the last 18 months.

**Mr Hyman:** Good morning, Chairman. Thank you for inviting us along today. We have been working quite closely with the DTI and Defra's environmental industries unit to try and improve practices in at least the specific area of how environmental Regulatory Impact Assessments take account of the benefits in terms of stimulating new environmental industries. There are some—I think four or five—examples of RIAs now which for the first time ever have specifically identified those issues and how new policy measures have stimulated the environmental industry. More broadly, however, I think the overall approach of impact assessments, certainly outside Defra, to environment, and more broadly sustainable development, has remained pretty weak and I think that the NAO report which followed on from your predecessor committee's inquiry reflects that and provides a fairly accurate estimation. There is lots of work going on and there have been some significant successes with Trudie Mansfield and the environmental industries unit in the DTI and Defra, but overall it is still a pretty painful and slow progress. Stephen, as a practitioner, do you notice any improvements?

**Mr Billington:** I would support Merlin's view on that. Good morning, everybody. I am a Divisional Managing Director of Enviro, a specialist adviser working in the area of environmental performance and environmental management more generally. We are a market leader in that area of provision of services in the UK and Europe and it is certainly our commercial experience that, although we get very heavily involved in environmental impact assessment, strategic environmental assessment is starting to come in more significantly within the marketplace. When it comes to the specifics around RIAs, we are certainly not seeing an awful lot of commitment from the obvious ministerial committees or the obvious commissioning agencies through the public sector in the specific areas of development around RIA.

**Q2 Tim Farron:** The National Audit Office report says, a quick quote here, that: "RIAs have [some] potential strength as a means to inform and influence policy making, and to facilitate the consideration of sustainable development concerns in new policy", but the briefing also highlights serious limitations in the RIA process when it comes to sustainable development, and we were discussing similar points, these limitations. Do you believe the current RIA system can be built on as it stands or do you feel that there could be more effective alternatives?

**Mr Hyman:** Yes. First, in our written evidence we looked through the history and I took some of it from our own experience but also from your predecessor committee's report and since the 1997 assessment of environment impact as a policy. It is a pretty sorry history when you put it down on one piece of paper, it even shocked me. There is 100% compliance with doing RIAs at least and there is a system with a big stick to make sure people do RIAs, so there must be a big concern that introducing a separate system alongside RIAs, however well-intentioned at the start, will fall into disuse. On a practical level, our instinct at the moment is that we ought to work with the imperfect tool of RIAs or IAs—as I think the Cabinet Office proposes to change the name to—rather than try and put in something else, tempting as that is just because the history of the last nine or so years tells us there is such a big risk at that it will be ignored.

**Q3 Tim Farron:** Do you think they affect policy outcomes genuinely or are RIAs really used to justify what was going to happen anyway in your experience?

**Mr Hyman:** I will bring Stephen in on that in a minute, but I think today they rarely have an obvious impact on changing a policy. The evidence and the figures in them tend to get used within the policy-formation process by other parts of government. When there is an environmental policy coming forward, particularly, the figures that come out are used to influence, say, the UK's negotiating position in Brussels and the like. I think ministers have been influenced over the years particularly with the issue of, say, EU directives on the figures they have seen in front of them, say, this new WEEE Directive which we are all struggling to implement now. For example, I remember seeing the Regulatory Impact Assessment of that which suggested the costs were 100 times the benefits on the basis of some pretty lamentable assessment. I would have said, of the benefits. I remember talking to a Foreign Office official who was very clear on the UK's lobbying line on that and I think those figures must have had a resonance, so I think the figures do resonate even if an RIA does not directly change a policy in quite that way. There are also one or two examples now perhaps, and they are slightly broader than just IAs. For example, there is a review of the Air Quality Strategy which is presented very much as a cost-benefit analysis and there is a lot of similarities to an impact assessment. That rates all the different policy measures the UK could take to reduce air quality impact with a traffic-light system based on a cost-benefit approach. For example, low-emission zones come out as red in the draft. Again we would question the figures behind that, but I think it is pretty clear and we have already seen with some of the decisions DfT has taken that whatever comes out of the Air Quality Strategy in the red place is very unlikely to go ahead. The Government is really only going to be looking at the things that come in green in their traffic-light system, which is a cost-benefit

analysis using much the same principles of guidance as an impact assessment, if not strictly an impact assessment.

**Mr Billington:** Just to come back to your original question, it is certainly my view that RIAs are moving a considered approach on and around policy development, certainly introducing a higher level of objectivity. Given that we are looking at policy judgments, which are really quite complex quite often, there is a number of influencing factors and major uncertainties around some of the influencing factors, and it is not easy to look at how the implications in one area are going to impact in another area. Certainly I would advocate anything that opens up a greater understanding. A degree of transparency and a greater push on objectivity has got to be a good thing. I think where we are struggling is in the practice of RIA itself. It is still emerging. We do not have a lot of good examples around best practice and that is really what has to be pushed quite hard now. Certainly from an industry perspective, we are looking for the evidence that properly thought-out RIA is leading to the right policy outcomes, and people can point to the reason why certain policy outcomes have been advocated and advanced. You also touched on waste regulation and the WEEE experience. Let me very briefly, if I may, widen out my understanding to where we are at the moment on the interpretation of material resource flows through the UK economy at the moment. We have quite a lot of public expenditure and public support on recycling initiatives, moving the diversion targets away from landfill. It is quite interesting to reflect more broadly and we have done some quite early work around the material resource flows through the economy as a whole on behalf of EA/Defra. This is quite recent work and what we are finding is that around 1.6 to 1.7 billion tonnes of waste is generally arising within the current UK economy currently. That roughly represents around 10% of the total resource flows through the UK economy. You have got to wonder, given the commercial pressure that a lot of manufacturing companies are under, why we are left in a situation with all the developing advancement around environmental regulation, with all the understanding that is evolving around what we need to do to perform better environmentally, why there is so much slack in the market that allows us to still generate 10% of our resource flows as potentially a waste with no value. If we were adopting the right approach to RIA, in the areas of policy development associated with waste one of the first things that the RIA would look at is what I have just been talking about. There is very scant evidence that this has been taken account of previously.

**Q4 Chairman:** Just on the point you made about the WEEE Directive. Did you say that the original estimate was that the cost would outweigh the benefits by 100 times?

**Mr Hyman:** Yes.

**Q5 Chairman:** In fact, that assessment was not borne out?

**Mr Hyman:** There has not as yet been a post-assessment. Some of those have been done in other areas and they have pretty much uniformly found the costs to be a great deal less than predicted and the benefits to be higher. There was a good one of the UK Air Quality Strategy a couple of years ago. Just looking at the original cost benefit analysis, the benefits were simply worked out by taking the value of the landfill tax as an estimation of the externality of WEEE waste and “timesing” that by the amount of WEEE waste taken out which was, I think, a very narrow perspective on what the benefits of the Directive were.

**Q6 Chairman:** You mentioned low emissions and you said they are coming out similarly badly.

**Mr Hyman:** The Air Quality Strategy, as consultation, has put low emissions zones in the rate of not cost beneficial.

**Q7 Chairman:** Has anybody told the Mayor?

**Mr Hyman:** Yes, he is determinedly ignoring it. It does show the complexity of these things. It has taken us several months of ministerial meetings to dig into what those figures are based on and the costs, for example, of particulate traps is twice the reality in there. Changing those will produce very different figures, but what ministers are looking at already is a red light, low emission zones do not work based on “this is objective evidence”, but you have to dig right down and look at the detail and you find that it depends on the assumptions which you put in and those figures can be pretty suspect.

**Q8 Chairman:** If other countries decide that low emissions zones are a good idea and we have not had one here first, is there any way of assessing the benefit that might accrue your members of being the first to move to advantage and developing technologies which would be exported to Calcutta or somewhere?

**Mr Hyman:** I think that could be done but it is very rarely done at the moment. It is just emerging. Work with our unit within Government is pushing departments to go down that sort of line, but it has never happened previous to that.

**Q9 David Howarth:** One of the problems with Regulatory Impact Assessments has been some uncertainty about what they are for. In particular, concerns have been expressed that the origins of Regulatory Impact Assessments in the Better Regulation Agenda is a problem. Is that your view? Is it possible to combine the Better Regulation Agenda with putting into effect sustainable development principles?

**Mr Hyman:** Regulatory Impact Assessments grew out of compliance cost assessments in the 1990s when it was fairly clear what it was for, it was assessing the costs of compliance and then other factors like sustainable levels of environment were assessed separately. It has developed into an overarching tool which various things have been bolted onto including—after living in various places unsuccessfully—environment and sustainable

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development. It is clear that the whole culture of RIAs and particularly of the Better Regulation Unit, the Better Regulation Executive in government, is focused around the better regulation, sometimes straying into the deregulation agenda. The environment and sustainable development bit of that is by no means core to the parts of government that run the impact assessments. I think you only have to look at the consultation out, recently closed from the Cabinet Office, to find that very, very little thought has been paid to the environment and sustainable development within that. There were some incoherent mentions in that and it was very difficult to understand what was planned with the new approach but it was pretty clear, in talking to the people involved in the process, that very little thought had been given to it despite the fact of a critical NAO report which is a driver in any review of Regulatory Impact Assessments to recognise the change needed in that area. That is my view. In terms of can they be reconciled, I think I would go back to our earlier thought that in an imperfect world we have to make use of what is there. Setting up a separate process has not worked in the past and our feeling is that the practical approach at the moment and the best way forward is to try and make the existing impact assessment system work and fit within the better regulation and alongside the Better Regulation Agenda. I think that would be the least of two evils.

**Mr Billington:** From an industry point of view, I would certainly support Merlin's points here. Again, I think there is quite a bit of evidence to indicate where companies have been able to take on board the spirit of regulation early, rather than defending a position and then reluctantly deciding to commit quite late in the day. There is a lot of evidence to suggest that early commitment and early implementation, has put certain companies at significant commercial advantage. Coming back to your point about how RIA potentially links into sustainable development, let me take one fairly significant example. Clearly there is a huge agenda running at the moment between the implications of climate change and how that fits with the broader sustainability agenda. It is certainly our experience that despite the increases in energy costs which 'UK PLC' has seen over the last 18 months or two years, generally in manufacturing energy efficiency improvement is still seen as a fairly low priority to commit to. When you draw out the salient aspects of that and think about our positioning on climate change at the moment, the commitment that we will advance with around objectives and targets reduce CO<sub>2</sub> emission, there is a very real need to think through at an early stage the implications of regulation, in this case specific to energy efficiency, and how that then has a knock-on effect around the broader objectives as set out with the Government's sustainable development strategy. I think there are potential linkages that can be drawn out across a broad area of environmental performance. I think it is still early days and industry needs to be challenged on this as much as the regulator, but I am quite optimistic that once we see the linkages clearly

between more effective regulation, the supporting evidence with RIAs and the policy outcomes, we will see a turnaround in approach and attitude which will enable us to see clearly that RIAs going forward underpin a profound commitment to sustainable development.

**Q10 David Howarth:** I am quite worried about this notion of bolt-on.

**Mr Billington:** Yes.

**Q11 David Howarth:** You start with one thing and bolt on something else, and that does raise a question about whether or not the whole purpose of the system needs to be recast. Could I read out something from the present guidance. It says RIAs are to be carried out: "for all policy changes, whether European or domestic, which could affect the public or private sectors, charities, the voluntary sector or small businesses", and the question is whether that is comprehensive enough or comes from the right angle. We have a memorandum from Anglian Water, for example, that says the criteria should be widened to include impact on citizens and the environment just to make it clear what this is for. It is something different from where it started. Do you agree with that?

**Mr Hyman:** I think there is a need for a cultural change and this consultation on impact assessment, which the Cabinet Office is running at the moment, has some fairly major changes and recognises at its start that the system has a lot of flaws. It is a good opportunity to do that and to drive through different approaches. I think you are right that it comes from a certain background, it has a certain culture and approach and it is taking a long time to shift it, but you could replace it with something else that gets ignored and put on the shelf.

**Q12 Dr Turner:** The National Audit Office has looked at a selection of RIAs and its comment was that: "few identified all social or environmental impacts that they might have been expected to cover". Would you agree with that comment and, if so, why do you think that is?

**Mr Hyman:** Yes. Certainly, that is the case in our experience. I think that the root cause comes from the point we were discussing earlier, in the fact that they are rooted in compliance cost assessments, the mechanisms and the guidance come from that background and that aim, and it is a bit of a bolt-on. It has not been fully integrated into the system and I remember looking at the response from the Government—I think I have a copy here—to your predecessor committee's inquiry. It just said, "Do not worry. Everything is rosy in the garden. No problems. We just need to carry on working a bit harder". This shows a lack of commitment from the better regulation and RIA bit of government to improvement, better guidance, training on assessing sustainable development impacts, which is why we have been working with our unit in government with the idea of getting some best practice and training out there. Those are the main problems.

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**Q13 Dr Turner:** Do you think it would improve the situation if it was made an absolute essential requirement that environmental issues should be addressed in an RIA, irrespective of the policy topic that RIA is supposed to address?

**Mr Hyman:** My understanding is that is, at least in theory, there at the moment.

**Q14 Dr Turner:** In practice it is clearly not observed too often?

**Mr Hyman:** It is done very badly. There are some genuine difficulties with this area. The area is developing, expert consultants like Stephen and academics are developing practice. But there is enough good practice out there for it to be done a lot better than it is at the moment and there needs to be clearer signals and clearer guidance as to how that should happen.

**Q15 Dr Turner:** One of the clearest possible signals would be your suggestion, that the RIA should assess the impact of policies on carbon emissions and this should be included in the summary sheet and conclusions in the assessment. Would you like to expand on that?

**Mr Hyman:** I am pleased to do so. Against the background that we have today of the Stern Review it does seem to me incredible that the Cabinet Office could put forward a change to Regulatory Impact Assessments at the moment that does not assess the carbon impact of a new policy. That seems to me completely untenable and indefensible. I cannot see how that can happen. Yet, I have to say, in putting it to them they looked at it like it was a new idea—although that suggestion was also in your predecessor committee’s inquiry report.

**Q16 Joan Walley:** Could I ask you to describe how circumstances were when you put it to them?

**Mr Hyman:** Without naming any particular individuals, I was in a consultation forum and I think the word “esoteric” was used around the table. It was clearly a new idea.

**Chairman:** Some official described the idea of assessing the impact of carbon as “esoteric”?

**Q17 Dr Turner:** Name names!

**Mr Hyman:** My lips are sealed.

**Chairman:** I have to say on the evidence we took from the Department for Transport, I am not surprised.

**Q18 Dr Turner:** It sounds as if one ought to contemplate going further then and elevating the carbon impact assessment separately over and above all other potential environmental impacts. Would you go along with that?

**Mr Hyman:** The Cabinet Office proposes a one-page summary sheet for the new system and, to be a little more serious, they are very concerned about it going over one page. They want to keep it to one page. It has to have the costs and the benefits, so they are pretty defensive about having anything else at the moment.

**Q19 Dr Turner:** Are you telling us the officials have as short an attention span as Members of Parliament? That is the implication of that!

**Mr Hyman:** It is going to be one page in theory and at the moment I think it says on it: “Has this policy been considered against sustainable development principles?”, as the summary and someone says, “Yes”, and that is it. There is no guidance as to what should be behind that. Perhaps that is due to come later. I do not know. I think, if you were to put on the one-page summary a figure in terms of carbon, that would be a very effective driver. I think looking at the carbon impact, most bad environmental things have a bad carbon impact, if I can put it very simplistically: burning down rainforests. Stern highlighted the devastation and terrible carbon impacts of that. The poor waste management impact, waste of resources, all of these things will get shown up in a poor carbon balance, so I think a figure on the front page of the carbon impact of every policy is eminently achievable and would have a great resonance and in today’s climate is surely pretty much a no-brainer.

**Q20 Colin Challen:** Following on from that, in the past we have perhaps found it very difficult to quantify environmental impacts, especially when you compare them with economic impacts. We have been told, because of that, it is sometimes the case environmental impacts are completely ignored. Are you saying that adding this carbon element might address that problem? Is it a new way of quantifying the problem?

**Mr Hyman:** The review of the impact assessment procedure, a fairly fundamental review by the Cabinet Office, presents an opportunity. It is one they are wholly missing at the moment and it is clearly a side issue they have not thought about very hard. In the consultation there are pretty much token references to it, but it does clearly present an opportunity to provide a clear requirement to assess against the sustainable development principles or new policies and to provide clear guidance to all departments as to how they go about making that assessment and that all the detailed environmental costs and benefits should be in there. They are creating quite a focus on the role of the one page summary, for whatever reason, of how they think policy is made in reality. Hopefully the future RIAs will have done a lot better at assessing the environmental and social impacts within the detail of the RIA or IA. What are we going to pull out of the summary, I think the carbon figure is one that has to be there and I think it will help provide an overarching perspective on the overall environmental impact policy.

**Q21 Colin Challen:** What you are saying is that we need to have this simplified approach to make it possible for people to act on it even though that might minimise wider environmental impacts which might still be ignored.

**Mr Hyman:** An impact assessment should have all the costs and benefits in it and that is the point. In policy decision-making one hopes that people will

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look into them and look at the detail so I would not minimise the importance of that. I think any time you aggregate out detail like that you lose things and if you pay too much attention to the summary you get some headline costs and benefits which do not tell you much about how they were arrived at or what assumptions were built into them and, as I say, we experienced that with the air quality strategy recently. It is important that the whole RIA is part of the policy formation processes. The idea of a summary sheet which gives a quick overview is probably one that will go forward and make sense in some ways and in that there should be a clear carbon score, but I am not meaning that to minimise the importance of looking at the full environmental cost and benefit analysis that the RIA should present.

**Q22 Colin Challen:** Just moving onto the question of how they are reviewed, Colin Kirkpatrick and Clive George from the University of Manchester told us that they see that the single greatest problem with RIAs is the lack of a strong review system capable of enforcing changes in order to meet any particular set of requirements. Would you agree with their assessment?

**Mr Hyman:** In environmental and sustainable development terms I think the most important problems are the kind of cultural ones, where RIAs come from, the lack of good guidance and the lack of enforcement by the Cabinet Office of the environment, social, sustainable development principles when they assess RIAs in the first place. I think a review approach would be a very good addition to the system and would improve impact assessments overall.

**Q23 Colin Challen:** What sort of criteria should RIAs be reviewed against, do you think?

**Mr Hyman:** In many ways they are a prediction of what is going to happen and then a few years later one has an experience of what has actually happened and one can look back and see how well they did. As I say, the evidence to date is that on the whole they greatly underestimate the costs of environmental policies and often overestimate the benefits of them. A more formal process of feeding that back into the system would hopefully have some impact on how they were done in the first place.

**Q24 Colin Challen:** Is there a gaining sense of urgency in reviewing RIAs? It seems to me that there can be quite a time lag in such a review process. Given the Stern Report yesterday telling us how urgent the problem is, do you detect any urgency in how that review itself is scrutinised?

**Mr Hyman:** Do I detect any urgency from Government?

**Q25 Colin Challen:** Yes, from Government.

**Mr Hyman:** In introducing a review requirement?

**Q26 Colin Challen:** From what you are saying it seems there is a bit of a time lag built into the whole system, people are still struggling even to define the system but we know we do not have the time to spare to have lengthy review processes.

**Mr Hyman:** I would not say that at the moment the Better Regulation Executive, the Regulatory Impact Assessment process and the Better Regulation Units within Government have a great urgency to improve the way Regulatory Impact Assessments handle, deal with and provide us with the tools to respond to sustainable development and climate change challenges. I would say quite the opposite, there is very little urgency and very little acknowledgement that there is a problem.

**Mr Billington:** Chairman, could I come in on a specific point of detail that is directly relevant to your line of questioning in that my own feeling is that there is a bit of a disconnect between the economic evaluation underpinning RIA as it stands at the moment and the societal and environmental implications that you were touching on. Interestingly, on the environmental and societal aspects, there is already well-defined best practice out there in industry more widely and there is best practice defined, underpinning some of the approaches that we see across the public sector. There is a professional organisation that I am quite heavily involved in known as, the Institute of Environmental Management and Assessment, IEMA. They have been promoting best practice on environmental and societal assessments for a number of years. In amongst all of this commitment is a well-defined approach to peer review. To come back to the point that you were raising earlier around the evaluation of impact assessment, there is already a capacity to undertake these peer reviews in a well-defined way that could certainly advance the quality of the inputs to that part of the RIA. What is clearly missing is the linkage between the environmental and societal aspects and the economic aspects that are probably more to do with how you quantify impact in the first place and how numerical you are in how you would evaluate the impact. There is still an inclination on the economic side to rely very heavily on monetary value whereas, of course, on environmental and societal impacts, the base of evidence is much, broader. It will of course involve quantifiable evidence, but in a lot of cases there is qualitative judgment coming in there as well.

**Q27 Chairman:** Can we go back to the benefits of the high environmental standards methods to the industry. Your memorandum says that RIAs do not give much consideration to that. How could that consideration be increased?

**Mr Hyman:** Looking back, we submitted evidence to your predecessor inquiry and they recommended specifically that that should be included in RIAs and, indeed, John Healey, Treasury Minister, when he gave evidence to the predecessor committee was asked this question and endorsed that idea, but the Government's formal response said that it is all covered already and Departments can do it if they

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want to. I think it is fair to say that they were very negative about that idea, they did not feel that the impact on the environmental industry was an impact that should be considered in impact assessments in most cases. There are 400,000 jobs in this environment industry according to DTI figures that have come about because of environmental policy on the whole, it is difficult to see how you can describe them as not an impact in any rational sense. However that tended to be the line which the Cabinet Office economists took. I think it really needs a clear statement in the guidance, that is what people follow when they do these assessments that when looking at environmental impacts the positive impacts on the environment industry should be considered and I would say that there are now some examples where that has begun to happen. I think Euro 5 standards in cars and light duty vehicles includes those figures in them as a result of the work of the environment industry unit within government and our efforts. It is happening in one or two cases, but you need clear guidance to spread that best practice elsewhere.

**Q28 Chairman:** Both the Prime Minister and the Chancellor were at pains to stress the number of jobs when they were launching the Stern Review yesterday morning.

**Q29 Mr Hurd:** How content are you with the implementation of RIAs in relation to EU legislation?

**Mr Hyman:** By the Commission or the UK?

**Q30 Mr Hurd:** Implementation of RIAs in this country in response to legislation coming out of the EU.

**Mr Hyman:** I think that in many ways they are playing an important role in policy formation and I think they suffer from exactly the same issues as all the other RIAs. They take an insufficient look at environmental and social impacts. The WEEE one was an example that goes back a few years but it was a particular case. I think there is a slightly broader point here also about the implementation of EU environmental legislation which RIAs could help with. The UK Government has taken a policy decision not to gold-plate EU legislation and it does not go beyond the minimum possible requirements of the directive. It takes that very strictly to the point where a policy might be due to come in on, say, 1 June and it would make more sense to bring it on 1 April because that would fit with other deadlines and the way the regulatory system works—but they will not do it because it is gold-plating. It is bringing it in two months early. In other words, common sense appears to go out the window at this stage and we have a principle that we cannot gold-plate. There is not any real cost-benefit work done on the benefits to the UK of moving earlier or going further than the very minimum requirements in an EU directive.

Those may not be cost-beneficial for various reasons, or they may be, but we will never know because impact assessments do not look at those on the whole. It is pretty rare. They simply state it is UK Government policy not to gold-plate directives. There often is that kind of flexibility in directives with lots of countries, like Germany, taking advantage.

**Q31 Mr Hurd:** I think that is the point I was trying to get at. There is more room for manoeuvre in these EU directives than perhaps people give credit for, and the question is whether or not the RIA process is sufficiently robust in evaluating those options of implementation.

**Mr Hyman:** The point I was making earlier was the UK Government negotiating principle is often being guided by RIAs that have a very poor assessment of the environmental benefits of a policy. When it comes to implementation, I think the key concern that will come to us is that the cost-benefit analysis at that stage goes out the window and we state we will take the minimum approach. Often if you go out to the regulated industry, they prefer to get on with it and have some clear guidance early. This kind of late implementation, the last minute, big rush, is in nobody's interest.

**Q32 Mr Hurd:** A final question in relation to the BRE consultation, what are your expectations of that?

**Mr Hyman:** Given what has come out today, pretty low. I am aware that Defra has had concerns and has expressed them to the Cabinet Office, but at the moment I cannot see the kinds of structures and view of the approach of the Cabinet Office and the Better Regulation Executive in particular taking sufficient account of this. I am hopeful that the current political climate and this inquiry, indeed, will have an impact and produce a better result.

**Q33 Chairman:** Thank you very much. That is very helpful. Is there anything else burning that you wanted to say?

**Mr Hyman:** No, I am pleased to finish on the impact assessment consultation, because I think that provides an important hook. There is a great opportunity there. I think this Committee's inquiry and report could have a real influence. There is a window of opportunity. In terms of our follow-up and campaigning around this, I think the carbon assessment point is the one that we will be focusing on. I would encourage the Committee to support that because I think that could be a very powerful tool.

**Q34 Chairman:** I do not think we will have any difficulty in doing that, certainly. Thank you very much for coming.

**Mr Billington:** Thank you.

**Mr Hyman:** Thank you very much, Chairman.

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### Memorandum submitted by Anglian Water Services Limited

We are pleased to provide our response to this inquiry. The effectiveness of policy appraisal is a matter of central concern to us as a provider of crucial public services to our customers and to communities in our region. It is particularly critical given the uncertainties facing the future water environment from climate change.

#### BACKGROUND

The water industry has a great deal to gain from policy decisions that are made in the context of a proper evaluation of costs and benefits. A proper evaluation implies explicit consideration of which potential costs and benefits should be considered and fully values the economic, environmental and social considerations so as to allow robust comparison of policy options. We believe that these goals are common to all stakeholders. The industry operates within a regulatory framework, which to date has proved extremely effective in securing investment in critical public infrastructure and providing value to the customer in terms of restraining bill rises. There is now a challenge to reflect wider environmental and social goals within this framework. Good policy-making at government level is an essential pre-requisite to meeting this challenge.

Therefore, despite the focus of this inquiry on RIA's, it is really achieving effective policy-making, which we view as critical. RIA's are one tool to achieving this aim.

#### KEY POINTS OF OUR RESPONSE

- RIAs should not be abandoned—they are an effective means of providing rigour in the creation of good policy.
- There needs to be continued reinforcement of the need to use RIAs in the right way and at the right time to be most useful, and particularly to their use as a policy-making tool early in the process.
- Use of RIAs should be promoted among all policy-makers, including those outside of central government.
- Economic appraisal should be strengthened so that environmental and social impacts of policy are explicitly considered on the same basis as economic impacts.
- Guidance on what costs and benefits are relevant for the policy decisions and how to value them should be strengthened.
- Valuation of environmental and social benefits is difficult. A perfect approach is probably not possible and demanding such an approach risks alienating policymakers. Guidance should more comprehensively cover such practical issues and suggest pragmatic ways of reaching conclusions faced with uncertainty or poor data.
- Sound policy-making should actively be promoted European level.
- In implementing policy the roles of various stakeholders needs to be taken into account, in particular how overall costs and benefits of chosen policy options aligns with each stakeholder's objectives, funding and other constraints.
- Attention should be paid as to how RIAs should address and accommodate current and future climate change predictions.

#### ANGLIAN WATER

Anglian Water provides water and wastewater services to 5.6 million customers over an area of 27,500 square kilometres, covering most of East Anglia and parts of the East Midlands up to the Humber estuary.

We see ourselves as leading promoters of sustainable development principles in our region and nationally. Key elements of our long-term business strategy reflect this. For example, we have the highest rate of domestic metering of all water companies, resulting from a strategy adopted 15 years ago that aimed to ensure that we could meet customer demand for water over the long term while sustaining water resources. We also:

- play a leading role in the debate on the sustainable development agenda, particularly in relation to population and demand growth, water resources, climate change, affordability and customer debt; and
- work closely with key stakeholders with interests in environmental, customer and consumer concerns via a range of initiatives. Examples include projects in education, fostering community care for the water environment, encouraging biodiversity, and providing opportunities for recreation.

## THE EXPERIENCE OF USING RIAs

In recent years RIAs have increasingly become established as the primary tool by which economic rigour is brought to policy decisions. The concept is now well understood and increasingly embedded in policy making practice. A number of problems have been identified, some of which are discussed later, but in general the use of RIAs is improving. However, as the recent NAO report<sup>1</sup> points out, the use of RIAs to achieve sustainable development goals in policy-making is not very advanced.

It seems also that RIAs are not used to the same effect or with the equal rigour by all bodies involved with policy making. Departments, local government agencies and independent regulators all create and implement policy to some degree. To date, however, most evaluation of the use of RIAs appears to be focussed on experience in central government.

## ANSWERS TO SPECIFIC QUESTIONS RAISED BY THE INQUIRY

1. *Should RIAs continue to be seen as the key vehicle for appraising policies against sustainable development principles, given the serious weaknesses that the National Audit Office review highlights? Is there a better way to ensure environmental, social and economic impacts are incorporated into policy-making?*

## AN INTEGRATED APPROACH TO POLICY APPRAISAL

We broadly agree with the thrust of the NAO's findings: there is no obvious alternative to using RIAs and therefore greater attention should be paid to improving their usage in practice.

The fundamental principle that policy makers should take account of all potential impacts (economic, environmental and social) in creating policy seems to be widely accepted. Policy-making is about making trade-offs and in order to make trade-offs the costs and benefits must be expressed in terms that facilitate comparison, preferably by monetising them.

Therefore the essence of "appraisal against sustainable development principles" is the extension (compared to past practice) of such trade-off decisions so that all areas of impact are considered—not just economic impact. This is important because it demands an integrated approach to policy-making. Appraisal against sustainable development should not be seen as an additional validation or check-up after key trade-offs have been considered.

RIAs have the potential to provide the framework for such an integrated approach. It does not seem sensible to continue to use RIAs for policy appraisal and some other approach to tackle "sustainable development" concerns. More specifically, we wonder whether government needs to consider how to integrate some of the tests that have been absorbed into RIAs (the NAO report refers to Rural Proofing and Health Impact Assessment<sup>2</sup>) into a more unified approach using monetised costs and benefits? How should appraisal against cross-cutting sustainable development principles (eg precautionary, polluter pays) be integrated? A collection of separate sustainability tests would seem to be somewhat weaker than an integrated approach.

In terms of evaluation of costs and benefits two sets of questions are raised:

- What impacts are relevant to consider? Both the outcomes of the proposed policy options and the activities required to achieve them (who needs to do what?) should be considered.
- How can a value (or other measurement which allows trade-offs to be evaluated) be ascribed to these impacts? This is substantially more difficult for some impacts than others.

These questions are not generally easy to answer when social and environmental impacts are to be taken into account. It is less likely to be as clear which policy effects should be evaluated because environmental and social consequences are likely to depend on numerous influences. However, we do not believe that this relieves policymakers of the obligation to try. We are generally sceptical of the view that uncertainty makes it undesirable to monetise all relevant impacts.

We also question whether the requirement to prepare an RIA only when there is an impact on the business, charity or voluntary sectors is defined widely enough. What about general impact on citizens and the environment itself?

Where wider policy impacts are being considered, policy-makers are unlikely to be confident to the same degree about the methods and information on which they must rely to place a value on costs and benefits. They might need to put more effort into deciding what information is relevant and obtaining it. In short the business of policymaking becomes more difficult than hitherto.

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<sup>1</sup> "Regulatory Impact Assessments and Sustainable Development"—National Audit Office 22 May 2006.

<sup>2</sup> *ibid.* p 4.

The poor practice observed by the NAO in relation to sustainability concerns could be seen as a natural consequence of the greater difficulty and effort needed, and perhaps the lack of clear guidance as to how to achieve these difficult objectives.

Against this background of increasing complexity, it would therefore seem that there is substantial dividend from a framework which provides clarity and rigour in policymaking. It is more essential than ever.

RIAs appear to be able to provide such a rigorous framework and as we note above are gradually becoming more embedded in government. It would seem a backward step to throw away the progress that has been achieved so far.

#### TACKLING PROBLEMS WITH RIAs

Some of the problems that have been experienced with RIAs could be seen as significant barrier to their effective use:

- RIAs seen as bureaucratic, box ticking.
- Not all options fully considered.
- RIAs deployed too late in the process, after policy decisions made, in order to justify rather than inform them.
- Inconsistent performance across government departments and lack of appropriate expertise and capability within departments.
- Environmental and social impacts not well analysed and not monetised.

All of these are clearly problematic but perhaps the key underlying theme might be expressed in the observation that “RIAs are only occasionally used to challenge the need for regulation and influence policy decisions”<sup>3</sup>

We believe this encapsulates a fundamental problem with RIAs, namely a lack of clarity (at least to us, on the outside of government) as to what they are supposed to be.

- Are they central tools of policy analysis and decision-making, to be used from the outset of the process?
- Are they central tools of policy-making but to be used only when that policy results in new or changed “regulation”, however this might be defined? The NAO report is not as clear as it might be in defining what this term means in this context.
- Or are they really, as their name suggests, supposed only to be some sort of check at the end of the process with some but perhaps not great influence on the policy decisions themselves. And if this is the case, then how is policy actually formulated and, in relation to this enquiry, how can we be assured that the methods used will properly take into account the complexities of incorporating environmental and social impacts?

RIAs should aim to meet the first of these and this should be made clearer. We agree with the NAO that one key step is likely to be to improve substantially the guidance on the content and process of RIAs, particularly to assist policy-makers to draw boundaries around the set of impacts to be considered and establish a robust basis for policy trade-off decisions. Guidance should also cover what depth of analysis needs to be conducted, how to undertake it and how robust supporting evidence needs to be.

#### APPLICATION OF THE RIAs TO OTHER PARTS OF THE PUBLIC SECTOR

One aspect not specifically addressed by the NAO’s reports is the extent to which different parts of government become engaged in an RIA process and how a joined up approach to policy appraisal can be taken. How is the commitment needed to realise potential benefits secured from different stakeholders via a policy process? When policy costs and benefits are likely to accrue to different parts of government, there is scope for not achieving anticipated outcomes because decisions will tend to be taken from the partial perspective of a particular body.

To take one rather prosaic example from our own experience, the full potential economic and social benefits from significant investment on one scheme to improve bathing water quality were not realised because the relevant local council refused to fund additional infrastructure (a toilet block) needed to achieve “Blue Flag” status for the beach. The council’s decision did not appear to take into account the wider implications.

<sup>3</sup> “Evaluation of Regulatory Impact Assessments 2005–06” NAO 26 June 2006 p 3.

The above example also highlights the question of whether use of RIAs should be promoted outside of central government. The NAO report notes that policy-makers at local government level tend to use tools such as Strategic Environmental Assessment and Environmental Impact Assessment which focus predominantly on environmental issues and would therefore appear to offer a second-best approach to the more holistic RIA. Agencies and independent regulators appear to tend to develop their own methodologies. For example, the Environment Agency has its own methodology and guidance for assessing costs and benefits. Similarly work is being conducted “from scratch” to look at how costs and benefits should be evaluated for the Water Framework Directive. This is not necessarily inappropriate but in our view there would be merit in reviewing the different approaches adopted across these bodies to assess the scope for more consistency and promulgation of best practice to secure better policy outcomes.

2. *If RIAs are seen as the best solution, what steps are being taken to address these weaknesses, including:*

- *the weak link between the structure of RIAs and the principles and priorities set out in the UK’s Sustainable Development Strategy;*
- *the difficulty of ensuring that environmental and social impacts which are difficult to quantify in monetary terms are fully taken into account;*
- *the variable quality of RIAs; and*
- *the poor co-ordination of policy appraisal processes.*

*In each case, will the steps taken be enough to resolve the problem?*

We cannot comment authoritatively on the steps being taken within government to address these and other weaknesses. However, we would suggest that addressing these matters is going to need far more comprehensive guidance than currently exists.

In terms of quantification of impacts, to make trade-off decisions that are based on something more than gut-feel, policy-makers should monetise costs and benefits. The thrust of any guidance needs to be towards making monetisation be seen as the norm rather than the exception and making it easier to do it, possibly by developing standard views/techniques on how various common environmental and social impacts could be valued for policy purposes and/or bringing together the latest thinking in easily accessible form. One example is the use of ecofootprinting. Learning after the event also needs to be a key part of the overall process so that predicted and actual benefits can be measured and results shared.

As we note above, RIAs have potential to provide a more holistic view than techniques such as Environmental Impact Assessment. If other techniques are used then perhaps it should be a requirement for RIAs to articulate and draw together the results of all such assessments in particular so that double counting of benefits is and/or a battle of methodologies is avoided. A further implication is the need to decide how and by whom differences are to be resolved.

3. *Does the formal role of Better Regulation Units within departments take adequate account of sustainable development objectives? How can training and guidance to officials be improved?*

We cannot comment authoritatively on capabilities of government departments but note that policy is, *de facto*, made by other bodies including government agencies, local government, and independent regulators. Similar questions should be asked of these bodies.

From an external perspective we observe that a formal approach to measuring and recognising capability might be useful, including the use of competency testing and/or certification.

The core skill set of those conducting RIAs would appear to be that of an economist. It would be interesting to understand whether this is recognised in recruitment and training policy for the Better Regulation Units.

4. *How can the Better Regulation Executive improve its scrutiny of RIAs to ensure that sustainable development issues are adequately incorporated into each appraisal?*

Again we are not in a position to comment authoritatively. It would seem sensible to ensure that such scrutiny is conducted against agreed standards for process and outcome. Use of peer review could also be beneficial.

5. *What evidence is there that RIAs make a difference to policy outcomes? Can departments document examples where the appraisal process has resulted in a change in the preferred policy option to one which is more sustainable?*

We find it difficult to pinpoint an example of where policy has changed substantially as a result of an RIA process. This could be seen as a reflection of the difficulties above but we also accept that an effective RIA embedded into the policy making process might have influenced outcomes, without its being obvious that this is so. However, one purpose of an RIA is to communicate how policy decisions have been arrived at. There should be greater visibility of the history and development of policy and how the RIA has influenced the process in future consultations and all new or amendments to legislation.

It is easier to identify where policy-making has been deficient. The most glaring recent example affecting Anglian Water has been decisions by DCLG (and its predecessor ODPM) in relation to planning for substantial new housing development in the East of England, which were made apparently without any proper consideration of the impact on sustainability of water resources. The recent report by the House of Lords<sup>4</sup> highlighted this issue.

6. *Is the application of the RIA process sufficiently comprehensive? Should it be extended to cover areas such as the Pre-Budget Report and the Comprehensive Spending Review? If not, what other processes are there to ensure that there is transparency and accountability over the consideration of sustainable development issues at the very earliest stages of decision making. Are these processes adequate?*

The RIA process appears to be limited in application. It is not applied to all policy decisions or used by all policy-makers. We have already highlighted some examples above but one significant gap seems to be at the earliest stage of decision-making. Thus the NAO states: “RIAs would not normally be expected to accompany high-level, strategic papers which outline the general direction and intent of a policy”.<sup>5</sup> Why not? Isn’t this when the major trade-offs of economic, social and environmental impact are likely to be made?

We would therefore support extension to high-level policymaking processes like the Pre-Budget Report and the CSR. We would also like to see rigorous use of RIAs in the development of planning policy, including Regional Spatial Strategies.

#### EUROPEAN DIMENSION

The consultation makes passing reference to practice at European level. This is of critical importance to the water industry as many of the drivers for increased investment and operating costs are driven by requirements set out in EC Directives. We would urge government not to underplay the importance of a rigorous RIA process in these instances. The implementation of EC directives often allows a surprising range of options in implementing mandatory requirements and there is no lesser need for evaluating these options properly than in designing policy from scratch.

We would also ask how government intends to engage at the European level to encourage better practice by European policymakers.

#### CLIMATE CHANGE

The potential impact of climate change is clearly of fundamental importance for policymakers both because it represents a significant uncertainty, which will impact the evaluation of environmental benefits, particularly, in many policy decisions and because it will demand substantial policy responses in its own right. Adaptation to and mitigation of climate change is a fundamental driver of our own strategy. In considering the role of RIAs, attention should be paid to how RIAs should address and accommodate current and future climate change predictions.

#### NEXT STEPS

We hope that this response will provide a useful perspective from outside of government. We would welcome the opportunity to be involved at later stages of this enquiry, possibly by developing one or more detailed “case studies” if this would provide useful evidence for the Committee. There are a number of potential case study topics, including:

- Sustainable Homes.
- Water Framework Directive.
- Impact of climate change.
- Traffic Management Act.
- Water quality regulations.
- Bathing Water Directive.
- Hazardous Substances Directive.

October 2006

<sup>4</sup> “Water Management”—House of Lords Science and Technology Committee 6 June 2006.

<sup>5</sup> “Regulatory Impact Assessments and Sustainable Development”—National Audit Office 22 May 2006 p 6.

*Witnesses: Mr Paul Gibbs, Director of Wastewater, Ms Jean Spencer, Regulation Director, and Mr Martin Silcock, Strategy Manager, Anglian Water Services Limited, gave evidence.*

**Q35 Chairman:** Good morning. Welcome to the Committee. We are grateful to you for coming and talking to us. Generally to start off, we have read your memorandum, thank you for that, and it is quite positive in tone in many ways. Could you say a general word about your experience of RIAs as they have affected Anglian Water's business?

**Ms Spencer:** Mostly, we see the consequences of regulatory impacts and almost all of our activities are regulated in some shape or form whether it is drinking-water quality, environmental quality or economic regulation and so on. In terms of the RIAs that go behind those regulations, I think our experience, by and large, is that they look at specific aspects of regulation but they do not look at all of the impacts. If you take examples of environmental regulation, it is looking at water quality but it does not look at all the other impacts that come as a consequence of those regulations particularly things like carbon impacts, the production of sludge and methane, and transport sludge and so on which come from that, they look very narrowly at the particular aspects of regulation that they are trying to address. While most of the Regulatory Impact Assessments have been carried out, I think our concern is they are not looking at all of the impacts of those regulations. By and large, we do not see regulation as a bad thing, there are examples where we would want to see more regulation where it can have positive impacts. I think the issue is they are being carried out, but it is the scope of those impact assessments and whether or not they are considering all impacts that affect us.

**Q36 Mr Vaizey:** Your memorandum gives the impression that you are in favour of environmental impact assessments on the basis they fit in with the RIA system, but they are not "very advanced", I think was the phrase you used. What signs of promise do you see in terms of environmental assessments? What more positive aspects do you see in the situation as it is at the moment?

**Ms Spencer:** I think one of the issues is that you should not have environmental impact assessments separate and stand-alone. Impact assessments need to be looked at from all aspects so if it is improvement in water quality, you also need to look at the carbon impacts that go with that in particular. That is particularly focused on the need to address the carbon effects of new regulations and there are a number of reasons for that. In terms of climate change impacts I think, as a water sector, we are particularly affected, so you are looking at climate change effects, you have got coastal erosion, flooding, increased storm events, drought, all of those impact directly on our activities. What we are seeing is a vicious cycle: we see new regulations that require us to put in technological solutions which require intensive energy, chemicals, transport, that in themselves then cause the effects we are having to address in terms of water and environmental quality. All of those things have to be brought together. As an example of the overall level of the impact on our activities, in 2005 our energy consumption was

about 730 gigawatt hours per annum, that is forecast to increase to 900 gigawatt hours per annum by 2010 and that is a consequence of the new quality regulations that we have to meet.

**Q37 Mr Vaizey:** I do not know if you were here when we had the earlier debate. Do you think it would be better if we had a stand alone carbon impact assessment?

**Ms Spencer:** There should be an assessment of the impact of carbon but as part of the other economic costs and benefits. I do not think you can look at it in isolation. Those impacts need to be measured but I think our view is that they then need to be monetised so that you can put them into the overall assessment of those impacts.

**Q38 Mr Vaizey:** I think you answered this question to a certain extent in your memorandum but do you get the feeling that Regulatory Impact Assessments at the moment are tacked on at the end to justify a policy as opposed to happening early enough in the process to influence the policy?

**Mr Silcock:** I think the observation that we would make is that it might be the case that Regulatory Impact Assessments are being done earlier in the process, but it is hard to see that. There is an element of transparency which is missing there so where policy decisions are being made, have they been subject to some sort of assessment which is akin to an RIA. That is one point. You are right in interpreting our response to mean that, yes, we are keen for those assessments to be done as early as possible in the process where the policy decisions are being made, that would seem to be the sensible time to do them.

**Ms Spencer:** In many cases for the water industry that is actually in Europe because many of the regulations that we are having to comply with are driven by European directives and I think it is not clear that European directives are subject to robust RIAs. Picking up on the end of the last discussion, it is then a question, once those European directives are in place, that EU Regulatory Impact Assessments are then carried out in translating that into UK legislation. I think we do find that they are seen as statutory requirements and, therefore, a robust Regulatory Impact Assessment is not needed because Europe says we have to do it. There is the need to review that because there is some flexibility in there. It might be worth perhaps Paul taking you through some of the impacts which we are seeing, in particular around the implementation with urban waste water and the removal of phosphorus from our works, to give some colour around how we see that working in practice.

**Mr Gibbs:** The issue is that we tend to look at end of pipe solutions, so we have a peak consent that we need to meet, we look for the end of pipe solution and what we end up doing is bringing in chemicals from the other side of the country at a high cost to the environment to meet a directive set by Europe at the end of the pipe. What it leads to is that we put in more complex treatment. For example, if we take a

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works that we have in our region which is very sustainable, very low energy use, simple technology, been around for a long time and meets the needs of the environment as it stands, if we have a new directive come in that we are required to put in place phosphorus removal and what we do is ship in chemicals from Wales at a high cost and we have to put new treatment technologies in place at the works to meet that standard and that means increasing the energy consumption significantly at the works, putting in more concrete structures and more complex treatment processes. I think what we have failed to do is look at the overall impact on the environment of making that decision. We look at the directive and the need to meet the standards that the directive imposes but we do not consider the overall carbon impact on the solution that we put in place. What we would like to see is a bit more joined-up thinking with all of the agencies working together to look at the overall impacts that we are having on the environment when we make these decisions.

**Ms Spencer:** I think part of it is because we are regulated when consents are set at works in terms of discharges that we can put out. They are very rigid consents and that causes us to respond by putting in those technological solutions to make sure we absolutely meet those consents because there are penalties and we can be prosecuted if we do not meet those consents whereas a more sustainable solution would be something like reed beds but where the outcome is less certain in terms of meeting the consent at all times. It is not to criticise the Environment Agency in the way in which they regulate us because they would see it as a requirement that we always meet those consents and if we do not there will be consequences in terms of not meeting the EU directives and possibly infraction proceedings. It is not a criticism of the Environment Agency but, as I say, we need to work together to look at where there is flexibility and to see whether it can come up with overall more sustainable solutions.

**Q39 Chairman:** Just on that example which you gave of the increase in electricity usage from 730 to 900, was that figure identified in advance or has it only emerged latterly?

**Ms Spencer:** It was not identified in the impact assessments. It would have been identified in terms of the economic regulation because we would have identified the energy increases and therefore the operating cost effects that needed to be funded through the periodic review process, but that certainly was not taken into account and explicitly identified as part of that impact assessment. Thinking ahead, we are at the point now where we have to implement the Water Framework Directive and I think what is key is that all of those impacts and costs are identified. We are not seeing that at the moment because it is focusing on the pound notes costs. It is taken into account indirectly because in looking at the costs, the energy costs are taken into account, the operating costs, but it is not putting a price on the external costs, the carbon impacts. I think it has been difficult to do that, how do you

come up with the pound notes for carbon and methane production and so on. It is perhaps easier if we could use Nicholas Stern's estimate going forwards, but I think it has got to be explicit.

**Chairman:** If the RIAs are supposed to have a sustainability dimension to them, not exposing an increase in electricity requirements of almost a quarter seems to me to drive a coach and horses through the whole idea. Whatever the costs might be, the fact is that is not a sustainable policy change to achieve other perhaps desirable objectives.

**Q40 Colin Challen:** Your memorandum describes other fundamental problems of RIAs as a lack of clarity as to what they are supposed to be. Is that lack of clarity in itself a burden?

**Ms Spencer:** Yes, I think so.

**Mr Silcock:** I think inevitably it is, whether it is lack of clarity of what it is supposed to be. We set out there three possibilities and I think we are very much in favour that RIAs should be about informing good policy making as opposed to being about something that occurs towards the end of the policy making process as some sort of check on a policy that has already been derived. To the extent that if there is confusion about what an RIA is supposed to be about, that will clearly limit its value or limit how it is seen.

**Q41 Colin Challen:** Would one possible approach to this lack of clarity be paring down an RIA, perhaps redefining it in a more focused way? Would that be your preferred approach?

**Mr Silcock:** I think there is quite a lot of impact in the BRE consultation in terms of where that is heading and, in essence, it is sort of going in that direction in suggesting that perhaps an impact assessment needs to be fit for purpose at the time that it is deployed so that one which is done rather early in the process might be quite limited in terms of the level of detail that is included in it, but nevertheless needs to tackle the key issues. I do not agree, on the other hand, with the concept that you can decouple certain elements of the RIA. I think, as we mentioned before, it is important that it takes a holistic view which uses potentially some of these other pre-existing assessments as information to inform a more holistic viewpoint.

**Q42 Colin Challen:** In trying to achieve that holistic view of course, the holistic view is all of the thing, is it not, and of course business would rather government kept out of more regulation in trying to cover perhaps more of that holistic entity, so is there not a bit of a contradiction there, that if we have to get better regulations for sustainable development, we might actually have to look at more regulation rather than less, but obviously better-defined regulation?

**Mr Silcock:** I think that the regulation has to be right and better, and it is a bit trite to say so, but we are not coming from a point of view which says that more regulation is better or less regulation is better, it is just that the focus on considering the potential costs and benefits should be there at the time that the

policy decisions are made at the appropriate level of detail that one can reasonably employ at that time. I see the RIAs as looking rather different as they go through the policy-making process.

**Q43 Colin Challen:** But you would accept that better regulation might be one which, for environmental reasons, increased costs to businesses?

**Ms Spencer:** Potentially, but I do not think it would necessarily increase the costs to business in our case because our experience is that the regulation which is causing us to invest something like £300 million a year, which we have done since privatisation, is causing us to increase our energy usage. I think you could get sustainable outcomes without incurring those costs, so I think you cannot necessarily say that regulation will increase costs. In fact there are two pieces of regulation which we actually want to see as a water industry and as Anglian Water in particular. One of those is biosolid sludge regulations where at the moment we are reliant on a voluntary code which is satisfactory in that we have a very robust process, but the end customer of agriculture, particularly the malting industry, are not confident in those voluntary regulations and they would get a lot more comfort if we actually saw sludge regulations. That will not add any costs to the industry because it is just putting into regulations what we already do in practice, but it significantly reduces our risk of losing the sustainable route for our sludge. Another example is around sustainable homes and the Anglian region is subject to the highest levels of growth as a result of what was ODPM and so on, and we want to see water efficiency in building regulations and we see that as a sustainable solution. I think I have probably said that to this Committee before. We do not see that in the long run adding significant costs. It might change the impact of the costs on different sectors, but I do not think it is right to say that the regulations will necessarily add costs. I think it just makes sure that the costs are in the right place and with the right impacts.

**Mr Silcock:** Just to add to that, in terms of administrative burden and the costs of that, from the business perspective that is always likely to be a bad thing, but we are not saying that an increase in that burden is unacceptable if, in the round, the overall benefits, including taking into account the policy costs and benefits, outweigh that increase in the administrative burden.

**Mr Gibbs:** Just to add to Jean's point about the sludge regulations, we would see that as a way of reducing long-term costs because without the regulation there is the potential to lose the sustainable outlet and the alternative outlets which we have been presented with would be extremely expensive and also detrimental to the environment in terms of incineration, so with good regulation in place and the right regulation, it can actually lead to a longer-term reduction in costs.

**Ms Spencer:** That is right and good science behind those regulations.

**Q44 Colin Challen:** I am fascinated by the sludge of course and it begs the question whether sludge is a waste or a resource if you are looking at anaerobic digestion and all that sort of thing. Do you feel, if you were to recast regulations, that really perhaps the best way to do that would be to ensure a greater voice for industry? We do tend to have this argument, and the Companies Bill last week going through the House is a good example, where it seems that politicians and regulators are at odds with business. Do you share that view and, if you do, how would you go about remedying it?

**Ms Spencer:** I think business does need to be more involved in the setting of policy and regulation. Again if you take an example of sustainable homes, presumably there was a regulatory impact assessment in there, but nobody spoke to the water industry and it was not engaged in doing that assessment, yet you cannot have sustainable homes without looking at the impact on water resources, waste water and so on, but you need that involvement of the people who are having to deal with the consequences of the policy and the regulation to ensure that that policy is well-founded. I think yes, we do need to be involved earlier.

**Q45 Colin Challen:** Perhaps to satisfy my own curiosity on this question of sludge—

**Ms Spencer:** “Biosolids”, we prefer to call it.

**Q46 Colin Challen:**—would you say in the regulatory regime that we have at the moment that it is cast mainly as waste or is it increasingly seen as a resource, from your perspective?

**Ms Spencer:** From our perspective, it is a resource because that sludge actually is treated and it then becomes biosolids, so we see it as a product, and we can all wax lyrical about biosolids, but I think there is a huge risk that it suddenly switches and there is confusion about it being treated as a waste. If it is treated as a waste rather than a by-product of our operations, then that will have huge consequences in terms of cost and unsustainable solutions. Biosolids and disposal to land is the most sustainable way of dealing with those biosolids.

**Mr Gibbs:** We have gone as far as actually branding the product that we produce which we are calling “Nutribio” and there is a high demand for it from farmers because farmers see it as a valuable resource to add nutrients to the soil and also to add moisture and organic matter. At the moment we have a bigger demand than we can produce which is a fantastic position to be in. The alternative involves basically burning it and you end up with a product which ultimately has to go to landfill and unless you can get good energy recovery, we believe that the better option is through the agricultural route.

**Ms Spencer:** There is a huge risk that in Europe it comes under the Waste Directive, it becomes a waste and, therefore, forces an unsustainable solution. It is one that, both through Anglian Water and Water UK, we are lobbying quite hard on making sure that it is not classified as a waste.

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**Q47 Joan Walley:** Can I just pick up on one of the points you were responding to Mr Challen about in respect of the short, medium and long term. How much do you think the time factor and the time that it takes to get pay-offs over time from investment now should be part of the way in which we look at regulation?

**Ms Spencer:** I think where we are at the moment is that we look for those short-term solutions, so the end-of-pipe solutions. If you take the impact on the drinking water side, there is huge investment in terms of nitrate removal, and we have to do that now because the nitrate is in the system, so for drinking water quality we have to address that. I think the question is: what actions do we need to take now so that in about 20 or 30 years we can actually do away with that by taking the nitrates out of the system through the farming practices and so on? The Water Framework Directive might help with that because that is looking at protecting water sources, but I think that will take a long time to come through in terms of being able to abandon the technical solutions we have on drinking water quality, but we need to do that because of the impact on climate change and so on.

**Q48 Joan Walley:** Do you think that is sufficiently taken into account?

**Ms Spencer:** No, no.

**Q49 Joan Walley:** So how could it be taken into account?

**Ms Spencer:** I think we really have to address the issue of diffuse pollution, but then you have to look at the impact on agriculture and the impact on the farming sector and I am not sure that there is the will to actually do that because it is much easier for us to do it, for Paul and Paul's part of the business to treat end-of-pipe solutions because we engage with that debate and we understand the processes and there are technical solutions. I think it is much harder, but I think it is something that has to be done.

**Q50 Mr Hurd:** RIA guidance specifies that RIAs are to be carried out "for all policy changes, whether European or domestic, which could affect the public or private sectors, charities, the voluntary sector or small businesses". Are you satisfied that coverage within these areas is sufficiently comprehensive and is such a wide approach feasible?

**Ms Spencer:** The National Audit Office Report found that where the required regulatory impact assessments are carried out, and I think we have made the point that the scope of those impact assessments needs to be widened, but I think we would challenge why would you just limit it to those sectors and it should be applied, I think in our view, to all policy decisions. We are not the experts in terms of pre-Budget reports, we are just standing outside government, but I think we would question why not, why would you not look at all the impacts of all policy decisions.

**Q51 Mr Hurd:** Do you think such a wide approach is feasible?

**Ms Spencer:** Yes, I think so if you can keep them simple. I think it needs to be made easier for people carrying out impact assessments. If you are looking at costs and benefits, the direct costs are easy enough to get at, but it is evaluating the other costs and benefits and I think that is partly why they are not done well because it is difficult. I think Better Regulation refers to a toolkit and if that toolkit includes that the price of carbon is X, I think we can have a good go, it should be possible to have a good go at assessing what CO<sub>2</sub> emissions are, but then in putting a price on it, you do not need to reinvent the wheel every time and it is about having a look at the table to say, "Well, it's this". We focus on carbon, but similarly for biodiversity, the loss of biodiversity and the impacts on biodiversity, it should be possible at a national level to say, "Well, this is how we value biodiversity". It is one of those issues which, as a regulated sector, we never funded for biodiversity in terms of protecting it because there is no pound-note value to it. Again I do not want to criticise, but working with an economic regulator, unless you can put pound notes on it, it does not get recognised, but it should be possible, just like you have the green book for discount rates, to have a green green book which says that the carbon impact is £X, biodiversity is £X and social impacts in a similar way, so I think it is about making it easier for people to do. It is not a criticism, it is difficult to do those other impacts, but I think it is something we have got to address.

**Q52 Mr Hurd:** Just on the carbon point, leaving aside the price issue which I quite understand, how easy actually is it, if there were a requirement, to measure the carbon impact? How easy do you think that would be across this range of sectors?

**Ms Spencer:** I think on energy usage reasonably easy, and on methane impacts it is more difficult. You will be looking ahead here, but it is something we have not been terribly good at estimating and measuring methane emissions, but I think it has to be done. I suppose it is really over the last 12–18 months or two years when climate change has really come to the fore that we say, "Yes, we've got to do this. It's not nice to have", whereas I think in the past it has been more nice to have than an essential that we do that.

**Q53 Joan Walley:** Just picking up that point about climate change really coming to the fore, in your evidence you have really highlighted the way in which the regulation is really a matter for central government and it does not apply across different public bodies, it does not include local authorities which I find quite interesting really because I think the key theme of the current Government White Paper is all about partnership. You give that very wonderful example of all the investment that you have made to get clean beaches, and I would like to know which beach it is actually, and the fact that whatever you did was not matched by the local authority and because they did not invest in the public toilet, they did not get the clean beach award. Can you elaborate on that and can you perhaps show that what central government is requiring

needs to be matched through partnerships with other bodies, whether it is local government or other businesses?

*Ms Spencer:* I think it is saying that regulatory impact assessments are done at a point in time and it is then how do you make it clear who is accountable for delivering those costs and benefits.

**Q54 Joan Walley:** Is the assumption that the accountable body or the accountable person is just one body rather than requiring a kind of partnership approach?

*Ms Spencer:* No, I think it has to be a partnership. I think that is what we are trying to say, that everybody has to recognise their accountability to deliver the outcome.

**Q55 Joan Walley:** But that is not accepted in the way it is done, is it, otherwise the council concerned would have had to have found the money to match your investment to get the clean beach standard?

*Ms Spencer:* And take account of all of that regulatory impact assessment in deciding not to invest.

**Q56 Joan Walley:** Which council was it, by the way?

*Ms Spencer:* I would rather not say. I do not think it is really fair on that particular local authority to say.

**Q57 Joan Walley:** But you feel that it ought not just to be central government, but it ought to be other bodies as well?

*Ms Spencer:* Yes.

*Mr Gibbs:* I think the overall issue with blue flags, it is a partnership approach, it has to be a partnership approach, and I think it is fair to say that a lot of emphasis has been put on the water companies to drive the push towards blue flags and good bathing water standards quite obviously because a lot of the pollution used to come from primary treatment, sewage treatment works, so there has been an awful lot of investment put in place to up the standards and to meet the standards required. I think because the focus is on the water companies, it has not been extended widely to cover all of the agencies involved and that example was a very good example because, with a bit of joined-up thinking earlier on in the process, that situation could have been avoided.

**Q58 Joan Walley:** So how do you get that joined-up thinking through regulation?

*Mr Gibbs:* I think, from my perspective, that needs to come very early on when the directives come through and it needs to be picked up very early on in the impact assessment process. I think we are guilty there of focusing on one agency to meet the requirements of a directive rather than encompassing all in a partnership approach, as you have stated.

*Ms Spencer:* I think it is also because it comes back to Mr Challen's point about who do you involve and when, and I think it is the need to involve all of those partners who are going to have to take action to deliver the outcome, but I think it comes back as well that the water industry is easy to engage with.

**Q59 Joan Walley:** How can that be done?

*Ms Spencer:* It has to be done at a regional level or there need to be mechanisms to do that—I am thinking aloud here—whether you do it through something like the regional government offices which can pull all of those issues together because they are working alongside various parties, local authorities, health authorities, water companies, so there should be mechanisms perhaps through that process to pick that up.

**Q60 Joan Walley:** What about local area agreements that local authorities have with other partners to agree set targets in terms of policy areas across the board?

*Ms Spencer:* The only reason I am hesitating is that in our region with 60 local authorities, which in itself makes it quite difficult to actually engage with all of them, it is how do you get an umbrella organisation to pull those together in making those decisions, but there are mechanisms. In our region we have Go East as the Government Office and there is also the East of England Development Agency which ought to be capable of having a role in pulling those issues together.

**Q61 Joan Walley:** Do you find that they do have that role?

*Ms Spencer:* It has worked better with things like the Regional Spatial Strategy and the examination in public has pulled together the various aspects, but I think it is difficult actually. There is no easy answer really.

*Mr Silcock:* One of the things that it seems to me might be a plausible thing to do would be to make it more visible to the bodies which are involved in making implementation decisions in relation to policy, the reasoning and the costs and benefits that went into the earlier policy decision, so to make that visible to those bodies and somehow place some sort of expectation that those costs and benefits are taken into account within the local context. Coming from the other side, for those departments perhaps in central government who are coming up with regulatory impact assessments, there needs to be some way of looking forward towards the potential implementation options that might be available to implement those policies, so, if you like, identify the key groups and stakeholders that might be involved in implementing policies, take a look at where they are coming from in terms of the lens through which they will look at the particular decisions they will have to make and try in some sense to predict what sort of choices they may need to take and do all that at the time you are considering the main policy decision itself. It is sort of connecting the different phases of the policy-making process together, so to the extent that you might get a gap in that you come up with a policy and then shove it out somewhere else to be implemented, it is realising that there are decisions which are made lower down the tree, if you like, that will impact the conventional outcomes.

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**Q62 Joan Walley:** The NAO have highlighted to us that they identified that there were few social or environmental impacts, that they were not really all covered. How do you think we can explain this poor consideration of these issues? Do you think it is restricted scope, lack of awareness or other factors?

**Mr Silcock:** I think restricted scope in some instances clearly does seem to take an account, and I am really only going on what I have read from the NAO as well, but it is difficult. It would seem to me that the fundamental reason is that taking account of environmental and social impacts is inherently much more difficult and uncertain than taking account of economic impacts because in most cases there is no obvious value to be ascribed to those impacts and, therefore, it is perfectly understandable that less account is taken of those. Now, I think the broad thrust or one key focus of improving this approach should be a real push perhaps from the centre to try and help policy-makers value those costs and benefits which are currently very difficult to value. The idea of a toolkit that the BRE are suggesting, I think, is a very valuable one, a very good one, and that is where giving some central government weight behind the sorts of values that policy-makers might use across both central government and in government agencies or local government, I think that would be a very important thing to take forward.

**Q63 Joan Walley:** I think really you touched on this earlier on, but do you think it should be a requirement to address environmental concerns irrespective of the topic under regulation?

**Ms Spencer:** Yes, definitely.

**Mr Silcock:** Yes.

**Q64 Joan Walley:** Do you think that it is likely to happen, that it is now on the radar, or do you think that is a message that needs to go out much more strongly and clearly?

**Ms Spencer:** Hopefully with the Stern Report yesterday and the increasing focus on the impact of climate change yesterday, I would hope it would be taken into account and be seen as being essential.

**Q65 Joan Walley:** I think one of the issues that we find is with all of this it is the devil that is in the detail. We had Stern yesterday and there is a huge amount of work that needs to be done. What kind of corporate responsibility do you have within the area that you cover and the 60-odd local authorities that you work with to try and get this message across or to try and increase public awareness because, otherwise, there will be no public buy-in to these ideas which are actually very technical and very complex? What are you doing to engage with the public on this?

**Ms Spencer:** I think a number of things and one of the key things we have done recently is that we are reinvigorating our education programme, so we are opening education centres across our region and also we are in the process of setting up a mobile education unit that we can take out to schools. A key part of that, as well as looking at the water cycle and

so on, is picking up the impact of climate change, pushing on water efficiency and so on, so that is one area and that has been the main focus of the last 12–18 months for us, to get that up and running. We are also very focused on things like water efficiency and trying to link that into climate change and so on, but I think we do have a responsibility. We are also looking at how we can widen out the climate change impact message more widely and that is something we are actually actively looking at at the moment because at the end of the day the impacts come back to our water sector and to our customers, so we are looking at that message. The key thing at the moment is picking up on the education side and how we get that message out to schools.

**Q66 Chairman:** You have referred to the difficulty of measuring some environmental impacts in monetary terms, but what are the other ways in which they can be measured which might be helpful?

**Mr Silcock:** Carbon footprinting, I suppose, is the obvious quantitative measure that springs immediately to mind, and certainly that has a lot of merit. I think that getting to a monetised measure is still important notwithstanding that because it seems to me that that is the only way one can compare options one with another and make the trade-offs that need to be made, but I think measures such as carbon footprinting have a lot of merit in them. If one is unconfident about converting that measure into money, then that measure may very well be useful for comparison purposes. Now, there may be other measures, and I do not know, I am not an expert in this, but if you were looking at biodiversity, for example, you might have a measure of species loss or something of that nature which would equally be quite important. I think one of the tasks is to try and do some work on what are the measures which would be useful and what are the measures which are measurable and what is practicable to do. That is something that we are concerned with ourselves and we are doing work on to try to understand what we actually can do to measure this stuff, but certainly a push from government towards that would be extremely useful.

**Q67 Chairman:** What about the question of whether RIAs should be subject to a better review process? Do you have a feeling about that?

**Mr Silcock:** I think it is difficult for us to comment really from the outside. We are not really clear on what the review process currently is, so it is a difficult one for us on that.

**Ms Spencer:** I think it seems sensible in the Better Regulation Report that it is suggesting sign-off by ministers and so on, but I think the question is how robust is the process behind that.

**Q68 Mr Hurd:** How content are you with the effectiveness of UK RIAs in relation to the implementation of EU legislation? Can you give us an example of how your company has been affected by it?

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**Ms Spencer:** I think our experience is that once an EU Directive is in place, the assumption is that we have to implement it irrespective of the impacts of that Directive.

**Q69 Mr Hurd:** There can be quite a broad scope in how it is implemented.

**Ms Spencer:** Yes.

**Q70 Mr Hurd:** The issue is how robust we are in reviewing all the options.

**Ms Spencer:** Yes, I think that is right and I think Paul gave as an example P removal. There are other examples as well. There is the Hazardous Substances Directive and I think what we found there is that, in its original interpretation, it was being proposed that we would have to register every one of our premises because they all have hazardous waste of some kind or another mostly because they have some control panel where then ultimately we will have to dispose of that electronic equipment. As it is envisaged, we would have had to register 25,000 premises even though some of them are little huts, cabinets on the site with a control panel inside. Well, that was clearly gold-plating and was completely unnecessary, though I did not see the regulatory impact assessment for that, but I cannot imagine that it was not required in terms of the original EU Directive, so there needs to be absolutely robust application of that regulatory impact assessment when it is translated into UK legislation and is then implemented. I think it does need to be enhanced.

**Q71 Mr Hurd:** What is your reaction to the BRE consultation document?

**Ms Spencer:** I think our view there is that there are a lot of good positives in there and particularly it is very clear that there is a requirement to include the environmental and social costs and that it has to

address sustainable development principles. It is very positive that it says there has to be a statement where we are going beyond the EU Directive requirements, positive in that it is envisaging a toolkit, although I would question what that would look like. I think our concerns with it are principally that there should not be a separate environmental assessment, that that needs to be brought into looking at the overall impact. I think it is a good thing to change the name to an 'impact assessment' rather than a 'regulatory impact assessment' because then it covers all of those impacts, but not taking a piecemeal approach. I think where we are concerned is that, if you look at the pro forma for the summary, sustainable development is somewhere down lost in the detail with the sort of yes/no, and I think where we would want to see it much clearer in terms of looking at the impact is right up-front and more prominent than that. Do you have any comments to add, Martin?

**Mr Silcock:** No, I think that is right. I think we are pleased that it is trying to focus on the core purpose which is the clarity and rigour of analysing benefits and costs across the three strands of economic, social and environmental, and it seems to me that is a very positive thing coming out of it. The negative thing for us is that talking about decoupling certain aspects of the assessments seems to be misguided, I think, and we need to bring those aspects of the assessment into the holistic perspective.

**Ms Spencer:** But I think also that it is good that the regulatory impact assessments state that it is not thrown away and something else put in its place because it is recognised as a requirement and it is being complied with, it is just the quality of that compliance.

**Chairman:** Well, thank you very much. That was very helpful and interesting. Thank you for coming in.

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**Tuesday 7 November 2006**

Members present:

Mr Martin Caton  
Mr David Chaytor  
David Howarth

Mr Graham Stuart  
Dr Desmond Turner  
Joan Walley

In the absence of the Chairman, Mr Chaytor was called to the Chair

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**Memorandum submitted by the Office of Gas and Electricity Markets (Ofgem)**

1. Ofgem is the regulator of gas and electricity industries in Britain. Ofgem's principal objective is to protect the interests of present and future gas and electricity consumers, where appropriate by promoting effective competition. We also have important duties relating to the environment, sustainable development and security of supply. We welcome the opportunity to respond to the Committee's inquiry into policy appraisal and regulatory impact assessments.

2. Ofgem has a duty under section 5A of the Utilities Act 2000 to undertake impact assessments (IAs) including, in particular, an assessment of the environmental impact of any important policy proposals that we make. We also have a duty to carry out our functions in the manner best calculated to contribute to the achievement of sustainable development. We take these duties very seriously and have sought to develop a rigorous approach to IAs in line with best practice, while ensuring that our decisions are consistent with our wider statutory duties. We will accordingly pay close attention to the recommendations that emerge from the Committee's enquiry and from the Cabinet Office's consultation on impact assessments.

3. In order to promote best practice we provide guidelines and training to staff undertaking impact assessment based on, as much as possible, methods that are standardised across government. We therefore draw on the guidance prepared by the Treasury, the Cabinet Office, and we participate in the important ongoing work by the Interdepartmental Analysts Group, which advises on the Climate Change Programme, and the Interdepartmental Group on the Social Cost of Carbon.

4. Ofgem looks to identify to the greatest possible extent the environmental effects of its proposals before making final policy decisions. Wherever possible therefore, we quantify the environmental costs and benefits of any particular proposal and consider how large the potential environmental impacts are in relation to other costs and benefits of the proposal. Where impacts are relatively minor, it is not always worthwhile to undertake a quantitative appraisal of costs and benefits. In such cases, our IAs contain a qualitative assessment of the environmental impact of a proposal.

5. In our IAs we consider whether a policy proposal gives rise to any material issues relating to unequal distribution of benefits or costs between groups or within a group, for example between rural and urban customers. We also consider the social impacts of policy proposals in line with guidance issued by the Secretary of State.

6. Ofgem notes the criticism made that including an assessment of sustainability impacts in Government IAs has not been as successful as it might in driving change across Government. The Committee asks whether or not IAs should continue to be seen as the key vehicle for appraising policies against sustainable development principles, given the serious weaknesses recently highlighted by the National Audit Office. To the extent that the criticism is warranted, Ofgem suggests that the aim should be to improve the quality of the analysis contained in IAs. For our part, we are currently looking at the structure of our IAs and at whether we can bring together the environmental impacts with the social/distributional impacts to provide a fuller picture of the impact of our proposals on sustainable development.

*October 2006*

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*Witnesses: Mr Steve Smith, Managing Director—Markets and Ms Sarah Harrison, Managing Director—Corporate Affairs, Office of Gas and Electricity Markets, gave evidence.*

**Q72 Mr Chaytor:** Good morning, Sarah and Steve. I am taking the chair today in the absence of Tim Yeo, the Chairman of our Committee who is in foreign parts. We are a small but very select group of committee members this morning. What we lack in quantity we will make up for, I hope, in quality. Our sessions are fairly informal. You know our interest in Environmental Impact Assessment. We have had one informal briefing seminar; we have had one

previous session with two witnesses; and this session today which will be our final session. In the second half of the meeting we will interview representatives of Friends of the Earth and then move to writing our report. Welcome to the Committee. We have received your memorandum which was short and sweet compared to some memoranda we have received on this topic. To a degree I felt slightly ambiguous because we were trying to get a fairly

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specific view of whether people thought the RIA system was working or not and you tended to sit on the fence. Could you clarify the Ofgem view of RIAs in general; are you content with the way it works; and do you think it does give adequate coverage of sustainable development and environmental issues?

**Ms Harrison:** Thank you for inviting us to come along today. Can I begin perhaps with a couple of introductory remarks and to explain, for your benefit, what Steve and I do. My responsibility at Ofgem with a corporate affairs brief is to look after the way in which the organisation approaches its work on Impact Assessment, and to make sure that we fulfil our section 5A duty to conduct Impact Assessment in respect of important decisions, and I have a small Better Regulation Unit that is charged with that. Steve will explain himself that his area of policy includes the environmental team, and within that team we have some expertise that particularly helps us in considering the environmental aspects and elements of our policies and our processes. I think that the particular issue on our view on RIAs is that, as an organisation, we have now had a statutory duty to conduct RIAs since 2003. We have in fact been doing that as part of our policy process since the middle of 2003. We have conducted some 70-odd in the time that we have been pursuing that. I think I very much agree with some of the remarks, and conclusions if you like, the NAO draw out of its briefing to the Committee. Basically its assessment was that RIAs have some way to go, but as a basis we ought to continue to invest in them rather than rather look to an alternative. I think that is very much our view. Our own practice on the development of RIAs really has evolved very much in the three years that we have been conducting them. We see them as very valuable tool as part of our policy development-making process. In respect of sustainable development, in particular the ability of RIAs to accommodate sustainable development, I think you have to look from our perspective at least at the context of our duties and the statutory framework in which we operate, because that drives some of the elements we consider in developing our Impact Assessment. Our statutory framework includes our principal duty to protect consumers present and future; but it also encompasses duties in respect of economic efficiency, in respect of the environment, in respect of the needs of vulnerable customers, and indeed in respect of the achievement of sustainable development. All of those things together combine to support the consideration of sustainable development in our policy and, therefore, translate directly into the Impact Assessment process. I think that is a very important linkage in considering the effectiveness of the IAs. The other comment we would make about IAs, picking up again on the sentiment from the NAO briefing, is that the real challenge is in respect of the rigour, if you like, of the analysis and assessment that goes into initiating and then developing the RIA. That is an area which for Ofgem as an independent regulator whose stock in trade is independent analysis of policy options, where consideration of proposals is very much core to what

we do. Therefore, I am not saying our practice is perfect, but I think our practice is strong by reference perhaps to other approaches that may be taken. It is something we will continue to invest in.

**Q73 Mr Chaytor:** Could I just clarify one specific point. Your duty under section 5 concerns Impact Assessment—do you follow precisely the same model as the Government’s own Regulatory Impact Assessment, or is there a different methodology? How do they relate—the Ofgem Impact Assessment and the Government’s regulatory practices; are they identical?

**Ms Harrison:** The statutory duty is to undertake Impact Assessments in respect of important decisions, and in particular also to consider environmental effects. We have developed our own framework. We very much look to the Cabinet Office and Better Regulation Executive’s guidance. We also look to the NAO’s experience and comment as part of its scrutiny role. We have developed our own framework; and essentially our framework identifies the objectives of a policy, the issues for consideration; the effects on competition; and then it also looks at the impacts, be they environmental, be they distributional, or be they impacts on health and safety. All those matters are related to our statutory framework.

**Q74 Mr Chaytor:** Would it be possible to send the Committee a copy of your framework so that we can compare it with other models?

**Ms Harrison:** Yes, of course. We have actually published our guidance on Impact Assessment, and we will in fact, as an organisation, be reviewing it in the next six to nine months to take account of a number of factors, not least of which will be the report perhaps of this Committee.

**Q75 Joan Walley:** Can I just press you a bit further on that. You have given us a description of how you apply this but what I do not understand—given the comment that you made that you noted “the criticisms made that including an assessment of sustainability impacts in Government IAs has not been as successful as it might in driving change across government”—is whether or not it is the way that it is applied, or whether or not it is the actual form of sustainable development not being at the heart of the Impact Assessment in the first place?

**Ms Harrison:** Two points on that. First of all, I think there are the challenges about the way in which IAs are fulfilled, and at the heart of what our operational Impact Assessment approach is about is trying to give the fullest and most thorough analysis of the policy options available; and it is the commitment, if you like, to undertake that full and thorough analysis which is key to making it work well within the existing framework. Secondly, in terms of the framework going forward, we ourselves are looking at our own framework for Impact Assessments. In particular we will be asking ourselves the question, “Can we improve the way in which we consider sustainable development issues at the moment?” As I outlined, we have a requirement to look at

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distributional effects, to look at economic effects and to look at environmental effects; it is a question for us to consider where we can improve our practice in the way in which we very specifically take account of sustainability issues.

**Q76 Joan Walley:** Do you think as things stand at the moment with the Regulatory Impact Assessment that Government does, that that pays the accounts to sustainable development that should really be there?

**Ms Harrison:** I am best qualified really to comment on our own approach. I do think there are some differences between the approach that we pursue and perhaps those that other Whitehall departments pursue. The point I am making is that one of reasons for that is that our approach is really driven by a detailed statutory framework and set of duties which specifically points us towards all the elements of sustainability. My comments are really in particular about our own approach.

**Q77 Joan Walley:** Would you say that what you do is more likely to result in sustainable development than the Government approach?

**Ms Harrison:** I am saying that our approach specifically asks us to look at the elements of policy and how that impacts upon our duties; and those duties in the round contribute to sustainable development. Our approach is quite targeted in that respect. It can be improved but it is quite targeted.

**Mr Smith:** The problem is, being candid, with the RIA template, if you push it, and say, "It must have a section where there is sustainable development", it will only be as good as the effort and energy that is put into doing that assessment. Being candid, part of my role in Ofgem (I have the environmental brief) is to challenge colleagues at board level and say, "Have you really thought about the sustainable issues here?" and to be a champion for that. The actual analysis you have to do under sustainability is very hard and it is difficult. I think you need not just the requirement in the IA itself to do it, but you need the commitment from senior people, whether it is a Government department or Ofgem or whoever, to do that. I do not think people are unwilling but it is the section they come to and think "Gosh this is actually really difficult", and it does not lend itself as well to the financial analysis you do in the other sections of the IA. I think it is all about the commitment you get from whoever is producing the document to do what would be the hardest part. Certainly in Ofgem there is no lack of enthusiasm; but in many of the policy issues we deal with it is the most difficult part to actually work out what the sustainability aspects of the proposal are.

**Q78 Dr Turner:** Sustainability is a recent addition to Ofgem's framework of responsibilities. Prior to that I think it is fair to say that a much more potent driver for Ofgem was security of supply. Having the RIA mechanism in existence, how does that actually help you in a) developing the sustainable development agenda as far as Ofgem is concerned; and b) also

continuing this security of supply? Or is it perhaps a hindrance? Are RIAs truly relevant to what you are doing? Do they help, or do they not?

**Mr Smith:** I think they do help because it is an important discipline and it is a way of making you think about something you are going to do, your policy, from a range of different angles. I do not think we see a big conflict between security of supply and sustainability; because in some senses it really just points to the cost of achieving anything. If you look at the generation sector, you can have security of supply with any series of generation technologies, it is just that sustainability may push you to more expensive generation technologies. I do not think we see any conflict between the two. I think the IAs are a helpful way for any policy of really focussing the mind to say you can rush to thinking this is the answer, but then you have not thought through all of the different aspects, including impact on sustainability. I think it is just a useful tool to make people think as they are developing policy across all the different dimensions.

**Q79 Dr Turner:** Could you be more specific about the system in terms of driving sustainable development?

**Mr Smith:** I can give you some recent examples. For example, we are in the middle of price controls on the network companies, and there was an issue that came up as the network companies use SF6, which is a very nasty greenhouse gas, very potent; and through that framework of IA analysis we said, "Hang on a minute, there is an issue here". It led to us to propose actually having an incentive on the companies to manage and, hopefully, reduce any leakages of this from the system. There is an example of where the framework drives you. Normally you would be thinking about efficiency and costs and the usual things you do under price control, but here you actually stop, take a step sideways and say, "There's something where we could make a positive difference".

**Q80 Dr Turner:** That sounds very useful. It would be even better if you could force them to find a replacement that was not a greenhouse gas?

**Mr Smith:** Indeed. We are assured by our engineers that that is impossible, and actually what you need to do is make sure that none of this stuff ever leaks.

**Q81 Dr Turner:** It always will. How do you feel that this system places you in helping Ofgem to make a contribution to what Stern is now going to require of all of us?

**Mr Smith:** I think it helps us in two ways. To be honest, I think we are probably different from other government departments. Because we actually have the SD duty, in some senses even in the absence of Impact Assessment, whenever we are thinking of exercising any of our duties or powers naturally SD is quite close to the forefront because it is one of our secondary duties. For us what the IA process brings to that, because we always have to consult on our Impact Assessment, it really puts us on our mettle. We have to set out what we think the impacts are. If

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respondents or people out there in the real world think we have got it wrong, or we are not doing enough, then it falls to us to set out quite clearly why we are proposing to do something; and what we think the SD impacts are. If they do not agree it gives them a route to come in and say, “Actually, we don’t think you’re doing enough. We think you could be doing more. We don’t think you’ve thought about this aspect”.

**Q82 Dr Turner:** Several of the memoranda we have received suggest that Regulatory Impact Assessment are more concerned with the drive for “better” regulation, which of course most people see as less or easier regulation for those being regulated. They see that there is something of a potential conflict between that driver and the need for sustainable development. What is your feeling about that?

**Ms Harrison:** I think it is right to acknowledge that there are tensions but not necessarily conflicts. I think better regulation is more dynamic than perhaps some people consider it to be. It is not simply about deregulation; it is about smarter and improved regulation to ease the burden on business whilst ensuring the appropriate protection for customers. We very much see it in that context. I think the process of setting out and being required to set out all of these issues and noting, if it is possible to do so, the tensions and testing them externally through consultation really helps to identify where those tensions are and give rising to helping us to consider possible ways forward. It is not necessarily a conflict but I think it is fair to acknowledge there are tensions.

**Q83 Dr Turner:** The National Audit Office have had several things to say about Regulatory Impact Assessments. They seem to doubt whether Regulatory Impact Assessments truly affect policy decisions, or whether in fact they are more often used as a *post hoc* means of justifying policy decisions that have already been taken. How does your experience relate to that?

**Ms Harrison:** I think it is probably best to think about some examples. In answer to that question Steve was talking about the process of the transmission price control review, where we are using the Impact Assessment to think about ways in which to incentivise the reduction of SF6. Another example would be the way we set the price controls for the electricity distribution networks in 2005. As part of that process we looked at whether there was a need for an incentive to promote innovation. There was a question about whether that really was something that was going to be of value and use. We tested it through the Impact Assessment process. We also additionally brought in some consultancy to help look at that. The conclusion of all of that was that we moved our position. We concluded that it was worth putting in place an incentive on companies, known as the “Innovation Funding Incentive” which is worth about £1–2 million per company per year. What we have seen as a result of that interestingly, and can share the detail with the Committee if it is useful, is a real increase in response

of the companies to their consideration of R&D in part as a result of the new incentive arrangement being put in place. That was a practical example of where a shift in position as a result of the IA has also led to a shift in approach.

**Mr Chaytor:** That is a good response to the critique. You have given us good examples of where things have moved as a result of RIAs.

**Q84 Mr Stuart:** Another criticism of RIAs is that they are tools of government; and they are an intellectual Whitehall exercise far removed from events on the ground and the key players affected by the policy. Do you think there is any justice in that concern?

**Ms Harrison:** I have heard that criticism and I think, again, I have to look at it in our own context. We very much see IAs as the tool to set out policy proposals and there is a framework for testing those. What makes that whole IA process much more dynamic, which is how it should be looked at, is not just in terms of the exercise on paper but the process it gives rise to, which is the challenge from consultees; the information input through the consultation process to make it a really rich process, and therefore one that can properly inform our decisions. I think if you apply it in that way then it will not suffer from the criticism of being remote. I think it has to be looked at in that way: it is not an end in its own right.

**Q85 Mr Stuart:** In your opinion, are stakeholders sufficiently informed and consulted regarding the process? Are there any areas of stakeholders who you feel could be better acknowledged by RIAs?

**Ms Harrison:** Again, in our own experience the consultation process, and indeed the process of setting out policy proposals in the context of IAs and other consultations, is really what our core business is. In terms of our consultation process, pursued like a lot of the different measures, we make sure we really do engage stakeholders, including those who have environmental interests, those who have concerns in respect of fuel poverty and those who have concerns with the breadth of our work and consideration. That process is not just about written responses. A typical policy development process that we would pursue would have an IA as part of the paperwork, if you like, but would very much be supported by seminars, by meetings, by events, to really make sure we get the strongest, most effective input.

**Q86 Mr Stuart:** That touches on Steve’s point about the fact that any of these exercises are bureaucratic and meaningless if they are not accompanied by a culture of commitment to genuinely make a difference. Do you feel that RIAs can at any times be counterproductive? In other words, they allow someone not to be challenged. Can you go through this process, especially the sustainable development, with difficulties with monetisation? Is there a danger that sometimes it becomes a way of not addressing sustainable development in a more central way, in a way the policy is made?

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**Ms Harrison:** That is a difficult one to answer. It is really about the central point that Steve and I have been making—it is about how you go about this process, and what use do you make of it to your policy development process. If you do not engage through the consultation process, if you do not seek to really get the widest input from your stakeholders, then there is a risk that that would be the case.

**Q87 Mr Stuart:** Do you ever find the people with whom you deal do treat it as a paper exercise? Are they able to tick the boxes without really challenging and innovating and thinking deeply about how they do what they do more sustainably?

**Ms Harrison:** I do not think that is our experience. As an organisation we get very good responses from consultees to our proposals and through events we host as well.

**Q88 Mr Stuart:** Is there any way we can make the process more transparent?

**Ms Harrison:** Some of the measures the Better Regulation Executive are considering in terms of the way in which they are looking to develop the IA template and framework are certainly about achieving greater accessibility, and that in and of itself I am sure will help to contribute to getting greater engagement. That is not the only consideration; there are other aspects and we would support many but not necessarily all.

**Mr Smith:** We went through our own exercise in Ofgem of trying to improve the quality of our product and what we put out, and as a result we redesigned all our documents to try and make them more accessible. I think some of what the BRE and the NAO are saying is part of the problem with many RIAs—it is just the way they are constructed and presented; they are not very accessible. Going to your point on transparency, it is really delivering on some of the problems there—short and simple, one-page summaries at the front that anyone can pick up and actually understand what the thing is asking them to do. Yes, I think there are things that can be done in terms of clarity and accessibility of the document itself.

**Q89 Mr Stuart:** The NAO also sampled a number of RIAs and they said that few of them included all the social and environmental impacts that they might have been expected to. Why do you think this might be? What can be done to improve this?

**Mr Smith:** It goes back to what I said earlier. I think it is difficult and, therefore, unless there is really that commitment at the top of an organisation, then it is just a natural human thing that, “This is going to be hard and, therefore, let’s not go there”. It comes back to making clear that it needs to be in there, but then having that commitment right from the top. I think the NAO and BRE have both suggested that you need to have the challenge. Part of my role, because I have the environmental brief, is that I get to see the Impact Assessment we do. If I see it and think that that section is lacking or not really up to scratch then I will say, “Go back to the drawing

board”. That does not always make me popular, but you need to have someone in the organisation whose role it is to do that.

**Q90 Mr Stuart:** The NAO said, something to do with the scoping of the RIA, this takes us to a technical level which precludes proper discussion of sustainable development. Do you agree with that?

**Mr Smith:** I think it is inevitably a risk. It is relatively easy for us as a reasonably small organisation for me to have that role, but I could imagine in a big department you have got lots of people who are detailed technical experts and probably do not have expertise in this area. Unless there is someone who is going to pull them back and push them onto that route then it is probably quite natural that is going to happen.

**Q91 Mr Stuart:** Can you expand? I am particularly interested in any ideas you have as to how the system can be improved so that in other departments sustainable development is fully addressed rather than being buried by technical detail.

**Ms Harrison:** I would like to come back to my introductory remarks which is what Steve’s and my role is, in my corporate affairs function and as a member of the Board, which is to make sure that across the organisation on behalf of the board the organisation is meeting its section 5A responsibilities; and that the organisation is equipped to do that, by promulgating advice and guidance and, wherever possible, supporting this with training as well. Steve’s role is in a similar vein but very much from an environmental perspective and also as a board member. In terms of the top of the organisation, we have got the commitment to ensure these processes are pursued.

**Q92 Mr Stuart:** I suppose I was trying to move away from your organisation. As you say, you are the regulator per se; there are other organisations that do not see that as their primary purpose and perhaps are less committed to trying to find out ways, and you have worked on this, to be applied elsewhere.

**Ms Harrison:** One other practice that we have pursued is the role of scrutiny; and external scrutiny is very important. In our case we put a sample of our own IAs out to external scrutiny and we took the product of that, warts and all, in terms of the feedback. The feedback showed our practice was good in some areas and less so in others. We also published the outcome of that external review. That sort of scrutiny role has an important place.

**Mr Smith:** That went through an independent academic and that is something which big government departments could do. We published the report we got back which said, “Here’s what you’re doing well with your IAs. Here’s what you’re doing less well”. That is a simple thing people could do which pick up and point out some of these problems.

**Q93 Mr Caton:** You have mentioned some of the difficulties in both quantifying and presenting the environmental impacts in RIAs. The central issue

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seems to be how to present environmental impacts in a manner that can easily be compared with the economic impacts. Government officials told us that if the impact cannot be quantified it is often not included at all. How can environmental impacts be presented on an equal footing with costed economic impacts?

**Mr Smith:** We can give you examples. Some of the SD issues we deal with are easier. In some senses the carbon-related issues I think nowadays lend themselves much more to monetisation and putting them on that equal footing. Where they do not we use what we call “qualitative assessments”; so we use scoring out of 10 and things like that to try and develop some ability to compare like with like. We do not just have the problem in SD in our area, for example, when dealing with security of supply and other things; not all issues there can be monetised or can we do hard quantitative analysis. We have got quite good in RIAs of doing qualitative analysis and saying, “Clearly this is not good for the environment”, or, “It’s not good for these reasons”. We cannot quantify the cost of that, but that has got to be weighed up against the benefits on the other side. I do not think I can give you a precise answer, rather than it is just putting effort into thinking about how to do a qualitative assessment if you cannot actually do a quantitative one.

**Q94 Mr Caton:** Could you expand a little bit because I think that is very useful. You say carbon monetisation is a runner—can you give us examples of other sustainable development issues where you use other approaches?

**Mr Smith:** Possibly one of the most difficult ones we deal with is the whole issue of visual amenity with transmission lines and things like that. That still exercises a lot of thought within Ofgem, because you can go and do surveys of people who say to you, “I’d be willing pay X not to have a line near my house”, but you are always a bit sceptical unless they are actually paying it! That is an area where we have had to think about qualitative as well as quantitative assessment.

**Q95 Mr Caton:** Are you confident in your Impact Assessment that the environment is weighted as equal to environmental impacts?

**Mr Smith:** I would say I am confident. I think we have got better. I think probably going back a few years I would not have been able to answer that way, but I think a combination of the change in our duties and also some of the hardening up of the scientific evidence in particular around carbon has made us more confident. There is always that tension for us because we are protecting customers’ interests and worrying about costs. That is that trade-off. As the scientific evidence has strengthened we have got more confident in being willing to spend money in essence on the customer’s behalf to do things, to make the network, for example, more sustainable.

**Q96 Mr Caton:** Continuing on the question of carbon, the Environmental Industries Commission spoke to us last week and they proposed a

requirement for RIAs to assess the impact of policies on carbon emissions, and for this to be included on the summary sheet. From what you are saying, that is what you are doing?

**Mr Smith:** Yes. To be honest with you, because the energy industries are such major emitters, in some sense you would think we were mad if we did not do that. I guess from our perspective carbon is always at the forefront of anything we are doing; but that is just the nature of the businesses we deal with which are such major carbon emitters.

**Q97 Mr Caton:** Is there a danger, concentrating on carbon, that you do not focus on other environmental issues?

**Mr Smith:** Yes, there is a danger, but I think we are alive to it. As I have said there other ones: visual amenity; and the energy sector is a major emitter of airborne pollutants—it is not just carbon—sulphur dioxide, nitrogen oxides. I think there is a danger but I think we are alive to it. I think the rigour of the process, because we have to consult on things, also means that if we have missed something we have got that safety value that people will come back and say, “You’ve got to look at this impact as well”.

**Q98 Mr Caton:** Are there any other areas where you think that in future monetisation will be appropriate in environmental terms?

**Mr Smith:** Nothing immediately springs to mind in our areas. As I have said, with most of the airborne pollutants we are moving towards the idea of trading schemes and permits and things like that, which makes hard quantitative analysis easier. Visual amenity I think remains the most difficult because you can go and ask people what they would be willing to pay but unless you actually ask them to pay it then you will always be sceptical of the results.

**Q99 Mr Caton:** Do you think the urgency called for in the Stern Review is going to affect the future shape of RIAs at all?

**Mr Smith:** It goes back to your earlier question, I guess. One would hope it would make more of the IAs carried out within Government think about the whole carbon issue. I was reading the evidence of the previous session and I think Anglian Water and one or two others saying that carbon was not always thought about. One would hope that the increased awareness and with the Stern Report out there that it would push it to the forefront of people’s minds in a way that it has not potentially done in the past.

**Q100 David Howarth:** I wanted to cover the differences between your processes and the Government’s. First, about the relevance of the Regulatory Impact Assessment in the EU, there are two views which have been put to us: one is that the policy has been decided at the EU level already and therefore that restricts any relevance of Impact Assessment here; and the other view is that there is a fantastically wide range of ways of implementing most Directives and that makes having an IA process even more important. I am just wondering what your view was?

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**Mr Smith:** You are absolutely right. In some sense there are Directives that have affected our industry that were incredibly prescriptive where, in essence, the IA would have been pretty much a waste of time because the law was so prescriptive you simply had to do something. There are other Directives, including one which is very much about sustainability, which is the Energy Services Directive which we have yet to implement where there is big description in their attempts to set principles and things that need to be done without being prescriptive about how. That would seem to be a good example of a Directive where the Impact Assessment process would be incredibly valuable in terms of actually saying, “How are we going to implement this? What measures or policies should we actually put on the ground to deliver the requirements of this Directive?” I think where the Directive is less prescriptive then the IA should be used to work out how it would be implemented.

**Q101 David Howarth:** Does the present UK Government practice distinguish properly between those two sorts of Directives?

**Mr Smith:** To be honest, we have very limited experience because the Directives we have been involved with, the Internal Markets Directives, were I think in a prescriptive mode and in some sense there was not much point. In ESD we have yet to go through that process. I can see where you are driving at but I do not have the experience to answer. Ask me when we have been through the ESD process, I guess.

**Q102 David Howarth:** You mentioned the Better Regulation Executive consultation. I am just wondering what your view about that is. What specifically is your view as to whether it meets the criticisms of the NAO about sustainable development?

**Ms Harrison:** I think generally with the Better Regulation Executive consultation, which we fully engage with, we support the moves they are advocating with one or two exceptions. This is consultation in the early stages but I am sure the policy will develop. First of all, we support very much the proposal for improved accessibility; and we also support some of the monetisation where that is possible. At present the BRE guidance seems to be pointing towards not looking to use qualitative

assessments of social and environmental impacts. Our experience has been whilst it is possible that the drive is to quantify as much as possible as one can on impacts, nonetheless there is a role for qualitative assessment as well. Therefore certainly as far as we are concerned, in the context of our duties we will continue to do that. I think the other aspect of BRE work that we have indeed commented upon is the proposal at the moment to really consider a focus on a single policy option. Again our practice has been and will probably continue to be to prosecute all reasonable options, including the “do nothing” option, to make sure they are tested.

**Q103 David Howarth:** What do you expect the outcome of the consultation to be? Do you think they will take on board what you are saying on present practice?

**Ms Harrison:** I am sure the BRE will be taking a lot of views from a lot of different parties. We have certainly made our views known. As I have said in terms of our statutory duties which very much drive our approach to RIAs, we will follow our own practice where we can and take account of the BRE’s advocacy.

**Q104 Mr Chaytor:** Could I ask one final question before we draw to a close. You have emphasised the importance of your statutory duty in terms of improving the quality of your own Impact Assessment. Is there an argument that a similar duty should be placed on individual government departments, or possibly a public service agreement to promote sustainable development? By analogy, would that improve performance of RIAs within individual government departments?

**Ms Harrison:** Yes, I think the focus it has brought to our own organisation—as I have said, the duty since December 2003, our practice in this area began earlier in that year—having that duty gives a focus and gives rise to the sorts of arrangements we have put in place. It has a part to play. There are other factors that will have just as much value: external scrutiny being one; and consideration of the IA process, not as a process of saying, “Right, let’s make sure it is dynamic” and good practice in terms of consultation. These are other examples of where overall you can improve the present practice.

**Mr Chaytor:** Thank you very much indeed. That was extremely helpful.

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#### Memorandum submitted by Friends of the Earth

We welcome the opportunity to respond to this inquiry. We focus our response on the Committee’s first two questions.

#### INQUIRY QUESTION 1

*Should RIAs continue to be seen as the key vehicle for appraising policies against sustainable development principles, given the serious weaknesses that the National Audit Office review highlights? Is there a better way to ensure environmental, social and economic impacts are incorporated into policy-making?*

Our understanding is that Government intends to make RIAs a more important factor in decision-making. In that context, it appears that RIAs would be, in theory, the most important place for implementing sustainable development principles. Separate assessments of impacts are in future likely to be accorded even less weight than they are at present and this makes it all the more urgent that the deficiencies highlighted by the NAO are addressed.

## INQUIRY QUESTION 2

*If RIAs are seen as the best solution, what steps are being taken to address these weaknesses, including:*

- *the weak link between the structure of RIAs (and accompanying guidance) and the principles and priorities set out in the UK's Sustainable Development Strategy;*
- *the difficulty of ensuring that environmental and social impacts which are difficult to quantify in monetary terms are fully taken into account;*
- *the variable quality of presentation of RIAs, which can inhibit their ability to allow trade-offs between environmental, social and economic impacts to be readily assessed; and*
- *poor co-ordination with other policy appraisal processes, such as European Impact Assessments and Strategic Environmental Assessments.*

We agree with the committee and the NAO that these are key weaknesses to the existing RIA process. We are concerned that the changes proposed by the Better Regulation Executive's current consultation document will to a large degree make these problems worse, and subsequently lead to worse policy outcomes. We understand the BRE's desire to simplify the RIA process, but believe the manner in which they are pursuing this will lead to worse not better regulation. Clear guidance is essential, but achieving integrated outcomes based on assessments which are always going to have both quantified and non-quantified impacts is an inherently complex process, which is already largely ignored. If simplification of the guidance hides this complexity even further, then even worse policy outcomes will follow.

Below we set out our four main concerns with the Better Regulation Executive's proposals, and suggest some ways of addressing them.

- We welcome the intention that RIA's assess the "full range of impacts", but suggest that guidance will need to be clearer to ensure that this happens. We cite below examples of where this important.
- We are concerned that the stronger proposed focus on monetisation will further downplay the importance of environmental and social concerns, and increase the likelihood of "trade-off" rather than integration of policy objectives, in opposition with the Government's stated aims in its Sustainable Development Strategy. To prevent this, we suggest that guidance provides more clarity over how to deal with non-quantifiable impacts, and we give examples below of how this could be done.
- We welcome the intention that RIA's have a stronger, earlier role informing the policy making process, rather than be a justification for policy already decided. However the two above points are central to determining whether the RIA gives decision-makers adequate information to be able to make sustainable, integrated decisions. If these two issues are not adequately dealt with, then giving more weight to the RIA process will lead to worse outcomes.
- Although the consultation is clear in one or two places that RIA will be about all policies (not just "regulations") there is still a hang-over in many places that this agenda is solely about regulation, and indeed a sense that regulation is in itself "bad". The clear purpose of RIAs is to get the best policies, whether through regulations, taxes or other market mechanisms. In this light we suggest removing text such as "*the new impact assessment is aimed at focussing on whether regulation will impose an unnecessary burden on the private, public or third sectors*" (p 15), and replacing it with text stating that the aim of RIA is to deliver best policies, defined by the Government's commitment to sustainable development.

On the first two of these points, we set out more detail below:

### FULL RANGE OF IMPACTS

We welcome the commitment to assess the "full range of impacts". However we agree with the NAO's conclusion (NAO 2006, p3) that the current process is "*dominated by economic and quantifiable impacts*". The guidance needs to be more explicit that full social and environmental impacts must be considered, in line with the Government's Sustainable Development Strategy (SDS 2005), and the BRE charged with ensuring that this happens.

We are concerned about the lack of clarity over how the consultation proposes treating non-quantifiable impacts (and indeed, non-monetised quantified impacts). For example, it is not clear what part of "environmental assessment" it is that the Consultation is proposing should be decoupled from the main RIA when it says "... *including decoupling of... assessments of environmental impacts*" (Box G, p 17). On one hand, the RIA is clear that "*all costs and benefits will continue to be represented in the Impact Assessment*"

(section 43), but on the other it says that “[for] areas such as sustainable development . . . costs and benefits are difficult to quantify and are normally addressed through a descriptive approach . . . this contributes to the RIA . . . being seen as a descriptive rather than analytical tool . . . they [eg sustainable development] should in future be free-standing rather than form part of the new Impact Assessment”.

We argue strongly that non-quantifiable and non-monetised impacts must remain part of the main RIA. This is because, particularly for environmental impacts, there are often grave difficulties in quantifying impacts, and so not including them would heavily skew the decision-making process. A major reason for this difficulty is the treatment of uncertainty—we do not know for example the health effects of endocrine disrupting chemicals in water and food supplies, or the effect of climate change on the Gulf Stream. There are also grave difficulties in monetising impacts—as the NAO states: “amongst experts, both academics and practitioners in the field, there is disagreement on whether environmental and social costs and benefits can be, or indeed, should be, quantified and monetised” (p 10).

Within the guidance we suggest there are four areas which will need strengthening:

- Clearer, stronger guidance is needed that non-monetised and non-quantified and uncertain impacts must be set out in the summary RIA, alongside quantified and monetised impacts.
- Full coverage of distribution of impacts. The commitment to consider all impacts on “the private, public or third sectors” is welcome, but some of these sectors are very broad indeed. Guidance will need to be clear that distributional analysis of impacts on (for example) future generations, people in other countries, and different sections of society within the UK all need to be assessed. Current RIAs are often very weak on distributional analysis—for example the Aviation White Paper RIA states “other than airports, there are no groups likely to be disproportionately affected”—this ignores evidence that the White Paper would be deeply regressive: with economic benefits mainly to richer UK consumers from cheaper flights, and costs largely borne by people in future generations and poorer countries from exacerbated climate change.
- We are also concerned about how decisions are made as to what counts as a benefit. For example a policy proposal imposing £50 million costs on an industry for pollution-abatement, for £50 million benefits to society overall may seem to be a zero-sum game from a CBA perspective, however is fully justified under the Government’s policy of implementing the polluter-pays principle. As a further example of confusion as to what is a cost or benefit, the RIA for the Aviation White Paper cites more expensive fares from not expanding airport capacity solely as a cost to consumers, when these same higher fares would be a benefit to the aviation industry. This is a zero-sum game presented as a benefit, as only one part of the sum is counted.
- Consideration of broader economic impacts. Traditionally RIAs look at the economic impact only on the directly affected sector. But there are wider impacts on business. For example, the Aldersgate Group of business, regulators and NGOs urges the Government to consider the economic benefits of regulation to other business sectors, as well as any economic costs of that regulation to the directly affected sector, and to consider the impact of for example environmental regulations benefitting the overall economy by increasing competitiveness through increased productivity and stimulating innovation<sup>6</sup>.
- Clearer caveats around the use of the Social Cost of Carbon (SCC). The Government frequently uses a figure of £70 t/C in monetising climate change impacts. However, this figure (or a range of £35–140 t/C) is a gross underestimate. The 2005 review for DEFRA is clear that this figure (or the range) only considers a tiny proportion of the full economic, environmental and social impacts of climate change. To use a figure of £70 t/C leads to wildly distorted policy outcomes.

We note that it is difficult for respondents to suggest how this guidance could be made stronger, because the Annex B “draft impact assessment guidance” makes repeated reference to a further “Impact Assessment Toolkit”—however this Toolkit is not available with the consultation.

#### MONETISATION AND INTEGRATION

We are also concerned that the Guidance is not presently clear on how quantified and non-quantified impacts, or monetised and non-monetised impacts should be treated together. There is a strong sense that at the moment “what gets measured counts”, and that the predominance (and proposed further dominance) of cost-benefit analysis will mean that the overwhelming focus will remain on determining “net present values”, thereby institutionalising trade-offs, at odds with the Government’s repeated commitment to policy integration.

We advocate that the guidance and summary RIAs should use tools such as DEFRA’s “stretching the web” (see NAO, p 14), with the aim of using RIAs to mitigate negative impacts and increase positive impacts, as opposed to a strategy of ensuring benefits outweigh costs. Such tools can also help ensure that policy better integrates with other core aspects of the Government’s sustainable development strategy, such as the precautionary and polluter pays principles.

<sup>6</sup> The Aldersgate Group, 2006. Green Foundations: Better regulation and a healthy environment for growth and jobs. <http://www.ieep.org.uk/publications/pdfs/2006/AGR.pdf>

In conclusion we are very concerned that as they stand, the proposed new RIA process will lead to worse policy outcomes, and that is a major opportunity missed. We are concerned that this process is occurring without a great deal of public scrutiny, and strongly welcome the Committee's decision to hold an inquiry into this process.

October 2006

*Witnesses:* **Mr Simon Bullock**, Economic Adviser and **Dr Michael Warhurst**, Senior Campaigner, Friends of the Earth, gave evidence.

**Q105 Mr Chaytor:** Good morning. Welcome to the second half of our session devoted to you now. We are interested to hear what you have to say. Would either of you like to make a brief opening statement?

**Mr Bullock:** We are happy to go straight to questions.

**Q106 Mr Chaytor:** First of all, why do you feel that policy appraisal and RIAs can play such an important role in promoting sustainable development? Do you feel they are working effectively at present?

**Mr Bullock:** I think the RIAs have potentially a very large role to play and the clear problem is that they are not embedded in the policy process. I think the BRE are right to say that RIAs, as they will be in future, should be involved at a much earlier part in the policy process. We do welcome that. However, we have some major concerns with how RIAs as they currently exist are being implemented. The BRE's consultation is undoubtedly a big opportunity to deal with those concerns, but we feel at the moment it is a missed opportunity. As far as we can see the three broad areas where we think there are big problems with RIAs are made worse by the BRE's proposals. We are really quite concerned at the moment about how this process will evolve.

**Q107 Mr Chaytor:** Do you go along completely with the criticism from the NAO or do you go further?

**Mr Bullock:** I think the NAO is broadly absolutely right. We see there being three main problems with the process at the moment. The first is that it should cover the full range of impacts. The NAO is quite clear with the full environmental and social impacts particularly it does not do that. The second concern is that the assessment should be fair and balanced; and largely it does not do that. I think the Environmental Industries Commission will have said something about the failure to cover some of the economic benefits of policy. There are other things as well. We think there is a tendency towards inflating the cost estimates of regulation; a tendency to ignore the potential for innovation, for example; and the whole range of issues around how you value environmental impacts which does not get taken into account. The third thing which is pretty fundamental really is that the final reckoning, once you have all this information and it is full and fair, is how you make your decision about whether your policy goes ahead or not. We strongly feel that the cost benefit analysis approach that the Government takes, equating costs with benefits and if the benefits exceed costs then you go ahead, that leads to an underlining of the Government's sustainable development principles. We understand that the

Better Regulation Executive want to simplify the process. We have no objection to wanting to make that process understandable and clearer for policymakers. However, with sustainable development you are dealing with what are inherently complex processes and inherently difficult issues between things you can quantify and things you cannot quantify. To attempt to simplify it by saying, "Only consider the quantifiable impact, the monetisable impact, and then tot them up and make a decision based on that", it seems to me a way of institutionalising a trade-off, that this Committee has said that sustainable development really must try and avoid.

**Q108 Mr Chaytor:** Do you think the publication of the Stern Report is going to concentrate the minds of the regulators? Presumably you feel that the system of RIAs at present does not reflect the urgency in dealing with climate change particularly that Stern is pressing on this? Will Stern concentrate minds? How can your criticism be advanced by the publication of Stern?

**Mr Bullock:** I think there are all sorts of excellent things in Stern. It is a real turning point in the politics of climate change, particularly its two big conclusions, that it is a colossal market failure which requires Government action, and that it is far better for the economy to act now rather than to delay, so turning round the previous economic argument. There are a couple of things that have been so far comparatively overlooked I think. Stern makes a very strong case for international action, which the Government has very rightly taken on board and it will be using Nairobi, and we welcome that. Stern also makes a really strong case for domestic action. It makes a strong case that if you delay then the transition costs are higher economically. It says very clearly that there is no macroeconomic threat to the economy from moving quicker. It says there are major opportunities where the new markets are cutting inefficiencies. So it is very strong for the economy. That narrative has not come out yet but I am sure it will over the months to come. Another really strong thing they do is that they make a clear case for regulation. It sets off and says you have got to deal with carbon price, and that is absolutely right; and you have got to help investment research and development deployment in new technologies. But Chapter 17 is a strong defence of why regulation is also needed and how it can be designed well. It is not saying that all regulation is good, and we would not argue that either; but just that you have to have good, well designed regulation. Finally, and this is relatively buried at the moment, the social cost of carbon. Government currently uses a figure of £70

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per tonne of carbon, and the Stern Report is arguing that that figure should roughly triple. It is buried on page 287, and then again on page 302. It is not high up there. They are also clear that that figure is likely to be underestimated too, because they are not covering all the impacts. They have made clear there that some things you cannot value. How do you value 250,000 children dying in 2100—it is almost impossible to do that. The Stern figure for social cost of carbon, if that translates across government that will have a big effect on ensuring that we tackle climate change. Currently so many policies and strategies are dropped because the environmental costs are undervalued—the Aviation White Paper is a clear example of that.

**Q109 Mr Stuart:** In memoranda we have received complaints that RIAs are primarily concerned with reducing the regulatory burden. Do you think that is right?

**Mr Bullock:** I think there is certainly a feeling that “better regulation” is sometimes a code for “less regulation”. You can see that in some of the wording of the document. They do talk about the purpose of assessment to make sure it is not an unnecessary burden, which is a very pejorative way of looking at it; the assessment should be to determine the best way of meeting the policy objective rather than just reducing the burden; and also saying that the case for doing nothing is often not sufficiently well made. We would argue that what Stern is saying is completely the opposite way round in fact for climate change—there is a much stronger case for more action rather than less. Yes, we are concerned that the process of trying to simplify regulatory assessment will lead to worse policy measures simply because of the fact that you are stripping out the complexity, which is so important in telling you what is a good decision.

**Dr Warhurst:** To follow up on the question and the link into better regulation, the impression I have had in my work on chemicals and waste, is that the better regulation is interpreted currently as being about simplification for business. What it means is you take a large amount of time reviewing a piece of legislation, you use lots of civil servants’ time, you consult people, you involve people and you produce something new. The important thing about that new thing is that it includes no improvement of any environmental objectives. Your aim is simplification. Most better regulation that we see is about simplification and not improving objectives.

**Q110 Mr Chaytor:** Are you saying with all the legislative changes, regulatory changes, which have come about following the better regulation guidelines, there has not been a single improvement to the quality of environmental emissions?

**Dr Warhurst:** No, I am not saying that as a general point. What I am saying is that the focus of the last few years of better regulation has been focussing on burdens—rather than saying what we actually want to do is we want to move forward in much stronger environmental objectives and make it simpler. I think there is a very interesting example of where

that has happened. It is a very big policy, which is REACH, the EU chemicals policy, which I myself was working on for many years; and what happened with REACH was the acceptance that the current regulatory system penalised new chemicals; new chemicals had to have lots of safety information from very low tonnages, whereas chemicals produced before 1981 did not have to have that information. What REACH did was it was basically a deal between the two elements. What we will do is we will deregulate new chemicals by hugely increasing the tonnage threshold and then we will increase the regulation on existing chemicals. What that meant was, as environmental NGOs in the process, we basically accepted that trade-off. We accepted a deregulation in one area because that area was unfairly over-regulated compared with the bulk. That was because that whole proposal was about making a substantial step forward. I think what we see in fact, there is not the idea, we are trying to do more; Stern is saying we should do more so we will do more and at the same time we will simplify where possible.

**Q111 Mr Stuart:** Do you think RIAs are truly helping in their making of policy; or do you share the NAO’s view that too often they are used as a way of justifying policy decision already made?

**Dr Warhurst:** In the example of the Government’s England Waste Strategy, in February they came out with a consultation policy—the RIA Environmental Assessment—and what you saw was the RIA there was definitely being used to justify the policy. The RIA actually showed that if you want to have a higher rate of recycling you would actually achieve climate benefits using a range of social costs to carbon. Because the range of climate benefits were similar to the range of costs they said, “We’re not doing this because the costs *may* outweigh the benefits”. Their big problem, firstly, is it about whether they do or do not, rather than *may*, outweigh the benefits; secondly, the social cost of carbon is now substantially higher according to Stern. Suddenly that equation is a different answer. The answer is that we must do more recycling because the benefits outweigh the costs. Thirdly, an issue which I heard raised earlier—the tendency that is happening now is that you only look at carbon benefits and the Waste Strategy Review released in February is explicit, once you get into it, that the only environmental benefits they look at are to climate. They absolutely ignore any other benefits of, for example, recycling, composting or whatever. It is purely climate. They have said, “We’re going to ignore the benefits and then we will say what we’ve got left may not be quite as much as the costs so we will ignore it”. Whereas my feeling is that they came into it saying, “We don’t want overdo our recycling target, they’ll cost us money so let’s just make sure that the RIA backs us up”.

**Q112 Mr Stuart:** How do you think RIAs can be changed, the system can be changed, so that the arm at the front end can help influence the making of policy rather than being just a justification afterwards?

**Dr Warhurst:** Fortunately the waste model did include a model with higher recycling rates, which was a start. At least they said it would be more ambitious. At the moment there is another provisional RIA out on the Government's position within the EU negotiations on the Waste Framework Directive and that one is totally focussed on the administrative burden to business and Government. It does not bother to try and examine other scenarios. I think examining other scenarios is very important because then you actually say, "If we did do this what will happen?" You have to incorporate as many benefits as possible. If you are not incorporating benefits—if you are ignoring things—you need to make sure that gets all the way up into the summary. One of the worries when we look at the documentation in the consultation is that the tendency of the summary will be very much bare bones; anything that is not costed will drop out. Any caveats in the costs will drop out. We will end up with things like, "Does the policy comply with sustainable development principles? Yes/No. Summary." It is about looking at the whole area, and it is about being very humble about what you are not looking at. I think at the moment the idea of listing the things you are not doing, that you are not able to cost right upfront in the summary is rather a long way from the minds of most of us.

**Q113 Mr Stuart:** As we were asking the last witnesses, a further criticism of RIAs is that they are an intellectual Whitehall exercise removed from the action on the ground. Do you think that is a real concern?

**Mr Bullock:** Yes, I think it is. I think one of the difficulties with cost benefit analysis generally is that it does reduce what should be political complex decisions to technical bureaucratic ones. My own personal example of that is going through the Aviation White Paper to find out what were the big economic benefits for each of the runway expansions; and it took me literally months to work it out through the spreadsheets that in fact the large proportion of the economic benefits claimed for the runways are from future passengers who do not fly at the moment being able to fly in the future and valuing that worth at about £20 per flight extra to them which, totalled over millions of people over 30 years, comes up to huge sums of money. That is compared with actual real life climate impacts that affect people's lives. By reducing everything to one figure, and the costs exceed the benefits, that hides that complexity. It should be a very open political discussion. I think that is what we argued for. We do think that Impact Assessment is really crucial. But the idea that to simplify it by quantifying it, the front page is there recommending we just reduce it to a number. What is the number?

**Q114 Mr Stuart:** Is there a danger the very nature of Impact Assessment certainly as they are currently constituted could be counterproductive? Inevitably this tension goes on and sustainable development

always falls out; as we heard from the previous witnesses on visual amenity, and how they will move to monetise that.

**Mr Bullock:** I think that is right. The real danger is that the process will lead to worse policy because, for laudable reasons, they are trying to make it simpler for policymakers; but by doing that it hides the important things. What we would argue for the ministerial sign-off, the chief economist's sign-off, should not be to say, "I'm satisfied that the benefits exceed the costs", but, "I am satisfied that this policy meets the Government's sustainable development principles". To do that you have that list, and there are not that many of them, of sustainable development principles and you assess against the economic criteria, the social criteria and environmental criteria whether that policy does it. That requires a mix of quantified and non-quantified and monetised and non-monetised information. Currently if we have this sort of summary sheet with just numbers on it, you have got to have the numbers but it is not the full story.

**Dr Warhurst:** There is another important point. A lot of the most successful policies, and this is particularly true of European policies, have been based around setting quite long timelines, where in 15 years we will have done this. To actually work out costs of that, given the amount of innovation and market change that will happen, and the benefits of that, it is extremely difficult. One of my concerns has been the Impact Assessment push will actually start to remove that sort of policy, even though in fact those policies have been some of the most effective in really changing the market.

**Q115 Dr Turner:** The National Audit Office reviewed a selection of our Regulatory Impact Assessments and found that few of them identified all the social and environmental impacts that they might have expected to come. What is your feeling about the range of RIAs in your experience? Do you think this is a fair criticism?

**Dr Warhurst:** I think, yes, basically. In our experience, you rarely see most of the environmental and social benefits, the focus is always on the cost to businesses. Apparently it is the easiest thing to measure, even though in reality what you see as soon as you review previous Impact Assessments after implementation is that those costs are usually exaggerated. Just because they are apparently easy to calculate does not mean that they are correct, so you end up with a false certainty on one side and an ignored uncertainty on the other.

**Q116 Dr Turner:** The National Audit Office clearly would agree with that because they felt they scoped it in such a way that it inhibits proper discussion of sustainable development aspects. I would anticipate that you agree with that view and I will take that as read. What would you like to see done to the system to ensure that fundamental sustainable policy objectives are properly addressed in Regulatory Impact Assessments?

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**Mr Bullock:** There are a number of things, and apologies for the repetition because I know I have said a couple of these already. The summary of information that is presented to policymakers has to include quantified and un-quantified information and monetised and non-monetised information and it has to have an assessment of the distribution of the impact, currently it does not have anything like enough, and also, as Michael said, which impacts are ignored, whether that is for uncertainty reasons or simply because the data is unlikely to be able to do it. That is only the coverage of the data, but then, again, the fundamental thing is how you use that data, and the assessment has to be against the sustainable development principles which should be underpinning all government policy. Just to have it based on cost-benefit institutionalises trade-off, in our view.

**Q117 Dr Turner:** That clearly raises the difficulties of the assumptions that were put into the economic benefit calculations in any event. I think you will agree they are not terribly reliable as undertaken at present?

**Mr Bullock:** Yes.

**Q118 Dr Turner:** Do you think we can, in fact, use the regulatory assessment process as a tool in achieving the results that Stern is now demanding of us? For instance, if we turn the assessment on its head compared with present assessments and made the primary requirement to demonstrate that the policy led to carbon reduction, led to environmental cost-benefits as opposed to other cost-benefits, et cetera, do you think that is (a) a workable approach and (b) do you think the assessment system is the best way of delivering that?

**Mr Bullock:** I think the assessment system is probably going to be the best place for it. It has a lot of faults at the moment which we are all talking about now about how to reflect that, but it probably will be the best place for it, especially as the government is clearly committed to making it a more important part of the policy process, so yes.

**Dr Warhurst:** One of the interesting aspects of the debate is at what level do you do cost-effectiveness assessments and at what level do you do Impact Assessments, because I think there is this element that where you have made a policy decision you need to take a measure, then you may be better off doing cost-effectiveness of how you can most effectively achieve your objective. The message from Stern is not that we can value these things a bit higher and then trade them off against something else, it is that we have to do something. We do have to reduce our CO<sub>2</sub>, so that ultimately is what we have to do; it is not that we have to trade that off.

**Q119 Dr Turner:** If our RIAs of the future are couched in such terms that it is obligatory for every new policy to make a contribution towards addressing climate change we might get somewhere?

**Mr Bullock:** I am not sure about that. Climate change is certainly an incredibly pressing problem and we have to tackle it, but for the purpose of policy

operation, again it comes back to the sustainable development principles. We would argue that if any policy has a major negative impact on any of the sustainable development principles then it should be sent back and changed so that it did not have that negative impact. With the environmental limits of the sustainable development principle, clearly one of the most important environmental limits is climate change. If a policy was coming into the Impact Assessment process saying, "This will have a major impact on climate change", like, for example, the aviation White Paper, then it should be sent back and say, "In its current form it does not do that and we have to change it". Yes, you are right, but I am not sure that there must be a page on climate change because I think there are other environmental impacts as well. The UN Millennium Ecosystem Assessment is very clearly that there are other really pressing biodiversity issues in environmental terms.

**Q120 Dr Turner:** Nothing affects biodiversity and ecosystems quite as much as climate change can.

**Mr Bullock:** We are absolutely not in disagreement here.

**Dr Warhurst:** One of the concerns is that, yes, climate change is a huge issue, but to some extent it is the limit we are being presented with first, maybe also fisheries because they are not doing very well either. We have to be a bit cautious because we do not know that in 20 years we might suddenly realise that we have some other fundamental environmental problem. Obviously some of the supposed climate change solutions, for example some of the areas around biofuels, end up having quite massive impacts in other areas, like palm oil plantations in the Far East.

**Mr Bullock:** Another issue also, which Michael alluded to before, is that you have to look at the other impacts as well. The Waste Strategy is a clear example of that. They are using, rightly, the climate change impacts of recycling versus incineration, which I think scores much higher, but also recycling prevents the initial primary extraction of metals in Jamaica or Ghana or wherever they are, and those are major environmental impacts as well, which means that recycling is a better environmental option than incineration on other environmental grounds other than climate change. We would be concerned that there would be a danger that climate change would be the only thing that was assessed. We are seeing that in the Waste Strategy now, that it is kind of, "The environment, climate change, that is ticked, let us go on to the next thing". We do need to see all of the impacts measured.

**Q121 David Howarth:** Can I carry on with this theme about what you would do instead. How would you deal with the social cost of carbon issue? You said 70 is too low, you claim that 200 is too low, how do you propose to present this to the ministers who make the decision?

**Mr Bullock:** It is a very complicated question, and you are right that we claim to be saying two things at once, both that it should be higher and—

**Q122 David Howarth:** You say it should be higher?  
**Mr Bullock:** It should be higher, yes. What I think it means is that it is the issue about uncertainty in climate change impacts, we do not know, the uncertainty is very high. It is just another example of why cost-benefit analysis is such a poor way of making policy decisions. For example, if Stern is right—and we would argue that he is right because we have argued it before—that the social cost of carbon they are currently using is far too low—and Stern is now advocating that it should be three times higher—that means that all the policies we have had over the last five years on climate change have been wildly underestimating the amount of climate change mitigation that you need to do. There is a US academic, Frank Ackerman, who does a lot of work on precaution, and his take on the social cost of carbon—I do hope I am not misrepresenting him—is that the figure, whatever figure you use, because of uncertainty, anything that comes in at a cost less than the cost of carbon that you use is certainly worth doing because the costs that you have got at the moment are ones that we do know about. It does not mean that anything that costs more than the social cost of carbon should not be done because it could well be that the cost of carbon is much higher. Our future information, three years from now or five years from now, may be saying we can say how likely an extreme event is, which we currently cannot do.

**Q123 David Howarth:** I am still worried about this point on trade-offs, that ultimately policymakers have to trade-off because not very many policies all point in the same direction. You have talked about different sorts of environmental impact, and although it is true to some extent that carbon is a measure of the impact on biodiversity, you said yourself it is not. What happens when policies are pointing in different directions on different sorts of environmental impact?

**Mr Bullock:** This comes down to the issue of cost-effectiveness. What we should be doing on climate change overall is rather than saying what is the best social cost of carbon and let us make our policy reflect that, is to say that overall we make a political judgment that the UK's carbon emissions need to come down by X% within the next 20 or 30 years and then set a carbon budget for the economy and for the sectors within it and say we are going to bring emissions down in each of the sectors by this amount according to what is the best thing to do. It could well be that in some sectors emissions do go up and that requires much bigger reductions in other sectors. It seems likely that even if we set a carbon budget tomorrow and year-on-year reductions and all the rest of it, the aviation sector would still go up because of the inertia of momentum in there and that would require much bigger cuts from other sectors. What that would be doing is rather than using social cost of carbon to determine a policy, is to say we are going to have an overall framework for dealing with all of the carbon emissions and that is the way you determine policy.

**Q124 David Howarth:** That is ideal if the government consisted of one decision-maker but it does not, it consists of lots of different decision-makers in different departments. This comes back to the point of how would you do it instead. What would you present to ministers in such a way as they can make decisions that are inline with that overall framework in their department without having to refer everything up?

**Mr Bullock:** It is a collective action. You are right that climate change is not the responsibility of any one government department and there needs to be an overall strategy led by the Prime Minister or the Cabinet Office with Cabinet taking collective responsibility for it and saying to each department, "This is our responsibility for dealing with the problem". That is why we are advocating a bill through Parliament to mandate exactly that, that you would have an overall framework for cutting carbon emissions, year-on-year reductions, policy packages to do it with an independent body to monitor whether that is being effective or not so they can say, "Are the government's policy packages as a whole meeting the challenge that we face with climate change?" If they are not, then it goes back to the overseeing body within government, however that is structured.

**Q125 David Howarth:** And targets for each department, is that the crucial part of you package?

**Mr Bullock:** There could be targets for each department. It is difficult because in some sectors, for example the transport sector, the policies of different department are affect it in different ways. It is a complex problem. We have commissioned Ecofys Consultants to publish a report for us on how you would set a carbon budget. It is a complex business and there is not necessarily a best answer at the moment. What they present is a range of five or six different options on how you could set a carbon budget. It is something that we believe should be a big issue for this Committee, and indeed government, as to how we would do that in practice. We are not saying that we, Friends of the Earth, or indeed any other campaigning groups who are campaigning for this, have exactly the right answer but we do know that the current system of long-term targets and no collective responsibility does not work. That is why we are arguing that a different structure is needed. We have sent copies to you about this report, but it is something we feel would be of interest to you all.

**Q126 Mr Chaytor:** On the guidance, you have been critical of the guidance on the summary sheet, in particular you criticised the yes/no tick-box on sustainable development. What is the alternative? What would you put in its place?

**Dr Warhurst:** I think there is too much effort. At some point you do simplify things so they are meaningless. You have to be very careful. If you look at the summary, 250 words maximum at the beginning, the second bullet says, "Say what the expected monetary benefit will be for the government's recommended option". In those cases

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where environmental impacts are not being costed or social impacts, then that is going to look pretty bad. That summary will get transplanted from this document into all sorts of other places. I think at a point you have to stop simplifying.

**Q127 Mr Chaytor:** Have you produced an alternative? Is there an alternative model that you are advocating?

**Mr Bullock:** What we would advocate is rather than yes/no for sustainable development principles, that it assessed the effect of the policy on the five key principles in the sustainable development strategy and saying it will have this effect on the economic goal, not just growth but jobs and resilience of the economy, and the effect on the environmental limit principle, the effects on the social and justice principle, to set that out clearly in a way that policymakers are aware of the potential negative impacts on the different strands of sustainable development. Simply just to say yes or no does not do it. An assessment against the principles requires probably half a page rather than three letters.

**Dr Warhurst:** Just to follow on from that, if you look at what is in the policy option questions, the questions that are there are very loaded on admin, they have other things which have not been that well established in UK law like, "Is a sunset clause included? If so, when?" It all creates an environment where if you are a civil servant and you have to do this, you would think, "I had better have a sunset clause, let us say that in 10 years this legislation ceases to exist". Our point is sunset clauses are generally pretty negative. We would say it is fine to have a review clause, and many pieces of EU legislation have a review clause by a detailed process, but there is a big difference between a review clause and a sunset clause. You also have a question asking if the implementation is going beyond the minimum EU requirements. Again, a civil servant would feel under pressure to say that it does not go beyond the minimum EU requirements, so it is not gold-plating. Not gold-plating means we must have our standards equal with the lowest in Europe and it also means that we will run our environmental policy entirely on the basis of what Europe decides. It is funny that gold-plating is pushed as a euro-sceptic thing but it means you make yourself completely dependent on the EU. The questions there are generally very loaded. If you took out three or four of the loaded questions you could put in three or four environmental ones: "Does this contribute to climate change" and split out the sustainable development then you may be improving a bit, but, as it stands, it is very much loaded in a certain direction. As a civil servant doing that, I imagine that would definitely make me think about what I was proposing, which is what it is written to do, of course.

**Q128 Mr Chaytor:** It has to be signed off by the chief economist?

**Dr Warhurst:** Yes.

**Q129 Mr Chaytor:** Does that send a signal, or is there an alternative way? Should somebody else be signing it off?

**Dr Warhurst:** I do not know how many departments have someone who has a responsibility for sustainable development, but if you were trying to put sustainable development up on the same level then obviously you would have a signature by that person. In general, when you look at the summary you do not think this is about finding the best solution to sustainable development.

**Mr Chaytor:** That was a slight digression there. Can we move on lastly to ask about the review and scrutiny process?

**Q130 Mr Caton:** Academics from Manchester University told us that the single greatest problem with RIAs is the lack of a strong review system to ensure compliance with guidelines. They wanted to see a structure for assessing coverage and quality of analysis of RIAs prior to finalisation. Would you support moving in that direction?

**Mr Bullock:** Very briefly, yes, we would, although this is not an area in which we have any expertise, so we would defer to Manchester University for the details of that.

**Q131 Mr Caton:** Are there any particular criteria you would like to see in that review?

**Dr Warhurst:** Ensuring that it really has identified all the potential significant environmental and social impacts and that it is clearly indicating where they have not been calculated or where there are significant uncertainties in the calculation. We are trying to create a situation where ultimately the reality that these are political decisions is expressed in the summary, for example we have the list of things which cannot be worked out, so politically you then have to work out how to deal with that rather than an approach which gives a false sense of security to the decision-maker because they think of one number and it is usually yes or no. Certainly half of the review would be making sure that there really was proper consideration of all the impacts.

**Q132 Mr Caton:** In your view, does every RIA need to have an environmental Impact Assessment? People have argued with us, for example, that if you do that you create this tick-box mentality and also a reaction from officials who feel it is not really necessary in this case. How do you feel about that?

**Mr Bullock:** I am sure there are types of policy which have very minimal environmental impacts. As part of assessing any decent assessment against sustainable development principles it may well come up quite quickly saying, "There are limited environmental impacts here, we do not need to worry about it in this case". As long as it is clearly set out there in a way that if people within the consultation process have a chance to challenge that and if that decision is wrong then it can lead to a revision of the Impact Assessment policy, then fine. Absolutely, there will be some policies which have no environmental impact.

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**Dr Warhurst:** One of the problems we do see is a tendency for environmental policies to be almost singled out for Impact Assessment much more than in other areas of policy. Effectively, it is important to establish a level playing field across government because I think there has been a very strong movement coming particularly from the US to really focus on environmental policies as obstructions to business and not to look at other policy areas. It is important that the official has to think about whether there is an environmental impact rather than just being told that the policies you are making do not need assessment. You do not want to create a bureaucratic process which is not generating something useful at the end of the day.

**Q133 Mr Caton:** Dr Warhurst, you mentioned your concern about how RIAs are used in looking at European Union legislation and tend to go for a bottom line rather than what you call “gold-plating”. Do you think potentially RIAs could be used to interpret EU legislation where we gold-plate but we have got the highest environmental standards possible?

**Dr Warhurst:** It could be. I think ultimately it is down to political will to do that. In some ways, the Impact Assessment can provide the political cover to not do anything almost, rather than saying, “What we are going to do is we will look at this”. The specific example I was using is still in negotiation. It is increasingly common now for the government to do an official RIA for something that they are still negotiating, which is fair enough in itself, the question is how comprehensive it is. In this case, the RIA is really assuming that the government will not make any attempt to improve the environmental objectives of the proposal, though that assumption is not spelt out in the provisional RIA but it is clearly in the document. Even though the proposal came out of the European Commission at a time when the European Commission was very much in a deregulatory mode and the proposals were very poor, the government has not come out and said, “Let us check because there are things which could improve environmental outcomes”. They have not done that, they have purely looked at the proposal. In some ways it is almost like they are trying to make sure they do not gold-plate some proposal from the Commission. If a proposal comes from the

Commission, all it will do is chop back on it, it will never improve it. In theory, you could get better implementation or better negotiation from doing an RIA, but at first you would have to remove this political assumption that whatever is out there is the top level and you are never going to go higher than that.

**Q134 Mr Caton:** My next question is on the RIA consultation, which you have already dealt with in some detail and identified what you see as the flaws. Do you see any potential positive outcomes coming out of it?

**Mr Bullock:** The main positive thing is the clear commitment that it should be at the beginning of the process and much earlier in the process rather than this post hoc justification we talked about earlier; I think that is a very positive thing. However, it is only positive if the other flaws in it from a sustainable development perspective are tackled. As we said, it will lead to worse policy outcomes, in our view, if they are not. Overall, we are concerned with it. We have put our views, and I am sure lots of other people have from both sides of the debate, but we are concerned that there is a strong drive within government to simplify it and that means that argument will carry the strongest weight. Yes, we are concerned.

**Dr Warhurst:** We have a box in the document, the United States comparison, where it talks of the Office of Management and Budget in the US operating a federal level processing, for examining regulation and if you talk to anyone who works in the environmental field in the US, it is almost impossible to get any environmental regulation through at federal level. The federal agencies, like the Environmental Protection Agency, are virtually toothless. One of the ways in which this is happening is because of the power of the Office of Management and Budget. Drawing a parallel with that in this document is a clear warning sign. It really is very, very difficult. I spent nine months working in the US last year, and it is amazing how difficult it is to get any sort of federal environmental measures through there.

**Mr Chaytor:** Thank you for that. I know it is the congressional elections today, but we do not want to get dragged into that. Thank you very much indeed, Michael and Simon, that was extremely interesting, and we are grateful for your time.

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# Written evidence

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**Memorandum submitted by Dr John Turnpenney, Dr Duncan Russel and Dr Andrew Jordan, Centre for Social and Economic Research on the Global Environment (CSERGE), School of Environmental Sciences, University of East Anglia, Norwich, UK**

## INTRODUCTION AND SUMMARY

We welcome the Committee's investigation into how well sustainable development considerations are covered in the new, more integrated, form of RIA in the UK. The inquiry comes at a particularly important time following the government's decision to collapse eleven of the UK's policy appraisal systems into RIA in 2004, the National Audit Office's subsequent review of progress in 2006, and the government's recent proposal to revise the RIA process. It is important that the Committee investigates the manner in which appraisal is not only advocated in official guidance, but is actually *used* in Whitehall, particularly in relation to sustainable development, which is often identified as *the* overall goal of all policy making.

CSERGE at the University of East Anglia has a strong research tradition in the fields of policy appraisal and sustainable development. Not only has it been at the forefront of work on developing appraisal techniques such as cost-benefit analysis, it has also been involved in researching the use of these techniques in different governmental settings. The evidence we provide is based on ongoing research on the patterns of appraisal in UK central government and a number of other jurisdictions. This work is being funded *inter alia* by the UK Economic and Social and Economic Research Council (PTA-026-27-1094) and the European Union's 6th Framework Programme (project: MATISSE<sup>1</sup>).

The main points we make in this Memorandum are as follows:

- If the Government is serious about developing in a more sustainable manner, it needs to show greater political leadership. The current political focus on achieving better regulation is hindering the ability of the RIA system to deliver on the UK Government's Sustainable Development Strategy. Without high level political support, further incremental adjustments to the RIA regime are very unlikely to have a significant effect on day to day policy development in Whitehall and cannot be expected to make a significantly greater contribution to the delivery of the UK's sustainable development strategy.

That said, we believe there are areas where the current RIA process could be improved:

- An integrated rather than a sectoral form of appraisal is useful, but only when there are appropriate mechanisms for ensuring that the environmental dimensions of sustainability are not marginalised.
- It is useful to link Sustainable Development appraisal with economic policy documents such as the Pre Budget Reports.
- The principles of Sustainable Development (such as the use of the Sustainable Development Indicators) need to be enshrined as a formal goal of RIA. Departments which do not consider the Sustainable Development criteria adequately in their RIAs should be censured.
- Most RIAs are rather unsophisticated. Quantification is not always possible, but more comprehensive (note: not necessarily more quantified) coverage of all aspects of sustainable development is urgently required.
- More clarity is required in presenting the assumptions underlying and framing individual RIAs.
- When implementing European Union (EU) policy, RIAs should explicitly take account of the relevant Impact Assessments conducted by the Commission. It is completely impossible for the Commission to fully evaluate the impacts of new policy proposals when there are 25+ member states. There is an untapped potential to share appraisal information amongst national agencies, the European Parliament and the Council of Ministers.
- A consolidation of the many bodies responsible for the delivery of Sustainable Development via RIA would significantly improve communication and coordination. Potential ways of achieving this should be investigated.

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<sup>1</sup> We would particularly like to thank our colleagues Måns Nilsson, Julia Hertin and Björn Nykvist for their parts in the research which has led to this Submission.

## DETAILED RESPONSES

1. *Should RIAs continue to be seen as the key vehicle for appraising policies against sustainable development principles, given the serious weaknesses that the National Audit Office review highlights? Is there a better way to ensure environmental, social and economic impacts are incorporated into policy-making?*

6. *Is the application of the RIA process sufficiently comprehensive? Should it be extended to cover areas such as the Pre-Budget Report and the Comprehensive Spending Review? If not, what other processes are there to ensure that there is transparency and accountability over the consideration of sustainable development issues at the very earliest stages of decision making. Are these processes adequate?*

The UK has been experimenting with various forms of RIA since the 1980s, when a programme of cost compliance was introduced by the Conservative government to act as a counterweight to excessive bureaucratic power that was perceived to be exercised by the civil service (Radaelli, 2005: 938). The RIA system in its more modern form was introduced by the Labour government in 1998 under the “better regulation” and “modernising government” agendas. Under this system, an RIA was required for all new legislation where there was likely to be an impact on business, charities or the voluntary sector (Kirkpatrick and Parker, 2004: 267). While the new integrated form of RIA is not strictly a sustainable development appraisal, since its main focus is still on regulatory impacts on business and the voluntary sector (Russel and Jordan, 2007), it is arguably the closest thing that the UK has to sustainable development appraisal or integrated assessment. Moreover, it is now the only official cross-departmental assessment procedure. On the whole, the application of RIA appears to be fairly comprehensive with the Cabinet Office reporting 90–100% compliance. This is clearly more favourable than was the case with environmental appraisal before it was subsumed by RIA. For example, between 1997 and 2004 only around 62 environmental appraisals were produced compared to some 631 RIAs over the same period (Russel and Jordan, 2007). If properly applied, RIA should not only allow for the consideration of sustainable development, and any necessary tradeoffs, at the earlier stages of policy making, it should also generate good quality information on the potential spillover effects of a policy, thus facilitating consultation and coordination processes.

However, a requirement to assess sustainability impacts in RIAs will not in itself deliver more sustainable policy. Our research demonstrates that the way more integrated RIAs are carried out can depend strongly on the overarching agenda—what the “big picture priorities”, or policy paradigms are. Better Regulation and deregulation are the main paradigms which frame the RIA process in the UK. The Better Regulation Commission is in the very heart of government, with explicit and high level political support from the Prime Minister and Chancellor. Economic growth, immigration and security appear to be the dominant political issues propagated by the Better Regulation Commission, the Prime Minister and Chancellor, which is again generally reflected in the principal focus of the RIA we examined. By contrast, there was little consistent focus on sustainable development issues except in DEFRA, and then mostly understood in environmental terms. RIA is primarily a means of gauging whether regulation is necessary, as a means to achieve the wider political target of reducing and simplifying the regulatory burden. RIA is also a clearer way of setting out information for stakeholders. However, in many cases, the desire for flexible and market-based approaches overrides attempts to protect the environment by regulatory means.

We feel that the *Comprehensive Spending Review* and *Pre-Budget Reports* are two crucial mechanisms through which the appraisal of sustainable development impacts could be enhanced. As the EAC (HC 92, session 1998–99, para 37) has previously noted, the *Comprehensive Spending Review* is a fundamental review of public expenditure and is, therefore, tied to the government’s policy intentions. Therefore it arguably represents an ideal opportunity to marry these intentions with the goals set out in its sustainable development strategy. The Treasury’s introduction of Sustainable Development Reports for the 2002 Review was a welcome progression in this regard. However, given the apparently superficial manner in which departments approached their Sustainable Development Reports (Russel, 2005) and the Treasury’s subsequent shelving of the requirement to produce similar reports for the 2004 Review, there is arguably a case for applying RIA to the process to encourage at the very least a more consistent approach.

*The Budget* and *Pre-Budget Reports* are other areas in which we feel the application of RIA to appraise for sustainable development impacts is crucial. Not only do they set economic policy (which has implications for environmental degradation and increased non-renewable resource extraction), they also often contain environmental taxation measures (such as the fuel duty escalator) that must be analysed to assess their full impacts, and assess whether they are likely to achieve the desired level of environmental improvement.

To conclude, our responses to Questions 1 and 6 are as follows:

- An integrated (rather than a sectoral) appraisal system is much more capable of making a major contribution to the delivery of the Sustainable Development Strategy (HMG, 2005) than sectorally-sponsored forms of assessment, such as DEFRA’s environmental policy appraisal, which were largely ignored by “non” environmental departments.
- *The Budget* and *Pre-Budget Reports* and the *Comprehensive Spending Reviews* are vital areas for the application of RIA. In theory there is no reason why RIA should not be applied in these domains (but there are questions as to whether the steps in the RIA guidance are sufficiently elastic enough to cope).

- In the light of our research, the current system of RIA is not capable of delivering significantly more on the sustainable development agenda without a significant increase in political leadership from the centre of government.

2. *If RIAs are seen as the best solution, what steps are being taken to address these weaknesses. In each case, will the steps taken be enough to resolve the problem?*

3. *Does the formal role of Better Regulation Units within departments take adequate account of sustainable development objectives? How can training and guidance to officials be improved?*

4. *How can the Better Regulation Executive improve its scrutiny of RIAs to ensure that sustainable development issues are adequately incorporated into each appraisal?*

(a) *the weak link between the structure of RIAs (and accompanying guidance) and the principles and priorities set out in the UK's Sustainable Development Strategy;*

Departmental officials conducting RIAs can draw on two main pieces of guidance: a paper version published in 2003 and an online version which reflects the more integrated nature of RIA (EAC HC 518, session 2004–2005, para 47). Thus, the online guidance is more detailed in terms of sustainable development issues with web links to other useful sites. The guidance generally advocates a quantitative approach to conducting the analysis, ie it recommends consultation with departmental economists and the Treasury's CBA-centric Green Book (HMT, 2002). We note however, that some aspects of the guidance could be significantly different following the government's current consultation on a revised RIA process. The proposed new RIA guidance is a welcome recognition by the government that the current approach to RIA does not necessarily match the expertise and needs of policy makers or take account of the complexities of policy making. While putting this guidance out to wider consultation is an example of best practice, there are concerns over how much dialogue has occurred with the very policy makers who are required to use it. Without appropriate input from this group, there is a danger that RIA will be dogged by the same procedural and quality problems uncovered by the National Audit Office (NAO) (2001; 2004; 2005), Russel and Jordan (2007, and our ongoing research)

According to Cabinet Office guidance, economic, environmental and social impacts should be assessed, as well as the costs of implementing the policy itself. Our findings support those of the NAO that in practice *"the social and environmental impacts are not often analysed in sufficient depth"* (NAO, 2006). Although the Guidance encourages an integrated approach, in practice the focus of RIAs is often on economic aspects, and other considerations are often framed in an economic manner (social issues are typically reduced to employment considerations, for example). Assessing the costs of administering a policy forms a significant part of the RIA. Considerations of cost-effectiveness receive the most attention. The implementation costs are seen to be more tangible than policy costs and benefits, and are therefore easier to assess. There is a strong tendency for departments to only take responsibility for issues closely related to their work (alongside regulatory impacts) resulting in a lack of integration in many RIAs. For example, DEFRA often says little about social costs and benefits in its RIAs while other departments suggest that the environment is little to do with them, but is DEFRA's responsibility. There is a feeling among some departments that there are too many things to consider in an integrated RIA which leaves officials not knowing where to start in some cases. The guidance is seen as variable—helpful to some but lacking in clarity to others. Training is minimal or non-existent. There may be gaps of months or years between RIAs carried out by individuals, and hence extensive one-off training may not be seen as beneficial.

In conclusion, we recommend that:

- The government (and especially the Better Regulation Executive) should use the opportunity provided by the revision of the RIA process, to couple assessments more closely to the principles and priorities of the Sustainable Development Strategy. Policy appraisals are often framed in terms of process; success is achieved by completing a series of appraisal steps. They are rarely framed in terms of whether the policy achieves its overall goals (eg as outlined in the Sustainable Development Strategy). Giving appraisers something more concrete to focus on—such as a set of sustainable development indicators or targets—would significantly help in this regard.
- A dedicated and much more comprehensive (ie rolling) programme of training is required, which officials should be encouraged as far as possible to attend before embarking on an RIA. This needs to be fully supported by senior civil servants and the political centre of government ie the Prime Minister.

(b) *the difficulty of ensuring that environmental and social impacts which are difficult to quantify in monetary terms are fully taken into account;*

In spite of a drive for more evidence-based policy making in the UK, the RIAs we examined made very basic (or no) use of data, formal tools and methods. Where tools were used, they were mostly economically focussed, for example, simple cost-benefit analyses. Assumptions were not made clear in many models, leading to a lack of clear justification for the results presented. Difficulties were cited in quantifying benefits such as biodiversity, and in making causal links between policy and potential impacts, which were either

skirted around or ignored. The nature of impacts is often very uncertain and there are fundamental difficulties with establishing causal links: it is often impossible to specify what impacts may result from a policy, and RIAs' estimates can be very wrong.

In our sample of RIAs the use of quantification and monetarisation in calculating costs and benefits often sidelined especially the more social aspects. It was felt by interviewees that the reason for this was a lack of equivalent methods for assessing social impacts since these are difficult to quantify. These aspects were covered in other ways through argument, or simply "common sense". Analysis was mainly qualitative, drawing on data, both official and stakeholder-derived. Data was often difficult to find in RIAs or biased with much resting on using pre-existing departmental knowledge. There was ample evidence of "quantifiction", where numbers were added to comply with the guidance recommendations, or altered to fit the desired results.

In the light of these findings, we therefore recommend that:

- The Better Regulation Executive should relax the requirement to quantify impacts, while at the same time widening the type of tools advocated beyond technical economic approaches (eg cost-benefit analysis) to encourage more thorough but not necessarily quantified forms of analysis.
- Bridges are built between those developing appraisal systems, writing guidance documentation and producing appraisal, and those in the academic research community, which have considerable experience of creating, using and disseminating tools (such as through the European Commission-funded Sustainability ATest project<sup>2</sup>). Ways of building "boundary organisations" that make these bridges should be explored.

(c) *the variable quality of presentation of RIAs, which can inhibit their ability to allow trade-offs between environmental, social and economic impacts to be readily assessed;*

The RIA process is closely monitored and controlled by the Cabinet Office's Better Regulation Executive. The Better Regulation Unit in each department which assists with the RIA process. The Panel for Regulatory Accountability, chaired by the Prime Minister, performs a major quality control function. Many commentators, such as the OECD, believe such a quality control unit near the seat of power is vital for ensuring RIAs are up to standard, and this is to be welcomed in the UK.

In spite of these mechanisms, we have concerns about the general quality of RIAs produced. For instance, while RIA compliance appears to be extremely high, in a series of separate reviews the National Audit Office (2001; 2004; 2005), has consistently revealed a number of quality problems associated with RIAs, namely many: only considered a limited number of options; did not contain quantified estimates of benefits, which made it difficult to compare different options; were *ex-post* justifications conducted after the main policy direction had been decided; and did not adequately highlight uncertainties in the data (The National Audit Office, 2001, 2004; 2005). With the caveats on quantification expressed in our response to Question 2(b), our research supports these conclusions. Russel and Jordan (2007) suggest that these problems might be related to more systematic problems with the way that appraisal is advocated in Whitehall. These include a lack of appraisal expertise among policy makers. They also include the more general unsuitability of rigid technical-rational appraisal systems (as advocated in official best practice guidance) for everyday policy making situations, where policy can be governed by the need to respond to crisis events, ministers' initiatives, European legislation etc. These failings are significant given the UK government's apparent pursuit of better and more evidence-based policy making (eg see Cabinet Office, 1999).

We have found that trade-offs between different options in RIAs are mostly presented through qualitative argument. Where costs and benefits are presented, the assumptions behind the figures are not always clear. The presentation even of simple costs and benefits in RIAs is patchy. In some cases assertions are made with no obvious supporting evidence.

Consultation is often identified as a vital mechanism to identify and resolve trade-offs through debate and deliberation. There is a mandatory 12-week consultation period for RIAs, and compliance with this is improving. Our research revealed that consultation processes did involve the "main players", though this was often principally industry rather than non-governmental organisations and the voluntary sector. Involving the public was seen by interviewees as much less easy due to difficulties in creating enough interest to get the public to engage. Inter-department consultation was weaker than with external groups, but depended on the case. Stakeholder responses should be listed in the RIA but this was not always done. Informal consultation with key groups often occurred aside from public consultation. Stakeholders of *all* different interests sometimes see other interests as more influential than themselves. Differences in stakeholder positions were more often than not unresolved by the RIA, with most comments are made on the policy rather than on the RIA, reinforcing a perception that RIA is little more than a formulaic box-ticking exercise. The RIA was in many cases reporting on stakeholder consultations and relationships which date back many years: the policy in question is merely the latest in a succession. In some of cases we studied, consultation came so late in the policy development process, the process appears little more than an attempt to legitimise or communicate decisions.

<sup>2</sup> [www.SustainabilityA-Test.net](http://www.SustainabilityA-Test.net)

However, it was not necessarily poor quality of presentation or limited consultation obscuring trade-off decisions. In some cases, it was seen as the department's responsibility to balance competing priorities and options, and for interdepartmental processes to be used to knock issues around. But ultimately, many of the officials we spoke to felt it was up to the politicians to decide. It was felt by interviewees that decisions were mainly made outside the RIA; the RIA was seen as process to help inform, not decide policies.

To conclude, we recommend that:

- The Better Regulation Executive should ensure that there is a system in place to censure departments when their RIAs are not comprehensive enough in their coverage of sustainable development issues. Crucially, while the Prime Ministerial Panel for Regulatory Accountability does act as a quality control mechanism, its current focus is primarily on the costs to business. This remit should be extended.

(d) *poor co-ordination with other policy appraisal processes, such as the European Commission's Impact Assessments and Strategic Environmental Assessments.*

The UK RIAs we have studied tend to be weak at the strategic policy level, focussing much more on the implementation of legislation which is often determined at EU level or by ministers, or on the updating of existing policies. There is normally some flexibility available in implementation of EU Directives (but there is significant political pressure on departments not to “gold-plate” EU requirements<sup>3</sup>) with the possibility of using RIAs to “fine tune” details. Although the EU is a powerful driver of legislation, especially in areas where the EU has high competence such as environment, the UK seeks to influence the European agenda, especially through its promotion of a Better Regulation approach.

Since a large proportion of UK policy ultimately derives from the EU, it is important to understand the approach to assessment in the EU. EU Impact Assessment (IA) replaced, and aims to integrate, all sector-based assessments following the Communication on Impact Assessment [COM (2002) 276] and the first set of IAs were carried out in 2003. The dominant paradigm in the EU IA system is that of economic growth as exemplified by the Lisbon and particularly the Better Regulation agendas of reducing administrative burden on industry. Liberalisation of trade, completion of the single market, free movement across borders, security (particularly anti-terrorism), Human Rights, legislative harmony across the Member States, and subsidiarity are currently priorities. Sustainable Development, although prominent in political pronouncements and strategies, is in practice low down the political agenda. Linked to the theme of Sustainable Development are issues of international justice, development, and environmental integrity, although these tend to be covered principally by a few Directorate-Generals (eg ENV and DEV), rather than the Commission as a whole. The Council of Ministers and the European Parliament also have the power to carry out assessments of the substantive amendments they recommend on Commission proposals, further complicating the assessment systems.

Although the EU “paradigm” is closely aligned with the UKs, which should theoretically facilitate coordination between the two appraisal systems, neither system is geared up for delivering sustainable development. There are also major implications for the types of proposals which emerge from the EU, which limits the room for manoeuvre in the UK regarding sustainability. It is very unclear how the Commission's IAs currently relate to the UK's RIAs, or even if they are considered at all. Indeed, not only is there poor coordination between these systems at the European Union level, all assessments are one-off “snapshots” of the policy system, which do not account for changes in the systems over time.

To conclude, we recommend that:

- There should be an explicit requirement in the RIA system to consider any IA carried out at the EU level. In the longer term, some combination and consolidation of the many sustainable development mechanisms (See our response to Question 7), and appraisal systems (see first para of our response to Question 2(c)) could be explored to avoid unnecessary duplication of effort and to assist in the sharing of information between the EU and national tiers of government.

5. *What evidence is there that RIAs make a difference to policy outcomes? Can departments document examples where the appraisal process has resulted in a change in the preferred policy option to one which is more sustainable?*

Authors such as Shulock (1999) see appraisal less as a value-free evidence gathering exercise, and more as a device for shaping debates and values. Appraisal is also used in some cases as a device for legitimising political decisions, rather than policy being driven by evidence gathered through appraisal processes. These views find reflection in the UK, where many of the RIAs we studied appeared late in the policy process, and was seen as an administrative add-on, or a justification of an earlier decision. RIAs hence contain a limited range of options, since many are not true options but somewhat artificial constructions created to complete the appraisal process by complying with best practice. In reality, all policies appear with history behind them. Pre-existing policy commitments help to limit the options for making and appraising policy proposals. The very fact a policy is being proposed indicates that action is seen as necessary, and it is often clear roughly what that action should be. Hence, the “no action” alternative was rarely seriously considered. The least

<sup>3</sup> Chancellor Gordon Brown, pre-Budget Report, December 2005.

controversial decision was often taken, even if the RIA indicated another choice might have a higher benefits-to-costs ratio. Therefore, in our sample of RIAs, the ability of the RIA to radically change policy was very limited although in some other cases, the RIA has been a factor in encouraging the proposals to be dropped altogether (rather than changed) (BRTF, 2004; NAO, 2005).

However, especially in environment policy, analysis, whether through a formal RIA or not, can be an important part of policy decision. This is particularly true in “open” issues, where measures are not delivering results, it is not clear what action to take, and which cover a wider range of issues, such as in responses to climate change. In these cases, assessment can occur earlier in the process. In a closed situation, where there is a clear policy idea, a limited IA will be used to check for unforeseen side-effects, but will not fundamentally question the basic policy direction.

To conclude, we conclude that:

- RIAs have far more influence in certain policy situations than others. Which situations are which should be more explicitly identified in the RIAs, to assist with transparency of the assessment process, and to avoid the spurious implication in some cases that a pre-existing decision was actually formed through the RIA.

*7. More generally, are there sufficient mechanisms across government for ensuring that sustainable development is fully incorporated into policy making in order to deliver the Sustainable Development Strategy?*

The UK has an impressive array of mechanisms (eg Sustainable Development Ministers, the Environment and Energy Cabinet Committee, Sustainable Development Unit, etc) across government to help it deliver its sustainable development strategy. But as this committee has frequently documented, they are not working well either individually or in combination. Thus they are not driving the pursuit of more sustainable development. While maintaining our support for more integrated forms of appraisal (see our response to Question 1), it is important to be aware of the potential problems associated with such an approach. For instance, how is RIA going to feed into and support the UK’s mechanisms for sustainable development, given that RIA is a Cabinet Office initiative while sustainable development is primarily owned by DEFRA? We would argue that DEFRA’s ability to manage the UK’s Sustainable Development Strategy is weakened because the Cabinet Office is part of the core executive, which makes it difficult for a line department such as DEFRA to exert enough influence on its activities.

Many of the UK’s mechanisms for sustainable development, such as the Environment and Energy Cabinet Committee and its sub-committee of Sustainable Development Ministers, depend on high quality information on sustainable development-related policy spillovers to operate effectively. However, given that RIA is not officially designated as a tool for sustainable development and our findings indicate that many RIAs have weak coverage of sustainable development, the very information these mechanisms require is being choked off. This problem is being exacerbated by the fact that RIAs are not being sufficiently aimed towards achieving stipulated sustainable development targets related to the Sustainable Development Strategy and/or Public Service Agreements.

Overall, therefore, we recommend that:

- DEFRA’s Sustainable Development Unit should be moved to the Cabinet Office, where it should oversee how far the RIA system contributes to the delivery of the UK’s Sustainable Development Strategy. Thus far, the Unit has been politically marginalised in DEFRA. Meanwhile, the Better Regulation Executive and the Cabinet Office have tended to be more preoccupied with the better regulation agendas.

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### Memorandum submitted by the King’s Centre At Risk Management, King’s College London

#### King’s Centre at Risk Management (King’s College London) and RIAs

The King’s Centre for Risk Management is a centre of excellence in research and consulting on risk, regulations and policy issues. Its staff and graduates work with government, NGOs and industry, researching on policy, impact assessment, management, governance and communication in relation to risk.

In the last years the King’s Centre for Risk Management at King’s College London has carried out extensive research on “better regulation” and Regulatory Impact Assessment. Applied and peer-reviewed research focuses on European Commission, US, UK and EU member states RIA reports, procedures and risk analysis techniques. The memorandum addresses some issue of the inquiry on Regulatory Impact Assessments (RIAs) by the Environmental Audit Committee-House of Commons. It contains the independent view of academics who worked on the very topics that constitute the enquiry. The final recommendations should be therefore taken as technical suggestions which are not driven by any political agenda. The paper addresses part of the questions of the inquiry. The selection was based on our expertise and knowledge. As a further note to the reader, the focus of this paper is more on the improvement of the quality of RIA rather than on the integration of sustainable development in RIAs and policy appraisals.

#### INQUIRY ISSUE 1

*Should RIAs continue to be seen as the key vehicle for appraising policies against sustainable development principles, given the serious weaknesses that the National Audit Office review highlights? Is there a better way to ensure environmental, social and economic impacts are incorporated into policy-making?*

RIA has the potential to play a key role in appraising sustainable development principles. When the quality of RIA is solid, environmental, social and economic impacts are incorporated into policy-making. Before explaining the importance of assessing the impacts of policies, this section emphasises the importance of policy and regulatory itself.

##### 1.1 *The importance of policy and regulatory intervention . . .*

Policy and regulatory intervention by public sector sphere is crucial for society. Without public policy and regulatory intervention, individual firms may not take into account the social, environmental and some of the economic consequences of their actions. The market does not oblige a company to reduce externalities such as the level of pollution. The regulator’s actions, through appropriate regulation, will limit a company’s pollution output.

At the same time, without an adequate policy and regulatory regime in place, leader companies may bring about excessively unequal positions in the business environment. In the logic of economies of scale, for instance, a single firm could prevail and eliminate the competition, creating a monopoly situation. The dominance of the market by an individual firm could be potentially more efficient in terms of production, but could be disastrous in terms of prices and distribution of wealth. The survival of authentic competition should be guaranteed through regulation.

##### 1.2 *. . . and the importance of assessing impacts*

The impacts of policies are not always the ones desired. They can bring about very high costs and yet fail in their purposes. Academic studies proved that in some cases policies had adverse effects on the economy without reaching sustainable development goals.

Cost, benefit and risk estimates constitute the empirical basis of policy and regulatory decisions. They facilitate the understanding of the future economic, environmental and social consequences of legislation. A sound assessment of the future impacts of policies must consist of solid estimates of costs, risks and benefits.

Costs are not always simple to calculate. Previous studies pointed out that industry tends to exaggerate the costs imposed by eg environmental regulation (Stirling, 1997). RIAs seldom focus on both transfer costs and efficiency costs.

Transfer costs represent payments from one group to another (eg producers to consumers). They provide a measure of the winners and losers from regulatory change.

Efficiency costs: represent net losses in producer and consumer surpluses. They provide an indication of the overall impact of a regulation on the economy or industry under investigation.

In order to decide whether a new policy will have adverse impacts on economy, the costs are indicative only if compared with benefits. The NAO (2006) report stresses the scarce number of RIAs that present quantified benefits. Indeed social and environmental benefits, which constitute the analytical core of sustainable development measures are difficult to estimate quantitatively, as it is explained in the next section.

The impact assessment gains in accuracy if it looks also at the counterfactual (ie “*what would have happened in the absence of that change?*”). Regulatory policies create a variety of risk—risk trade-offs. People may engage in more risk-taking behaviour in response to regulations that reduce the risks of their behaviour.

### 1.3 Regulatory Impact Analysis (RIA)

Regulatory Impact Analysis (RIA) seeks to estimate and evaluate the effects of regulatory change. RIA is defined by the OECD (1997) as follows: “RIA encompasses a range of methods aimed at systematically assessing the negative and positive impacts of proposed and existing regulation”. Indeed, RIA, if well implemented, provides the regulator with the best alternatives for the affected community in economic, social and environmental areas. However, without an adequate level of analytical depth, RIA can turn into an additional bureaucratic paper in addition to internal public administration red-tape (Torriti, 2006). In order to guarantee an adequate level of RIA quality, encompassing sustainable development aspects, RIA should be strengthened using a peer-review process. Peer-review is one of the most important procedures used to ensure that the quality of published information meets the standards of the scientific and technical community. It is a form of deliberation involving an exchange of judgments about the appropriateness of methods and the strength of the author’s inferences. Peer-review involves the review of a draft product for quality by specialists in the field who were not involved in producing the draft (OMB, 2004).

## INQUIRY ISSUE 2

*If RIAs are seen as the best solution, what steps are being taken to address these weaknesses, including:*

- *the difficulty of ensuring that environmental and social impacts which are difficult to quantify in monetary terms are fully taken into account; and*
- *poor co-ordination with other policy appraisal processes, such as European Impact Assessments and Strategic Environmental Assessments.*

### 2.1 Difficulty to calculate social and environmental benefits in monetary terms

One of the recurring perplexities around the use of RIA is the difficulty of quantifying environmental and social impacts.

In particular, economists unanimously agree that environmental and social benefits are the most difficult to assess. Three types of benefits can be defined:

- Benefits that cannot be quantified (eg social justice).<sup>4</sup>
- Benefits that can be quantified but not monetised (some environmental benefits such as saved animal species).<sup>5</sup>
- Benefits that can be both quantified and monetised.

<sup>4</sup> Some authors refer to intangible benefits when it is impossible to give a monetary value to the principal source of investment this is the case, for instance, of health projects. In many cases what generates the benefit can be materially tangible though difficult or impossible to monetise. Most recent development in CBA tend to exclude impossible cases of monetisation.

<sup>5</sup> Non-monetary valuation techniques are used to detect indirect values that are assigned using partial measures of impact and includes these figures in a general valuation of the value placed upon reducing such risk. The non-monetary value of specific goods can be valued according to the Hedonic Pricing Approach. This approach considers the stream of benefits that result from a given product in determining its value. Data for Hedonic Price Approach comes from either a time-series analysis, a cross-section of properties at a given time or simply a pooled approach of all types of data sets.

Some social benefits cannot be quantified and can only be weighted only qualitatively. The reliance on qualitative statements can in principle result in uncertainty due the political value of social impacts.

Economic theory and practice demonstrate that judgement values are part of every decision take in the context of uncertainty. Analysts who undertake economic choices are not extraneous with the values that underpin each political choice.

For environmental benefits that can be quantified, the problem of monetisation remains significant. For environmental benefits, the use of willingness to pay methods is recommendable.

- *Willingness to pay values*: citizens are asked how much they would pay to reduce the risk of pollution.
  - *Stated preference*: a survey is carried out in which individuals are asked questions pertaining to changes in benefits. This method involves an open-question approach where respondents are asked to state their maximum willingness to pay for the decrease of the probability of pollution. Eg what is your maximum willingness to pay to reduce the risk of dying of CO<sub>2</sub> emissions by 10 times a year?
  - *Revealed preference*
    - *Close-ended*: respondents are asked whether or not they would be willing to pay a particular amount for the environment improvement. Eg Are you willing to pay €10 (yes/no)? Are you willing to pay €20 (yes/no)? Are you willing to pay €30 (yes/no)?
    - *Stochastic payment card*: offers to respondents a list of prices and associated likelihood matrix describing how likely the respondent would agree to pay the various offered prices. Eg how likely you are willing to pay €10? (0—not likely, 2—maybe, 3—very likely, 4—definitely); how likely you are willing to pay €20? (0—not likely, 2—maybe, 3—very likely, 4—definitely).

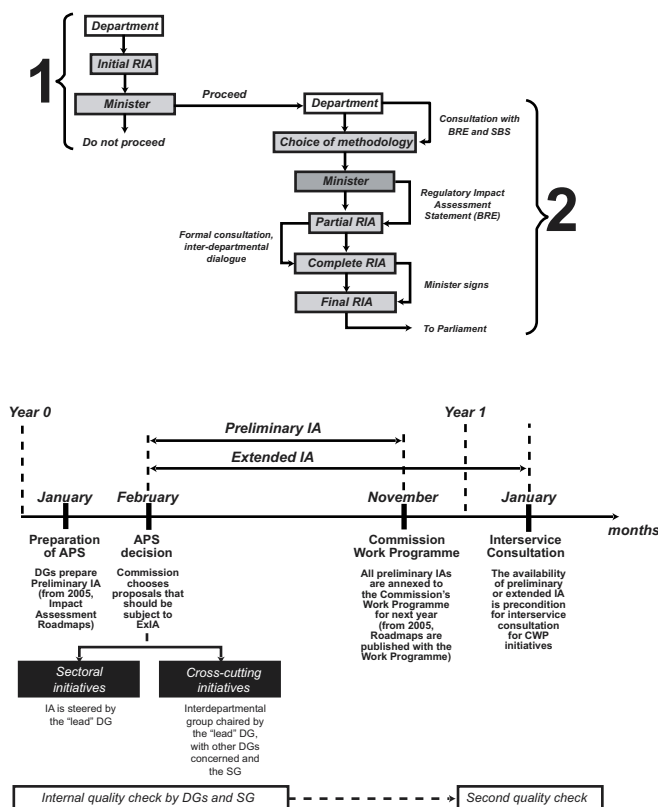
## 2.2 Coordination with European Impact Assessments

UK RIAs pre-date European Commission Impact Assessments (IA) which were introduced for legislative proposals only in 2003. The EU integrated system was set into place to systematically assess the economic, environmental and social impacts of policy proposals. The overall aim was to improve the quality and transparency of the European Union (EU) legislative outcome (EC, 2002). Empirical studies on early days Impact Assessments reports highlighted that they were not able to guarantee full knowledge of the costs and benefits of future legislation (Kirkpatrick and Lee, 2004; IEEP, 2004, Torriti, 2006). In “better regulation” circuits UK RIAs are still considered advanced compared to their EU counterpart. However some improvements can be made with regards even to coordination with EU Impact Assessments.

The timing between UK RIA and EU IA is sometimes problematic (see figure 1). While the European Commission is drafting a new policy or regulatory proposal, the UK line department prepares a UK RIA to inform UK stakeholders of the content of the future EU law. At the same time, the European Commission prepares a roadmap which establishes whether the proposal will have significant impacts on the market, society and the environment. If the expected impacts are substantial, the European Commission will carry out an extended IA, according to the principle of proportionality. The contribution of UK stakeholders in building the EU Impact Assessment varies depending on their interest. Notably, businesses, corporations and organisations which have lobbies in Brussels, will seek to influence the Commission even by providing numbers, risk assessments and cost-benefit analyses. The UK government also collaborates in the formulation of the EU IA in many different ways: provision of expertise, know-how, data, staff, are only some examples. At that time the European Commission carries out the extended IA taking into account data coming from national governments. When the proposal becomes an EC directive, regulation, or decision, the UK government carries out a RIA to assess the impacts of implementing the law at national level. For instance, for the directive on Unfair Commercial Practice, EU and UK had to work on different levels and time scales. The European Commission produced a first preliminary Impact Assessment and then an extended IA. DTI wrote a first RIA assessing the potential economic, environmental and social impacts of the EU directive and then an implementation RIA to understand which existing UK legislation on consumer protection should be repealed or amended. This high number of RIAs for just one proposal implies a high use of resources and does not always guarantee an adequate level of quality. Some problems of coordination and with EU level will inevitably persist. However, the number of RIAs can be restricted and their quality ensured by introducing a peer-review process of control over the quality of individual reports.

Figure 1

UK AND EU MODEL OF RIA<sup>6</sup>



INQUIRY ISSUE 3

[ . . . ] How can training and guidance to officials be improved?

Training of government officials is crucial for ensuring an adequate balance of costs benefits, and risks measurement with environmental and social assessment. The knowledge of basic techniques of data collection and risk management can be imparted by academic institutions in order to ensure both impartiality and high level of training. In the US, for instance, the Office of Management and Budget, in consultation with the White House Office of Science and Technology Policy, has recently released a Proposed Risk Assessment Bulletin (OMB, 2006). This bulletin provides technical guidelines for risk assessments that are done by the government. Risk assessments are an important tool for ranking the risks of different kinds of activities and helping to set priorities. These assessments can also serve as a basis for informing the public about the likely magnitude of different kinds of risks.

INQUIRY ISSUE 4

How can the Better Regulation Executive improve its scrutiny of RIAs to ensure that sustainable development issues are adequately incorporated into each appraisal?

A peer-review process should be introduced in order to make sure that the quality of RIAs is examined by expert practitioners, from public sector, academia. The NAO report defines some flaws in the RIA process, as well as good and bad practice. However, a closer scrutiny of individual reports is needed. Peer review should not be confused with public comment and other stakeholder processes. The selection of participants in a peer review is based on expertise, with due consideration of independence and conflict of interest. The critique provided by a peer review often suggests ways to clarify assumptions, findings, and conclusions. For instance, peer reviews can filter out biases and identify oversights, omissions, and inconsistencies. Peer review also may encourage authors to more fully acknowledge limitations and uncertainties. For large, complex reports, different reviewers may be assigned to different chapters or topics. Such reports may be reviewed in stages, sometimes with confidential reviews that precede a public process of panel review. As part of government-sponsored peer review, there may be opportunity for written and/or oral public comments on the draft product.

<sup>6</sup> Adapted from Renda (2006).

## 5. RECOMMENDATIONS

(1) RIAs should undergo a peer-review process in order to guarantee high quality standards. The concept is that important scientific information shall be peer reviewed by qualified specialists before it is disseminated. The purpose is to enhance the quality and credibility of the government's scientific information. It should be performed by independent experts and academics who would evaluate the content of the RIA and provide additional information based on available research.

(2) Guidance for peer-review of RIAs should be established by the Better Regulation Executive in the Cabinet Office. Even if the selection of an appropriate peer-review mechanism for scientific information could be left to the department's discretion, guidelines would help define general instructions on when and how conducting peer-review.

(3) Peer-review should be carried out for major policy proposals, whose budget is above a set threshold. To ensure that the peer-review is not too costly or rigid, the requirements for more intensive peer review apply only to the more important scientific assessments disseminated by the government. Even for highly influential scientific assessments, BRE guidance should leave significant discretion to the department formulating the policy proposal.

(4) Once the peer-review mechanism is in place, the BRE may find superfluous to carry out initial or partial RIAs. The simplification of the RIA system from the current two-step procedure a single peer-reviewed RIA will facilitate co-ordination with EU level.

(5) In order to ensure the achievement of sustainable development goals, policy proposals should be based on a comprehensive assessment of costs, benefits and risks. To fit this purpose, policy officials should be familiar with a number of basic risk management methods, including cost-benefit, risk-benefit and risk-risk analysis,

(6) Training courses especially on risk analysis. Policy-makers require a clear understanding of basic principles of decision-making under uncertainty. It is therefore crucial that all policy-makers have a clear understanding of risk analysis and risk management techniques.

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### Memorandum submitted by the Law Society

#### SUMMARY

A. The Law Society regulates and represents solicitors. This response is from the Society’s representation arm.

B. We welcome the Committee’s inquiry into Policy Appraisal and Regulatory Impact Assessments (RIAs), and note members’ concern with the shortcomings of RIAs as a means of assessing environmental impacts.

C. We think there is a need to find a way to value intangible and difficult-to-quantify factors—ones which are indeed “priceless” (as the Committee puts it in para 83 of the Seventh Report). From the Law Society’s point of view, these factors are jurisprudential, arising from the Constitution, the rule of law and the existence of civil society. They relate to rights, expectations and obligations, are as difficult to value as environmental aspects, and equally vital to everyday life.

D. In this context, costs and in particular benefits can take tangible and intangible forms. In a policymaking process where costs and benefits are to be quantified, there must be a way of attaching a “value” to intangible factors such as legal and constitutional matters and to weigh any loss of these as costs.

E. Attempts to create equivalent cash values may be to miss the point. These rights cannot be regarded as being “for sale” or “having a market” but are of inestimable worth.

F. Finding a means of incorporating a non-price weighting—a worth factor—for legal and constitutional intangibles might assist. A worth factor could for instance be attached to “rural peace and quiet” and “protection from danger in the workplace” in a similar way to “the right of access to justice”.

G. Whatever method is adopted, legal and constitutional rights and other intangibles cannot simply be ignored in the impact assessment process. To leave them out, in effect allotting a nil amount, is to risk distorting the balancing of costs, benefits and interests which is part of the policymaking process.

Note: This response is based on extracts from our forthcoming response to the Cabinet Office RIA Review mentioned above, and does not deal with all the Inquiry Issues.

#### PREFACE

1. The Law Society regulates and represents solicitors. This response is from the Society’s representation arm.

#### INTRODUCTION

2. We welcome the Committee’s inquiry into Policy Appraisal and Regulatory Impact Assessments (RIAs), and note members’ concern with the shortcomings of RIAs as a means of assessing environmental impacts, expressed for instance in the Committee’s Seventh Report of 2004–05<sup>7</sup>.

3. These concerns share some common factors with those raised in the Society’s forthcoming response to the Cabinet Office’s Review of the Regulatory Impact Assessment<sup>8</sup>. In that response, we discuss the need to find a way to value intangible and difficult-to-quantify factors—ones which are indeed “priceless” (as the Committee puts it in para 83 of the Seventh Report).

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<sup>7</sup> <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmenvaud/261/261.pdf> HC 261, accessed 19 Sept 2006.

<sup>8</sup> <http://www.cabinetoffice.gov.uk/regulation/ria/consultation/index.asp> accessed 19 Sept 2006.

4. From the Law Society's point of view, these factors are jurisprudential, arising from the Constitution, the rule of law and the existence of civil society. They relate to rights, expectations and obligations, are as difficult to value as environmental aspects, and equally vital to everyday life.

#### RESPONSE TO THE ENQUIRY

5. This response is based on extracts from our forthcoming response to the Cabinet Office RIA Review mentioned above, and does not deal with all the Inquiry Issues, merely the first two, which we take together.

6. These refer specifically to the way RIAs, and policymaking more generally, might value intangible assets and assess impacts on them. We argue that there may be common factors which could be helpful in valuing all intangibles, whether environmental ones or those which exist within the Constitution and legal system or elsewhere.

7. The Inquiry Issues ask:

- Should RIAs continue to be seen as the key vehicle for appraising policies against sustainable development principles, given the serious weaknesses that the National Audit Office review highlights? . . .
- If RIAs are seen as the best solution, what steps are being taken to address these weaknesses, including: . . .
  - the difficulty of ensuring that environmental and social impacts which are difficult to quantify in monetary terms are fully taken into account . . .
  - the variable quality of presentation of RIAs, which can inhibit their ability to allow trade-offs between environmental, social and economic impacts to be readily assessed . . .

#### *Future role of RIAs*

8. RIAs, or Impact Assessments (IAs) as the Cabinet Office Review mentioned above proposes they should be renamed, seem likely to be of growing importance in future.

9. The National Audit Office (NAO) noted this in its Evaluation of Regulatory Impact Assessments 2005–06<sup>9</sup> (the NAO Evaluation). Following the acceptance in the 2005 Budget of the report from the then Better Regulation Task Force, “Regulation—less is more”<sup>10</sup>, for instance, RIAs will for example be expected to address implementation in more detail<sup>11</sup> and set out ways in which existing regulation on a topic may be simplified<sup>12</sup>.

The need therefore to ensure that they deal with all the necessary issues is correspondingly increased.

#### *Impact assessment needs more than economics*

10. While we note with interest many of the points made by the National Audit Office (NAO) in their report on RIAs and Sustainable Development<sup>13</sup> to which the Committee refer, an aspect of the NAO Evaluation, mentioned above, causes us concern.

11. At para 18, p 6 of their Evaluation, the NAO state that the Better Regulation Executive (BRE) “should re-emphasise that economics should lie at the heart of RIAs”. We think that this recommendation is badly mistaken.

12. To limit RIAs by requiring that economics should “lie at [their] heart” would be a serious error. Unless other disciplines—along with practical tests of on-the-ground efficacy—are brought in, all that will be assessed is the factors which matter, and are recognised, in economics. These are not the only factors which matter in good policymaking.

13. We argue that many other factors than those which are significant to economists also matter to the end-user. If the analysis made is strictly economic, these may be omitted from the IA to its detriment. As lawyers, naturally we would argue that legal and jurisprudential factors must also be a part of policymaking. Other specialists would also be able to argue convincingly for their own area of knowledge to be taken into account. Policymaking has far wider effects than simply its costs and economic effects.

<sup>9</sup> Evaluation of Regulatory Impact Assessments 2005–06, Report by the Comptroller and Auditor General, HC 1305 2005–06, June 2006 at [http://www.nao.org.uk/publications/nao\\_reports/05-06/05061305.pdf](http://www.nao.org.uk/publications/nao_reports/05-06/05061305.pdf) accessed 19 Sept 2006.

<sup>10</sup> <http://www.brc.gov.uk/publications/lessismoreentry.asp>

<sup>11</sup> Hampton Review (accepted in the 2005 Budget) recommendation 23, p 56. See [http://www.hm-treasury.gov.uk/media/AAF/00/bud05hampton\\_641.pdf](http://www.hm-treasury.gov.uk/media/AAF/00/bud05hampton_641.pdf)

<sup>12</sup> The most recent report from the BRTF, “Regulation—less is more” published in April 2005, suggests that RIAs should also include proposals for the simplification of legislation in the same area. See <http://www.brtf.gov.uk/docs/pdf/lessismore.pdf> (p 39).

<sup>13</sup> [http://www.nao.org.uk/publications/nao\\_reports/05-06/ria\\_sustainable.pdf](http://www.nao.org.uk/publications/nao_reports/05-06/ria_sustainable.pdf)

14. To take an obvious example, economics do not lie at the heart of why democracies prosecute criminal offences. There, the cost far outweighs any fine imposed, for example, and results in further unrecoverable costs if a person is imprisoned. However there is no suggestion that crimes should not continue to be consistently investigated and, when appropriate, dealt with according to law. The reasons do not involve economic factors, but those arising from the assumptions underlying for example the conduct of civil societies and the rule of law. Equally, economics is an insufficient guide to how society approaches issues of civil justice.

15. Nor does economics tell the whole story of the reasons why legal rights and obligations underlie concerns affecting other areas such as education and health, animal welfare, environmental sustainability, employment, sport and the arts.

16. If policymaking is confined to economics—basically, what it costs in money terms—IAs will miss matters of great significance to those affected and will fail to do all they could to improve policymaking.

#### *Tangible and intangible benefits and drawbacks*

17. Towards the end of the present RIA process, Ministers are required to declare that the benefits of a proposed measure outweigh the costs.

18. Costs and in particular benefits can of course take tangible and intangible forms. We have many reservations about the possibility that “social and environmental costs and benefits” can be always be meaningfully quantified, as already suggested. We are also concerned that RIAs at present do not (and IAs in future will not) sufficiently assess the value of intangible benefits, such as rights, freedoms and entitlements, nor weigh any loss of these as costs.

19. For example, in a policymaking process where costs and benefits are to be quantified, there must be a way of attaching a “value” to legal and constitutional matters, such as the right to seek the assistance of the court, the freedom to go about one’s business unmolested, or entitlement to welfare benefits. Similarly the availability of facilities such as help from the Equality Commissions and legal aid are benefits, even if most individuals may never call on them. Reasonable expectations also need to be borne in mind—that power, water, communications, health, education, dispute adjudication, law enforcement and other services will be maintained at a certain level, for instance. Provision of these facilities should not be regarded only as costs. They should be weighed also as benefits to the community at large.

20. Neither do RIAs currently cover such intangible costs and losses as, for example, serious delay in obtaining resolution of litigation. While such delay may involve practical difficulties, with measurable costs (such as postponement of decisions, pending the outcome, by many others than just the parties themselves), there are in addition less quantifiable losses. “Justice delayed is justice denied” and although this is not always a measurable loss, there will be a loss nonetheless.

#### *Unquantifiable costs and benefits*

21. We welcome the NAO Evaluation’s advice that “uncertainties” should be reflected in the RIA (para 2.12, p18) and that the Cabinet Office RIA Review consultation paper says the new Regulatory Impact Assessment (the IA) should show costs and benefits and “the assumptions made in costing them” (para 28).

22. In an earlier review of RIAs<sup>14</sup> the NAO noted the difficulty experienced in quantifying costs and in particular benefits “for which”, as their report puts it, “there is no market”<sup>15</sup>.

23. Current RIA guidance refers policy makers to the Green Book<sup>16</sup>, which offers some guidance on this point<sup>17</sup>. If there is no “market data” policy makers are advised to try and assess people’s “willingness to pay for a particular benefit” or “the amount of compensation consumers would demand in order to accept” a cost<sup>18</sup>.

24. However this is of very limited help. Inevitably there is a particular problem with assessing the cash value of the legal system, for instance, or elements of it, by and to people who have not had contact with it (or whose perception of their contact with it has been negative). Most individuals will have no realistic way of comparing and expressing the value of the right of access to the court, say, with the value of any other constitutional principle, or any other intangible good in their lives, and of then converting it to monetary amounts.

<sup>14</sup> first Evaluation of Regulatory Impact Assessments Compendium Report <http://www.nao.org.uk/pn/03-04/0304358.htm>

<sup>15</sup> para 2.53 p 37.

<sup>16</sup> “Green Book, Appraisal and evaluation in central government”, [http://www.cabinetoffice.gov.uk/regulation/ria/ria\\_guidance/costs\\_and\\_benefits/cost\\_and\\_benefits\\_checklist.asp](http://www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/costs_and_benefits/cost_and_benefits_checklist.asp)

<sup>17</sup> <http://greenbook.treasury.gov.uk/>

<sup>18</sup> “Valuing costs and benefits where there is no market value” para 5.30ff <http://greenbook.treasury.gov.uk/chapter05.htm>; and Annex 2: <http://greenbook.treasury.gov.uk/annex02.htm>

25. Further, the limitations of these methods are recognised: one set of assessment methods is described as only “fairly reliable”<sup>19</sup>. To go some way to solving the problem of “estimat[ing] the value placed on an asset by people who make no direct use of it” the Green Book suggests a combination of assessment methods<sup>20</sup> and admits that an important factor is still a “feel” for the issues involved:

“When using any technique, it is advisable to provide a range of values, and to subject the estimated values to a plausibility check with decision makers”<sup>21</sup>.

26. The Green Book suggests that information about “the robustness of the valuation techniques employed”<sup>22</sup> should be specifically set out and we think this is an important aspect which should be included in the IA.

27. Other countries have grappled with this issue. For instance, the guidance from New Zealand is as follows:

*“Tangible and intangible*

“66. Tangible impacts are those values that can be identified and quantified. An example is the cost of employing people to collect information from the public. The term “intangible” is often applied to those impacts to which it is difficult to attribute a dollar value. Examples might include time, health, comfort, environmental, and cultural impacts.

“67. It is both possible and necessary to integrate the two types of impact . . . Intangible factors (either dealt with in a descriptive or qualitative manner) should be presented alongside quantitative analysis. The analysis should indicate the relative importance that has been assigned to the values, and the assumptions that have been made in making those judgements. It is also critical to recognise the use of a formal [cost/benefit analysis] approach does not imply ignoring non-quantifiable factors. In fact, it may be more important to focus on the qualitative factors, especially where those factors are expected to be larger than the quantitative impacts”<sup>23</sup>.

*A “worth factor”?*

28. We recognise that this is a difficult matter. One solution might be to allot a notional amount in the cost/benefit analysis for constitutional rights (this amount would have to be agreed and applied across government and be regularly reviewed to take account of inflation) and other intangibles.

29. However we tend to think that attempts to create equivalent cash values for something like the existence of legal aid, or the right to seek the assistance of the court, may be to miss the point. These rights cannot be regarded as being “for sale” or “having a market” but are of inestimable worth.

30. Generally we think the New Zealand approach has much to recommend it. Finding a means of incorporating a non-price weighting—a worth factor—for legal and constitutional intangibles might assist, as suggested in the extract above, with other IAs as well, such as rural impacts. A worth factor could for instance be attached to “rural peace and quiet” and “protection from danger in the workplace” in a similar way to “the right of access to justice”.

31. Agreeing a common way of dealing with worth factors across government would also increase transparency and enable consultees to respond more fully to proposals, or even challenge the worth factor attributed.

32. Whatever method is adopted, legal and constitutional rights and other intangibles cannot simply be ignored in the impact assessment process. To leave them out, in effect allotting a nil amount, is to risk distorting the balancing of costs, benefits and interests which is part of the policymaking process.

33. It is essential therefore that governmental impact assessments, whatever form they finally take, should include some means of recognising the importance of these factors. Omitting them from the equation risks valuing only what is measurable, and damagingly warping the resultant assessment.

*Consistent and systematic presentation*

34. We agree that IAs should as far as possible be consistent in presentation. This way, users will know where to find what, regardless of which department prepares the IA.

35. However, it must be recognised that one IA format is unlikely to fit all proposals. Where a question is inappropriate or another is needed, we see no reason why this cannot simply be stated in the IA. Nonetheless a consistent format should be used so that for instance it is clear that an issue has been considered and not merely omitted.

<sup>19</sup> para 7, *ibid.*

<sup>20</sup> para 7, *ibid.*

<sup>21</sup> para 12, *ibid.*

<sup>22</sup> para 12, *ibid.*

<sup>23</sup> [www.med.govt.nz/templates/MultipageDocumentPage—609.aspx P215\\_46759](http://www.med.govt.nz/templates/MultipageDocumentPage—609.aspx?P215_46759)

CONCLUSIONS AND RECOMMENDATIONS

36. As RIAs are likely to be of increasing importance in future, they must raise the right questions and allow for presentation of the information they contain consistently and clearly.

37. In addition it is essential that a way of valuing intangible factors, such as those relating to legal, jurisprudential and constitutional matters, should be devised and incorporated into the impact assessment. This will ensure that assessments will cover all the costs and benefits and not only those which can easily be measured. Unless this is achieved, impact assessments will fail to reflect the true impact of policymaking and legislative and other change.

*October 2006*

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**Memorandum submitted by the National Joint Utilities Group Ltd**

I am contacting you in my capacity as the Chief Executive of the National Joint Utilities Group (NJUG), which represents utilities from the gas, electricity, water and telecommunications sectors in street works matters. NJUG and its member companies support the Government's aims of minimising traffic congestion. We continue to innovate in reducing the environmental impact and disruption our essential works sometimes cause.

Utilities undertake essential street works for four primary reasons—safety, security of supply, to connect new customers/enhance existing customers' supply, or to divert apparatus to facilitate major transport or urban regeneration projects. We believe the best way to reduce the impact of our street works is through better co-ordination, co-operation and communication, coupled with ever-better environmental techniques such as the use of minimum-dig technology, reducing the amount of spoil removal and the duration of works.

We have been working closely with DfT and other key stakeholders on a range of legislation and regulation which impacts on utilities' ability to provide cost-effective, timely and secure essential services to our customers.

NJUG welcomes the opportunity to contribute to your Inquiry into Policy Appraisal and Regulatory Impact Assessment (RIAs). Whilst I appreciate your consultation is focusing on environmental issues, I wanted to take this opportunity to highlight our experience of promoting better regulation, specifically during the passage of the Traffic Management Act 2004 (TMA) and its ongoing Regulations. We have also recently responded to the Cabinet Office's consultation "Revising the Regulatory Impact Assessment".

We worked closely with the Government, Parliament and a broad range of stakeholders during the passage of the TMA to seek to prevent it resulting in unnecessary and costly burdens upon the utility industry. We argued that a number of the proposed regulations were replicating existing powers and we supported the improvement of existing measures instead of introducing a complicated web of new measures, something which the Transport Select Committee highlighted in the findings of its Road and Pathway Maintenance Inquiry.

In our view, the Government did not demonstrate its commitment to the principles of "Better Regulation" during the passage of the TMA. NJUG was also disappointed at the lack of in-depth analysis of the impact of the proposed regulations on utilities and the potential increase in costs and the consequent knock on effect for consumers' utility bills.

NJUG welcomes the findings of the National Audit Office's (NAO) 2006 report on RIAs, which used the TMA as a case study. The report supported NJUG's position that there is a lack of clarity and consistent weaknesses in the assessment process (pages 33 and 39 refer).

NJUG welcomes any attempts to streamline and simplify regulations and will support measures designed to ensure that RIAs have increased transparency through greater consistency and produce comprehensive cost/benefit analysis.

We are particularly concerned, however, that the Government is ignoring the findings of so many consultations and introducing further legislation that is adding to the legislative burden on UK plc. NJUG believe the refinement of, and adherence to, existing legislation and the use of non-regulatory measures is preferable to additional regulation. We feel this is an important part of the "Better Regulation" agenda currently being supported by all parties.

*October 2006*

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## Memorandum submitted by the Sustainable Development Commission

### INTRODUCTION

The Sustainable Development Commission (SDC) is the Government's independent advisor and watchdog on sustainable development, reporting to the Prime Minister and the First Ministers of Scotland and Wales. Through advocacy, advice and appraisal, we help to put sustainable development at the core of Government policy.

Despite a number of revisions since the inception of regulatory impact assessments (RIAs) in 1998, the SDC believe that the existing structure is still an unsuccessful vehicle for incorporating sustainable development (SD) into policy making. The National Audit Office (NAO) review of SD in RIAs found that, even in their selection of ten policies judged to have significant environmental and social impacts, sustainable development concerns were covered badly, if identified at all.

RIAs and now the new Impact Assessment (IA) are based on cost-benefit analysis. This emphasis on quantification and monetisation of impacts necessarily downplays qualitative costs and benefits. As a result, the sustainable development impacts that are difficult to quantify, such as biodiversity, are insufficiently considered in the policy analysis process. However, we recognise that RIAs are the only existing mechanism currently available for analysis of policy impacts and that attempts are being made to improve them. Our response is therefore aimed at identifying improvements that could be made to the existing system and the new IA system currently out for consultation.

The SDC however feels that the biggest problem for embedding SD into policy is not just mechanisms and rhetoric, but action and leadership. For SD to become a force within policy making in Government, the five principles in the Government SD strategy, "Securing the Future", must become the basis for decision making rather than an afterthought. Many departments are as yet unfamiliar with the principles and for the most part cannot demonstrate how they are being used. As yet, there is little evidence that policy makers have made any politically difficult decisions based on a desire to encourage sustainability. Indeed, the path of least resistance seems invariably to be the status quo.

### EXECUTIVE SUMMARY

#### *Better Regulation Executive Consultation on Impact Assessments*

This memorandum is submitted during the Better Regulation Executives (BRE) public consultation on the new Impact Assessment. The SDC welcome this consultation and its intention to simplify and improve the existing RIA structure. We also very much welcome the proposed reference to the five SD principles in the policy summary sheet questions and associated guidance. Some issues from this memorandum will be addressed in more detail in our consultation response to the BRE in October 2006. We are happy to forward our BRE response to the EAC if it would be useful to this inquiry.

#### *Better Guidance and Training on Quantification of SD*

As the decision has already been made to emphasise quantification of policy impacts in the appraisal process, we feel the best way to ensure that sustainable development impacts are given sufficient emphasis is for these to require accurate quantification. Given the complexity of this task, the SDC would like to see Defra and the Better Regulation Executive work together as a matter of urgency to develop strong and clear guidance and training on costing and accounting for environmental and social impacts within new policy.

#### *Stand-alone Assessments*

The Impact Assessment consultation document proposes that "other" concerns such as health, equity and sustainable development should be the subject of stand-alone assessments. This is because their inclusion was felt to: "detract from the core purpose of the Regulatory Impact Assessment: ie ensuring that the costs and benefits of the policy options are identified, quantified wherever possible and set out transparently". We feel that this conclusion is wrong. By clearly separating SD issues from the purely economic in this way, the BRE is specifically working against the Government's commitment declared in *Securing the Future* for the five principles of SD to be the overarching framework within which policy is to be made. If all environmental, social and economic costs and benefits are fully considered and measured, there should be no requirement for any stand-alone assessment.

#### *Widening the Scope of Impact Assessments*

Broadening the scope of the RIA analysis is a difficult but crucial issue for sustainable development and for the better regulation agenda more generally. The NAO found RIAs were often, "scoped in ways which precluded or inhibited discussion of sustainable development concerns." This point is not dealt with by BRE in their consultation on the new IA structure, and we believe it should be further explored.

*Overarching Departmental SD Objective*

The lack of consideration of SD within RIAs is symptomatic of a continuing lack of prioritisation of SD outside of the champion department Defra. This is despite a number of mechanisms in place to embed SD into departmental objectives. The SDC would like to see each department given an overarching SD objective that is actively linked to their Public Service Agreements negotiated with HM Treasury during the Comprehensive Spending Review in 2007. We believe strongly that a clear line of accountability for the overarching SD PSA is needed for all Departments. This would establish SD within the responsibility and reporting lines that are already in place for delivering against their PSA objectives.

*Better Scrutiny*

We recommend that both the BRE and the Better Regulation Units (BRUs) within departments need to be more proactive and take on responsibility for highlighting where the quality of the SD analysis and costings within RIAs and IAs are of unacceptable quality. The capability of the BRUs to address these issues is currently variable and this skill needs to be strengthened through training and guidance. In the meantime, we feel Defra should consider the need to provide a dedicated contact to help departmental BRUs strengthen their capacity in line with the new guidance so they can offer strong advice on appraisal of SD impacts in new policy areas.

## EAC QUESTION 1:

*Should RIAs continue to be seen as the key vehicle for appraising policies against sustainable development principles, given the serious weaknesses that the National Audit Office review highlights? Is there a better way to ensure environmental, social and economic impacts are incorporated into policy-making?*

1. Even though the existing RIA structure often fails to sufficiently account for SD, the SDC does support the pragmatic viewpoint expressed by the NAO that, given the current lack of any viable alternative, RIAs do have “potential strengths as a means to inform and influence policy making, and to facilitate the consideration of sustainable development concerns in new policy<sup>24</sup>.” The Better Regulation Executive (BRE) is currently holding a consultation on a new version of impact assessments (IAs) to replace the existing RIA structure. The SDC feels that this new IA structure could also be improved in terms of coverage and integration of SD principles. Therefore, we suggest a number of improvements to this structure within this response and will develop these in more detail in our consultation response to the BRE in October 2006. We are happy to forward our BRE response to the EAC if it would be useful to this inquiry.

## EAC QUESTION 2:

*If RIAs are seen as the best solution, what steps are being taken to address these weaknesses, including:*

*(2a) what steps are being taken to address the weak link between the structure of RIAs (and accompanying guidance) and the principles and priorities set out in the UK's Sustainable Development Strategy;*

2. The new proposed IA involves a cover sheet and a cost and benefit summary page. As we understand it, this up-front information is intended to provide policy makers with a high-level summary of the key issues. One of the tick box questions in the summary page indicates that the policy option needs to be assessed against SD principles. The guidance then asks that impacts should be costed where possible and refers readers to the assessment toolkit for further information. The SDC very much welcomes the inclusion of this question and reference to the five SD principles in the policy summary sheet and guidance.

3. However, other than those two references, there is very little reference to SD principles within the new guidance and consultation. The SDC feels that SD principles could be better embedded within the whole document implicitly rather than explicitly. For example, we would anticipate that SD would feature in the summary of the policy purpose and intended effects. Furthermore, qualitative impacts would also need to be judged against the five principles.

*(2b) what steps are being taken to address the difficulty of ensuring that environmental and social impacts which are difficult to quantify in monetary terms are fully taken into account;*

4. Given that the decision has been made to emphasise quantification of costs and benefits in the new IA structure, we feel the best way to ensure that environmental and social goods are given sufficient emphasis is for these to also require accurate quantification wherever possible. Unfortunately, few environmental and social goods have reliable market rates for goods and services, and there is a tendency to downplay the value of these goods due to this uncertainty. However, there are various methodologies that can be used to derive

<sup>24</sup> NAO (2006) Regulatory Impact Assessments and Sustainable Development. p 2.

a monetary value for the majority of environmental and social goods. The social cost of carbon is a well-established valuation method for climate change impacts. For other goods, it is often possible to use a combination of revealed preferences or contingent valuation.

5. We would also like to highlight that difficulties with monetary quantification are not just limited to environmental and social impacts. The NAO report in 2005 found that only four out of their sample of ten RIAs quantified the benefits of a policy whereas eight quantified the costs. Quantification can be problematic for all estimates of future costs and benefits, including economic; competition and small business impacts will still require a high degree of approximation and judgement in order to reach a monetary estimate. We feel that acknowledgement of this uncertainty in any calculation needs to be better reflected and referenced in the summary pages of RIAs and the new IA structure.

6. Given the complexity of the subject, the analysis within the RIAs of environmental and social impacts will only be as good as the supporting guidance, training and toolkit. Without both comprehensive training and guidance on SD, it is likely that we will return to a situation where it is considered “too difficult” to quantify environmental and social goods and, as a consequence, they are either ignored or given insufficient weighting within the policy decision. As a result, the SDC would like to see Defra and BRE work together as a matter of urgency to develop strong and clear guidance on costing and accounting for environmental and social impacts. We would recommend that, when completed, all departments then sign up to agreed valuations, methodologies and discount rates so that each department is not able to pick and choose a convenient level of valuation.

The Guidance should:

- be based upon the five SD principles from “Securing the Future”, the Government’s SD Strategy;
- draw upon on the Defra “Stretching the Web” tool, developed to help policymakers integrate SD considerations;
- address the issue of lower or zero discount rates for environmental and social goods;
- be of a similar level of clarity and format to the DTI toolkits that assess regulatory impacts on competition and small businesses;
- be developed and rolled out through classroom and web-based training to policy makers, Better Regulation Units and departmental economists and their teams.

*(2c) what steps are being taken to address the variable quality of presentation of RIAs, which can inhibit their ability to allow trade-offs between environmental, social and economic impacts to be readily assessed;*

7. The new IA structure includes a recommendation that Chief Economists sign a declaration on the RIA that states, “I have read the Impact Assessment and I am content that the evidence base supports the proposed costs, benefits and impact of the policy option”. Ultimately, this declaration makes the quality of the RIA a reputation issue for departmental economists. The SDC supports this requirement as we feel it would encourage more input and attention to the evidence base by departmental economists and result in better quality assessments and trade-offs of costs/benefits.

8. Finally, the quality can be improved through better scrutiny. There are a number of bodies that should contribute better and more proactively to scrutinising the quality of SD assessments within RIAs. Both the BRE and the Better Regulation Units within departments need to take on the responsibility to highlight where the quality of the analysis and costings of SD are of unacceptable quality. Sub-standard RIAs should be required to be re-submitted, and the policy makers responsible offered further training and support. Clearly the capability of the BRUs to address these issues is currently variable and this skill needs to be strengthened through training and guidance. In the meantime, we feel Defra as champion department should consider the need to provide a dedicated contact to help departmental BRUs strengthen their capacity in line with the new guidance so they can offer strong advice on appraisal of SD impacts in new policy areas.

*(2d) what steps are being taken to address poor co-ordination with other policy appraisal processes, such as European Impact Assessments and Strategic Environmental Assessments.*

9. The SDC agree with the EAC that RIAs are rarely coordinated with other appraisal processes outside the integral structure of the assessment. This is in contrast to the good coverage identified by the NAO of the assessments of impacts on competition and small businesses that are central to the current arrangements<sup>25</sup>. We would recommend that in order to adequately incorporate other policy assessments, their consideration be made mandatory and integral to the RIA or IA structure.

10. The Government has previously insisted that a good, properly structured RIA should raise all relevant issues for SD<sup>26</sup>. However the BRE has now proposed in the IA consultation that “other” concerns such as health, equity and sustainable development should also be the subject of stand-alone assessments.

<sup>25</sup> NAO (2005) Evaluation of Regulatory Impact Assessments Compendium Report. p 2.

<sup>26</sup> EAC (2005) HMT response to EAC 7th Report. p 5 <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmenvaud/528/528.pdf>. Accessed September 2006.

This is because their inclusion was felt to, “detract from the core purpose of the Regulatory Impact Assessment: ie ensuring that the costs and benefits of the policy options are identified, quantified wherever possible and set out transparently”. We feel that this conclusion is quite wrong. By clearly separating SD issues from the purely economic in this way, the BRE is specifically working against the Government’s commitment declared in *Securing the Future* for the five principles of SD to be the overarching framework within which policy is to be made.

11. The SDC feels strongly that the proposal for a stand-alone assessment is likely to make SD issues even less well-addressed than they are at present. However, if de-coupling assessments is approved, the BRE consultation document currently provides very little clarity on the proposals about stand-alone assessments and their relationship to the IA. There is no indication as to when a stand-alone assessment would be required, whether they are published with the IA, or what their ultimate purpose or influence would be.

The SDC would like to see:

- a very clear link between the stand-alone assessment and the new IA structure;
- assessments acting as a strong evidence base for the costings of environmental and social goods within the IA;
- assessments triggered when the policy has an impact, either positive or negative, on the Government’s targets on “other” issues such as health, inequality and the environment;
- a reference being to all completed stand-alone assessments in the summary sheet of the new IA;
- assessments and relevant policy appraisals published alongside the RIA or IA to improve transparency for stakeholders and the general public; reports need to be fully downloadable from the same departmental and Cabinet Office websites that host final RIAs.

#### EAC QUESTION 3:

*Does the formal role of Better Regulation Units within departments take adequate account of sustainable development objectives? How can training and guidance to officials be improved?*

12. The Better Regulation Executive is supported in its work by Better Regulation Units (BRUs) within each departments. As well as the “better regulation” agenda, these units also clearly champion the overarching objectives of their respective departments. Within Defra, whose PSA1 is to promote SD across Government and in the UK, we feel that the unit does adequately take account of SD principles. Within other departments, this is rarely the case. To counter this, the SDC is recommending to HM Treasury as part of its input to the Comprehensive Spending Review, that all departments should have an overarching SD objective as part of their Public Service Agreements. We feel this objective should help to embed SD within departmental objectives.

13. Improving SD guidance on policy appraisal is an crucial issue which we have partly addressed in paragraph 6 of this memorandum. But better guidance itself is clearly not enough. The crucial issue is whether it can be applied effectively within Whitehall. A few departments have already undertaken to develop appropriate training tools to develop the skills and capacity of their policy makers to deliver SD. For example, DfES plans to develop a policy makers toolbox with a simple SD policy appraisal method, and the Food Standards Agency has also developed an active training programme on these issues. We would like to see all Whitehall departments take similar active approaches.

#### EAC QUESTION 4:

*How can the Better Regulation Executive improve its scrutiny of RIAs to ensure that sustainable development issues are adequately incorporated into each appraisal?*

14. The Better Regulation Executive has a key role in scrutinising new policy proposals, and RIAs, from Departments and Regulators. This scrutiny role is mainly focused on delivery of their main remit, “to minimise bureaucracy for businesses and front-line staff in the public sector.<sup>27</sup>” We feel that an explicit intention to “minimise regulatory burdens” as outlined in the IA consultation deviates from what should be the key aim of the process, which is to ensure “better regulation” and good policy making. The SDC would agree that bad regulation does cause an unnecessary burden, but would also stress that it should not be assumed that regulation is bad per se. For example, regulation can be a very cost-effective tool to raise sustainability standards.

15. In their review of RIAs and SD, the NAO highlighted that a policy change triggered direct BRE involvement primarily when a policy impact reached certain economic conditions. The result has been that BRE is often primarily concerned with economic impacts with little regard to those on environmental and social goals. The SDC recommends that BRE involvement in an RIA should also be triggered when the

<sup>27</sup> [http://www.cabinetoffice.gov.uk/regulation/about\\_us/index.asp](http://www.cabinetoffice.gov.uk/regulation/about_us/index.asp). Accessed September 2006.

policy change works contrary to any of Government's SD objectives, such as an increase in carbon emissions. This change will focus policy-makers on these impacts and encourage the development of more expertise within BRE on sustainable development.

EAC QUESTION 5:

*What evidence is there that RIAs make a difference to policy outcomes?*

*Can departments document examples where the appraisal process has resulted in a change in the preferred policy option to one which is more sustainable?*

16. The SDC has no evidence of a situation where a policy was changed to one with a more sustainable outcome through an RIA. There is evidence from NAO that policies have been changed in other ways as a result of the RIA process<sup>28</sup>. If there is no evidence of changing policy due to SD considerations, the only conclusion can be that this is a failure to assign SD enough political emphasis and importance, rather than the fact that RIAs are not fit for that purpose. This conclusion supports our response to question 1: that RIAs have the potential to integrate SD into policy making but for various reasons do not yet fulfil it.

EAC QUESTION 6:

*Is the application of the RIA process sufficiently comprehensive? Should it be extended to cover areas such as the Pre-Budget Report and the Comprehensive Spending Review? If not, what other processes are there to ensure that there is transparency and accountability over the consideration of sustainable development issues at the very earliest stages of decision making. Are these processes adequate?*

17. We feel that scope of analysis is a key issue that is limiting the RIA's effectiveness of embedding SD in policy making. The NAO found RIAs were often, "scoped in ways which precluded or inhibited discussion of sustainable development concerns<sup>29</sup>," and "each RIA only deals with small aspects of a policy there is risk that the fundamental issues of a policy are never fully addressed." Broadening the scope of the RIA analysis is a difficult but also crucial issue for sustainable development and for the better regulation agenda more generally. Obviously there cannot be fundamental re-analysis of a whole policy every time a small area of regulation is amended. However, it may also be the case that changes and amendments can highlight that the original policy may be flawed or incomplete. Rather than simply adding another layer of policy or regulation, it may well be more sensible to scope the RIA more widely. This point is not dealt with by BRE in their consultation on the new IA structure, and we believe it should be further explored.

18. The SDC believes that the biggest omission for RIAs is taxation, and would therefore support the EAC's suggestion for extension into the areas listed above. The Budget, pre-Budget reports and Spending Reviews are highly political and significant areas of Government policy. To have no publicly available cost/benefit analysis of Treasury taxation and spending policy raises big questions about transparency of government decision-making. Fiscal policy could have an enormous positive impact for SD, though currently many Treasury taxation policies are problematic for SD. For example, both the EAC and the Treasury Select Committee have questioned Treasury policy concerning the continuing freeze and falling yields from air passenger duty against the exponential and highly damaging rise in carbon emissions from air transport.

EAC QUESTION 7:

*More generally, are there sufficient mechanisms across government for ensuring that sustainable development is fully incorporated into policy making in order to deliver the Sustainable Development Strategy?*

19. At present there are a number of mechanisms within Government with the aim of incorporating SD principles and objectives into policy making. These include a champion department (Defra), scrutiny bodies such as BRE, NAO and EAC, an SDAP requirement and a newly-formed "watchdog" for SD in the Sustainable Development Commission. In addition to this, the SDC would like to see each department given an overarching Sustainable Development objective that is actively linked to their Public Service Agreements negotiated with HM Treasury during the Comprehensive Spending Review in 2007. We believe strongly that a clear line of accountability for the overarching SD PSA is needed for all Departments. This would establish SD within the responsibility and reporting lines that are already in place for delivering against their PSA objectives.

<sup>28</sup> NAO (2005) Evaluation of Regulatory Impact Assessments Compendium Report. The NAO discovered that four out of 10 policies in their 2004-05 compendium report were changed as a result of the RIA process.

<sup>29</sup> NAO (2006) Regulatory Impact Assessments and Sustainable Development. p 7.

20. The SDC feels that the biggest problem for embedding SD into policy is not just mechanisms and rhetoric, but action and leadership. For SD to become a force within policy making in Government, the five principles must become the basis for decision-making rather than an afterthought. As yet; there is little evidence that policy makers have made any politically difficult decisions based on a desire to encourage sustainability. Indeed, the path of least resistance seems invariably to be the status quo.

SD mechanisms include:

#### *Sustainable Development Action Plans (SDAPs)*

The recent House of Commons report on Government SD reporting explains the Treasury's position on SDAPs that, "these action plans will be a key tool in ensuring that sustainable development is taken into account in policy formulation and operational decisions in government Departments. The plans will provide a basis for assessment of progress and . . . reporting of sustainable development"<sup>30</sup>.

Unfortunately, the approach taken by most departments and agencies in their first SDAP is unlikely to drive any key changes in priorities, work programmes or approaches at present, although many plans do provide a glimmer of hope for how the plans could potentially work in the future as a mechanism for SD. Ultimately, the hope is that SDAPs will allow policy makers to take an active approach to reviewing how existing departmental work programmes and infrastructure contribute to, and support, sustainable development.

#### *Scrutiny Bodies*

These bodies include the NAO, EAC and others such as the BRE. Currently, the NAO also undertakes an annual analysis of the quality of RIAs across Government or, as in the most recent report, assessing the performance of individual departments. The report from the NAO in 2006 looked specifically at sustainable development in RIAs following a specific request and is not planned to be repeated with any regularity. Although performing a useful scrutiny role, the general analysis of RIAs by the NAO does not generally cover sustainable development in much depth, if at all.

#### *Sustainable Development Commission*

The Sustainable Development Commission (SDC) was given the role of SD watchdog in the SD Strategy launched last year. The Commission is currently building its own capacity in scrutinising Government performance, offering departments help to improve their own capacity on SD, and providing policy advice to government on policy making and policy processes such as the RIA. As part of this role, the SDC will shortly be reporting on the departmental SDAPs and other departmental performance indicators and objectives, to assess whether these mechanisms are driving change across government. Given that the NAO is unlikely to repeat its report on sustainable development in RIAs with any frequency, we feel that there may also be a role for the SDC as watchdog in this area.

*October 2006*

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### **Memorandum submitted by the University of Manchester, Impact Assessment Research Centre, Institute for Development Policy and Management**

The Institute for Development Policy and Management (IDPM) is a multidisciplinary centre in the School of Environment and Development at the University of Manchester, specialising in research, postgraduate education and consultancy work in the field of development policy. The Institute, which was established in 1958, currently hosts two major Research Centres for the UK Department for International Development, in Regulation and Competition and in Chronic Poverty, and an Impact Assessment Research Centre (IARC), working on the impacts on sustainable development of national, regional and international policies.

IDPM has played a leading role in the European Commission's programme for Sustainability Impact Assessment (SIA) of trade negotiations and agreements, has worked for both DFID and OECD on the evaluation of National Sustainable Development Strategies, and has been engaged in a series of initiatives for the development and strengthening RIA systems in the UK, the EU, and developing and transitional countries.

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<sup>30</sup> House of Commons report on Sustainable Development Reporting by Government Departments, Seventh Report (paragraph 13).

## INQUIRY ISSUES

1. *Should RIAs continue to be seen as the key vehicle for appraising policies against sustainable development principles, given the serious weaknesses that the National Audit Office review highlights? Is there a better way to ensure environmental, social and economic impacts are incorporated into policy-making?*

We agree with the NAO that the RIA system should be strengthened rather than attempting to incorporate SD issues in some other way. If a viable alternative were developed, which has been suggested as a possibility by the EAC, it should replace the RIA system rather than complement it. There are two main reasons for this. First, sustainable development has to integrate decisions on economic, social and environmental issues. If a separate system were introduced, it would serve to separate the issues rather than integrate them. Second, one of the main difficulties of environmental appraisal of policy is linking it directly to decision-making. The RIA system already has a defined place in decision-making, and environmental issues need to be evaluated at the same point.

2. *If RIAs are seen as the best solution, what steps are being taken to address these weaknesses, including:*

- *the weak link between the structure of RIAs (and accompanying guidance) and the principles and priorities set out in the UK's Sustainable Development Strategy;*
- *the difficulty of ensuring that environmental and social impacts which are difficult to quantify in monetary terms are fully taken into account;*
- *the variable quality of presentation of RIAs, which can inhibit their ability to allow trade-offs between environmental, social and economic impacts to be readily assessed; and*
- *poor co-ordination with other policy appraisal processes, such as European Impact Assessments and Strategic Environmental Assessments.*

*In each case, will the steps taken be enough to resolve the problem?*

We are not involved in current actions to solve the problem, beyond our contribution to the NAO work. We would however comment on the above points.

- The weak link between RIA and SD strategy is a key issue. If the strategy is to be implemented, means are needed for evaluating its implementation in policy, precisely as can be provided through the RIA process. To be effective in this respect, RIA needs to include formal requirements for evaluating impact on each aspect of the strategy.
- Typically, integrated assessment draws a clear distinction between those environmental and social impacts which have a direct economic impact, and those which do not. The economic component of the first should always be assessed in economic terms, while all other impacts should be summarised separately. Multi-criteria approaches can sometimes be used for evaluating relative importance, but more commonly the key need is for sound analysis and transparency, so that all stakeholders can make well informed contributions to the debate, each based on their own (economic and non-economic) values.
- During the introduction of EIA, a quality review process was introduced using a set of defined criteria, enabling decision-making bodies to request revisions to the submission. A similar approach could be used for RIA.
- Clearly, an RIA will not be valid if it fails to take account of a relevant EU IA, and an SEA will not be valid if it ignores a relevant RIA. Also, RIA can often make use of information available in relevant SEAs. Better guidance on these aspects would improve the process. It is worth noting, however, that the European Commission's approach to Impact Assessment exhibits the same problems of providing for an integrated and balanced assessment of economic and environmental (and social) impacts.

3. *Does the formal role of Better Regulation Units within departments take adequate account of sustainable development objectives? How can training and guidance to officials be improved?*

We believe that the Cabinet Office RIA unit can play an important role here. The unit already performs a quality control function. This could be strengthened to ensure the Departmental BRUs take adequate account of sustainable development objectives. The key need is to have a review process that requires re-submission if RIAs are inadequate. This would create the incentive to follow the guidance and make use of training. Without a review process and some form of sanction, training and guidance may have no lasting effect.

4. *How can the Better Regulation Executive improve its scrutiny of RIAs to ensure that sustainable development issues are adequately incorporated into each appraisal?*

Develop a review process with agreed criteria, as discussed above.

5. *What evidence is there that RIAs make a difference to policy outcomes? Can departments document examples where the appraisal process has resulted in a change in the preferred policy option to one which is more sustainable?*

A fundamental weakness in the current procedures is the absence a monitoring and evaluation stage in the RIA process. If this were part of the process it would generate the information needed to answer this question, and also contribute to quality improvements over time. We have seen some evidence of this, and would be interested in details of Departments' own examples.

6. *Is the application of the RIA process sufficiently comprehensive? Should it be extended to cover areas such as the Pre-Budget Report and the Comprehensive Spending Review? If not, what other processes are there to ensure that there is transparency and accountability over the consideration of sustainable development issues at the very earliest stages of decision making. Are these processes adequate?*

We believe that the integration that is needed for SD cannot be fully achieved without extension to both these areas. OECD and UN guidance on the implementation of national sustainable development strategies calls specifically for integration of the strategy into the budget process.

7. *More generally, are there sufficient mechanisms across government for ensuring that sustainable development is fully incorporated into policy making in order to deliver the Sustainable Development Strategy?*

Research has shown the UK to be quite strong on this compared with many other OECD countries. There are however significant gaps, as revealed by the EAC and NAO reviews of RIAs.

August 2006

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