

HOUSE OF LORDS

Merits of Statutory Instruments Committee

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8th Report of Session 2009-10

**What happened next?  
A study of Post-Implementation  
Reviews of secondary legislation:  
Government response**

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### *The Select Committee on the Merits of Statutory Instruments*

The Committee has the following terms of reference:

- (1) The Committee shall, subject to the exceptions in paragraph (2), consider—
  - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
  - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (3).
- (2) The exceptions are—
  - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
  - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
  - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (3) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
  - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
  - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
  - (c) that it may inappropriately implement European Union legislation;
  - (d) that it may imperfectly achieve its policy objectives.
- (4) The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (3) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

### *Members*

The members of the Committee are:

Rt Hon. the Baroness Butler-Sloss GBE	The Baroness Morris of Yardley
The Baroness Deech DBE	The Lord Norton of Louth
The Lord Hart of Chilton	The Lord Rosser ( <i>Chairman</i> )
The Lord James of Blackheath CBE	The Lord Scott of Foscote
The Lord Lucas	The Baroness Thomas of Winchester
The Lord Methuen	

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### *Publications*

The Committee's Reports are published by the Stationery Office by Order of the House in hard copy and on the internet at [www.parliament.uk/parliamentary\\_committees/merits.cfm](http://www.parliament.uk/parliamentary_committees/merits.cfm)

### *Contacts*

If you have a query about the Committee or its work, please contact the Clerk of the Merits of Statutory Instruments Committee, Delegated Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email [merits@parliament.uk](mailto:merits@parliament.uk). The Committee's website, [www.parliament.uk](http://www.parliament.uk), has guidance for the public on how to contact the Committee if you have a concern or opinion about any new item of secondary legislation.

### *Statutory instruments*

The Government's Office of Public Sector Information publishes statutory instruments on the internet at [www.opsi.gov.uk/stat.htm](http://www.opsi.gov.uk/stat.htm), together with an explanatory memorandum (a short, plain-English explanation of what the instrument does) for each instrument.

# What happened next? A study of Post-Implementation Reviews of secondary legislation: Government Response

## GOVERNMENT RESPONSE

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1. On 12 November 2009 the Committee published a report on the degree to which Government departments evaluate the effects of statutory instruments. (HL Paper 180). The report was based on a statistical survey of a sample of instruments laid in 2005 conducted by the National Audit Office and some case studies using evidence from the public. It found that 46% of the regulations in a sample from 2005 had not been subject to any form of follow-up evaluation at all and only 29% to full post-implementation review. The Government's response to that report has now been received, and is printed as an Appendix.
2. The Committee intends the report and the response to be debated in the House of Lords in due course.

## APPENDIX: GOVERNMENT RESPONSE

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### **Response from the Department for Business, Innovation and Skills**

The Government has considered in detail the Committee's recommendations relating to post-implementation review (PIR) of secondary legislation. This report sets out its response.

The response is in two sections. This first section sets out the Government's views on the role and purposes of PIR and a vision of how it should work. The second section sets out the Government's response to each recommendation in turn.

#### *The context*

Effective monitoring and evaluation of policy is necessary to ensure that the desired policy outcomes are being achieved at minimum cost, and that unintended consequences are identified and managed.

Monitoring and evaluation of policy should test both that the implemented policy is working as expected, and that it remains appropriate in the light of wider changes.

Monitoring and evaluation can inform future policy developments in the specific area being reviewed, and also give rise to lessons that inform the policy development process more widely.

Post-implementation review of legislation is a key aspect of policy evaluation. However, in many cases, legislation is one aspect of a multi-faceted approach to a policy issue, so it is important that post-implementation review is fully integrated with wider policy evaluation and linked to the EU policy cycle.

As the Committee notes, post-implementation review has always been seen as a core element of a sound policy-making process. It is the sixth and final stage of the policy cycle outlined in Impact Assessment guidance. Similarly, HM Treasury's Green Book,<sup>1</sup> which sets out detailed guidance on economic appraisal and evaluation, uses the ROAMEF framework: Rationale, Objectives, Appraisal, Monitoring, Evaluation, Feedback. Post-implementation review of secondary legislation sits within this framework. The post-implementation review process, as clarified and amended in this response, will be flexible and targeted. Evaluation should be carried out in a manner which is suitable and proportionate to the likely benefits.

#### *The response*

The Government believes that the system for post-implementation review should satisfy the following principles:

1. Post-implementation review should be integrated into the policy making process as part of policy evaluation;
2. The resources devoted to the review should be proportionate to the likely benefit; and
3. Reviews should be transparent, in order to further engagement with stakeholders.

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<sup>1</sup> The Green Book—Appraisal and Evaluation in Central Government, HM Treasury.

### ***Integration into the policy process***

Effective policy-making involves the consistent application of the ROAMEF policy cycle.

In recent years, significant progress has been made in aligning Impact Assessment (IA) to this cycle, for example by requiring IAs to set out clearly the rationale for intervention and the policy objectives. Departments consistently use IAs in developing policy; the National Audit Office uses them in its reviews; and the work of the Better Regulation Executive and the newly-established independent Regulatory Policy Committee will continue to encourage Departments to improve their quality further.

Some progress has been made in strengthening the framework for monitoring and evaluation, although, given the length of the policy-making cycle, it takes time to see results. For new regulations, the Impact Assessment template, as amended in 2007, requires policymakers to indicate a date by which the regulation will be reviewed. The default position is a post-implementation review three to five years after commencement. Therefore, an increase in the flow of post-implementation reviews should be observed from this year onwards.

This is a work in progress, and the Government is committed to improvement. The Committee's report provides a welcome impetus to that work.

As a core part of the policy-making process the Government believes that:

- An understanding of the existing policy landscape, including the effectiveness of existing policy interventions, should always inform new policy development. The Better Regulation Executive (BRE) will amend the IA guidance and toolkit to improve its alignment with the appraisal and evaluation guidance provided by the Green Book and Magenta Book.<sup>2</sup> The revised guidance will emphasise more strongly that new policy proposals should draw on analysis of the effectiveness of existing policy. The Government will ask the independent Regulatory Policy Committee to consider the quality of post-implementation review in its observations on the quality of analysis underpinning new policy proposals.
- Reviews of both primary and secondary legislation should form part of an integrated approach to policy evaluation. The approaches to primary legislation (post-legislative scrutiny, or PLS) and secondary legislation (PIR) are currently different, creating a lack of clarity for policy-makers and a risk of overlap between PIR and PLS. The BRE and Cabinet Office will clarify the linkage between PIR and PLS by the end of March 2010 and will also clarify the link to the evaluation process conducted at EU level.
- The responsibility for taking forward policy evaluation, including PIR, should rest with the Departments leading on the policy area in question. This responsibility includes deciding when and how to undertake it and the level of resources to commit. Each Department will be expected to have in place systems that ensure that officials follow better policy-making processes, and that any lessons resulting from reviews are widely shared. While the centre of Government will not impose any particular review methodology on Departments, it will support them so that it becomes part of their everyday policy-making. For example, policy leads may call on support from evaluation professionals and should use the guidance in the Green Book and Magenta Book. The BRE will work with Departments to ensure that Departments publish information that will increase stakeholder awareness of progress in this area.

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<sup>2</sup> The Magenta Book: guidance notes for policy evaluation and analysis, GSRU, <http://www.civilservice.gov.uk/my-civil-service/networks/professional/gsr/resources/magenta-book-main-page.aspx>. It is currently being updated and a revised version of this guidance will be published later this year.

- To maximise the return on the investment in policy evaluation, lessons need to be learned and applied. Not every post-implementation review will result in change, but a robust PIR system should help policymakers amend policies to remedy weaknesses, scrap redundant regulation and design better policy when new issues arise. The BRE will amend the IA guidance and toolkit to clarify that every PIR IA should set out clearly the further actions arising as a result of the review.<sup>3</sup> There also needs to be an effective connection with European work, particularly in light of the new emphasis that the European Commission has placed on evaluation, building on UK encouragement to look at this area in more detail.

### ***Proportionality***

Review and evaluation require resources funded by the taxpayer, and so the effort applied must be proportionate to the importance of the intervention being considered and to the likely benefits accruing from a review. It is important to avoid processes that lead policymakers to “tick boxes” without adding value to the policy-making process.

The Government believes that the appropriate intensity and scope of a post-implementation review can vary quite widely, depending on the scale of the likely benefits of a review and on the extent to which Departments carry out routine monitoring. The distribution of monetised costs estimated within IAs is highly skewed. Of the 196 impact assessments included in the Government’s recent Benefit-Cost Ratio analysis for legislation made in 2008-09,<sup>4</sup> 118 identified equivalent annual costs of £1m or less and only six identified equivalent annual costs of more than £100m. The system for post-implementation review must accommodate this range. In most cases, policies imposing burdens above £50m a year should be subject to full review, including a formal information-gathering exercise or stakeholder consultation and a revision of estimated costs and benefits, based on evidence from businesses and others. Policies imposing small costs should be subject to a much less intensive review with the option to explain why a PIR would not be proportionate in the circumstances.

The Government will update the Impact Assessment guidance, template and toolkit to clarify expectations of the type of review that is appropriate in different circumstances.

### ***Transparency***

To be effective, post-implementation reviews need to be an opportunity for the Government to understand the real-world impacts of regulation on business, the third sector and citizens. They should also be an opportunity for stakeholders to comment on the implementation of existing policy and to participate in shaping future policy development. Post-implementation reviews need, as far as possible, to be open and transparent, in order to facilitate open communication and to maximise the credibility of the review.

Central to this is the expectation that when a PIR has been carried out, the review will be published. One output of a post-implementation review is a revised Impact Assessment (a ‘PIR IA’) and, like other Impact Assessments, these must be signed off by the relevant Minister, and published.

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<sup>3</sup> HMRC, as a taxing authority rather than a classic regulator, has parallel but different processes in place and the BRE’s template, guidance and toolkit are not always applicable. Where different arrangements apply for tax measures HMRC will nevertheless follow the same principles of integration, proportionality and transparency.

<sup>4</sup> <http://www.berr.gov.uk/files/file53280.pdf>.

All UK primary and secondary legislation is accessible on the website of the Office of Public Sector Information, [www.opsi.gov.uk](http://www.opsi.gov.uk). All Impact Assessments are attached to explanatory memoranda of the relevant statutory instruments, and these are also available on OPSI. In addition, all Impact Assessments are stored individually on the IA library.<sup>5</sup> The Government is currently working to make Impact Assessments (at each stage of policy development from the consultation stage onwards) and post-legislative scrutiny memos (PLS memos) available alongside primary and secondary legislation on OPSI. This will enable Parliament and other stakeholders to assess more easily the degree to which the Government is carrying out its commitment to IA and to PIR of legislative instruments.

***Recommendation 1. It is crucial that there should be robust systems for the review of secondary legislation as well as primary legislation.***

The Government agrees with this recommendation.

The United Kingdom's regulatory framework is defined by a combination of primary and secondary legislation. The requirement for IAs and PIR IAs to be carried out and published applies equally to secondary and primary legislation.

By March 2010, the Government will clarify the relationship between post-implementation review of secondary legislation and post-legislative scrutiny of primary legislation.

***Recommendation 2. There needs to be a stronger Government impetus to help departments establish a methodical PIR system. This would help ensure that departments used the learning gained from PIR reviews to inform both the content and the delivery mechanisms of their secondary legislation.***

The Government accepts this recommendation.

The Government will clarify that each Department is expected to have systems for evaluation and review in place and to report on them publicly (see recommendation 13).

The BRE is amending its Impact Assessment template, guidance and toolkit in order to clarify the Government's policy and procedures relating to PIR, and is improving their alignment with existing guidance on policy appraisal and evaluation to strengthen existing policy evaluation and make sure it is at the heart of future policy-making (see recommendation 15).

The BRE will further strengthen knowledge-sharing across Government and key national regulators and ensure that both domestic and EU legislation is included in the process (see recommendation 13).

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<sup>5</sup> The Impact Assessment electronic library is maintained by the Better Regulation Executive and is available at <http://www.ialibrary.berr.gov.uk/>.

***Recommendation 3. For every SI reviewed, the following criteria should be met:***

- ***Even if conducted as part of a broader review the impact of each SI should be clearly identified and assessed***
- ***The review should assess the extent to which the SI has achieved its objectives***
- ***The review should examine how the outcome compares with the success criteria set out in the IA***
- ***The review should assess the costs and benefits compared with original estimates***
- ***The review should identify whether there have been any unintended consequences.***

The Government does not accept the recommendation in the first bullet point. It does not believe that it is a proportionate use of resources to carry out a post-implementation review of every statutory instrument (SI). Moreover, there will be occasions where SIs are closely related such that the review of several SIs in combination will be more effective in informing future policy development and will represent the best use of resources. However, in these circumstances, Departments are expected to explain the reason for bundling SIs together for PIR.

For example, the Government is currently carrying out a full evaluation of the Companies Act 2006. The Companies Act is the largest statute on the books, and more than 80 SIs have been made under it. The Government will not review each of these SIs separately. Instead, the Government will evaluate the extent to which the key elements of the Act have achieved their objectives.

The Government accepts the rest of the recommendation in part. Where a policy is of sufficient importance to justify a full-scope PIR, these four issues should be considered in the review. The Government believes that, for the large number of policies of lesser impact, it may not be appropriate to devote significant resources to re-estimating costs and benefits. Instead the PIR should focus on the core question: is the policy working? The IA guidance and toolkit will be amended to clarify this point; they already emphasise that it is vital to set out clear objectives as part of the policy design process.

***Recommendation 4. It is important for departments to consider the delivery mechanism as well as the policy intent in the review and we recommend that the views of those affected by the legislation should usually be sought when assessing its performance.***

The Government accepts this recommendation in part.

Departments should certainly consider both the extent to which the SI has achieved its policy objectives and whether the delivery and enforcement mechanisms are working effectively. Those who are subject to regulations, and those who enforce them, are often far better placed to observe the consequences of policy than those who promulgate the policies.

The BRE's IA toolkit already highlights the need for PIR IAs to consider "the views of stakeholders regarding implementation of the policy and whether there have been any unintended consequences."

Many government policy-makers are in regular contact with those subject to regulations and with enforcers. The extent to which a PIR requires a specific information-gathering exercise should be considered on a case-by-case basis. Where a Department is in

possession of reliable current evidence relating to stakeholders' views, it may not be a proportionate use of resources to carry out further inquiry.

***Recommendation 5. We recommend that the initial Impact Assessment should be aligned with the process for post-implementation review:***

- ***departments should ensure that all IAs include a clear statement of the current (baseline) position against which the change introduced by the legislation can be measured;***
- ***to facilitate comparison a PIR report should include many of the same headings as an IA; and***
- ***to make the process coherent the same branch of Government should provide a template and guidance on both.***

The Government accepts this recommendation.

On the first bullet, the cost and benefits of changes introduced by legislation are measured against the current regulatory framework.

The second and third bullets describe the current position. It is Government policy, as described in the guidance and toolkit on Impact Assessment, that an Impact Assessment should be updated and published at the review stage. Thus an output of PIR is a revised Impact Assessment. The template and language are aligned to allow for easy comparison of what was intended and the actual result. The guidance is common to both.

The revised IA guidance will clarify how IAs should be produced for PIRs, and will align more closely with the Magenta Book.

Within this approach, where appropriate, policy-makers should seek specialist guidance on particular techniques for review and evaluation.

***Recommendation 6. The criteria for undertaking a PIR should be similar to those for the production of an IA, but PIR should not be solely linked to IAs.***

The Government accepts this recommendation.

PIR is one aspect of policy evaluation, focusing specifically on the impact of regulation. However, in many cases, regulation is just one aspect of a multi-strand approach to a policy issue, so it is important that PIR is fully integrated with wider policy evaluation.

The Government's policy is that all policies on which an IA is published should also be subject to a PIR, giving due regard to the principle of proportionality. The revised IA template and guidance will set out that Departments are required to 'comply or explain': plan to carry out a post-implementation review within three to five years as expected, or explain why not. Much the same criteria therefore apply to post-implementation review as to impact assessment.

As is emphasised in this response, the Government considers post-implementation review a key part of the policy cycle. It is particularly important where the Government is considering further regulation in an area in which it has previously legislated. It also a vital part of the EU policy cycle, and Departments will need to ensure that they plan the timing of PIRs so that they can feed into the Commission's evaluation programme. The Government will keep under review the effectiveness of the arrangements described here, in order to ensure that it learns lessons from past regulation.

Departments may carry out PIRs and publish PIR IAs using the BRE template and guidance, as often as they see fit. They may, for example, choose to carry out a PIR in

response to a change in a parameter that drives costs or benefits, as the Committee notes in paragraph 32.

Departments may also choose to carry out a PIR where no earlier IA exists, for instance where they have reason to suspect that objectives of an existing policy are not being met, or stakeholder concerns have been raised. Equally, where evidence suggests a policy is working effectively, it may not be an appropriate use of resources to carry out a full PIR. The systems that Departments implement need to be flexible, targeted and proportionate.

The IA guidance will be amended to clarify these points.

***Recommendation 7. There is already a monitoring and review heading in the EM and the Committee now expects to see an explanation of the department's plans to review the SI set out there in all cases.***

The Government accepts this recommendation in part.

As the Government has emphasised throughout this response, it is essential that resources devoted to review are proportionate to the likely benefits of the review. Therefore, as the response to recommendation 3 makes clear, the Government does not accept the recommendation that all SIs should be subject to an IA or to PIR. It would, for example, be wholly disproportionate to spend any time reviewing all commencement orders.

Where an SI has been subject to an IA, then there should be a plan and proposed timing for a review. However, when this time arrives policy officials must retain the flexibility to judge whether carrying out a PIR would be a worthwhile and proportionate course of action. The IA, which will contain plans for post-implementation review, will be attached to the explanatory memorandum (EM). Moreover, the EM should include summary information relating to plans for PIR. Where the final IA states that there is no intention to carry out a post-implementation review, the reasons should be set out in the EM as well in the IA. The guidance to the explanatory memorandum explains:

“When and how will they be reviewed? State who will review the outcome, when and how the results will be published... Where this material has already been included in the IA, please include the headline answers in the EM and cross refer to further detail in the IA (specifying the relevant paragraph or page).”

***Recommendation 8. We believe it essential that good quality impact analysis is provided for the majority of public sector initiatives and that it is followed up with PIR so that departments can refine the efficiency of their delivery mechanisms and taxpayers can see whether their money is being spent to best effect.***

The Government agrees that effective policy appraisal, monitoring, evaluation and feedback are essential for public sector initiatives.

As part of current review of its guidance on Impact Assessment, the Government is reviewing the overlap with other guidance on the appraisal and evaluation of public sector initiatives to ensure there is a single coherent approach for policy makers to follow.

***Recommendation 9. Suggested arrangements for PIR should be part of the policy formulation and included in the consultation exercise. This would allow departments to seek endorsement of their proposals for a review that is appropriate and proportionate to the contents of the regulations.***

The Government accepts this recommendation.

The policy cycle should be seen as a continuous process in which effective engagement with stakeholders plays an important role.

The BRE will shortly be revising the IA template to include further details of the plans for PIR. The IA forms a key part of Government consultations. Plans for review should therefore be included in the IA published for consultation, giving stakeholders an opportunity to comment on review plans. However, it should be noted that the plans for PIR contained in the consultation stage IA are likely to be brief. The Government does not consider that it would be a proportionate use of resources to require more in all cases.

***Recommendation 10. Wherever fees are not increased annually by a fixed increment such as RPI or inflation, a review should be mandatory after a maximum of three years.***

The Government does not accept this recommendation.

The objective of a post-implementation review is to understand the extent to and effectiveness with which policy objectives are being achieved. A review of fees is distinct from, and independent of, a review of the effectiveness of policy. While there may be cases of fee changes in which a PIR would be desirable – for example where fees had been radically restructured – a mandatory PIR in every case where fees were not automatically changed annually appears disproportionate. However, in cases where changes in fees have arisen as a result of changes in policy (rather than being driven by inflation), the fee changes will be included in the PIR of the amended policy.

***Recommendation 11. All PIRs/evaluations on Statutory Instruments should be published online, alongside the original IA.***

The Government accepts this recommendation.

It is Government policy that IAs must be published at three stages in the policy cycle:

- Consultation – development IA;
- Enactment - final IA;
- Review – PIR IA.

The Government currently publishes legislation on-line on the website of the Office for Public Sector Information (OPSI). This includes primary<sup>6</sup> and secondary<sup>7</sup> legislation, including explanatory memoranda to SIs, to which IAs are attached. Additionally the BRE is responsible for managing the IA library, which contains a public record of IAs.

In the future all legislation will be available on [www.legislation.gov.uk](http://www.legislation.gov.uk). This will capture the entire legislative cycle, including reviews.

Discussions between the BRE and OPSI have identified the fit between OPSI's strategic drive to use public data to increase the transparency of government and BRE's programme to embed the use of IA and PIR across Government. Working with OPSI, the BRE will improve PIR tracking across Government and key national regulators by making improvements to the IA library.

As part of this push for increased transparency, future PIR IAs will be available directly alongside the original IAs. PIR IAs should cross-refer, in the Evidence Base, to all other evaluation reports published.

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<sup>6</sup> <http://www.opsi.gov.uk/acts>.

<sup>7</sup> <http://www.opsi.gov.uk/stat.htm>.

Opportunities are being investigated, in parallel with the current updates to the Impact Assessment template, guidance and toolkit, to provide a more effective and transparent online dataset than that offered by the current IA library.

***Recommendation 12. The Government should amend IA or EM templates so that they include an explicit prompt to give the results of any relevant PIR exercise (in the same way they currently do for the outcome of the consultation exercise).***

The Government accepts this recommendation.

As stated in the response to recommendation 6, the Government believes that, where it is considering further regulation in an area in which it has previously legislated, a review of the current regulatory landscape is especially valuable. The results of any PIR would be expected to be incorporated, or cross-referenced, in the Evidence Base of the IA for the new policy.

***Recommendation 13. Lessons from good and bad practice should be disseminated more widely both within the department and across Whitehall.***

The Government accepts this recommendation.

There is already a range of networks, formal and informal, to share knowledge within and between Departments. These networks are used to transmit lessons about good and bad practice in policy-making and about appraisal and evaluation methodology. Within BIS, for example, one of the tasks of the Strategic Evaluation Group is to share knowledge and feed it back to policymakers. Whitehall networks include, but are not restricted to, Whitehall economists and social scientists and Heads of Policy Profession. The general lessons are recorded in the Green Book and Magenta Book.

The BRE coordinates several cross-government better regulation networks at official level. These networks help to embed the principles of better regulation throughout government. The BRE will work with these networks to ensure that lessons learned from post-implementation reviews are shared.

Furthermore, the BRE also produces reports containing advice on good and bad practice. For example, the BRE has recently published a report<sup>8</sup> containing advice to policymakers on how to maximise the benefits from regulation.

***Recommendation 14. The Government should require each department to establish and maintain an online register of its legislative portfolio. This would enable departments to track and follow up PIR commitments, aid consolidation, and also to smooth transition when machinery of government changes are made.***

The Government partially accepts this recommendation.

As explained in response to recommendation 11, the new online service [www.legislation.gov.uk](http://www.legislation.gov.uk) (currently being developed by OPSI, the Office of Public Sector Information) will make available all primary and secondary legislation in one place. It will be possible to search instruments by name of Department. A search will return all instruments for which a Department's name appears in the instrument; however, not all instruments contain a Department's name, and in some cases (e.g. for Privy Council Orders) this will not return details of the responsible department, so a search will not give

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<sup>8</sup> Better Regulation, Better Benefits: Getting the Balance Right, BRE (October 2009), <http://www.berr.gov.uk/files/file53252.pdf>.

a complete Departmental portfolio. The Government has no plans to ask Departments to produce their own legislative portfolios.

Plans are in place to develop an improved IA library. Individual Departments will be able to publish their IAs in the same way as they can at present on the BRE IA library and existing published IAs will be imported into the new service. Alongside the proposed improvements to the IA template and PIR process, this will provide a central store of PIR commitments which will enable Departments and interested stakeholders to track and follow them up.

A related recent advance, supporting Departments' planning of regulatory initiatives, is the publication by the BRE of the Forward Regulatory Programme of planned future regulation.<sup>9</sup>

***Recommendation 15. The Government should take a more active role in supervising both IA and PIR systems. The BRE seems the most obvious body to take on this role: it should move from its position of facilitator to enforcer.***

The Government rejects this recommendation.

The Government aims to embed both IA and PIR fully within the policy-making cycle. As indicated above, it believes that Departments must bear the primary responsibility and accountability for their policies and for the quality of their policy making and IAs.

The Government accepts the need for more systematic and transparent monitoring of whether PIR IAs are being completed in line with plans set out in the original IA. It expects Departments to have systems in place to ensure that PIRs are carried out effectively to support good policy development. From 2011, the Government will expect Departments to include in their Annual Reports a report of the PIRs carried out during the reporting period, giving an indication of the number of PIRs carried out on time and the number delayed. It looks to a range of stakeholders, including Parliamentary Committees, to hold Departments to account for the effectiveness of their policy making, including evaluation and PIR.

The centre of Government will support Departments by providing clear guidance on effective policy-making, including Impact Assessment and PIR, and by continuing to strengthen the requirement for transparency so that Departments' commitments to PIR and their delivery against those commitments are accessible to stakeholders.

While emphasising the need for Departments to retain primary responsibility, the Government has recently established the Regulatory Policy Committee (RPC) to provide expert, independent scrutiny of the analysis supporting policy decisions. The RPC can comment publicly on the matters within its terms of reference, and this therefore increases the potential for public identification of poor performance in the area of IAs and post-implementation reviews.

**Recommendation 16. In setting up the Regulatory Policy Committee we would urge the Government to consider the role that PIR should play in informing the cost estimates for amending or replacement regulations and establish consistent methods for PIR and IAs.**

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<sup>9</sup> <http://www.berr.gov.uk/files/file53203.pdf>.

In setting its terms of reference, the Government has asked the Regulatory Policy Committee “to comment on the quality of analysis supporting policy decisions on new regulations, and on whether the policy design will ensure the benefits justify the costs, including:

- the accuracy and robustness of the costs and benefits;
- whether the range of policy options assessed support minimising costs and maximising benefits; and
- the degree to which issues of public risk and the practicalities of ensuring compliance are taken into account.”

The Government will ask the Regulatory Policy Committee to ensure that its assessment of the quality of analysis takes into account the extent to which this has been informed by PIR. The Government has forwarded the Committee’s report to the RPC.

January 2010