CONTROLLING THE REGULATORS

Controlling the Regulators

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07	06	05	04	03	02	01	00	99	98

Contents

<i>List of Figures</i>	viii
<i>List of Abbreviations</i>	ix
<i>Preface and Acknowledgements</i>	x
1 The Deregulation Initiative and Compliance Cost Assessment	1
The Deregulation Initiative	1
Explanations for Deregulation	6
Regulatory Appraisal: International Developments	9
Regulatory Appraisal: Compliance Cost Assessment in the UK	10
2 Theoretical Justifications for Compliance Cost Assessment	14
CCA as an Aid to Regulation Making	14
The Appraisal Perspective	15
The Control Perspective	25
Conclusion	32
3 Compliance Cost Assessment in Action	33
Introduction	33
Production, Role and Content	33
Procedural Matters	37
Issues in Methodology	42
An Evaluation	53
4 Assessing Regulatory Compliance Costs in the EC	55
Introduction	55
The European Context	56
The Introduction and Operation of Regulatory Assessment in the EC	57
The 1990s: Pressures and Reforms	63
Prospects for Change	66
5 The Directive on the Landfill of Waste: Two Forms of Appraisal	71
Introduction	71
Policy Background	71
Chronology	74
Analysis of the CCA	76
The Use and Impact of Cost Assessments	79
Assessing the Role of the CCA	83

6	Reviewing Environmental Protection Legislation	87
	Introduction	87
	Background	87
	Analysis of the CCA	93
	The Use and Impact of the CCA	98
	Assessing the Potential Role of the CCA	99
7	(De)Regulating for Employee Consultation Rights	104
	Introduction	104
	Background	104
	Analysis of the CCA	109
	The Use and Impact of the CCA	116
	Assessing the Role of the CCA	117
8	Enforcing Intellectual Property Rights: The Relevance of Compliance Cost Assessment	119
	Introduction	119
	Policy Background	119
	Analysis of the CCA	123
	The Use and Impact of the CCA	128
	Assessing the Role of the CCA	129
9	Valuing the Froth on a Pint of Beer	131
	Introduction	131
	Background	132
	Chronology	134
	Analysis of the CCA	135
	The Use and Impact of the CCA	141
	Assessing the Role of the CCA	142
10	Cost-benefit Analysis: An Alternative Approach	145
	Introduction	145
	Background	145
	A Case Study: Regulating for the Health and Safety of Display Screen Equipment Use	153
	Conclusion	162
11	Regulatory Impact Analysis in the US	163
	The Development of RIA and Other Appraisal Techniques	163
	Reagan's Executive Order 12291	165
	The Motivation for Regulatory Impact Analysis	170

The Content of RIA	171
The Process of RIA	174
The Impact of RIA	176
Conclusion	178
12 Conclusions	180
Introduction	180
Critical Appraisal	182
Public Management Implications	187
The Way Forward	192
<i>Notes</i>	198
<i>References</i>	202
<i>Index</i>	213

List of Figures

2.1	The direct or first-round costs of regulation	17
2.2	The indirect or secondary costs of regulation	18
4.1	The European Commission's 'Business Impact Assessment Form'	60
4.2	Example of a <i>fiche d'impact</i>	62
5.1	Summary of expected compliance costs for a change in technique from co-disposal	78
5.2	Distribution of costs and benefits from the proposed Directive on landfill	81
6.1	The implementation of the Environmental Protection Act 1990, Part I	89
6.2	The meaning of BATNEEC	90
6.3	CCA commentaries for ten separate proposals	95
6.4	Impact of lowering the threshold for LAAPC on body shops	97
7.1	Summary of the legislative background to the case	105
7.2	The costs of the 1995 Regulations to a 'typical business'	112
7.3	Calculating the costs of collective redundancy consultation	113
8.1	Outline of the CCA for the 1994 Regulation on counterfeit goods	125
9.1	Summary of the first CCA, 1992	136
9.2	The costs to business of implementing section 43: the second CCA	139
10.1	A checklist of questions for undertaking CBAs	147
10.2	Estimated costs arising from implementing the DSE Directive in the UK	158

List of Abbreviations

BATNEEC	best available technique not entailing excessive cost
BPEO	best practical environmental option
BPM	best practical means
CAMRA	Campaign for Real Ale
CBA	cost-benefit analysis
CBI	Confederation of British Industry
CCA	Compliance Cost Assessment
CEA	cost-effectiveness analysis
DDU	Departmental Deregulation Unit
DG	Directorate General
DoE	Department of the Environment
DSE	display screen equipment
DSS	Department of Social Security
DTI	Department of Trade and Industry
DU	Deregulation Unit
EC	European Community
ECJ	European Court of Justice
EDU	Enterprise and Deregulation Unit
ENDS	Environmental Data Services
EO	Executive Order
EPA	Environmental Protection Act
HMIP	HM Inspectorate of Pollution
HSC	Health and Safety Commission
HSE	Health and Safety Executive
IPC	Integrated Pollution Control
IPR	intellectual property rights
LAAPC	Local Authority Air Pollution Control
MAFF	Ministry of Agriculture, Fisheries and Food
MMC	Monopolies and Mergers Commission
NPM	new public management
OMB	Office of Management and Budget
R&D	research and development
RA	Regulatory Appraisal
RIA	Regulatory Impact Analysis
RSI	repetitive strain injury
SI	Statutory Instrument
SMEs	small and medium-sized enterprises
TRIPS	trade-related aspects of intellectual property rights
TUC	Trades Union Congress
VDU	visual display unit

Preface and Acknowledgements

For Conservative governments from 1979–97, state disengagement and deregulation were important goals. A perception that there had been too much regulation seemed to require some mechanism to constrain interventionist tendencies. In 1985 a procedure known as Compliance Cost Assessment (CCA) was introduced: when preparing regulatory proposals, government departments were required to produce a systematic assessment of the predicted costs to business.

Although CCA appears to be a major innovation in governmental processes, it has been surprisingly neglected by the academic community. When we embarked on our study, we recognised the importance of an interdisciplinary approach. The accounting dimension would focus on the measurement of costs and how accounting practices and expertise influence policy formation and implementation. The economics input would attempt to relate CCA to standard models of cost-benefit and cost-effectiveness appraisal and determine the predictable impact of the initiative on the competitiveness of industry and on allocative efficiency. The legal issues were concerned with the extent to which the process leads to ‘rational’ law-making in the pursuit of public interest goals and encourages accountability and transparency.

As we began to explore these questions, it also became increasingly clear that we should address the public administration issues: how does CCA operate as a technique of government, notably to what extent does it enable politicians to control the behaviour of civil servants (and perhaps other politicians) in the pursuit of government objectives?

The British experiment with CCA is not unique: regulatory appraisal techniques have also been introduced in other countries. We felt that it would be particularly valuable to compare CCA with the more ambitious system of Regulatory Impact Analysis used in the US and with the *fiche d’impact* prepared by the European Commission.

To structure our research and analysis we postulated two goals for CCA against which the process and impact of the technique might be judged. The first was that CCA, by providing some form of economic appraisal of regulatory proposals, could generate information which would enhance the quality of policy-making: it would provide some indication of whether the measure would lead to increases in economic welfare. The second, not necessarily incompatible with the first, was to enable government, and particularly the more influential Ministers within government, to exert greater control over the regulatory process.

The project utilised a range of primary sources to build a picture of the practice and impact of CCA. CCAs were collected from government departments covering the period 1991–96. Their analysis revealed both the detail and an indication of the scope of the process, including the kinds of information presented and the assumptions made. These not only generated a rich source of qualitative and quantitative information, but also helped in selecting a number of case studies for more thorough investigation.

Five case studies of CCAs were undertaken, drawn from three Whitehall departments. These were intended to provide an insight into the ways in which a CCA might become part of the regulatory process and were selected to include regulatory proposals of both domestic and European Community (EC) origin. One additional case study was also carried out in order to investigate the alternative use of cost-benefit analysis by the Health and Safety Executive. For each case study, interviews were conducted with officials responsible for the production of the document and its incorporation into the regulatory policy process. The research was supplemented by secondary sources, including parliamentary and official documents and the specialist and business press.

The research was also supported by two field visits. In October 1995, two of the authors spent four days in Washington DC interviewing officials from the Office of Management and Budget, the President's executive office, and two Federal agencies. Information was collected on the process of, and recent changes in, the American system of regulatory appraisal. In December 1995, two of the authors spent three days in Brussels interviewing officials of the European Commission and members of COREPER, the organisation of UK permanent representatives, whose officials act as the negotiating arm of Whitehall. Information was collected on two different issues: first, the extent to which CCA was having, and potentially could have, an impact on the regulatory policy process within the Commission; and, second, the use and development of the *fiche d'impact*.

In this volume we present the findings of our study. Chapter 1 places CCA in its historical and international context. Chapter 2 explores the nature of CCA, and other techniques, in the light of the possible goals of an appraisal system. In Chapter 3, we describe and evaluate the content of, and procedures for, CCAs and summarise their characteristics during the period 1992–95. Chapter 4 contains a critical account of how the *fiche d'impact* has developed.

Chapters 5–10 detail the case studies. Chapter 5 considers the development of a proposed EC Regulation on the operation of landfill sites. In Chapter 6 we discuss a different area of environmental regulation: the review of Part I of the Environmental Protection Act 1990. Chapter 7 considers the role of CCA in changes in requirements for consultation with employees in the event

of collective redundancy or business transfer. In Chapter 8 questions are raised about the universal application of CCA by focusing on an EC Regulation which improved opportunities for holders of intellectual property rights against counterfeit goods. Chapter 9 analyses two CCAs produced as part of a process which first decided to implement and later abandoned legislation on beer measures. We move from CCA to cost-benefit analysis in Chapter 10 and consider the earlier introduction of that technique in the area of health and safety regulation with an example of an EC Regulation on display screen equipment.

In Chapter 11, we explore the American system of regulatory impact analysis, drawing comparisons with CCA. Chapter 12 contains our conclusions: an evaluation of the CCA process and some tentative suggestions on how it might be developed.

Towards the end of our study period, and indeed at a time when we were already providing some feedback on our findings to the Cabinet Office Deregulation Unit, the government introduced a new formal process, Regulatory Appraisal. When fully operational, this will provide a much more comprehensive assessment of the predicted impact of regulatory proposals and may come to resemble the American system. We were unable to observe how the new system works in practice and, at the time of writing, it is unclear to what extent it has superseded CCA. Chapter 1 contains a short account of Regulatory Appraisal, and the possible implications of its introduction are considered in Chapter 12. Notwithstanding these interesting developments, our study stands as a useful commentary on a major innovation in the process of making regulation in the UK and has a relevance for the future use of such techniques.

The end of 18 years of Conservative governments, coinciding with the completion of our manuscript, does not mean the end of CCA: the incoming Labour government has also expressed the desire to pursue goals of competitiveness and labour market flexibility. While there may be some change in the detail – for instance, an emphasis on effective regulation rather than *deregulation* – the fundamental notion of assessing the expected impact of regulatory proposals is likely to remain.

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