

# 사후 규제영향평가 국제컨퍼런스

International Conference on  
Post-Implementation Review

| 일 시 |

'23.09.22(금) 10:00-16:00

| 장 소 |

코트야드 바이 메리어트 세종, 그랜드볼룸(2F)

| 주 최 |  한국개발연구원  
Korea Development Institute

| 후 원 |  규제개혁위원회  
Regulatory Reform Committee





## Dear Delegate

The International Conference on Post-Implementation Review, hosted by the Korea Development Institute(KDI), will be held at the Courtyard by Marriott Sejong on Friday, September 22, 2023.

Regulatory Impact Analysis(RIA) is a policy decision-making process conducted to provide a preliminary analysis of the socioeconomic impact of new regulations and to design optimal alternatives for regulations. However, with the emergence of new technologies and industries, and the rapidly changing socioeconomic environment, it has become more important to post-examine the functional efficiency of previously introduced regulations and achievement of their initial purposes.

Therefore, as a system that reviews regulatory performance and seeks alternatives based on the results of regulatory enforcement, the Post-Implementation Review is expected to play an important role in regulatory reform and improvement of regulatory qualities.

This conference has been organized to discuss Post-Implementation Review systems in leading countries as well as in Korea. During this conference, systems and examples of Post-Implementation Review in leading countries will be comprehensively examined, and in-depth discussions of the methods employed to measure regulatory performance will be held.

This conference represents a great opportunity to explore new ways for regulatory reform and to determine how Korea's regulatory policy should develop moving forward.

I look forward to your interest and participation.

September 2023  
Dongchul CHO  
President, KDI



## 초대의 글

한국개발연구원(KDI)이 주최하는 「사후 규제영향평가(Post-Implementation Review) 국제컨퍼런스」가 9월 22일(금) 코트야드 바이 메리어트 세종에서 개최됩니다.

규제영향분석은 규제가 사회, 경제적으로 미치는 영향을 사전에 분석하고 최적의 규제대안을 설계하기 위해 수행되는 정책 의사결정 과정입니다. 그러나 신기술·신산업의 등장과 급변하는 사회·경제적 환경에서 이전에 도입된 규제가 효율적으로 기능하고 당초 도입취지를 적절하게 구현하고 있는지 여부를 사후적으로 점검할 필요성이 증대되고 있습니다. 이에 사후 규제영향평가는 규제집행 결과를 바탕으로 규제의 성과를 점검하고 대안을 모색하는 제도로서 규제혁신 및 품질개선에 중요한 역할을 수행할 수 있을 것으로 기대됩니다.

이번 컨퍼런스는 우리나라를 비롯하여 주요국의 사후 규제영향평가 제도를 논의하기 위해 마련되었습니다. 현재 운영 중인 주요국의 제도를 종합적으로 살펴보고, 사후 규제영향평가의 사례, 규제 성과측정 방법 등을 심도 있게 논의할 예정입니다.

이번 컨퍼런스가 규제혁신을 위한 새로운 방안을 고찰하고, 우리나라 규제정책이 나아가야 할 방향을 모색하는 좋은 기회가 되길 기대합니다.

여러분들의 많은 관심과 참여를 부탁드립니다.

2023년 9월  
KDI 원장 조동철

# International Conference on Post-Implementation Review

**DATE** | 22<sup>nd</sup> September, 2023  
**VENUE** | Grand Ballroom, Courtyard by Marriott Sejong  
**Hosted by** |  KDI Korea Development Institute  
**Sponsored by** |  Regulatory Reform Committee

Time	Contents	Speaker
10:00 - 10:10	Opening Remarks	<b>Youngsun Koh</b> Vice President of Korea Development Institute (KDI)
10:10 - 10:20	Congratulatory Remarks	<b>Jong Seok Kim</b> Chair of Regulatory Reform Committee
<b>Session 1</b> PIR Framework and Methodology		<b>Chair: Min Chang Lee</b> Professor, Chosun University
10:30 - 11:00	● Post-Implementation Reviews across OECD Countries	<b>Paul Davidson</b> Policy Analyst of OECD
11:00 - 11:30	● Post-Implementation Review of Regulations in Korea	<b>Sung Bou Kim</b> Korea Institute of Public Administration (KIPA)
11:30 - 12:00	Panel Discussion	<b>Hyuk Woo Lee</b> Professor, Pai Chai University <b>Jong Cheon Kim</b> Director of Regulatory Legislation Research Center, Korea Legislation Research Institute
Luncheon & refreshment break (12:00 - 13:30)		
<b>Session 2</b> Sharing PIR Design, Operation and Achievement Experience		<b>Chair: Jin Gook Kim</b> Professor, Yonsei University
13:30 - 14:00	● Methodology for Post-Implementation Review in Korea	<b>Yonghyeon Yang</b> Director of Center for Regulatory Studies, KDI
14:00 - 14:30	● The Role of PIRs in UK Regulatory System	<b>Andrew Hallett</b> Senior Policy Advisor of Regulatory Policy Committee (RPC)
14:30 - 15:00	● Post-Implementation Review in the German System of Legal Impact Assessment	<b>Hans-Jörg Dietsche</b> Professor, FHM Bielefeld
Refreshment break (15:00 - 15:15)		
15:15 - 16:00	Panel Discussion	<b>Soo Jung Choi</b> Korea Small Business Institute (KOSI) <b>Gwan Pyo Bae</b> Professor, Chungnam University <b>Hyung Seob Kim</b> Professor, Hanbat Unibersity
16:00 - 16:10	Closing Remarks	<b>Yonghyeon Yang</b> Director of Center for Regulatory Studies, KDI

# 사후 규제영향평가 국제컨퍼런스

## International Conference on Post-Implementation Review

| 일 시 | '23.09.22(금) 10:00-16:00

| 장 소 | 코트야드 바이 메리어트 세종, 그랜드볼룸(2F)

| 주 최 | **KDI** 한국개발연구원  
Korea Development Institute

| 후 원 | **규제개혁위원회**  
Regulatory Reform Committee

시간	내용	발표/토론자
09:40 - 10:00	사전등록	
10:00 - 10:10	개회사	<b>고영선</b> KDI 연구부원장
10:10 - 10:20	축사	<b>김종석</b> 규제개혁위원장
<b>Session 1</b> 사후 규제영향평가 제도 및 방법론		<b>좌장: 이민창</b> 조선대학교 교수
10:30 - 11:00	● OECD 국가들의 사후 규제영향평가 제도	<b>Paul Davidson</b> OECD 정책 분석관
11:00 - 11:30	● 한국의 사후 규제영향평가 제도	<b>김성부</b> 한국행정연구원 부연구위원
11:30 - 12:00	패널 토론	<b>이혁우</b> 배재대학교 교수 <b>김종천</b> 한국법제연구원 규제법제연구센터장
오찬 및 휴식 (12:00 - 13:30)		
<b>Session 2</b> 주요국 사후 규제영향평가: 제도설계, 운영 및 성과		<b>좌장: 김진국</b> 연세대학교 교수
13:30 - 14:00	● 한국의 사후 규제영향평가 방법론	<b>양용현</b> KDI 규제연구실장
14:00 - 14:30	● 영국 규제 체계에서 사후 규제영향평가의 역할	<b>Andrew Hallett</b> 영국 RPC 선임 정책분석관
14:30 - 15:00	● 독일 입법영향평가 체계에서의 사후 규제영향평가	<b>Hans-Jörg Dietsche</b> FHM Bielefeld 교수
휴식 (15:00 - 15:15)		
15:15 - 16:00	패널 토론	<b>최수정</b> 중소벤처기업연구원 연구위원 <b>배관표</b> 충남대학교 교수 <b>김형섭</b> 한밭대학교 교수
16:00 - 16:10	폐회사	<b>양용현</b> KDI 규제연구실장



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## Session 2

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P A R T

# I

## OECD 국가들의 사후 규제영향평가 제도

Post-Implementation Reviews  
across OECD Countries

—

Paul Davidson

OECD 정책 분석관 / Policy Analyst of OECD

사후 규제영향평가 국제컨퍼런스  
International Conference on Post-Implementation Review





# » Post-implementation reviews across OECD countries

Korea Development Institute international conference 22 September 2023  
Paul Davidson, Policy Analyst, OECD Regulatory Policy Division

## » *Today's presentation*

- Role of PIRs in the regulatory policy cycle
- Approaches to PIRs
- Connecting PIRs with stock-flow/offsetting rules
- Stakeholder engagement in PIRs
- Conclusions



## Role of PIRs in the regulatory policy cycle

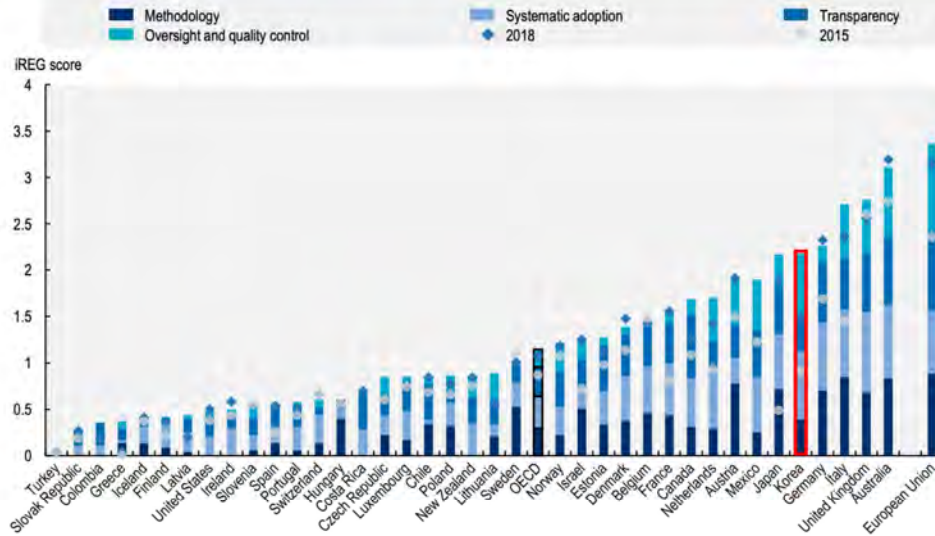


### *PIRs in the regulatory policy cycle*





## PIRs – OECD country composite indicator for primary laws



Note: Data for 2014 is based on the 34 countries that were OECD members in 2014 and the European Union. Data for 2017 and 2021 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.  
Source: OECD (2021), OECD Regulatory Policy Outlook 2021, OECD Publishing, Paris.



## PIRs – OECD country composite indicator for subordinate regulations



Note: Data for 2014 is based on the 34 countries that were OECD members in 2014 and the European Union. Data for 2017 and 2021 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.  
Source: OECD (2021), OECD Regulatory Policy Outlook 2021, OECD Publishing, Paris.

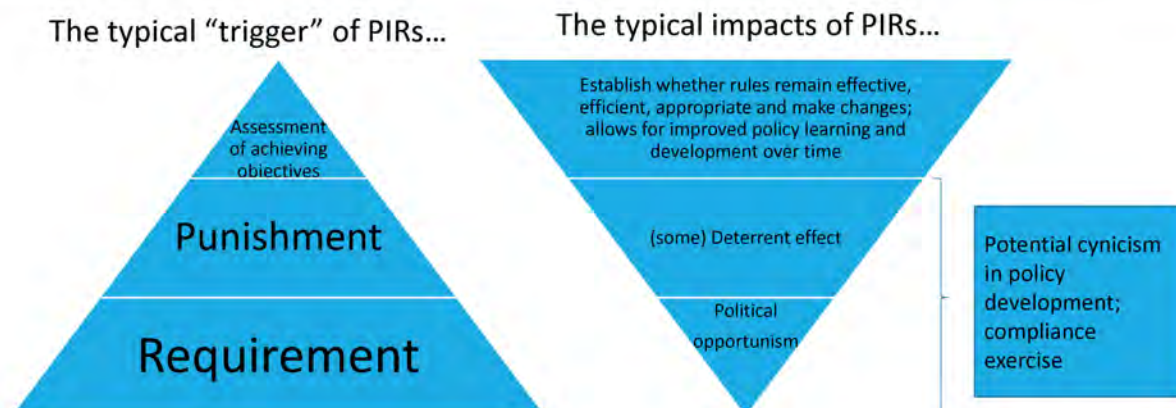


## Why PIRs are needed as part of the regulatory policy cycle

- The 'stock' of regulation is extensive in all countries
- The potential for regulation to have significant impacts
- The effects of regulation cannot be known with certainty *ex ante*
  - Regulations can also be exempt from *ex ante* stakeholder engagement and impact assessment – e.g. during crises or in response to emergencies
- Ensuring regulations remain fit for purpose over time
- Understanding the aggregate impacts of regulation
- Improving the design and administration of *new* regulations
- Providing public support for regulations and governments



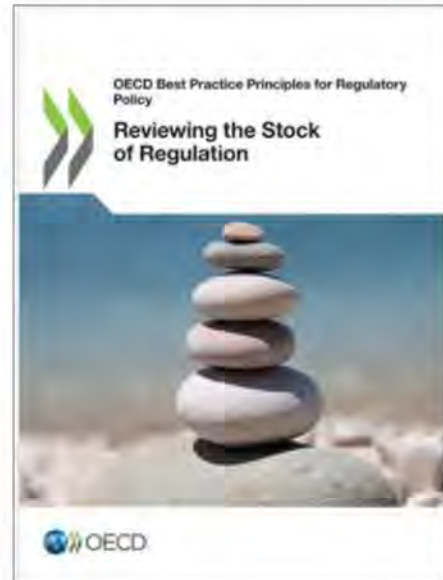
## PIRs in the regulatory policy cycle





## OECD Best Practice Principles on Reviewing the Stock of Regulation

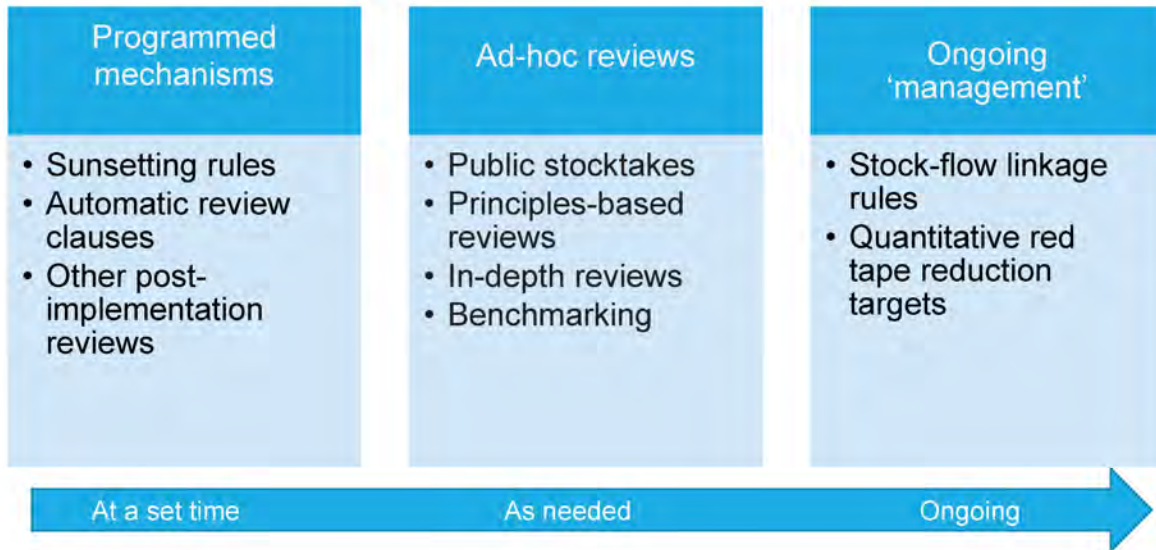
1. Overarching Principles
2. System governance
3. Broad approaches to reviews
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5. Key questions to be answered in reviews
6. Methodologies
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8. Prioritisation and sequencing
9. Capacity building
10. Committed leadership



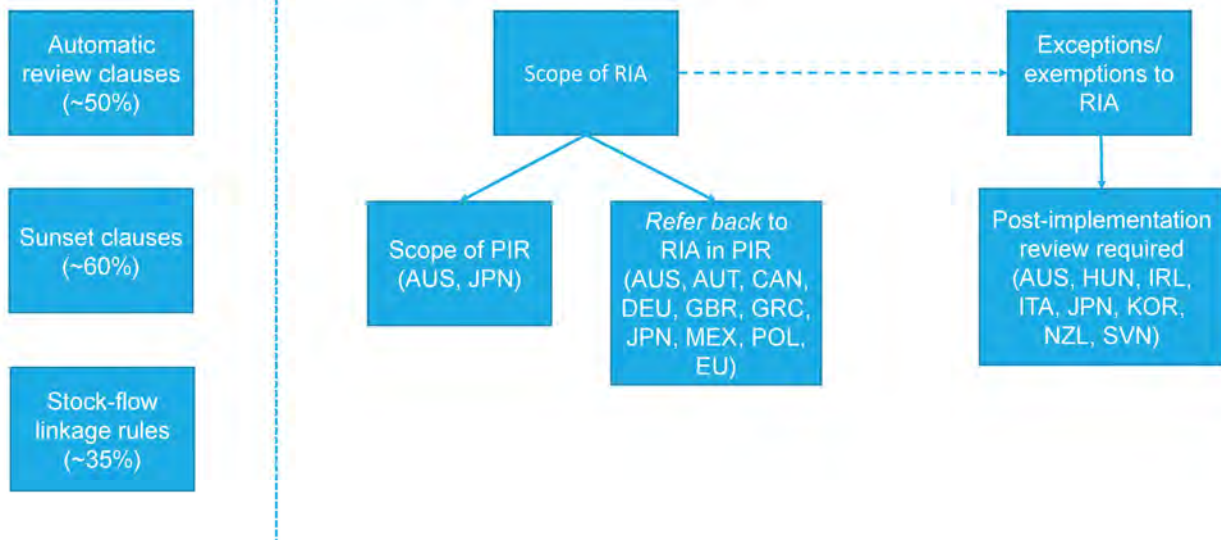
Approaches to PIRs



## Main approaches to reviewing existing regulations



## PIRs: initial mapping of country scope





## **Programmed mechanisms**

- Sunset clauses provide that a regulation will cease to have effect at a specified future date, unless it is either amended or remade.
- Automatic evaluation clauses provide a specified date by which either a review of the regulation needs to have commenced or concluded by.
- The use of sunset clauses is slightly more prominent than automatic review clauses across OECD members, although both are usually implemented on an ad hoc basis
  - Around half of OECD members currently utilise automatic review clauses and around 60% make use of sunset arrangements, with results virtually unchanged from 2014.
- Across the EU, around half of the EU Member States include sunset clauses while automatic evaluation requirements are less common



## **Post-implementation review requirements – country examples**

### **Australia**

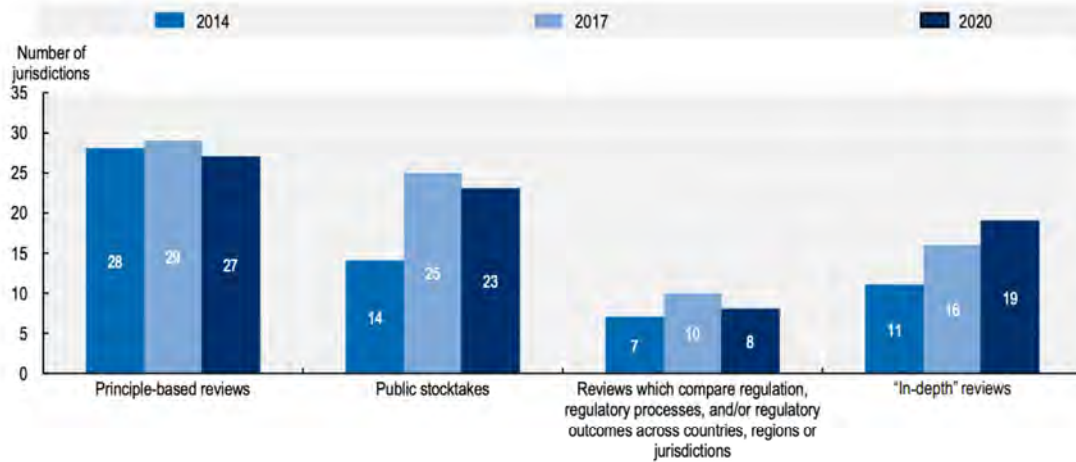
- General requirement to conduct a review *within five years* for all new regulations with "a substantial or widespread economic impact"
- Post-implementation review (PIR) must be conducted within two years for any regulation introduced, removed or significantly changed without an adequate regulation impact statement, including where the Prime Minister has granted an exemption from regulatory impact statement requirements because of exceptional circumstances

### **Slovenia**

- When a Bill has been presented to the National Assembly without impact assessment and is adopted by an urgent procedure, a report must be completed sometime *after two years* from the date of implementation
  - The report must contain an impact assessment in the same areas as for a standard impact assessment, and the report is then forwarded to the National Assembly for information and published on the government website



## Types of ad hoc reviews undertaken by OECD countries



Note: Data are based on 34 OECD member countries and the European Union.  
Source: OECD (2021), OECD Regulatory Policy Outlook 2021, OECD Publishing, Paris.



Connecting PIRs with  
stock-flow/offsetting rules



## Ongoing stock management and PIRs

- Around 35% of OECD countries currently utilise some form of stock-flow linkage rule (e.g. OIOO etc),
- Regulatory offsetting should not exist in isolation from other regulatory policies, such as PIRs etc. OIXO should be implemented as a complement, not as a standalone tool. Its use is mostly in strengthened communication with regulatory agencies and highlighting regulatory costs.

Adapted from Trnka and Thuerer (2019)



Stakeholder  
engagement in PIRs



## **Public consultation in PIRs**

- All reviews should involve consultations with affected parties, and to the extent possible, be accessible to civil society.
- The **nature and extent** (coverage, duration) **of consultations should be proportionate to the significance of the regulations and the degree of public interest or sensitivity entailed.**
- Stakeholder engagement can be particularly useful in PIRs to provide input into how regulations are actually working and can be a channel for regulators to prompt feedback from those parties affected by a regulation.



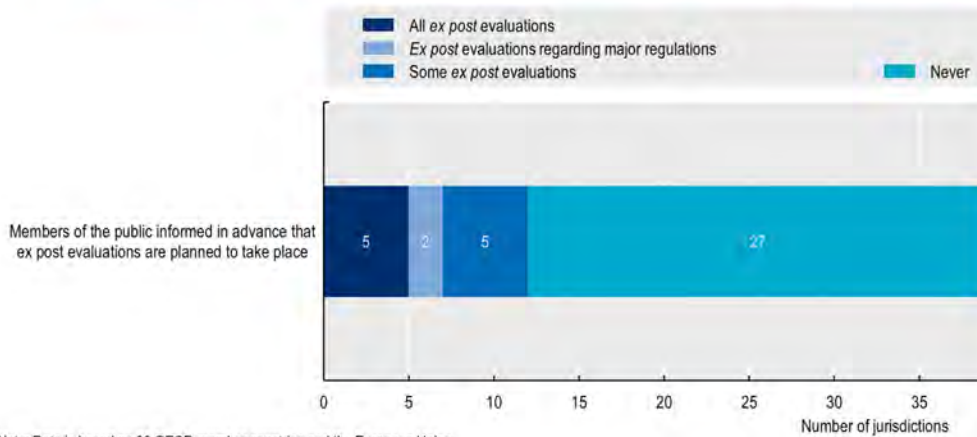
## **Stakeholder engagement in PIRs across the OECD**

- Estonia and Sweden and the European Union report to systematically engage stakeholders in PIRs.
- 85% of OECD countries engage stakeholders in at least some PIRs.
  - Since 2017, Japan and Latvia now involve stakeholders in evaluations of some regulations.
- Most commonly, stakeholders are provided **ongoing opportunities to submit comments, participate in interviews and meetings**
  - Their input helps to identify areas for improvement and is often included in the scope of any evaluation
  - Stakeholder involvement is used in this manner in Canada, Lithuania, the Netherlands, Poland, Portugal, and the Slovak Republic.



## Stakeholder engagement in PIRs across the OECD

Members of the public are rarely informed in advance about PIRs across the OECD



## Stakeholder engagement in PIRs – country examples

### In Italy

- Stakeholders are consulted twice – first, early in the planning stage and then during the evaluation process.
- As for reviews of a large number of regulations, stakeholders are also involved in defining the priorities to simplify administrative and regulatory burdens and monitoring the implementation of the simplification measures.

### In Sweden

- Experts from business organisations and other interest groups can be appointed as experts in a committee of inquiry established by the responsible ministry to carry out *ex post* evaluation of a regulation.
- Referral bodies and stakeholders are also invited to provide comments on the final report, which are then dealt with by the responsible ministry in the continuous work within the Government Offices.



## Conclusions



### **Conclusions**

- PIRs form an important part of the regulatory policy cycle
- PIR framework remains underdeveloped across many OECD countries
- Several approaches exist to conduct PIRs
- PIRs should be seen as a compliment to stock-flow/offsetting rules
- OECD countries can improve engaging stakeholders in PIRs



## References

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264209022-en>.

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*Better Regulation Practices across the European Union 2022*, Highlights brochure. <https://www.oecd.org/gov/regulatory-policy/BRP-brochure-2022-web.pdf>



**Thank you for attention!**

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**To see more of our work please visit**  
**[Regulatory policy - OECD](https://www.oecd.org/gov/regulatory-policy/)**





P A R T

# II

## 한국의 사후 규제영향평가 제도

Post-Implementation Review of  
Regulations in Korea

김성부 (Sung Bou Kim)

한국행정연구원 부연구위원 /

Korea Institute of Public Administration (KIPA)



# Post-implementation Review of Regulations in Korea



International Conference on Post-Implementation Review  
September 22, 2023  
Sung-Bou Kim, Ph.D.

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Opinions expressed are solely my own and do not express the views or opinions of the institution or its members.*



## Table of Contents

1. Overview
2. Purpose of the PIR
3. Legal Framework of the PIR
4. Types of Review and Selection Criteria
5. Review Process
6. Concluding Remarks



- **What is a post-implementation review?**
  
- **Post-implementation review involves ex post analysis of existing regulations to confirm the level of achievement in respect of the originally intended purpose of regulations and to effectively enforce regulations**
  - Post-implementation review is a series of regulatory decision-making tools that measure the actual effectiveness of existing regulations that have already been established, seek ways to improve the relevant regulations, and maintain the level of effectiveness desired to be achieved through these regulations.

- **Changing trend of regulatory reform in Korea**
  
- **At the time of enactment of the Basic Act in 1997, the main purpose was to abolish and relax regulations in terms of scale; however, the purpose and emphasis of regulatory reform is gradually shifting towards regulatory quality management.**
  - Thus, in addition to reviewing new and strengthened regulations, the role of the Regulatory Reform Committee to improve existing regulations is increasingly emphasized

- **Limitations of the current ex ante regulatory impact assessment system**
  
- **There are two major criticisms regarding the application of the regulatory impact assessment system, which is limited to examining newly introduced and strengthened regulations.**
- **First, the predicted results of regulatory impact assessments conducted prior to regulatory enforcement show significant differences from the actual results.**
  - Once regulatory review is completed, all impact assessments are completed and there is no room for modification or supplementation.
  - There are limits to estimating regulatory costs and benefits in situations where ex ante uncertainty is high, and assessments may not be thoroughly conducted for urgent regulatory laws and regulations that need to be enforced immediately.
- **Second, ex ante regulatory impact assessment does not lead to regulatory improvement of existing regulations.**
  - Currently, de facto post-regulatory impact assessment is carried out during the sunset review process; hence, formal adoption of the post-implementation review process can be considered in order to improve evaluation process and outcomes.

- **How is post-implementation review different from ex ante regulatory impact assessment?**
  
- **While ex ante regulatory impact assessment is used to select the best regulatory alternative before the regulatory legislation is drafted, post-implementation review is conducted to determine whether regulations need to be improved after they are implemented.**
  - Post-implementation review goes beyond simply measuring the costs and benefits of regulations to confirm their legitimacy, and has the purpose of maintaining the rationality of regulations after their introduction.
  - While regulatory impact assessment is conducted at the level of individual regulatory items, post-implementation review takes a more comprehensive approach by examining a group of relevant regulations.

- **post-implementation review in other countries**
- **The OECD emphasizes the need for ex post regulatory impact assessments as it provides an opportunity to learn from past mistakes and increase the stability and effectiveness of regulations.**
- **While the ex ante regulatory impact assessment has an almost standardized format, post-implementation review is still used in various ways with different purposes in each country.**
  - The UK uses post-regulatory impact assessment as a tool to review regulations in a timely manner to assess whether they are still necessary, whether they have the intended effect, and what costs they will cause.
  - Australia conducts post-regulatory impact assessments to assess whether implemented policies are operating as originally intended and whether they are effectively and efficiently resolving government problems.

- **Purposes of the post-implementation review program in Korea**
- 1) **Improving regulatory effectiveness**
  - PIR is intended to analyze the effectiveness of government intervention through regulation and find ways to improve effectiveness based on the results.
  - After regulations are introduced, the effectiveness of actual regulatory policies can be analyzed again and regulations redesigned based on the results to improve the effectiveness of regulations.
- 2) **Reduce unnecessary regulatory burden**
  - PIR is a prerequisite to existing regulatory reorganization activities and is intended to reduce unnecessary regulatory burden by reviewing the feasibility of existing regulations and evaluating their performance.
- 3) **Active evaluation of the degree of achievement of regulatory policy goals**
  - By performing a PIR, it is possible to overcome the limitations of ex-ante regulatory impact assessments in terms of predicting future outcomes and actively evaluate the achievement level of regulatory policy goals.
  - PIR works effectively to eliminate inefficiencies in the existing regulatory system along with assessing the actual policy effects of regulations and reviewing changes in regulatory impacts over time and environmental changes.

## Legal Framework of the PIR

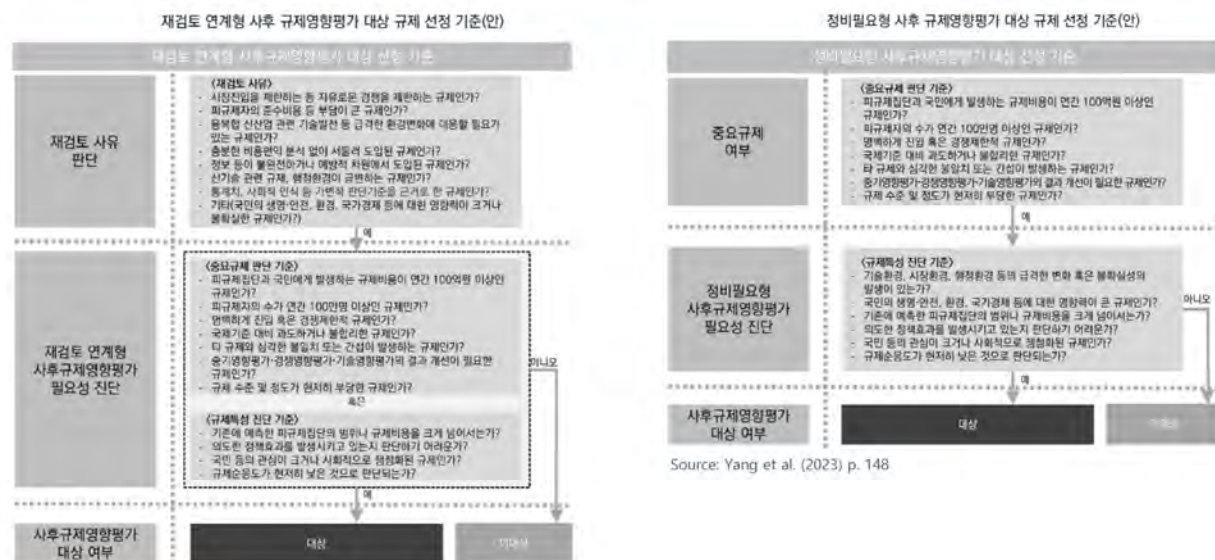
Korea Institute of Public Administration

- Framework Act On Administrative Regulations
- Article 19 (Independent Revision of Existing Regulations)
  - (1) The head of a central administrative agency shall annually select regulations under his/her jurisdiction which require revision and revise them, after gathering the opinions of interested parties, experts, etc. on those existing regulations.
  - (2) The head of a central administrative agency shall submit the results of the revision under paragraph (1) to the Committee, as prescribed by Presidential Decree.
- [This Article Wholly Amended by Act No. 9965, Jan. 25, 2010]
- Article 19-2 (Stipulation of Effective Period and Review Period of Existing Regulations)
  - (1) The head of a central administrative agency shall stipulate in the relevant statutes or regulations, etc. the effective period or review period of regulations proved to have no evident grounds to remain in force after an examination on the existing regulations.
  - (2) Regarding the stipulation of the effective period or review period of the existing regulations pursuant to paragraph (1), Article 8 (2) through (5) shall be applied mutatis mutandis.
- [This Article Newly Inserted by Act No. 11935, Jul. 16, 2013]

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## Types of Review and Selection Criteria

Korea Institute of Public Administration



Source: Yang et al. (2023) p. 147

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### 1) PIR report preparation (national administrative agencies)

- National administrative agencies conduct qualitative and quantitative analyzes focusing on evaluation items for regulations subject to PIR and actively utilize external experts and research institutes to ensure the quality of PIR reports.
- If there is an existing ex ante RIA report, the effectiveness of the regulation is evaluated through review and verification of the analysis report.
- Strengthening communication with regulated groups, interest groups, and the general public in the process of writing a PIR report
- Receive consulting and supporting services from the Korea Institute of Public Administration and the Korea Development Institute's Regulatory Research Centers.

### 2) PIR verification (regulatory research centers)

- The Regulatory Research Center verifies the adequacy of the contents of the PIR report submitted by the ministry, prepares a verification report, and submits it to the Regulatory Coordination Office.
- Simultaneously conduct the sunset TF review of PIR

### 3) Collection of verification opinions and evaluation results (Regulatory Coordination Office, national administrative agencies)

- The Regulatory Coordination Office compiles the verification opinions of the Regulatory Research Centers and the Sunset TF review opinions and delivers them to the relevant ministries.
- The head of the national administrative agency revises and supplements the PIR report by reflecting the verification opinions of the Regulatory Coordination Office and the Regulatory Research Center, Sunset TF opinions, stakeholder consultation details, etc.

### 4) Self-review (national administrative agencies)

- Based on the revised and supplemented PIR, the appropriateness of sunset regulations and whether to extend sunset are independently reviewed by the Self-Regulation Reform Committees established within the affiliated national administrative agencies.

### 5) Regulatory review (Regulatory Reform Committee)

- The Regulatory Reform Committee finalizes the feasibility and appropriateness of sunset settings for individual regulations, and notifies the results to the head of the national administrative agencies.

### 6) Notification of review results (national administrative agencies)

- The relevant ministries prepare regulatory improvement plans according to the deliberation results by the Regulatory Reform Committee.

## • Use of Post-Implementation Reviews

Korea Institute of Public Administration

### 1) PIR for regulators (national administrative agencies and local governments)

- By measuring the actual effectiveness of existing regulations that have already been established through PIR, we confirm whether the regulations are achieving their originally intended policy goals and seek ways to improve the regulations to determine the level of effect that the regulations aim to achieve.

### 2) PIR for regulated persons (major affected groups) and the general public

- By providing regulated individuals and the general public with the opportunity to present diverse opinions on existing regulations, it is possible to help achieve the policy goals originally intended by regulations and at the same time reduce unnecessary regulatory burden.

### 3) PIR for regulatory improvement

- The Regulatory Reform Committee reviews PIR on sunset regulations and important regulations, and the results can be used as a tool to determine whether regulatory improvement is necessary.

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## • Concluding Remarks

Korea Institute of Public Administration

- Efforts are required to increase the effectiveness of the overall regulatory management system through harmonization with existing systems.
- Also, need to monitor whether the introduction of the PIR show unintended consequences (e.g., review of abolition and relaxation of regulations via PIR lead to an increase in regulations)

### ▪ Issues related to the adoption of the PIR in Korea:

#### 1) How can we ensure the effectiveness of the PIR on abolition and relaxation of regulations related to life, safety, and environment?

- When introducing new regulations or strengthening existing regulations, the relevant ministries often apply a simplified ex ante RIA report under the pretext of relevance to life, safety, and the environment
- However, when abolishing or easing the relevant regulations, the same agencies may deny the relevance with safety and environment issues.

#### 2) How can we ensure that the introduction of the PIR system improves the quality of the regulatory system?

- The issue of work burden: how can we ensure/incentivize practitioners to thoroughly and objectively conduct the PIR?

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## • Concluding Remarks

Korea Institute of Public Administration

- In order to for the post-regulatory impact assessment system to be introduced and utilized effectively, the PIR's role of managing regulatory quality needs to be emphasized.
- Unlike ex ante RIA that mainly focus on regulatory costs, PIR should focus on the evaluation of the policy effects of regulations.
- A comprehensive and open evaluation system that involves experts from relevant ministries, industries, and research communities is also necessary.

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## • References

Korea Institute of Public Administration

- Lee, Minho. (2023). Introduction and Use of the Post-Implementation Review System: Including the Review for Abolition and Relaxation of Regulations [in Korean]. Presentation at the Regulatory Impact Assessment Forum. May 15, 2023. Korea Institute of Public Administration.
- Office for Government Policy Coordination. (2023). Guidelines for Writing a Post-Implementation Review [in Korean].
- Yang, Yong Hyeon et al. (2023). Plan for Introducing the Post-Implementation Review system [in Korean]. Collaborative Research Series 23-25-01. National Research Council for Economics, Humanities and Social Sciences.

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# THANK YOU





P A R T

# III

## 한국의 사후 규제영향평가 방법론

Methodology for Post-Implementation  
Review in Korea

양용현 (Yong hyeon Yang)

KDI 규제연구실장 /

Director of Center for Regulatory Studies, KDI



International Conference on  
Post-Implementation Review (PIR)

# Analysis Methodology for Korea's Post-Implementation Review

**YANG, Yong Hyeon**

**KDI** Center for Regulatory Studies

2023. 9. 22.

World's Leading Think Tank



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- [Case 2] Obligation of Operators of Sports Fishing Vessels to Obtain Certificated Ship Officer's License
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### 3. Issues to be Discussed

- [Issue 1] Linking Analysis to the Purpose of PIR
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- [Issue 4] Staying Neutral: Stakeholders' Opinions
- [Issue 5] Difficulty in Assessment of Regulatory Appropriateness

# Overview of Korea's PIR



## 1. Overview of Korea's PIR



### < Background to Korea's PIR >

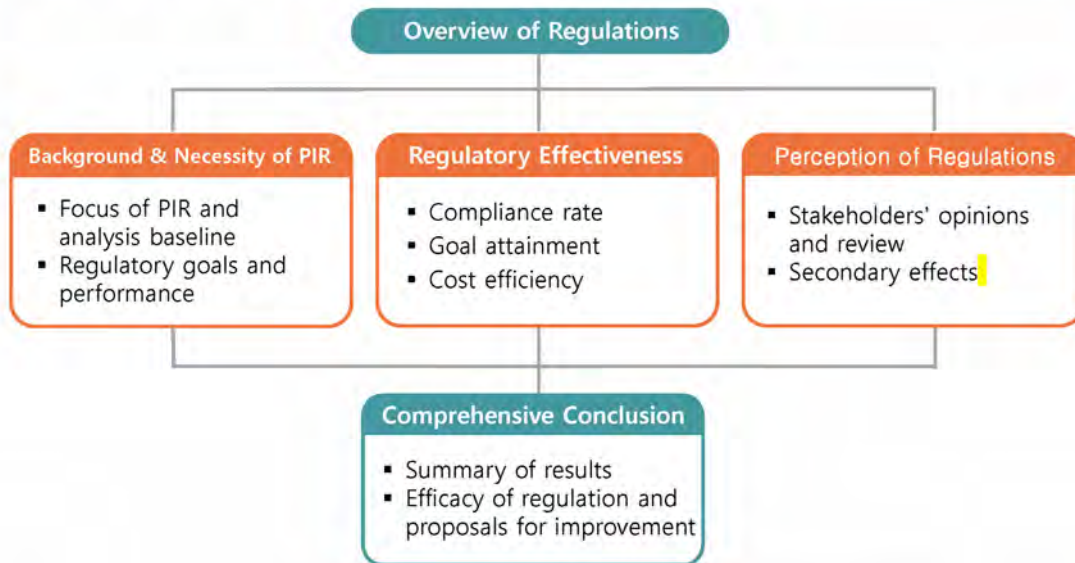
- ❑ Post-implementation review: Institutional measure to monitor the achievement of intended regulatory goals and to effectively enforce regulations
  - Focus of analysis: determining the need for regulatory improvement

### < Number of PIR Projects in Korea >

- ❑ 1 per ministry since the introduction of PIR in 2023
  - [Economy-related ministries] a total of 11 projects, reviewed by the KDI
  - [Society-related ministries] a total of 9 projects, reviewed by the KIPA

# 1. Overview of Korea's PIR

## < Flowchart for PIR Reports >



# 1. Overview of Korea's PIR

## > (Criteria 1) Background & Necessity of PIR

- Understanding the necessity of regulatory improvement and major issues associated with PIR
- Checking the compatibility between regulatory goals and design

Elements	Main Content	Note
1. <b>Background to PIR</b>	<ul style="list-style-type: none"> <li>Rationale for the review, evaluation standards, etc.</li> <li>Changes in the policy environment between the introduction of regulations and the present time</li> <li>Regulatory trends in other fields and jurisdictions</li> </ul>	
2. <b>Maturity of Regulation</b>	<ul style="list-style-type: none"> <li>Introduction and progress of regulation               <ul style="list-style-type: none"> <li>Regulatory goals: final goal (outcome) and intermediate goal (output)</li> <li>Regulatory means: regulated parties, obligation / prohibition, etc.</li> <li>Regulatory compliance status of the regulated parties (if quantitative measure is readily available)</li> </ul> </li> </ul>	
3. <b>Regulatory Enforcement Resources</b>	<ul style="list-style-type: none"> <li>Regulatory enforcement power of central and local governments: administrative and financial enforcement status</li> </ul>	

# 1. Overview of Korea's PIR

## > (Criteria 2) Regulatory Effectiveness

- **Examining** whether the introduced regulations have achieved the goals
- **Determining regulatory effectiveness:** present the costs and benefits of the regulations; conduct analysis using quantitative indicators

Elements	Main Content	Note
1. Degree of Goal Achievement	<ul style="list-style-type: none"> <li>• <u>Regulatory compliance rate:</u> number of regulated parties, complying parties, and others</li> <li>• Changes in policy outcomes and outputs: using target indicators, compliance rate, etc.</li> <li>• Whether the issue has been resolved by regulations and the degree to which they have contributed to solving the problem</li> <li>• Regulatory awareness (recognition, understanding and clarity of regulations, etc.) and perceived contribution of regulation to goals achieved</li> </ul>	
2. Cost Efficiency	<ul style="list-style-type: none"> <li>• Results of cost-benefit analysis</li> <li>- Limited to the costs and benefits that can be measured by the time of evaluation</li> </ul>	

# 1. Overview of Korea's PIR

## > (Criteria 3) Perception of Regulations

- **Ensuring transparency and clarity** in regulatory improvement through stakeholder consultation
- **Reviewing** political/policy rationality from various perspectives for comprehensive evaluation, which may be neglected in economic analysis.

Elements	Main Content	Note
1. Stakeholders' Opinions and Review	<ul style="list-style-type: none"> <li>• Collecting opinions on problems not resolved by the regulations / side effects of the regulations / future improvement directions / and others</li> <li>• View of the government on stakeholders' opinions</li> </ul>	
2. Secondary Effects	<ul style="list-style-type: none"> <li>• Unintended positive and negative effects</li> <li>• Distributional effects</li> </ul>	

# Three Case Studies



## 2. Three Case Studies



### [Case 1] Scope of Persons Obligated to Designate Persons Responsible for Protection of Youths

❖ *Enforcement Decree Of The Act On Promotion Of Information And Communications Network Utilization And Information Protection (Article 25)*

□ Those information and communication service providers who meet specific standards\* must designate persons to be in charge of youth protection (enforced in 2005)

- \* 1. "A provider whose average number of users per day during three months immediately before the end of the previous year is at least 100,000 persons" or  
"A provider whose sales of information and communications services during the previous year (or the preceding business year, if the service provider is a corporation) is at least one billion won"
- 2. "A person who provides a media product harmful to youths, as defined under the Youth Protection Act or who acts as a broker or agent for a transaction of such medium."

**[Note]** Duties of persons in charge of youth protection:

- ① Planning, ② Access restrictions and management, ③ Staff training,
- ④ Counseling on damage and the settlement of grievances

## 2. Three Case Studies [Case 1]



### > (Criteria 1) Background & Necessity of PIR

- ❑ The forms and types of information and communication service providers have become more diverse in a rapidly changing industry environment; need to redefine the scope of the regulated parties
  - Number of Internet users: 33.01 million (2005) → 47.25 million (2022)
  - Number of providers obliged to designate youth protectors: 31 (2014) → 141 (2022)

### > (Criteria 2) Regulatory Effectiveness

- ❑ **Regulatory compliance rate:** 100% compliance if obliged; need to monitor the task performance of the person or persons in charge
  - The workload of the person(s) in charge may be interpreted differently depending on the efficiency of this regulation.
- ❑ **Regulatory goal:** to promote the mental health and safety of youth (outcome) & to implement designation and measures (output)
  - To determine the achievement of this goal, additional data are needed. (e.g., statistics on exposure to harmful content, number of reports, etc.)

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## 2. Three Case Studies [Case 1]



### > (Criteria 2) Regulatory Effectiveness

- ❑ After designating appropriate persons, it is important to monitor how effectively they contributed to blocking and protecting youth from harmful content based on their task performance
  - Overseas case: review of German youth protector system
  - Previous research focus on necessity of youth protection and wide application of the system rather than the effectiveness of the system
  - Check redundancy with other laws
  - Effect of designation obligation: need to identify the effect of the regulations by investigating how youth accessed harmful content
- ❑ The workload experienced by the designated person(s) should be considered in the cost-benefit analysis
  - Provider A: 24-hour monitoring, 10 training sessions per year
  - Provider B: operated by 3 team leaders and 5 members

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## 2. Three Case Studies [Case 1]



### > (Criteria 3) Perception of Regulations & Conclusion

- ❑ During an on-site inspection at the end of last year, the ministry reported :
  - that there's no stakeholder opinions on the burden of regulations, and
  - that the regulations should remain because they are in the public interest
- ❑ Issues raised by the regulated parties regarding the criteria for designation and overlapping regulatory burden
  - Criteria for designation : reliability of data used in the selection, consideration of the type or characteristics of the service, fair decision-making for similar providers
  - Increased workload due to overlapping duties required by different laws
- ❑ **(KDI's view)** Agree on the importance of youth protection and the need for regulations; difficult to determine regulatory effectiveness; need to review after confirming the effects
  - Recommend to consider various ways of implementing the regulation (e.g., the German case) based on stakeholder opinions

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## 2. Three Case Studies



### [Case 2] Obligation of Operators of Sports Fishing Vessels to Obtain Certificated Ship Officer's License

#### ❖ *Ship Officers Act (Article 2)*

- ❑ Mandatory possession of a certificated ship officer's license to operate sports fishing vessels under 5 tons (enforced in 2008)
  - Significant increase in the fishing sports industry: 784,000 sports fishers (2001) → 1,442,000 (2003); increase in marine accidents
  - Conducting PIR to evaluate the overall system

### > (Criteria 2) Regulatory Effectiveness

- ❑ The ministry reports that the frequency of marine accidents is lower for 'sports fishing vessel(for angling)' under 5 tons (for which possession of a certificated officer's license is required) compared to 'general fishing vessels(for fishery)' under 5 tons (for which a license is not required).
  - Sports fishing vessels (80 accident cases per year) vs. General fishing vessels (800)

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## 2. Three Case Studies [Case 2]

- It is desirable to review the accident rate by dividing by appropriate denominators such as the number of vessels, crew members and the departure days

Class.		2017	2018	2019	2020	2021
Sports fishing vessels under 5 tons	Number of reported vessels	2,811	2,726	2,665	2,506	2,193
	Number of accidents	78	71	84	102	69
	Accident rate	2.77%	2.60%	3.15%	4.07%	3.15%
General fishing vessels under 5 tons	Number of reported vessels	54,934	53,660	53,052	52,815	52,460
	Number of accidents	733	778	816	944	718
	Accident rate	1.33%	1.45%	1.54%	1.79%	1.37%

- Found a trend of an increasing number of accidents in proportion to the increase in the number of fishing vessels users;
- Absence of comparable data (such as accident statistics before and after the regulation)
  - Difficulties in analyzing regulatory effects in reducing safety accidents do not mean the regulations are not necessary.

## 2. Three Case Studies

### [Case 3] Obligation of Organic Food Producers to Complete Eco-Friendly Agriculture Education

- ❖ *Enforcement Rule Of The Act On The Promotion Of Environment-friendly Agriculture And Fisheries And The Management Of And Support For Organic Foods (Attached Form 4)*

- Compulsory training to apply for organic food certification (enforced in 2020)
  - **Compulsory training:** more than 2 hours, once every 2 years; once every 4 years for those who have maintained certification for over 5 years
  - **Training content:** value and role of eco-friendly farming, certification system, practical training, etc.

#### > (Criteria 3) Perception of Regulations

- The government received an opinion from a research institute: solve the information shortage problem (regarding organic food certification) by changing the training cycle to once a year
  - but concluded that the current system should be maintained, considering the budget, manpower, and burden on certified producers.

## 2. Three Case Studies [Case 3]



- ❑ Presented after listening to educational institutions and certified producers
  - Educational institution: identical contents for new and renewing applicants → need to differentiate contents; restrictions on the time available for group training → training during the agricultural off-season
  - Certified producer: more education for new applicants but less for renewing applicants; training based on the characteristics of each breed
- ❑ **(KDI's view)** Agree on the need for training; seeking ways to improve the training contents
  - The number of certified organic farms increased 15,528 (2018) → 24,906 (2022), but the number of farms with certification canceled due to the violation of standards decreased: 3,290 (2018) → 2,385 (2022); educational effect inferred
  - Need to change the training cycle and contents based on the opinions of educational institutions and certified producers

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# Issues to be Discussed



## 3. Issues to be Discussed

### **[Issue 1] Linking Analysis to the Purpose of PIR**

- The purpose of PIR (evaluation of regulatory effectiveness) can be subdivided as follows:
  - Determine if the regulations are being implemented and complied with as intended
  - Determine if regulatory compliance is achieving the intended effects
  - Determine if regulatory compliance costs are similar to the expected costs
  - Determine if the regulations have unintended side effects
- Currently, all of the above are being reviewed, but somewhat insufficiently
- Is it more appropriate to focus on the analysis for a specific purpose?
  - Is it then necessary to clarify the purpose of PIR when selecting a PIR target?
  - Or would it be better to specify the purpose through a preliminary review and then proceed to the in-depth analysis for that purpose?

## 3. Issues to be Discussed

### **[Issue 2] Data: Accumulation and Access**

- If data collection is not required, the data may be insufficient for evaluation.
  - If selected as a PIR target in advance, an obligation to collect and store data may be imposed.
  - Need to choose applicable regulations as the cost of data collection would be incurred;
  - However, is it possible to collect appropriate data without first specifying the purpose of PIR? Is it possible to fix the purpose of PIR in advance?
- For the regulations without ready-to-use data, organizations with access to raw data might be more suitable to conduct the evaluation.
  - Basically, regulators have access to raw data, but it is questionable whether they have an incentive for sincere evaluation.
  - Affiliated organizations (e.g., consignment institutions, research institutes, etc.) also have raw data, but are they independent of ministries?
  - How can a relatively independent organization get access to raw data?

## 3. Issues to be Discussed

### **[Issue 3] Level of Economic Analysis**

- ❑ Need for cost–benefit analysis from a society-wide perspective
  - Regulatory cost-in cost-out system focuses on measuring the regulatory burden on companies (excluding government costs)
    - ⇒ Linking with the RIA system vs. Separating from the RIA system
- ❑ Listing up cost–benefit items and quantifying them
  - (requirement by RIA guidelines) The benefits of regulations must be greater than the regulatory costs for stakeholders including the regulated parties
- ❑ Is it still important to confirm the net benefits even when the quantification of the costs and benefits is impossible?
  - If it is difficult to monetize the benefits, how can we confirm that the benefits are greater than the costs?

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## 3. Issues to be Discussed

### **[Issue 4] Staying Neutral: Stakeholders' Opinions**

- ❑ Need to draw a balanced conclusion by listening to various opinions from experts, stakeholders, the regulated parties, etc.
  - Disagreements or conflicts occur due to different interests
    - ⇒ staying neutral regarding conflicts between stakeholders; find solutions
- ❑ Issues difficult to address in a cost–benefit analysis, such as distributional effects
  - Different impacts depending on firm size, region, gender, race, etc.
    - ⇒ select groups that need consideration; methods to estimate the impact on them

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### 3. Issues to be Discussed

#### *[Issue 5] Difficulty in Assessment of Regulatory Appropriateness*

- How to determine whether the intended regulatory goal has been achieved
  - Need to clarify the final goal and present measurable intermediate goals
  - Difficulty in identifying the link between the regulatory compliance rate and the achievement of intermediate goals
  - When multiple policies are applied, it is difficult to identify the contribution of a specific regulation
  - Limitations to quantification through cost-benefit analysis: rely on stakeholders' opinions and overseas cases
  
- Hard to set up **clear grounds** for determining whether to maintain/abolish regulations or introduce improvement measures

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P A R T

# IV

## 영국 규제 체계에서 사후 규제영향평가의 역할

The Role of PIRs in UK Regulatory System

—

**Andrew Hallett**

영국 RPC 선임 정책분석관 /

Senior Policy Advisor of Regulatory Policy Committee (RPC)



 Regulatory Policy Committee

## The role of PIRs in the UK regulatory system

Andy Hallett

Regulatory Policy Committee (RPC), United Kingdom

September 2023

## Regulatory Scrutiny in the UK The Regulatory Policy Committee (RPC)

The RPC provides **independent scrutiny** of Impact Assessments (IAs) and Post Implementation Reviews (PIRs) for new legislation that affects business and society in the UK.

We scrutinise consultation and final stage IAs and ex-post evaluations to determine whether the evidence and analysis is fit for purpose (**Green**) or not (**Red**).

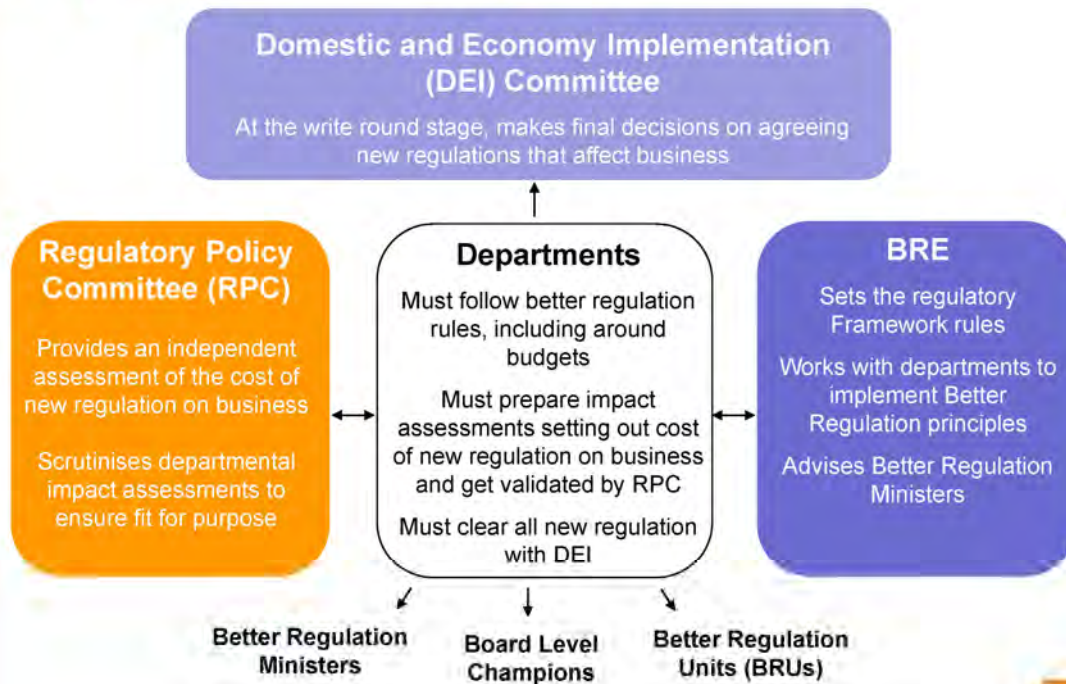
We publish our opinions, which are provided to Parliament alongside the department's IA.

Our opinions support ministerial decision making and Parliamentary scrutiny.

We also validate the cost to business of new regulation for the Business Impact Target (BIT).

**We do not comment on policy itself**

## Key UK Better Regulation bodies



## Types of assessments



**Consultation stage Impact Assessment (IA)** is proportionate analysis before consultation. RPC Scrutiny is optional but useful.



**Final stage Impact Assessment (IA)** RPC scrutiny is required at this stage (if over *de minimis*) and fully proportionate analysis is expected.



**Post-implementation Review (PIR)** occurs after the policy has been implemented for monitoring and evaluation.

## Why evaluate ex-post?

- We ask civil servants to “imagine if we did not”...
- We would have no way of properly knowing whether the regulation had achieved its objective
- Unintended consequences would go by unacknowledged
- We would also not know to do other (related) Impact Assessments better in future
- Evaluating ex-post can be seen as the first step in future ex-ante evaluations therefore
- It is an increasingly important part of the [Better Regulation Framework](#)

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## Monitoring and evaluation

**Good evaluation, and the reliable evidence it can generate, provides direct benefits in terms of policy performance and effectiveness. It should feed into future IAs.**



“One of the great mistakes is to judge policies and programs by their intentions rather than their results”

*Milton Friedman*

The **legal requirements in the UK** are **set out** in the SBEE Act 2015 and the [Section 31 guidance](#). “Any secondary legislation that is a qualifying provision is required to contain a statutory review clause.”

## Post-implementation review

A post-implementation review (PIR) is a process to assess the effectiveness of a regulation after it has been implemented.

It seeks to measure the **actual effects** of a Government regulation based on evidence that has been collected **before, during and after** implementation.

Just like an IA, the level of evidence should be proportionate to the measure.



## Triggering a PIR

PIRs are generally triggered in three ways:

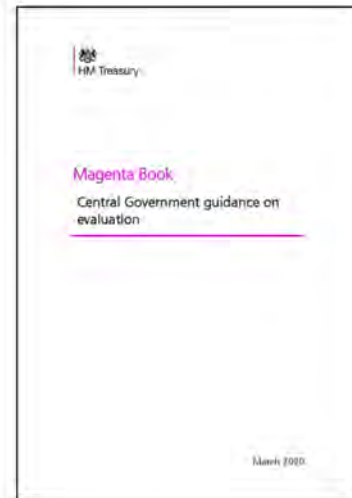
- (1) **Statutory reviews:** A commitment in the primary or secondary legislation to undertake a PIR (normally 5 years).
- (2) **Non statutory reviews:** A public commitment (outside legislation) to produce a PIR.
- (3) **Sunset clause:** Some statutory clauses contain an automatic expiry date for the regulation.

*Failure to complete a PIR means that the public body has acted unlawfully (for statutory), risks judicial review (for statutory & some non-statutory), possible regulation expiry (sunset clause) and poses a number of other risks.*

## What to consider

Monitoring and evaluation should be built in at the start of the policy process by departments.

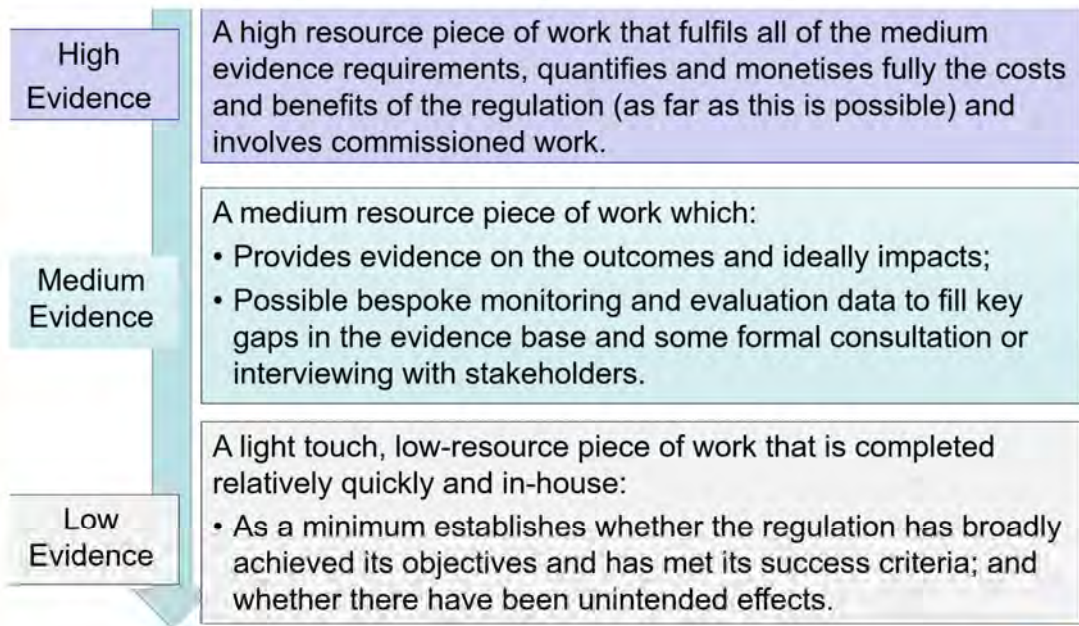
- (1) Who will monitor?
- (2) How will you assess if the objectives have been met?
- (3) What data is currently being collected?
- (4) Will you need to collect extra data?
- (5) What time scale for review?
- (6) What circumstances might change that time scale?



## PIR Template

- (1) What were the **policy objectives** of the measure?
- (2) What **evidence** has informed the PIR? A summary of the methodology and a critical review of quality of evidence.
- (3) To what extent have the policy objectives been **achieved**?
- (4) What were the **original assumptions**? A summary of lessons learned that could inform future IAs.
- (5) Were there any **unintended consequences**?
- (6) Has the evidence identified any opportunities for **reducing the burden on business**?

## Establish a proportionate approach



## Proportionality in analysis

- A key part of proportionately in constructing a PIR is ensuring that all data and information generally is collected over time (generally the five-year period as defined in the legislation). This will ensure that analysis can be constructed in an efficient manner using readily available sources and will not be “back-ended” at the end of the review period.
- The PIR begins during the drafting of the final stage IA

## Recommendations

There are four types of recommendations a PIR can make:

- (1) **Renewal:** regulation continues without amendment or, where a sunset clause applies, is renewed
- (2) **Amendment:** regulation remains but marginal changes are made to improve its objectives or implementation
- (3) **Removal or expiry:** regulation is removed (or expires) without replacement
- (4) **Replacement:** regulation is replaced or redesigned substantially

## Rating a PIR

For statutory reviews, the PIR must be sent to the RPC.

- We then scrutinise PIRs and advise ministers whether they are fit for purpose.
- Pre-submission meetings (of varying formality) can be made through a department's Better Regulation Unit. Previous conversations and advance warning are also useful.

**The RPC will make one of two recommendations (as for IAs):**

- Not fit for purpose – material concerns over the quality of the evidence and analysis or
- Fit for purpose.

As with a final stage IA, the recommendation can only be red or green, although they can be subject to an "Initial review notice" (IRN). When an IRN is issued the clock is stopped for up to fifteen days to allow the department to address the issues that they believe could be sorted out relatively easily.

[Title of measure]  
 [Department/Agency]

RPC rating: **fit for purpose / not fit for purpose**

**Description of proposal**

[one or two sentences – drafted by the RPC, based on information in the PIR (using quotations if succinct and well-drafted).] [All sections to be in 1.15 spacing, and size 12 Arial font.]

**Impacts of proposal**

[Business impacts – discuss the impacts on business as in the PIR, highlighting where these were [significantly] different to the original IA.]

**Quality of submission**

[Overarching question: is the evidence supporting the department's preferred option (Renew/Amend/Remove or Expire/Replace) robust?]

The Department should provide sufficient evidence to answer Q1-Q3 by considering the relevant bullet points beneath each question.

The answers to these questions should then correspond to the Department's preferred option, as explained in the table below Q4.

**Q1) To what extent is the existing regulation working?**

- Have they considered performance against the policy's objective criteria
- Have they accurately assessed the costs and benefits of the policy and how these differ from those in the original IA.
- Have they referenced and assessed the IA assumptions and considered if there have been any unintended effects
- Have they considered if there have been disproportionate effects on small and micro businesses

**Q2) Is government intervention still required?**

- Have they shown if the objective is still relevant
- Have they considered what would happen if you removed the regulation
- Have they clearly considered the baseline they are assessing against.

- Have they considered the extent would the objectives have been achieved without intervention

**Q3) Is the existing form of government regulation still the most appropriate approach?**

- Have they shown what the costs and benefits of the proposal will be going forward and whether they are likely to remain constant.
- Have they considered whether stakeholders consider the regulation appropriate
- Have they considered compliance levels and whether the implementation/enforcement mechanism for the proposal could be improved
- Have they considered whether amendments could be made to help the policy meet its objectives and/or reduce the costs to business (where amendment is possible)
- Have they considered whether the same objectives be met through alternative measures that have additional advantages

**Q4) What is the most appropriate option going forward?**

	<i>Is the existing regulation working</i>	<i>Is government intervention still required</i>	<i>Is the existing regulation still appropriate</i>
<b>Regulation should remain as is (Renew)</b>	Yes	Yes	Yes
<b>Regulation should remain but implementation should be revised or improved (Amend)</b>	Yes/Partially Yes	Yes/Partially Yes	Yes/Partially Yes
<b>Regulation should be removed without replacement (Remove or Expire)</b>	NA (Policy objective no longer relevant)	No	Indicates policy objective no longer relevant
<b>Regulation should be replaced or redesigned (Replace)</b>	No/Partially Yes	Yes/Partially Yes	No/Partially Yes

Section - post implementation review  
 Topic - Domestic Uninsured  
 RPC reference number  
 Date of review





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Departmental recommendation	[Renew / Amend / Remove or Expire / Replace]
-----------------------------	--

**RPC assessment**


Is the evidence in the PIR sufficiently robust to support the departmental recommendation?	[ Yes / No ]
--	--------------

Regulatory Policy Committee

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1

Title of issue: [AMT]  
[View this slide](#)

- 
- ## Important points to note
- The RPC rating is on whether the evidence in the PIR is sufficiently robust to support the departmental recommendation [Renew / Amend / Remove or Expire / Replace].
  - **Note that the focus is on overall costs and benefits, not just direct business impacts.**
  - Although consideration should be given to impacts on small and micro-businesses.
  - Re-estimating the EANDCB is best practice, where proportionate (i.e. for larger measures)
  - But does not guarantee a ‘green’ rating – which will need to be on the overall (societal) analysis supporting the recommendation.

## Good examples

- **Green rated** and unintended consequences identified:
- **Post Implementation Review of Motor Vehicle (Driving Licences) Regulation 2011 (Amend) (RPC16-3563(1)-DfT-DVLA):** The PIR identified an unintended consequence of the measure, whereby individuals who only experience hypoglycaemic attacks during sleep (“night time hypos”) were banned from driving for at least a year, despite posing little risk to road safety.
- To address this unforeseen issue, the DVLA revised the Directive and recommended a three to six months ban as a replacement for night time hypos. The amendment received support from stakeholders and medical experts.

## Good examples

- **Green rated** with a varied and appropriate use of research methods:
- **Post Implementation Review of the Default Retirement Age (DRA) 2016 (Renew) (RPC-4211(1)-BEIS):** Given the inherent difficulty of attributing changes in labour supply (age 65 and above) to the removal of the DRA, the Department provided sufficient analysis to support the recommendation to renew the measure.
- The Department included an analysis of data on labour market participation and evaluation of primary data collected from the British Social Attitudes Survey, adopting a proportionate approach for a relatively high-impact measure.
- From their research, the Department found that some employers were uncertain on how to discuss retirement plans with their staff. It recommended the provision of better advice and guidance. This should ensure that more employees are informed about the regulatory changes and should improve policy implementation and enhance benefits.

## Pre-Brexit: Evaluating EU Regulation

For an EU-derived regulation, a PIR should have covered **the same questions as a domestic PIR**.

It should also have considered:

- The impacts on UK based businesses relative to other European competitors;
- The possibility to improve the transposition of EU directives and regulations in the UK;
- Any gold-plating issues, when the UK has gone beyond the minimum EU requirements



## Common PIR problems

- Lack of comparison between actual and estimated costs and benefits of the policy; lack of justification for Department to take a light-touch approach to evaluation
- Lack of considerations on what refinements could be made to improve or simplify the regulation and insufficient discussion on unintended consequences
- **PIRs bein rushed or not undertaken/sent to the RPC**
- The culture shift may take some time and relies on consistent engagement and enlightened self-interest
- The OECD suggests more of an emphasis into non-business cost and benefits so a to ensure "inclusive growth"; this would be commensurate with the shift in RPC work on IAs

## Missing PIRs

- In March 2023 the Office for Environmental Protection showed that the Department for the Environment, Food and Rural Affairs (Defra) had not published PIRs on at least 40 recent occasions - there were similar failures by other government departments
- The Defra Secretary of State has acknowledged that this is unacceptable and committed to address the backlog in her department by the end of 2024
- Last year we calculated that less than 40% of PIRs were completed on time; in 2018 we thought half of PIRs that should have been done were not (7/16)




## The future

- Ex post likely to be prioritised under the new Framework, which will not have a Business Impact Target
- A stronger emphasis on ensuring that regulation is subject to evaluation and asking departments when proposing regulation to share their criteria for subsequently judging whether it has been successful
- REUL Bill measures likely to create significant ex post review pressure on RPC
- Our published “[case histories](#)” will continue to show departments and regulators what we expect

## **More about Better Regulation and independent regulatory scrutiny in the UK:**

**The RPC:** [gov.uk/rpc](http://gov.uk/rpc)

 [@RPC\\_Gov\\_UK](https://twitter.com/RPC_Gov_UK)

**The Better Regulation Framework:**  
[gov.uk/government/publications/better-regulation-framework](http://gov.uk/government/publications/better-regulation-framework)

**Contact us:**  
Andy Hallett ([Andrew.hallett@rpc.gov.uk](mailto:Andrew.hallett@rpc.gov.uk))



P A R T

# V

## 독일 입법영향평가 체계에서의 사후 규제영향평가

Post-Implementation Review in the  
German System of Legal Impact Assessment

—

Hans-Jörg Dietsche

FHM Bielefeld 교수 / Professor, FHM Bielefeld

사후 규제영향평가 국제컨퍼런스  
International Conference on Post-Implementation Review





## Post Implementation Review (PIR) in the German system of Legal Impact Assessment

**KDI** 한국개발연구원  
Korea Development Institute

Prof. Dr. Hans-Jörg Dietsche  
Sejong, 22. September 2023

■ |.

## Development and system of Legal Impact Assessment in Germany

## "History" of the reduction of bureaucracy

- 1969: Federal Chancellor Willy Brandt declares bureaucracy reduction to be the goal of his government for the first time
- 1984: first methodological approach with the "Blue Test Questions":
  - ten test questions on the necessity, effectiveness and comprehensibility of federal legislative projects
- 2002: among other things, "area-wide master plan to reduce bureaucracy".
  - BMWA's call to business associations to submit proposals
  - "Innovation regions" of the Federal Ministry of Economics and Labour, the Bertelsmann Foundation in the test regions of Bremen, East Westphalia-Lippe and West Mecklenburg
  - "sunset legislation" in German federal states as a general time limit on all laws, ordinances and administrative regulations, e.g. Hessen

## "History" of the reduction of bureaucracy

- 2001 New approach in the Netherlands: the Standard Cost Model (SCM) according to the striking principle "only what can be measured will be done".
- 2002 Actal in the Netherlands
- 2006 Nationaler Normenkontrollrat - National Standards Control Council in Germany
- 2007 EU High Level Group on Administrative Burdens

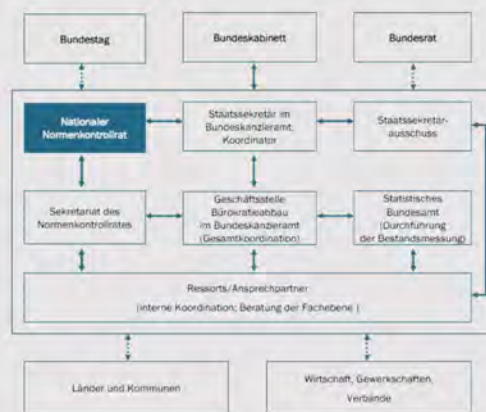
## Origin of the bureaucratic cost measurement § 2 NKRG

- (1) Bureaucratic costs within the meaning of this Act are those incurred by natural or legal persons as a result of information obligations. Information obligations are obligations existing on the basis of a law, statutory instrument, statute or administrative regulation to procure, keep available or transmit data and other information for public authorities or third parties. Other costs incurred by law, statutory instrument, statute or administrative regulation are not covered.
- (2) The Standard Cost Model (SCM) shall be applied when measuring bureaucratic costs. The internationally recognised rules for the application of the standard cost model shall be used as a basis. Deviations from this methodology shall require a resolution of the majority of the members of the National Regulatory Council and the consent of the Federal Government. The necessity of a resolution shall be examined in particular if a deviation from the internationally recognised rules for the application of the SCM is otherwise to be feared.
- (3) When determining for the first time the ratios necessary for the implementation of the measurement at enterprises (costs per unit, time per individual activity triggered by the law as well as their frequency per year and number of enterprises affected), all bureaucratic costs based on federal law shall be taken into account.

NKR Annual Report 2007, p.50 NKR Act §2

## Organisation of the bureaucracy reduction process

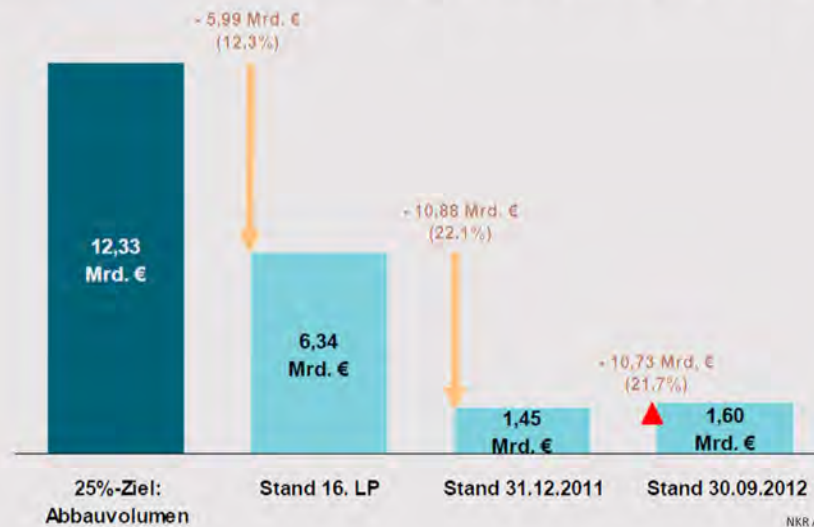
until 2021



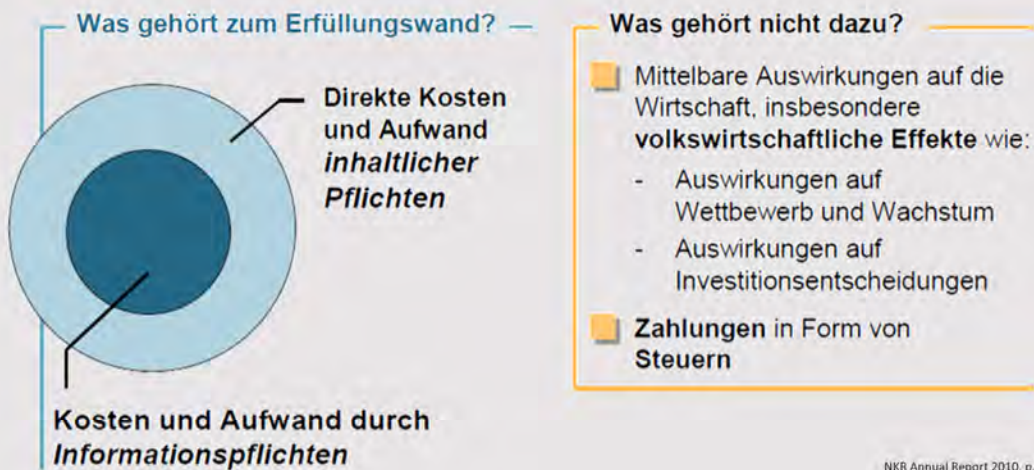
NKR Annual Report 2007, p. 20

From 2022: Relocation of responsibility from the Federal Chancellery to the BMJ

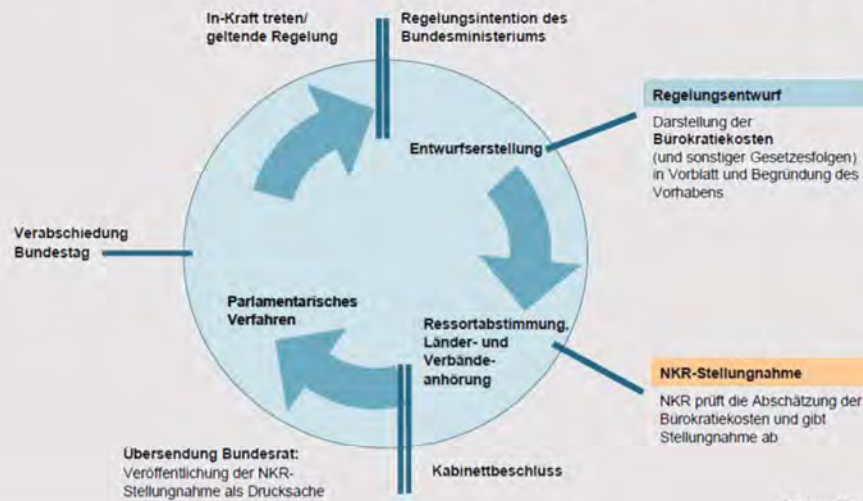
## Degradation balance NKRG old



## Definition of the compliance burden



## NKR and ex ante procedures in the legislative process



NKR Annual Report 2009, p.12

9

## Consideration of the individual company



- a** **Identifizierung der Informationspflichten:** Welche Informationspflichten betreffen das Unternehmen?
- b** **Kostenermittlung:** Nutzung der vom Statistischen Bundesamt ermittelten Kostenparameter für die Quantifizierung dieser Informationspflichten.
- c** **Rückkopplung:** Sicherstellen, dass Abbaumaßnahmen der Bundesregierung zu einer Entlastung auf der „Mikroebene“ führen.
- d** **Reduzierungsmaßnahmen:** Welche ergänzenden Möglichkeiten gibt es, die Bürokratiekosten eines einzelnen Unternehmens spürbar zu reduzieren?

NKR Annual Report 2007, p. 41

10

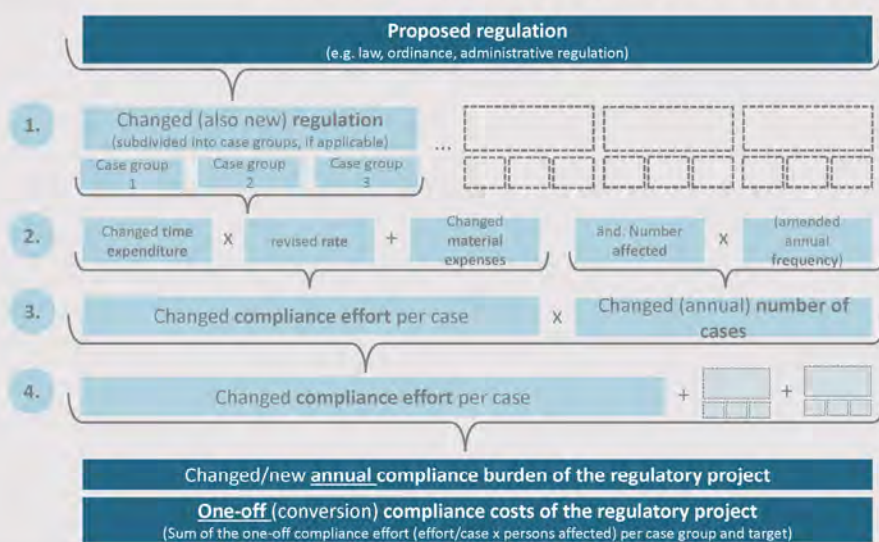
## Methodical approach

- › Elaboration of the concrete changes of the corporate and administrative duties on the basis of the standard as well as development of a survey catalogue
- › Identification and, if necessary, structuring of the norm addressees
- › Selection of survey participants
- › Surveys to estimate the compliance burden for the economy and the enforcement burden for the administration per case
- › Extrapolation of the collected results based on the total number of cases



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## Measurement of the compliance burden



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## Standard cost model

Standardaktivitäten	Zeitaufwand in Minuten	X	Lohnsatz in €/Stunde	X	Fallzahl	=	Bürokratiekosten in €
Formular ausfüllen	3,0		28,50		6.500.000		9.262.500
Berechnungen durchführen	5,0		28,50		6.500.000		15.437.500
Überprüfen der Einträge	4,0		28,50		6.500.000		12.350.000
Kopieren, Archivieren	2,5		28,50		6.500.000		7.718.750
<b>Gesamt</b>	<b>14,50</b>		<b>28,50</b>		<b>6.500.000</b>		<b>44.768.750</b>

NKR Annual Report 2007, p. 18

13

▪ **Art. 65 GG: Ressortprinzip (department principal):**

„Each Federal Minister is responsible for his own department“

▪ **Gemeinsame Geschäftsordnung der Bundesministerien (GGO)  
 (Joint Rules of Procedure of the Federal Ministries (GGO))**

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- **§ 44 Abs. 1 Satz 2 GGO:**
- In each draft a Ministry has to declare about impacts of regulation:
  - - „...intended effects (aims) and the unintended side effects (costs, bureaucracy costs etc.)...”

- II.
- Development of the practice of PIR  
in Germany

- **Bundesverfassungsgericht (Constitutional Court) 1972 (BVerfGE 33, 171 Rn 44):**
- *"In the case of complex issues, it can be justifiable that the legislature is initially given adequate time to gather experience and that in this early stage it can be satisfied with rougher typifications and generalizations, which can be justified from the point of view of practicability in particular because because a refinement can entail the risk of a lack of effectiveness. In such a case, the associated disadvantages only give cause for constitutional objection if the legislature fails to carry out a later review and progressive differentiation despite sufficient empirical material for a more appropriate solution."*

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- **Beschluß der Bundesregierung vom 20. Dezember 1989 über Maßnahmen zur Verbesserung der Rechtssetzung und von Verwaltungsvorschriften:**
- **„1.3 Verstärkte Erfolgs- und Wirkungskontrolle verabschiedeter Gesetze und Verordnungen:**  
Die Bundesminister werden künftig Gesetze und Verordnungen ihres Geschäftsbereichs verstärkt im Sinne einer Erfolgs- und Wirkungskontrolle beobachten.“
- *"1.3 Increased monitoring of the success and effectiveness of passed laws and ordinances:  
In the future, the federal ministers will monitor the laws and regulations in their area of responsibility more closely to monitor success and effectiveness."*

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- **§ 44 Absatz 7 GGO – (implemented in 2000 in GGO):**
- *“In der Begründung zum Gesetzentwurf ist durch das federführende Ressort festzulegen, ob und nach welchem Zeitraum zu prüfen ist, ob die beabsichtigten Wirkungen erreicht worden sind, ob die entstandenen Kosten in einem angemessenen Verhältnis zu den Ergebnissen stehen und welche Nebenwirkungen eingetreten sind.“*
- *„In the explanatory memorandum to the draft law, the responsible department must determine whether and after what period of time it should be checked whether the intended effects have been achieved, whether the costs incurred are proportionate to the results and what side effects have occurred.“*

- **Decisions of the Secretarylevel Committee „Bureaucracy Reduction and Better Legislation“:**
- - 23. January 2013: Decisions on the evaluation concept
- - 26. November 2019: Further development of the evaluation concept from 23. January 2013

■ III.

- Implementing the PIR in the
- German system of Legal Impact Assessment and first experience since 2020

- Basic of the evaluation concept 2013:
  - *“For all **essential** regulatory projects, statements on the implementation or non-implementation of evaluations must be included in the explanatory memorandum to the draft regulation in accordance with § 44 (7) GGO.”*
  - => In all draft legislation, the following points must therefore be commented on in the explanatory memorandum:

▪ **Time schedule:**

- The lead Ministry decides on the timing of the evaluation at its own discretion.

When choosing a suitable point in time, the expected occurrence of effects must be taken into account, among other things. As a rule, an evaluation should be carried out 3-5 years after a proposed regulation has come into force.

- „...According to this, draft regulations are considered to
- be **essential** if the annual compliance costs are at least
- - €1 million in material costs or 100,000 hours of work for citizens or
- - €1 million for the economy or
- - €1 million for administration
- is to be expected on the basis of the ex ante assessment or – if such an assessment is not possible – cannot be ruled out.”

- **Possibility of limitation of the obligation to evaluate - Proportionality:**
- The effort involved in the evaluation must be proportionate to the knowledge to be gained from it. This applies, for example, with regard to on judicial decisions or international or EU requirements with no scope for implementation and reporting obligations based on this.

- **Further criteria to be an essential regulation since 2019:**
  - The subsequent measurement of the compliance costs can also be a reason for an evaluation – if it is only then determined that the actual costs exceed one of the threshold values mentioned.
- - If all these requirements are not met, it **must** be checked whether the essentiality of the project does not result from other reasons:
  - a high other total financial expense, i.e. high household expenses or other costs,
  - the special political importance or
  - major uncertainties about effects or administrative enforcement

▪ **Further stipulations that the Ministry has had to make in relation to the evaluation in the explanatory memorandum since 2019:**

- - what are the objectives of the evaluation?
- - which criteria should be used as a basis for determining the achievement of objectives?  
(-> which also shows whether the collection of data is required for this and whether the Federal Statistical Office is involved, for example)

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▪ **The evaluation criteria are to be named in the explanatory memorandum:**

- The most important criterion is the achievement of the objective, since regulations that fail to achieve the objective formulated in the draft regulation usually cause unnecessary compliance costs.
- Other criteria can be, for example:
  - • side effects of the regulation (positive or negative);
  - • Acceptance of the regulation (e.g. use of government offers);
  - • The practicability of the regulation, which needs to be checked with regard to avoidable compliance costs (e.g. bundling of tasks at one enforcement authority);
  - • Considerations as to whether the costs incurred are proportionate to the results. This does not necessarily have to be a monetary consideration, but can also be considered as a weighing of advantages and
- Disadvantages of a regulation take place.

▪ **Design of the Evaluation:**

- Such as the evaluation in terms of
  - 
  - its depth (*e.g. regulatory projects as a whole, parts of an article law, individual areas of a main law, implementation*),
  - the methodology (*from internal to a scientific evaluation*), and
  - its scope (*from "two-page report" up to a detailed report - also depending on the available resources*)
- and:
  - whether an internal or external evaluation should be carried out

is to be carried out by the respective Ministry itself

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▪ **Publishing the evaluation report and dealing with the results:**

- - the 2019 decision stipulates that the Ministries should comment on the conclusions or further procedures they draw from the evaluation results. The results of the evaluation reports (ideally recommendations for action) should at least be checked by the Ministries for their feasibility.
- - the Normenkontrollrat can be called upon to ensure the quality of the report.
- - the evaluation report and the statement of the lead Ministry will be published on a central online platform of the federal government, and in addition it must be "given to the attention" to the departments concerned, the Bundeskanzleramt and the Nationale Normenkontrollrat.

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▪ **Beispiel für eine Evaluierungsklausel in der Gesetzesbegründung - Novellierung des Reisevertragsrechts:**

▪

*„Eine umfassende Evaluierung des neuen Systems der Insolvenzsicherung im Reiserecht soll spätestens nach fünf Jahren erfolgen. Dabei soll evaluiert werden, ob mit der Neugestaltung eine effektive Insolvenzsicherung erreicht wurde. Als Kriterium kann auf die richtlinienkonforme Entschädigung betroffener Reisender abgestellt werden, wobei insoweit Informationen aus den Geschäftsberichten des Reisesicherungsfonds entnommen werden können. Es soll dabei auch untersucht werden, ob zeitgleich mehrere Reisesicherungsfonds die Erlaubnis zur Aufnahme des Geschäftsbetriebs erhalten können sollen oder sogar eine vollständige Marktöffnung möglich ist.“*

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▪ **Example of an evaluation clause from the handbook of the Federal Statistical Office: (from the justification for the amendment to travel contract law - in the explanatory memorandum):**

▪ *“A comprehensive evaluation of the new system of insolvency protection in travel law should take place after five years at the latest. The aim is to evaluate whether effective insolvency protection has been achieved with the redesign. The criterion can be based on the guideline-compliant compensation of affected travelers, whereby information can be taken from the annual reports of the travel insurance fund. It should also be examined whether several travel insurance funds should be able to obtain permission to start business operations at the same time or whether a complete opening of the market is even possible.”*

32

- **Example of an evaluation clause inserted into the law by Parliament itself:**
- Informationsfreiheitsgesetz / Information Freedom Act:
- 
- § 14 Bericht und Evaluierung
- „Die Bundesregierung unterrichtet den Deutschen Bundestag zwei Jahre vor Außerkrafttreten über die Anwendung dieses Gesetzes. Der Deutsche Bundestag wird das Gesetz ein Jahr vor Außerkrafttreten auf wissenschaftlicher Grundlage evaluieren.“
- 
- § 14 Report and Evaluation
- “The Federal Government informs the Deutsche Bundestag for two years before expiry on the application of this law. The Deutsche Bundestag will the law one year before it expires on scientific evaluate base.”

## ▪IV.

**First experiences with the evaluation processes since 2020 and a  
▪first preliminary assessment**

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