**Case histories: Post-Implementation Reviews**

The aim of this section is to provide practical advice on the key analytical questions to consider when undertaking a post-implementation review (PIR). It outlines a proportionate approach to the evidence and analysis used to evaluate the impacts of a regulatory change, and to support a department’s preferred option.

**Framework**

This section is structured around the four analytical questions in the diagram below. These draw on the framework in ‘Figure 6: PIR Questions’ of the Cross-Government Evaluation Group guidance.[[1]](#footnote-1) This is also presented as ‘Figure 4.2B: Overview of PIR questions and possible review outcomes’ in the draft new BRFM.

|  |
| --- |
| 1. **To what extent is existing regulation working?** |

|  |
| --- |
| 1. **Is government intervention still required?** |

|  |
| --- |
| 1. **Is the existing form of government regulation still the most appropriate approach?** |

|  |
| --- |
| 1. **What is the most appropriate option going forward?** |

1. **To what extent is existing regulation working?**

Whether the policy objective is being achieved is perhaps the most important question of all. The following sub-questions provide guidance on the areas a PIR should cover to address this.

* 1. **To what extent has the policy achieved its objectives/success criteria?**

*The PIR should state clearly the intended purpose of the policy, as set out in the original IA. (It is important that the PIR does not restate the purpose of the policy with the benefit of what has happened.) This is crucial to determining the ex-post impact of the policy, and hence the extent to which the existing regulation is working. Departments should assess clearly to what extent, and for what reasons, the proposal met its objectives/success criteria. In order to do so, departments should consider carefully the most adequate and proportionate choice of evaluation method. The Magenta Book and the Cross-Government Evaluation Group guidance provide discussion and advice.*

* 1. **What have been the costs and benefits of the policy? How do these compare to the costs and benefits estimated in the original IA?**

*In order to determine the ex-post impact of the policy, departments should focus on the additional effects resulting directly from the policy, i.e. the incremental costs and benefits. As noted in the Magenta Book, establishing the counterfactual, or what would have happened in the absence of the policy, is not easy given that by definition it cannot be observed, and often a large number of factors drive the outcomes that are observed. Thinking about monitoring and evaluation in the early stages of the policy design and planning process has benefits, which may include helping to establish the counterfactual. For example, implementing a policy on an initially restricted group of individuals or organisations may help estimate the counterfactual, through observing what happens to the other individuals or organisations. The case below is an example of where considering monitoring and evaluation early in the policy design and planning process would have been beneficial.*

**Post Implementation Review of the Ecodesign of energy related products regulations 2010 (Green) (RPC-DECC-3144(1)):** The Department explains that the PIR could have been improved by monitoring compliance rates, but that this could not be done in a cost effective manner. The PIR explains that given the limited scale of the expected impacts on compliance, this is a proportionate and reasonable approach. The RPC, however, highlighted that not being able to monitor the effectiveness of a policy could be an issue in the case of more significant proposals. Monitoring and evaluation should, therefore, be considered in the early stages of the policy design and planning process.

*Clarity regarding the time frame is also important because short term impacts may be very different to longer term effects, and there is likely to be a time lag between implementation and when initial impacts materialise.*

*Departments should also compare the actual impacts against the estimates in the appraisal, and explain any significant differences. For example, the department may refer to how much the EANCB has changed compared to that estimated in the IA, and explain the reasons for this change. A good PIR will consider whether any of these changes provide lessons for future IAs or PIRs. The case below would have benefited from more clearly presenting these lessons.*

**Post Implementation Review of the Sale of Registration Marks (Amendments) Regulations 2008 (Green) (RPC13-DFT-PIR-1738):** Although the PIR was considered fit for purpose, it could had been improved by assessing further the specific impact of the ending of the contracted out tele-sales link and by bringing together lessons learned under one heading.

In the PIR the termination of the contract was credited with saving nearly £1m per year, compared with an expected saving of £847,000 in the 2008 IA. This accounted for about 80% of the overall estimated savings from the proposal. Combining all the savings together somewhat masked the fact that benefits elsewhere were substantially lower than estimated. Also, the PIR could have addressed whether ending the contract might had had a negative effect on sales. It appeared that in 2008 the number of transactions was considerably over-estimated, leading to a sharp fall in sales revenue.

* 1. **Have there been any unintended effects?**

*The existence of unintended effects may alter the extent to which the existing regulation is judged to be working effectively. Departments should discuss fully any unintended effects. This should include a discussion of the significance of these effects for meeting the policy objectives and their implications for the department’s preferred option. In this, departments should consider any unintended impacts that arise as a result of the policy itself or its implementation, and wider unexpected developments that may have had an unintended effect on the whether the objectives of the policy were being achieved. Departments should consider the extent to which such effects were reasonably foreseeable at the time the policy was implemented. The case below provides an example of where the magnitude of the impact on business was significantly affected by an unforeseeable change in market prices. Where market prices are volatile and unexpected movements could have a major impact on the achievement of policy objectives, or the costs and benefits of a policy, this should be addressed in the IA and PIR.*

* 1. **Have the Department clearly referenced the IA assumptions?**

*The assumptions made in the IA and PIR affect the conclusions reached in the analysis. It is, therefore, important to refer clearly to these assumptions when providing a judgment on the extent to which the existing regulation is working.*

*The PIR should discuss how the assumptions made in the original IA compare to what actually happened. Departments should indicate clearly where assumptions made in the IA have been used or changed in the PIR, and why. The level of evidence that is proportionate will depend on the size and nature of the policy proposal and the importance of the assumption. Departments should also discuss whether the IA’s assessment of risk and uncertainty was robust and how any limitations of the analysis in the PIR (and likely causes of such limitations) impact on the conclusions reached. The case below provides a good example of where the actual impacts were assessed clearly against those expected in the original IA.*

**Post Implementation Review of the UK’s transposition of the EU Oil Stocking Directive 2009 (Green) (RPC-DECC-3131(1)):** The purpose of the PIR was to consider the impact on business of the additional oil stocking obligations introduced by the 2009 Directive.

The RPC concluded that the evidence base used in the PIR was sufficiently robust to support the Department’s preferred option of renewing the regulations. The Department provided a proportionate assessment, which considered the effect of alternative approaches taken by other Member States in transposing the Directive, as well using data already gathered by the Department to compare the actual impact on business of the UK’s chosen approach with the projected impact in the IA.

The significance of, and reasons for non-compliance with the Directive, as well as the supplementary policy options the Department were considering to return to compliance, should have been more clearly and extensively discussed in the PIR.

This case provides an example of where the assumptions in the IA turned out to be ‘wide of the mark’ because of a large unexpected movement in market prices, in this case for oil.

* 1. **Has there been a disproportionate impact on small and micro businesses?**

*An effective regulatory regime will provide mitigations or exemptions for small and micro businesses where it is proportionate to do so. When assessing the current regulation, departments should, therefore, consider explicitly how small and micro businesses have been affected by the policy and how this compares with the impacts estimated in the IA. Departments should also consider whether mitigations or exemptions were applied and whether this gave rise to any market distortions.*

1. **Is government intervention still required?**
   1. **Are the objectives of the regulation still relevant? What would happen if the regulation was removed?**

*If the objectives of the regulation are no longer relevant, or if it would be beneficial to remove the regulation, government intervention may no longer be required. Departments should provide evidence that the objective is still relevant by considering what would happen if the regulation were to be removed. Relevant factors to consider include whether the problem has been solved, perhaps because behaviour has changed as a result of the policy, or the market has changed.*

* 1. **What is the baseline against which the impacts are being assessed?**

*When considering whether government intervention is still required, departments should make sure they compare the current regulatory regime to the appropriate baseline, i.e. the position before the policy began, taking account of any subsequent changes that are independent of the policy proposal. Departments should also consider whether the baseline has changed relative to that used in the original IA, and how this affects future costs and benefits of the policy.*

1. **Is the existing form of regulation still the most appropriate approach?**
   1. **What are the likely costs and benefits going forward? How likely are unintended effects in the future?**

*Having analysed the impact of the policy to date, the department should consider the extent to which it expects the costs and benefits of the existing form of regulation to change in the future. This analysis will aid the department in deciding whether the existing form of regulation is still the most appropriate approach, and will help ensure that the conclusions in the PIR relate clearly to the analysis and evidence presented in the PIR.*

* 1. **Does evidence from stakeholders support the current approach?**

*Considering evidence from a wide range of stakeholders will help the department understand the costs and benefits of the existing form of regulation, and the extent to which the existing form of regulation is the most appropriate approach. Data collection from businesses may take a range of forms including, but not restricted to, administrative data collection, consultations, surveys and qualitative research. Departments should explain clearly their choice of evidence sources, say how the evidence is proportionate and highlight any potential limitations.*

* 1. **How effective is the implementation/enforcement mechanism for the policy? Could it be improved?**

*Improving the implementation/enforcement mechanism for the policy is one way of achieving better outcomes. Departments should provide evidence on the extent to which the chosen enforcement mechanism is appropriate. This is likely to include consideration of compliance levels and stakeholders’ views on implementation. In the case of EU regulations, this may also include considering other member states’ approaches to implementation.*

* 1. **To what extent would non-statutory measures or amendments help the policy meet its objectives, reduce the costs to business and/or have other advantages?**

*To consider whether the existing form of regulation remains the most appropriate approach, departments should reconsider the extent to which alternatives to regulation could be used to achieve the policy objectives. Departments should consider whether the same objectives could be achieved through non-statutory measures and/or whether amendments could be made to reduce the cost to business, without damaging the policy objectives or increasing the overall cost to business. Departments should also consider whether the same objectives could be met through alternative measures that have additional advantages.*

1. **What is the most appropriate option going forward?**

The questions above provide guidance on the analytical issues to consider in deciding whether to renew, amend, remove or allow to expire/replace the existing regulations. The following table, taken from Figure 10 in the Cross-Whitehall Guidance (which is also presented as Table 4.2A in the draft new BRFM), provides a summary of how the answers to these questions relate to the policy option chosen.

|  |  |
| --- | --- |
| **Option (and legislative label)** | **Evidence in support of option** |
| 1. Regulation should remain as is (**Renew**) | Q1: To what extent is the existing regulation working?   * The policy is on course to achieve most or all of its objectives and key success criteria have been met * Costs have been proportionate to benefits   Q2: Is government intervention still required?   * government intervention is still required. (If the policy were withdrawn, the problem would return.)   Q3: Is the existing form of regulation still the most appropriate approach?   * compliance levels are sufficient to support achievement of objectives * there are no alternatives that are less burdensome to business and/or overall |
| 2. Regulation should remain but implementation should be revised or improved (**Amend**) | Q1: To what extent is the existing regulation working?   * The policy is achieving most or all of its objectives, and success criteria have been met   Q2: Is government intervention still required?   * government intervention is still required. (If the policy were withdrawn, the problem would return.)   Q3: Is the existing form of regulation still the most appropriate approach?  Amendments could help to:   * achieve further benefits * reduce costs or burdens on business and/or overall * simplify the implementation processes * improve compliance * reduce unintended or negative effects |
| 3. Regulation should be removed without replacement  (**Remove or Expire**) | *One or both of the following applies*:   * The policy is not, or is no longer, achieving most of its objectives or key success criteria [Q1] * costs are disproportionate compared to benefits [Q1]   *AND one of the following applies*:   * Government intervention is no longer required (the original policy objectives are no longer relevant or it is clear that if the intervention was withdrawn the problem would not return) [Q2] * compliance levels are insufficient to support achievement of its objectives and are unlikely to be improved [Q3] * alternatives to regulation can now be considered to achieve the objectives [Q3] |
| 4. Regulation should be replaced or redesigned (**Replace**) | *One of the following applies*:   * The policy is not, or is no longer, achieving most of its objectives or key success criteria [Q1] * costs are disproportionate compared to benefits [Q1] * compliance levels are insufficient to support achievement of its objectives and are unlikely to be improved [Q3]   *AND:*   * Government intervention is still required to address the problem [Q2]   *AND:* The same or better performance could be achieved using a regulationor alternative to regulation, which:   * costs less [Q3] * creates less burden on business and/or overall [Q3] * creates fewer negative impacts [Q3] * increases benefits [Q3] |

1. Guide for Conducting Post Implementation Reviews, August 2015. [↑](#footnote-ref-1)