Regulatory Impact Assessment (RIA)

a short guide

Regulatory Impact Assessment, commonly referred to as RIA, is a tool to test the practicality and feasibility of regulatory proposals. It can also be applied to existing laws and regulations to assess their economic, social and environmental impacts, costs and benefits. RIA focuses attention on the consequences of specific regulatory approaches.

RIA is key instrument for better regulation and service delivery, to achieve targeted policy objectives more efficiently and more cost effectively. It can minimise negative impacts, uncover unintended consequences, and reduce risk.

The RIA process begins with identification of a policy objective. How can that objective be achieved? RIA stresses the need to identify different options right at the outset - both regulatory and non-regulatory (such as self-regulation by an industry, for example). It then examines the broader impacts likely to be associated with the different options, and as far as possible assesses costs, benefits and practicalities associated with each option. Are proposals and their associated implementation and compliance costs justified in terms of the scale of the issue to be addressed and the likely scale of benefits to be achieved? How likely is it that there could be perverse consequences?
RIA systems were first developed in America and various European countries in the 1980s. RIA is now widely used in developed countries, and in a growing number of developing countries. South Africa was the first African country to adopt the system, endorsed by Cabinet in 2007. Other African countries have expressed interest in following suit. A central RIA Unit has been established in the Presidency, to support national departments in implementing the system. The RIA system is expected to gather momentum over the next few years.

**Key features of RIA**

- A structured process to support evidence-based decision making
- Critical evaluation of different options to achieve a policy objective
- A robust process of evidence-gathering to identify a wide range of potential impacts – throughout the decision-making process
- Proactive consultation with a broad range of affected groups – throughout the decision-making process
- Objective assessment of the anticipated benefits and costs to all affected parties (government, business, organised labour, and communities) associated with different options
- Explicit consideration of the practicalities of implementation and enforcement associated with different options
- A strong focus on inter-departmental communication to ensure cohesion and coordination across government
- A commitment to transparency and accountability as core characteristics of the decision-making process.

RIA in South Africa

SBP has been closely associated the evolution of South Africa’s RIA system. In 2005 SBP led a consortium commissioned by the Presidency and National Treasury to investigate the introduction of RIA in South Africa. The consortium, working with international RIA experts, drew on international good practice and existing South African systems and processes to develop an RIA methodology tailored for South Africa. This methodology and associated RIA tools were tested through a pilot process in two national departments. On this basis, the consortium made further refinements to the RIA methodology and developed recommendations for implementation, which were presented to Cabinet and subsequently adopted in 2007. Since 2007, RIA has been piloted in several national departments. SBP has undertaken RIAs for various government departments and organised business, and in 2009 completed the first official RIA requested by Cabinet, on the dti’s Intellectual Property Laws Amendment Bill.
Consultation is central to RIA

RIA requires consultation with those affected by regulation not just as a formal matter, but as a critical means of information-gathering to inform assessment of options. Consultation needs to include all significant stakeholders. Depending on the issue, this might include consumers, large and small businesses, organised labour, civil society groups, different government entities with a role in implementation, and potentially vulnerable groups such as rural communities, children or refugees.

While it is seldom possible to satisfy all stakeholders, it is critical to engage with a wide range of interests to identify possible disproportionate or negative impacts on particular groups, and develop effective mitigation strategies.

For which regulations should RIA be done?

Ideally, RIA should apply to all significant regulation. Given RIA's usefulness as a tool to support better regulation, RIA should not be limited to major pieces of legislation. It should also apply to secondary legislation and other regulations where needed. Regulations developed under framework legislation very often have far-reaching impacts, and where appropriate should be subject to RIA.

Given the large volume of regulations developed in South Africa, it is not feasible to conduct detailed RIA for all new regulations. The detail included in the RIA should be proportional to the scale and impact of the proposed regulation. In deciding whether or not a full RIA is required, it is necessary to consider criteria such as the anticipated implementation costs to government, likely compliance costs to business, the scale of impact, and the extent to which the proposed measure is likely to be controversial or difficult to enforce.

South Africa has adopted the application of RIA in the development of new regulation, where the focus is on identifying anticipated and potential impacts. RIA can also be applied as an important tool in monitoring and evaluation to assess the impacts of existing regulation and to evaluate the actual costs of implementation and compliance against the benefits realised as a result of implementation.

RIA is a structured process

RIA is not conducted as a once-off exercise at a static point. It is an ongoing assessment that happens alongside and informs the process of legislative development. It typically consists of three phases of assessment, which increase in level of detail:

1. An initial RIA should be conducted when a policy objective is first identified, to explore possible mechanisms to achieve the objective, and briefly identify potential costs, benefits and risks associated with each option.
2. Policy makers should engage with potential stakeholders and affected groups, including other government departments, on the basis of this initial RIA, in order to test the and further develop the assessment of the pros and cons associated with each option. The RIA report that is produced at this point in the process should provide a clear analysis of costs, benefits and risks associated with each option, and should recommend a preferred option, with clear justification.
3. Once a preferred option has been identified, and a Bill or regulatory proposal has been prepared, a final RIA should be compiled. This final RIA report should provide a detailed assessment of the anticipated risks, implementation and compliance costs, benefits, and potential broader economic and societal impacts, and identify mitigating strategies where necessary. It should also provide an assessment of the feasibility of implementation and enforcement, and set out provisions for monitoring and evaluation of impacts following implementation.

If significant amendments are made to a Bill during the legislative process, as a result of input from Cabinet, Nedlac, or Parliament, for example, the RIA report should be revised to include an assessment of the changes.
RIA requires qualitative and quantitative assessments

At its core, an RIA is an assessment of the risks, impacts, costs and benefits associated with a particular proposal or regulation, and an assessment of its effectiveness and efficiency in this light.

This requires an assessment of likely impacts - positive and negative – across a range of stakeholder groups, and across a variety of broad policy areas.

Such an assessment is likely to include both quantitative and qualitative components. Implementation costs to government and compliance costs for business may be relatively straightforward to represent in monetary terms. Benefits to communities, for example in terms of improved protection of rights, or better access to services, may be much more difficult to quantify, and might be best described in qualitative terms.

Similarly, it may be difficult to put a potential cost or other precise measurement to risks associated with the legislation – but it is nonetheless critical to describe such risks and to consider the associated broader impacts.

RIA must not be reduced to a simplistic analysis of cost versus benefit. RIA needs a wide-angle lens, not a narrow focus. Qualitative analysis of ‘soft’ issues and appropriate weighting of priorities is critically important. Constitutional challenges arising from unclear regulation, or lack of enforcement owing to systems inefficiency and weak implementation can undermine the achievement of benefits and result in very large costs.

Effective RIA needs adequate resources

An in-depth RIA may require input from a range of officials, lawyers, economists and other experts, within and outside government. This may represent a fairly time-consuming and costly undertaking. However, a well conducted RIA process can secure significant savings by streamlining the policy development process, improving coordination across government, and uncovering potential costly impacts and unintended consequences that can be mitigated in advance.

The costs associated with RIA are likely to decline over the first few years of implementation as departments build up in-house systems and capacity, and community groups, business and organised labour become more aware and better equipped to contribute meaningfully to the information gathering process.

Some key challenges and opportunities

As South Africa moves towards implementing RIA we need to develop an RIA-oriented regulatory ‘culture’ in terms of which government, business and civil society expect – and insist upon - open and evidence-based consultation from the early stages of regulatory decision-making, well before specific regulatory proposals are chosen, and from there onwards at points along the line. South Africa is at present a long way from this.

RIA must be championed across government in order to bed it in as a normal feature of regulatory policy making. RIA skills will have to be developed within government, including skills in quantitative and qualitative impact analysis. It must be acknowledged that RIA can be seen as a threat to existing practices – and it will be crucial to demonstrate its very real value. In national departments, the RIA template must be used in an honest, comprehensive and context-sensitive way. RIA must not be reduced to a narrowly focused and unimaginative ‘box-ticking’ exercise.

South Africa is in many respects an information-poor country. RIA needs sound information. Improving statistical sources must be a high priority for government and the private sector.

RIA can play a major role right across the legislative process from the initial stages of policy development to the drafting of Bills, in Nedlac; and in the passage of legislation through Parliament. It will be a major resource for Parliament’s oversight function and legislators’ ability to scrutinise Bills on the basis of fuller information.
RIA does not replace political responsibilities

RIA does not mean that political power is handed over to technocrats. It is not a substitute for decision-making in government. It is a tool to enhance the quality of debate and understanding, and to strengthen the evidence base of policy-making – a crucial condition for improving its quality. Applied effectively, RIA is an important device with which to further chosen policy objectives including economic growth, job creation, transformation and improving South Africa’s investment climate.
SBP is a not for profit company specialising in improving the environment for doing business. We have worked in Africa and internationally since 1998 providing innovative solutions for policy formulation, better regulation and development in emerging markets. We have a special interest in small business as vehicles for growth and job creation.

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