



HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

Corrected oral evidence: Quality of impact assessments

Tuesday 5 April 2022

4 pm

Watch the meeting

Members present: Lord Hodgson of Astley Abbotts (The Chair); Baroness Bakewell of Hardington Mandeville; Lord De Mauley; Lord German; Viscount Hanworth; Lord Hutton of Furness; The Earl of Lindsay; Lord Lisvane; Lord Powell of Bayswater; Lord Rowlands.

Evidence Session

Heard in Public

Questions 1 - 14

Witnesses

[I](#): Stephen Gibson, Chair of the Regulatory Policy Committee; Andrew Williams-Fry, Member of the Regulatory Policy Committee.

Examination of witnesses

Stephen Gibson and Andrew Williams-Fry.

Q1 The Chair: This is a formal evidence-taking session on the record and being webcast live. A verbatim note is being taken, which will be put on the public record in printed form and on the parliamentary website. We will, of course, send a copy of the transcript for the amendment of any errors. With that, I just have to ask my fellow committee members whether they have any relevant interests to declare for the record. Silence. Fine.

We will begin with a general question. What is the function of the RPC and what are its key objectives?

Stephen Gibson: Thank you very much for inviting us this afternoon. The Regulatory Policy Committee is the independent better regulation watchdog. We assess the quality of the evidence and analysis used in impact assessments produced by departments to inform decisions on regulatory proposals. Our advice, our scrutiny and our opinions are there to help Ministers and Parliament improve their decisions over regulatory policy by improving the evidence base and the analysis on which the choices are based.

The Chair: How many people do you employ?

Stephen Gibson: We have eight members of the RPC and a secretariat of 15 civil servants. However, we have recently been told that because of the latest spending round we will have an approximate 20% reduction in the secretariat next year. We are concerned that that will have a significant impact on our ability to undertake our role.

The Chair: We have been very interested in the ministerial and Civil Service responsibilities within each department for the preparation and quality of statutory instruments. Do you have contact with the senior civil servant responsible—I think it is called the SRO—or the Minister who performs the equivalent function from a political point of view?

Stephen Gibson: Our focus is on impact assessments rather than statutory instruments. However, we have senior-level contacts with, for example, the departmental chief analysts and the departmental chief economists. Occasionally, when there is a specific issue to do with a particular case, we might have an interaction with the relevant Minister.

The Chair: In a few words, could you give a tour d’horizon of the relative strengths and weaknesses of departments in preparing impact assessments? As part of that, could you address the issue of why we find that the quality of impact assessments varies a great deal from department to department?

Stephen Gibson: On the strengths and weaknesses, I think there are differences between IAs at the consultation stage—which are the impact assessments at the start of the process—which tend to be weakest on the

policy objectives and the set of options, and those at the final stage, which tend to be weakest on the assessment of the wider impact. That is, for example, the impacts on competition, innovation, trade, the environment—which is very important for achieving net zero—the monitoring and the evaluation plan. It is setting up the systems in place so that two, three, four or five years down the line you can assess whether the regulation is working well or whether it needs to be revised in some way. That is where the weaknesses are.

There are as many differences within departments as between departments, and it depends on the particular case in hand. There is a range of reasons for differences. In some cases there are tight timescales or resource constraints. It may be very difficult to obtain good evidence because of the nature of the proposal. We occasionally see that impact assessments have been developed as an afterthought; once the policy has basically been made there is a realisation that they have to go through this hurdle. That undermines much of the purpose of the impact assessment, which is to support the decision-making process.

There are also issues with the experience of the civil servants involved. Many of them have very limited experience of business or of life outside Whitehall. One of the advantages that the RPC brings is that it has widespread, extensive experience of business and of operating businesses that are subject to regulation, and it understands the costs that those regulations can impose on business.

The Chair: You said something very interesting about the ex post nature of a number of impact assessments justifying the policy post event. Can you give the committee some idea of how frequent that is—a rough percentage?

Andrew Williams-Fry: We find that different issues receive an urgency notice from departments. In 2019, 35% of impact assessments received a request for an expedited process. I think that increased in 2020-21 to 40%. We understand that some issues face genuine policy or political pressures to increase their urgency. Of course, if you are leading on a particular policy, your policy probably seems to be very urgent and very important to you, and it may not be in the broader sense. Where we have to expedite a process for a particular IA, that leads to other IAs potentially being delayed.

Q2 **Baroness Bakewell of Hardington Mandeville:** Can you confirm that it is not only statutory instruments that are within the scope of the RPC but codes of practice? Another unnamed department recently told us otherwise.

Andrew Williams-Fry: The better regulation framework sets out the items that are due for scrutiny by the RPC. These include primary legislation and secondary legislation. My understanding is that where a code of practice has a statutory nature—either it is set up statutorily for the industry to voluntarily take it forward or the code of practice itself is statutory—those items should face RPC scrutiny, although I note that

truly voluntary codes of practice conducted by the industry or an industry body fall outside of that scope.

Baroness Bakewell of Hardington Mandeville: The Small Business, Enterprise and Employment Act requires the RPC not only to validate IAs but to check whether all qualifying regulations have been assessed. Does that cause any problems? Are there any tensions around that?

Andrew Williams-Fry: Can you clarify what you mean by the question?

Baroness Bakewell of Hardington Mandeville: The Small Business, Enterprise and Employment Act requires that the committee validates IAs and whether the qualifying regulations have been assessed. That, according to this, causes some tensions and border skirmishes. Is that the case?

Andrew Williams-Fry: That does not sound familiar to me. To be clear, we publish our opinions on different impact assessments as we receive them. The impact assessment and the opinion should be published. That function is different from the assessment, the independent verification—

Baroness Bakewell of Hardington Mandeville: Is it ever challenged? Do you produce this independent assessment and it is not agreed with?

Andrew Williams-Fry: No. We do not see any conflict between our functions within that, but clearly the independent verification function for the business impact target is an important aspect at the annual review of that assessment.

The Chair: Is there any follow-up on this? Lord Rowlands, I cannot see you. I am assuming that if you want to join in with a supplementary you will shout, but we have no way of seeing you. Silence will be taken as assent, if that is all right.

Q3 **Viscount Hanworth:** I have been wondering, as I imagine we all have, about your degree of leverage over the behaviour of the departments. Is it largely a matter of giving advice and approval, and is that advice mainly on the methodology of the impact assessments and ensuring that they are not economically illiterate? A quick answer, if you would, because I have a more substantive question to ask afterwards.

Stephen Gibson: We assess and can formally red rate on the basis of the direct cost to businesses and the impact on smaller micro-businesses. We also comment, by giving grades that are good, satisfactory, weak or very weak, on the quality of a number of other aspects of the impact assessment: the objectives and rationale, the assessment of wider impacts on competition, trade and the environment, the monitoring and evaluation plan and the quality of the cost-benefit analysis.

Viscount Hanworth: I was juxtaposing your approval with your reproof and thinking that those were possibly your main instruments.

Stephen Gibson: Our main instrument is that we publish opinions, we can red rate opinions and whatever the colour of the opinion—red or green, whether it is fit for purpose or not—Ministers have to submit that. When they lay the legislation in front of Parliament, they have to be transparent about the RPC's assessment of the quality of the evidence and analysis in the impact assessment.

Q4 **Viscount Hanworth:** Somebody will later question you about how effective you imagine you are, but I am going to ask you the following. We have recently seen a number of impact assessments that appear to have been prepared at the last minute to confirm decisions already taken. In your opinion, what more can be done to ensure that the impact assessments inform the legislation and are not simply a way of validating decisions already taken?

Stephen Gibson: Yes, you are absolutely right and we certainly agree that we are also concerned with the development of impact assessments that are done after the policy decision has been made. The most benefit you get from the impact assessment comes from developing it alongside the policy so that it can inform whether regulation is needed and, if regulation is needed, what is the best form of that regulation, the regulation that has the lowest cost to businesses and is likely to be the most effective. Sometimes there is a legitimate reason for developing it late. An example might be the impact assessment we have just seen on sanctions for Russia. You would not want to have that delayed until we had gone through the impact assessment, but we have certainly seen many examples where we do not see quite such a legitimate reason for the delay.

We work with and encourage departments to submit their IAs as early as possible and we provide guidance and training to analysts within the departments to support them doing that and to make sure that they can do the analysis and collect the evidence as effectively as possible. But we also support our proposal in the better regulation framework review, which is that we have a role earlier on. At the moment the submission of impact assessments at an early stage, pre-consultation, is only voluntary. While some departments do that, many do not and as a result we get to see the IA only at a very late stage. We certainly support earlier mandatory submission of impact assessments as the policy is developing, rather than waiting until the decision has been made.

Viscount Hanworth: I think we agree with that too. It is exactly our objective.

The Chair: "Early" means how far in advance? How long do you take? How does your process work?

Stephen Gibson: As the policy is being developed, potentially pre-consultation or alongside the consultation, where the department is thinking about what the different policy options are, such as not to regulate—and often the options we see at the final stage are to do nothing or to take the preferred option. Often that is not much of a

choice, whereas in fact there may be quite a lot of choices: different options for how the regulation may be introduced, mitigation for smaller micro-businesses or different ways in which it can be as effective but have much lower costs to businesses and to society.

Lord Powell of Bayswater: Clearly you spend a lot of time guiding and educating departments in this. What do you do for us in Parliament? How do we hear about your concerns and why do we not hear them more often?

Stephen Gibson: We publish all our opinions transparently on our website, and of course an impact assessment itself has to signal on the front page whether it has been assessed as fit for purpose or not. We reach out and engage with parliamentarians—I have met a number of members of this committee over the past few years—to discuss our work and some of our thoughts about how that could be more effective and more efficient.

Q5 **Lord De Mauley:** I will ask a question relating to that one before I go on to mine. To what extent do you find that government departments listen to what you are saying and make amendments accordingly?

Stephen Gibson: Between a quarter and a third of impact assessments that we first see get what we call an IRN, an initial review notice, where we say that it is not fit for purpose, we point out why it is not fit for purpose and we send it back. The department then has an opportunity, a second bite of the cherry, to improve the impact assessment. When we get the final impact assessments, typically we rate them as green. Very few end up as not fit for purpose, having gone through that process. That is how, as well as the training, we point out and improve the evidence that is submitted by the departments.

Lord De Mauley: That is encouraging. Thank you. Where an instrument requires a formal impact assessment to inform parliamentary scrutiny, this committee has repeatedly asked that it should be laid at the same time as the instrument. You sort of touched on that in your answer to the last question. What could be done to improve that, first of all?

Andrew Williams-Fry: We feel that improved timeliness of submissions of impact assessments would certainly aid in the completion and timely publication of our opinions. As we touched on with the expedited request for our process to be completed, there are some limitations where we expedite the urgent issues and that could come at the expense of some of the other issues.

Lord De Mauley: Where an impact assessment is not required, it is helpful to us to have some proportionate description of the impacts, perhaps to be included in the Explanatory Memorandum, rather than a simple statement that a formal impact assessment is not required. Some departments helpfully attach their de minimis assessments. Why do you think that this is not standard practice?

Andrew Williams-Fry: Our understanding is that an Explanatory Memorandum is required, and I think that would be good practice. For a department to understand that an impact is below the £5 million net threshold, it already has conducted a certain degree of analysis. The analysis already exists and could feasibly be put into an Explanatory Memorandum, and we would encourage departments to do so.

Lord De Mauley: Thank you. The annual business impact target report appears long after the legislation has completed its parliamentary stages. Could not the RPC publish its views on the material that it receives from departments more routinely so that it is available when the instrument is under our consideration?

Andrew Williams-Fry: Our opinions are published alongside the impact assessment for individual issues as we go through the everyday activity of Parliament. Different from that is the accounting for the overall impact on business, the business impact target, which is of course a parliamentary duration, a five-year duration. For monitoring for that purpose, the Government issue an annual report on where they stand on the impact for business, and in response we issue our verification of that report. There are two different things there: the impact of an individual regulation as it is put forward and the overall impact as it is accounted for.

Lord De Mauley: It is really the former that I am asking about. Thank you.

Q6 **Lord German:** Can I examine some of the remarks that you have made already about timeliness and about where and when an impact assessment appears? We sometimes get an Explanatory Memorandum that says, "The IA is not yet available because it has not been cleared by the RPC, and therefore we cannot give it to you". What is your turnaround time once you receive it? If you receive it late, that makes a difference. Can you give us an example of roughly how long you take to turn something around once you have received it?

Andrew Williams-Fry: We have a target of a 30-day turnaround for the RPC process for the production of an opinion on an impact assessment. Currently the average timescale for that production is 22 days. Where we issue an initial review notice and a feedback loop happens, clearly that requires more time. That target is 45 days, and currently we are producing our opinions in 40 days on average. Across impact assessments, we are achieving a 90% target for fulfilling those targets.

Lord German: Even if people gave it to you early, they would know they would get it back roughly within 40 days. That is what you are doing at the present time—45 days is the target and in 40 days it would be there. You told the committee earlier that for expedited approaches you had 35% two or three years ago and then it rose to 40%. I presume those are the latest figures.

Andrew Williams-Fry: In 2020-21, yes.

Lord German: You might have given those two figures because that is the sense of direction. Is that true? Is this figure rising year on year or has it been a plateau or a bumpy ride? Are we to assume that the number of expedited requests has increased and is increasing?

Andrew Williams-Fry: It is increasing. I note that 2020-21 was a fairly unusual year for the country, but it is increasing. There is not a cost to requesting an expedited process and so currently, institutionally, there is no reason not to ask for an expedited process. However, we engage very carefully and closely with departments to try to understand the limitations that they are facing with their timing, but also with the content limitation they may face. We do not just allow departments to fail. We engage carefully to help to produce a good outcome, which at the end of the day is a decent impact assessment and a decent opinion for Parliament's sake.

Lord German: You explained that 2020-21 was a difficult year. Apart from, as you said earlier, "This is urgent because we feel it is urgent"—it will be urgent in their minds because it is their piece of legislation—are there reasons that are beginning to emerge that are helping the accelerated request process?

Andrew Williams-Fry: It is not clear to us as independent advisers sitting on a government panel why certain things happen within the Whitehall process. It is important to say that. I cannot comment on the project management capabilities of departments because I am not in a department, but the RPC process as it stands within the better regulation framework is known and the timescales that we target are also known. It is possible for departments to know what the process is at that stage and so not requiring an expedited process appears possible to me, as an independent person who has conducted projects in the private sector.

Lord German: You have expressed a view that the iterative process is the right way: "come to us with an idea". You have told us that a quarter to a third will be sent back, so they would not get red rated and then eventually most of those come out positive. The process is the right one and it can take place, as you described, within 40 days; 45 days is the declared timetable. What do you think that government should do to promote the fact that you are running an iterative process? You can demonstrate that it is the right thing to do. You did not respond perhaps to the Chair's request about which were better departments than others, but I can understand a reticence to do that. It could be through lack of experience or lack of skills, but the fact is that you are not getting the iterative process in the majority of cases, which you think is the right thing to do.

Andrew Williams-Fry: I personally do not have the knowledge of the processes within departments to be able to inform and give a good answer to that question, but I will point again to the fact that the RPC sees the importance of getting a good result at the end of the day. We engage with departments and we have an engagement lead with departments to aid in their production of material impact assessments

that would aid the ultimate opinion that we can produce in a timely manner to help Parliament. We do engage, and I note that the Better Regulation Executive also has units and champions based within departments to try to help with this process. My knowledge as to why there would be further problems ends at that point.

Lord German: This is a problem that presumably needs to be resolved. Do you think that there should be a prohibition on the laying of legislation without an impact assessment where such an impact assessment is required or where one has been red rated by you? Would that prohibition act as a stick? When you have the carrot and the stick, is that the stick you might use?

Stephen Gibson: I think that is quite a strong line to take. If an impact assessment has been red rated, I do not think it would be appropriate for the RPC to be able to prevent a democratically elected Government bringing forward legislation that they wish to. We simply assess the quality of the evidence and analysis. If the Minister wishes to bring forward a measure where the costs and benefits have not been properly assessed, that is up to him or her. The only sanction we have is to red rate it to make clear to Parliament our views on the quality of the evidence and analysis, and then it is up to Parliament to decide whether to proceed with the legislation. I think it would be quite a big step further to allow us to prevent legislation moving forward.

Lord German: On the basis that it has bounced back to us, I pass on, Chair.

Q7

Baroness Bakewell of Hardington Mandeville: If the IA had been red rated—as you say, it is not up to you to block the Government’s legislation—could the department then decide to publish the SI but without the IA because it has been red rated, and just put it in a drawer? Is that likely to happen?

Stephen Gibson: Once it is in the public domain, we publish our opinion on our website. We are independent and they do not stop us doing that. It would be difficult for them to hide the fact that there had been a red-rated opinion.

Baroness Bakewell of Hardington Mandeville: You would not flag up with them before you published that you did not think the IA was fit for purpose?

Stephen Gibson: Yes, we would flag up that it is not fit for purpose and, if it was an initial review notice, we give them the opportunity to resubmit and to improve the quality of their evidence. But if they then proceed to laying the legislation and it starts moving through Parliament, we would at that point—and we have done in the past—issue our opinion and then it is up to Parliament to make that judgment.

Viscount Hanworth: To clarify, the red rating arises only when they have not succumbed to your influence; is that the case?

Stephen Gibson: They have two bites of the cherry. Initially we will issue an initial review notice and that says, "We do not think that the work is fit for purpose but we will give you a chance to resubmit the IA, correcting the weaknesses that we have pointed out". Then we re-evaluate it and in most cases that ends up with a green, fit-for-purpose IA. However, if it does not or if they do not resubmit an IA and simply leave it hanging but proceed with the legislation, we publish our opinion and it would be evident on our website.

Viscount Hanworth: If I understand it, you are creating a case of the department having been utterly intransigent or disorganised or something like that?

Stephen Gibson: It might be that or it might be simply that its evidence and analysis are not fit for purpose for whatever reason.

Viscount Hanworth: Do some departments act in bad grace or do they generally act in good grace when they receive an adverse opinion from you?

Stephen Gibson: Generally, I think the initial review notice is an example of the process working well. The fact that we moved from a quarter to a third of IAs at an initial stage not being fit for purpose to virtually all of them being fit for purpose shows the value that the RPC process and RPC scrutiny brings to improving the quality of evidence and analysis that is put before Parliament.

Q8 **Lord Hutton of Furness:** Part of your committee's work relates to oversight of the business impact target, does it not? Your latest BIT report said that seven of 21 measures you looked at were given improvement notices. Why do you think departments still seem to be having difficulties presenting adequate impact assessments?

Stephen Gibson: We talked before about the fact that that is a sign that the process is working well and that we are adding value. There is a wide range of reasons why departments do not submit good quality, evidenced analysis. It might be because of tight time constraints or it might be because they have left the attempt to gather and analyse the data until very late in the process. It can be because of the difficulty of gathering good evidence. It can be, as I mentioned earlier, because of some of the weaknesses in the experience and training of civil servants not understanding how businesses work. It can be because they do not apply sufficient importance and priority to getting a decent impact assessment out in time. There is a range of reasons and they vary across the board but, as I say, I think the fact that we see quite a lot of initial review notices but they turn around into fit-for-purpose final IAs is a sign that the RPC process is working rather than a failure of departments.

Lord Hutton of Furness: Some of the reasons that you have given there sound fairly basic, do they not? They still seem to be almost struggling to do the minimum that is required in a lot of cases. Is that not right?

Stephen Gibson: We have different discussions with departments. Some discussions I have had, where they ask us literally, "What is the minimum I need to do to jump over the hurdle?", are a bit dispiriting, but many departments see the value that the RPC brings as improving the quality of the evidence. It is not just evidence for its own sake. It is not just an IA to jump through the hurdles. It is to improve the quality of the policy that is being delivered by the departments. The impact assessment should, if it is working well, improve the decisions between different policy options and allow Governments to think about how they achieve their objectives while imposing the lowest cost possible on businesses and civil society organisations, and whether there are non-regulatory ways or information ways of achieving those objectives.

Simply publishing information about, for example, the concerns might be more effective than regulating and banning something. I think the pushing of a consideration of different policy options and thinking about how those policy options work is an important part of the whole better regulation framework.

Lord Hutton of Furness: Yes, I am sure it is, but the business impact target as a policy initiative was designed essentially to reduce the regulatory burdens on business. Do you think that is being achieved?

Stephen Gibson: I think that the best way to do that is to consider the evidence, because we are the RPC. During the 2017-2019 Parliament, the Government had a target of reducing cost to business by £9 billion. In the event, cost to business increased by £7.8 billion. In the current 2019 Parliament, the Government set a holding target of zero—no increase in cost to business—while in the first two years of this Parliament costs to business have increased by £4.5 billion. That excludes the very important exemptions for all the Covid-related regulations, which have imposed more significant costs on business. So no, I do not think that government sets its legislative agenda with an eye to meeting the business impact target.

However, I think there is an opportunity to use the better regulation framework to help the Government think about the costs that particular regulatory measures impose on businesses and to think about how you choose options that lower those costs. The current system does not do that very well, because typically the impact assessment is done after the policy decision has been made. It does not inform the decision of whether to regulate and, if you are going to regulate, what are the lowest-cost ways of regulating.

One of the things that we have been pushing for, and that I think has been recognised in the government review of the better regulation framework, is to have mandatory pre-consultation stage scrutiny by the RPC, so that we see the assessment of the policy impacts before the policy decision has been made and the IA then informs and allows you to think about what is the lowest-cost way. We think that is a way that we can reduce the regulatory burdens on business at an appropriate stage in the policy-making process.

Lord Hutton of Furness: Would a change like that require new legislation?

Stephen Gibson: No, it does not require a change in legislation. A change to the business impact target, which is set out in the SBEE Act, requires legislation, but my understanding is that requiring mandatory early-stage scrutiny does not require it.

Lord Hutton of Furness: That is very helpful. That would be quite a significant new role and responsibility for the RPC, would it not? How do you think that will be received across Whitehall?

Stephen Gibson: I cannot comment on how different departments or different Ministers will receive that. However, it is certainly one of the points that was raised in the 31 January *Benefits of Brexit* document that the Government produced. Although it is still for ministerial decision, it seems to be the direction of travel of the better regulation framework review.

Lord Hutton of Furness: Thank you. That is very helpful.

Lord De Mauley: It may not, as you say, require legislation. However, it would require resourcing and you have told us that your resources are likely to reduce. Will you be capable of doing it if you get that role?

Stephen Gibson: Resourcing is obviously also within the Government's gift. If you think about the values that could be put on improved regulation for cost to business, we are talking about hundreds of millions or billions of pounds, and the cost of having a well-resourced Regulatory Policy Committee and Better Regulation Executive is a lot less than that.

Q9 **Viscount Hanworth:** I have been impressed by the fact that you have quoted some rather precise costs of the regulatory burden. Do you also assess the benefits of a particular piece of regulation? Are you a firm believer in the value and the meaningfulness of a monetarised cost-benefit analysis, in other words the monetarisation of the benefits as well as the costs?

Stephen Gibson: The impact assessment should include the benefits as well as the costs, and also the risks and the other wider impacts, and will include both quantified and non-quantified elements. It sets out what the benefits and costs are and then informs the decision-making process. I am an economist, so I believe in having a structured, robust process for setting out what the costs and benefits of different policy measures are. I absolutely recognise that not everything can be quantified and that government can have objectives that are outside that quantified framework. None the less, I think that it is very helpful in making policy decisions to have a clear assessment of what the costs and benefits of a particular policy are likely to be so that you can make an informed decision.

Viscount Hanworth: Are the figures that you quoted us simply the costs or do they also comprise the benefits?

Stephen Gibson: They were the net cost to business.

Viscount Hanworth: They were the net cost. In fact, you are making a very adverse judgment on the regulations that you have been describing.

Q10 **The Earl of Lindsay:** Can I go on to your involvement with post-implementation reviews? In what form are PIRs presented to you and what factors do you consider when assessing them?

Andrew Williams-Fry: The factors we consider with a PIR that we present in our opinion include an overall assessment of the fit for purpose-ness of the PIR and the lessons-learnt assessment for the purposes of amending, repealing or replacing a regulation at that time, having had that regulation in place for some time. The BRE assessment is that we receive only about 25% to 40% of the relevant regulations in the form of a PIR after a certain amount of time.

The Earl of Lindsay: Is there anything you can do to ensure that that rather low figure for the percentage of PIRs that you should be receiving could be increased to 100%? If a regulation or legislation is meant to be subject to PIR and is not, is there no way that you can insist that PIR is carried out?

Andrew Williams-Fry: Within the current framework, the PIR is a mandatory item for a department to complete, and so by statute the PIR should exist. As independent experts aiding the Government in their assessment of regulation, it is difficult for us to stand in the stead of the Whitehall process to enforce that, but I understand that the Government are thinking about ways to improve the incentive for departments to complete PIRs. Ultimately, it is an essential part of the policy-making process.

The Earl of Lindsay: There was an NAO report about a dozen years ago where it took a sample of 229 SIs that should have been subject to PIR and only 46% had been. Do you have any confidence that across government, whether or not you are seeing those PIRs, that 46% has improved?

Andrew Williams-Fry: My understanding from the Better Regulation Executive is that that number is lower now. Its assessment is that between 25% and 40% of matters that should face a PIR actually achieve a PIR. It is difficult to comment on up to 75% of issues that are missing from that function.

The Earl of Lindsay: What determines whether the RPC is given sight of a PIR?

Andrew Williams-Fry: A qualifying regulation should face a PIR. Whether it makes sense for an individual regulation to receive its own PIR or whether it is grouped together with other similar regulations in the form of a PIR—we are open to seeing that possibility, but a qualifying regulation should face a PIR within a certain amount of time. That amount of time is relevant to the particular policy and the

implementation timescales. We want it to be a meaningful duration between the impact assessment and the PIR, but at some point we should see the PIR.

The Earl of Lindsay: This is what I am getting at. Can a department commission a PIR but decide not to share it with the RPC, or if it is a qualifying regulation does it have to be shared with the RPC in theory?

Andrew Williams-Fry: By statute, it should be issuing the PIR. We would not be aware of any PIRs that are produced and not published; they would not be submitted to the RPC. It may be something that the Better Regulation Executive would see, but as the independent body we can produce opinions only on the PIRs that are produced. The figure of 25% to 40% of issues received by the RPC in the form of PIRs is a low number.

The Earl of Lindsay: If you see a PIR and make a judgment on it, do you publish that judgment?

Andrew Williams-Fry: Yes, we do.

The Earl of Lindsay: If you step back and look at the process of studying the impact of a regulation after it has been implemented, is there a case for there being greater visibility to Parliament of the process that reviews the implementation of these regulations?

Andrew Williams-Fry: I certainly feel, from experience in the private sector, that working through projects and understanding the lessons learnt from an endeavour before you repeat it is a valuable exercise and that Parliament should see this. It is part of a good policy cycle and I think that good PIRs are typically produced with new analysis—potentially a new study and maybe a fresh consultation. Good PIRs provide the value within the feedback loop of understanding whether a regulation should be amended, repealed or replaced. My opinion is that Parliament should require different pieces of information and analysis.

The Earl of Lindsay: BRE is the body that is best able to track where PIRs should be carried out and whether they are being carried out?

Andrew Williams-Fry: Yes, that is the case.

The Chair: You have been most helpful. From the present position, we would now like to turn to what lies ahead. Can we get Lord Rowlands on the line from deepest Wales? Over to you, Lord Rowlands.

Q11 **Lord Rowlands:** There is a number of changes in prospect through the reform of the better regulation framework and the so-called Brexit freedoms Bill. How do you think they might affect your committee's activities?

Stephen Gibson: We have had only limited detail on the Government's proposals for the changes to the better regulation framework. We are not yet clear how it will work, what our role will be within the framework or

on what basis we might assess initial impact assessments, final-stage or post-implementation reviews, or indeed where we might sit within the government machinery to do that. It is rather difficult to comment on our thoughts on where the Government are going. We have our own views about what we think would improve the better regulation framework, but it is difficult to comment on the Government's proposals currently because there is so little detail in them.

Lord Rowlands: In that case, will you share with us what you would like to see happening?

Stephen Gibson: Yes. We submitted our response to the consultation last summer and highlighted a number of areas. First, on the process, we certainly support retaining the external independent expert scrutiny. We have already talked about having mandatory scrutiny earlier in the process to focus on consideration of policy options and alternatives to regulation. We have also talked today about redoubling the efforts on post-implementation reviews, making sure they happen but also giving us the opportunity to red rate impact assessments on their monitoring and evaluation plans so that when departments come to assess whether regulations have been working, they have the information—through monitoring and evaluation of the impacts of the regulation—to make that assessment effectively and, importantly, so that it feeds through into future policy. Often we see post-implementation reviews that simply have a default assumption that everything is working well, whereas in my experience Governments do not always get it right first time. Seeing how regulations are working, and therefore revising and improving them, is an important part of that policy development process.

We certainly support streamlining the process and focusing on the key points of the different stages, but we are concerned that the Government may be throwing the baby out with the bath-water on scrutiny of final-stage impact assessments. We think that is where we add value, as well as the early stage where we are thinking about the policy options. The final stage supports the parliamentary decision-making process and the impacts that the department says its regulations are likely to have are confirmed by an independent panel.

Sorry, this is a bit of a list but it is a big subject. We are also concerned about some of the exemptions from the better regulation framework. Not the de minimis, which we think has been good at filtering out the low ones, but, for example, the exemptions for Covid regulations where we think we could have added a lot of value, perhaps not at the first lockdown stage but thinking about what we learnt from the first lockdown for the second and third lockdowns: was it right to close gyms, hairdressers, restaurants or whatever? Doing that monitoring and seeing how it worked the first time around would have informed better regulatory policy-making at a later stage.

We have had a lot of feedback from businesses, and we are very concerned about the impact on small businesses and micro-businesses and making sure that these businesses, which often face disproportionate

impacts of regulations that impose fixed costs that are less easy to manage in a very small business, are focused on and that the Government think properly about mitigations and exemptions for them. It is also about the transparency of the process and many of the points you have raised today about opinions being in the public domain and impact assessments being clear and transparent and in the public domain.

Finally, and this is another point that I think you raised, is it all being properly and appropriately resourced so that we can go through that process effectively within the government departments to create the impact assessments and within the independent scrutiny body to give it the external verification?

The Chair: On the number of people going from eight to 6.4, what number do you think you need? Give us an idea of the sort of staffing levels you think you would need to do a full proper job as you see it.

Stephen Gibson: It is very difficult to work out what a full proper job requires when we do not know what the full proper job is. It will depend on whether we are looking at more post-implementation reviews. Obviously, when you have only 25% of them coming through, that is less work for us to do than if we were nearer to 100%. Similarly, if we had more early-stage impact assessments, we would need more resource. Until we understand what the task is, it is very difficult to determine what the resources are.

Just to correct one point, the 20% reduction is of the secretariat staff, not of the RPC members. Currently we have a committee of eight and that will continue, but the secretariat of 15 might reduce.

The Chair: Sorry, Lord Rowlands, I cut across you asking that question. Please carry on.

Q12 **Lord Rowlands:** I will broaden the question, given the huge experience you have had now in considering the role of regulations, by saying that there have been two major reports in the House, one from this committee, *Government by Diktat*, and another by the Delegated Powers Committee, *Democracy Denied?*, which raised very serious concerns about the use and misuse of regulations, particularly in skeleton Bills, and the frequent or regular breaching of the generally accepted view that policy should be on the face of the Bill and regulation should be confined to implementation. Do you share our worries and our concerns, given all the years you have been on the committee or served the committee?

Stephen Gibson: It is not our role to comment on whether government should use skeleton Bills or more detailed Bills to push through policies in Parliament. Obviously it is very difficult to assess the impacts of a skeleton Bill if it does not have exact details about the regulations being introduced. In that case, we would very much look to the secondary legislation and the SIs and expect the department to submit those for regulatory scrutiny at the point where the measures are being defined into regulations that can be properly assessed.

Lord Rowlands: Skeleton Bills make your life a lot harder in making the vital assessments that your committee is supposed to make; is that right?

Stephen Gibson: That is correct.

- Q13 **The Earl of Lindsay:** You expressed a concern a moment ago that the final-stage impact assessment might be removed or reduced in its extent or analysis. From your point of view, I imagine that you will no longer be carrying out an exercise where you traffic light the quality of the analysis that supports a regulatory proposal. From our point of view and from the point of view of parliamentary scrutiny, we will equally be looking at proposed new regulations with much less independent analysis from a body such as yours. I am trying to get my mind around what that new world would look like if that happens. There will be an early-stage or pre-consultation impact assessment. I assume that would be made available because you would be publishing it; is that correct?

Stephen Gibson: Well, that is not clear. We hope that we would be able to publish it transparently, but of course at that stage it is still in the policy development process, so it is not clear to us whether we would be able to publish that transparently.

The Earl of Lindsay: We could then have a situation where the statutory option has been chosen by a department to achieve a certain outcome. It is above the de minimis impact. With the status quo, because it is above de minimis there should be a fully worked-up final-stage impact assessment, but that would no longer be the case. In a sense, the rationale with which a department develops a proposal, which might otherwise have been red lighted, will carry no such warning either to you or to Parliament.

Stephen Gibson: My understanding is that the department would still have to produce an impact assessment but that it might not have to be verified by the RPC, so you would not get the red or green traffic light warning about the quality. Of course, currently between a quarter and a third of those that are submitted get a red, not fit for purpose, which the RPC process then improves to near 100%. That is with a department knowing that it has to submit the IA to the RPC, which we hope would encourage them to do a good job. That is a concern that we have with some of the proposals.

The Earl of Lindsay: Do you agree that parliamentary scrutiny can only weaken if there is no final-stage impact assessment that has also been reviewed independently by you?

Stephen Gibson: We think that we add to parliamentary scrutiny, so if we did not have that role, yes, it would be weaker. It would have the balancing opportunity of greater input from the RPC at that policy-making stage but, yes, I agree with your question.

- Q14 **The Chair:** You have been most helpful. You understand that this committee is anxious to find ways to improve scrutiny for the various

reasons that are laid out notably in our *Government by Diktat* report. Lord German invited you to think expansively about what can be done to improve your position and your effectiveness. You declined it. Can I put another full toss on the leg stump as to what you would like to see?

Stephen Gibson: We have set out the changes that we would like from the better regulation framework. An important part is retaining that assessment at final stage to support parliamentary scrutiny, while having a greater focus on both early-stage, to support the decision-making process, and post-implementation reviews to ensure that you get that feedback loop and that regulations, once they come into operation, are properly reviewed and considered as to whether they are working as expected and whether they have unintended consequences or perverse behaviours as a result. I think that you have to see the policy-making process from the early stage, the objectives and the rationale and the option analysis, through the decision-making process and through the parliamentary scrutiny and then to the final post-implementation: is it working as expected? We cannot always get it right first time. Having that independent expert review across the different stages is what I would like to see for a well-working, effective better regulation framework.

The Chair: I am just looking around the committee. Does anybody else want to come in finally? If not, thank you very much indeed. You have been most helpful and very frank. We look forward to keeping in touch with you because we appreciate your evidence, your work and your help, and we are pulling on the rope in the same direction. Thank you very much.