

CLARIFYING THE RELATIONSHIP BETWEEN POLICY EVALUATION, POST-LEGISLATIVE SCRUTINY AND POST-IMPLEMENTATION REVIEW - MARCH 2010

Introduction

1. The Government recently committed¹ to clarifying the relationship between Policy Evaluation, Post-Legislative Scrutiny (PLS) and Post-Implementation Review (PIR).
2. It is good practice to take stock and learn from experience before moving on. It is standard practice in Government to evaluate regulatory policies and spending programmes, especially IT programmes. In the field of regulation, the Government has established a number of procedures to enable officials to take stock, and to assist Parliament in its scrutiny function.
3. It is essential that the Government's evaluation procedures fit together, in order to:
 - allocate resources effectively and efficiently;
 - avoid duplication of time and effort;
 - exploit any synergies;
 - ensure that evaluation of policy is effective; and,
 - assess properly the existing policy landscape and learn from previous experience in the design of new policy.
4. This document has been prepared for policy officials across Government and for those with an interest in the scrutiny of legislation, including Parliament.
5. It is intended to clarify the relationship between procedures for *ex-post* evaluation as they apply to regulatory policy. Spending and IT programmes are subject to different disciplines and are outside the scope of the document.
6. The relationship between these three policy scrutiny processes should be clearly set out in the specific guidance in all three areas. This will lead to improved understanding of when and how new legislation should be reviewed.

Landscape and Scope

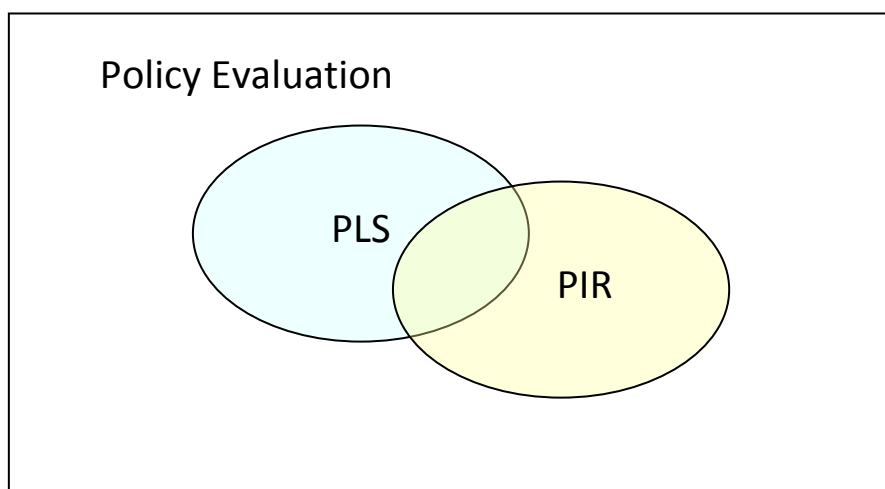
7. The purpose of evaluation is to identify lessons learned in order to improve ongoing policy design and implementation. Policies are designed in a context of uncertainty and limited information. They are implemented in complex environments and their impacts may be affected by a wide variety of factors. In these circumstances, by taking stock of previous experience and observed outcomes, policymakers should be able to learn and apply lessons about what worked well and what worked less well in the past. These lessons may be general (what kinds of intervention have previously work well or badly in what circumstances) or specific (how the design or implementation of a policy in a particular area could be improved).

¹ [What happened next? A study of Post-Implementation Reviews of secondary legislation: Government response](#), January 2010.

8. When regulatory policies are being evaluated, three types of *ex-post* review are often referred to:

- **Evaluation**, which is a general term referring to a systematic evaluation – in this context, an evaluation of regulatory policy. It is a key step in the ROAMEF² policy cycle, which, under current conventions, may be carried out at any time. Under current guidance the methods of review are unrestricted, and the results may or may not be published.
- **Post-implementation review (PIR)**, which, in this context, refers to the review of regulatory policy that complements the *ex-ante* appraisal contained in the Impact Assessment. The visible output is a revised Impact Assessment, known as the Review Stage Impact Assessment. This must be signed by a Minister and published. The resources devoted to a PIR should be proportionate to the likely benefits of the review.
- **Post-legislative scrutiny (PLS)** is a review of how primary legislation is working in practice. Its primary audience is Parliament, specifically the departmental select committees of the House of Commons. A post-legislative scrutiny memorandum must be published and submitted to Parliament. Unlike PIR, it includes a review of the extent to which the legislation and the supporting secondary legislation has been brought into force. Post-legislative scrutiny should include consideration of all or much of the delegated legislation made under the Act.

9. The relationship between the three is illustrated in the diagram below:



10. PIR and post-legislative scrutiny have much in common. Evaluating the extent to which legislation (both primary and secondary) is working as expected is common to both. Departments are therefore encouraged, where possible, to exploit synergies between PIR and post-legislative scrutiny. A plan for PIR must be attached to the policy Impact Assessment at consultation, final and enactment stages. Ideally, post-legislative scrutiny of a statute and PIR of the underlying policies should be carried out as a single activity. Where possible, the post-legislative scrutiny memorandum should cross-refer to the PIR documentation.

² See, for example, the Green Book, http://www.hm-treasury.gov.uk/data_greenbook_index.htm.

| POLICY EVALUATION | |
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| Who is expected to undertake policy evaluation? | Policy officials, with advice from economists and social researchers. |
| Is this a formal requirement? | No. However, evaluation is a key stage in the ROAMEF policymaking cycle. |
| What are the criteria for doing a policy evaluation? | An evaluation can be carried out at any stage and in a wide variety of ways. Best practice is after a period of monitoring of any new or revised policy, and particularly before introducing any new policy in the same area. |
| What are the benefits of policy evaluation? | An understanding of whether the policy has been implemented effectively, whether its objectives are being met and what its economic impacts are. Better policy making lessons learned can then be fed into future policy design. |
| What does policy evaluation involve (overview)? | Policy evaluation uses a range of research methods to systematically investigate the effectiveness of policy interventions, implementation and processes, and to determine their merit, worth, or value in terms of improving the social and economic conditions of different stakeholders. |
| How will findings be reported? | There is no standard reporting format. Evaluations may but need not be published. |
| Who is the audience for this? Is there formal external scrutiny of results? | The audience will vary case by case. As there is no formal requirement to publish there will not ordinarily be external scrutiny of results. |
| Will a policy evaluation draw on PLS and/or PIR? | Any prior policy evaluation is likely to feed into PLS and PIR. PLS and PIR can be seen as specific forms of policy evaluation. |
| Where can you find guidance on policy evaluation? | The Magenta Book, http://www.civilservice.gov.uk/my-civil-service/networks/professional/gsr/resources/magenta-book-main-page.aspx . |
| Who within Government owns policy evaluation? | Government Chief Economist and Head of Government Social Research Service. |
| Contact | Economists and social researchers in each Department. |

| POST-LEGISLATIVE SCRUTINY (PLS) | |
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| Who is expected to undertake PLS? | Policy officials, with advice from lawyers, economists and social researchers. |
| Is this a formal requirement? | Yes, although Departments may agree with Select Committees not to carry out a PLS or to vary the timetable. |
| What are the criteria for doing PLS? | <p>PLS should be carried out on Acts of Parliament, including Acts that were Private Member's Bills. Certain exemptions are listed in the Cabinet Office Guide.</p> <p>PLS should be carried out 3-5 years after Royal Assent (NB regardless of commencement date). PLS and PIR should be carried out on a timetable that avoids duplication of work.</p> |
| What are the benefits of PLS? | <p>The objectives are:</p> <ul style="list-style-type: none"> • to see whether legislation is working out in practice as intended; • to contribute to better regulation; • to improve the focus on implementation and delivery of policy aims; and • to identify and disseminate good practice so that lessons may be drawn from the successes and failures revealed by the scrutiny work. |
| What does PLS involve (overview)? | PLS is a preliminary review of the effectiveness of the legislation. Officials should have regard to the objectives of the Act, as set out in the Explanatory Notes to the Bill, and to the Impact Assessment. |
| How will findings be reported? | In a PLS Memorandum, published as a Command Paper. |
| Who is the audience for this? Is there formal external scrutiny of results? | The document should be submitted to the relevant House of Commons Select Committee. The Select Committee may decide that further inquiry is warranted. Other Committees may also take an interest. Command papers are publicly available to external stakeholders. |
| Will a PLS draw on policy evaluation and/or PIR? | A PLS may draw on, or cross-refer to, any policy evaluation. It should refer to any PIR of the statute or of secondary legislation under the statute. |
| Where can you find guidance on PLS? | Cabinet Office <i>Guide to Making Legislation</i> , http://www.cabinetoffice.gov.uk/secretariats/economic_and_domestic/legislative_programme/guide.html.aspx . |
| Who within Government owns PLS? | The Office of the Leader of the House of Commons formulated the policy. The Cabinet Office co-ordinates PLS, through Parliamentary Branches. |
| Contact | Tom Healey, Cabinet Office. |

| POST-IMPLEMENTATION REVIEW (PIR) | |
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| Who is expected to undertake PIR? | Policy officials, with advice from economists and social researchers. |
| Is this a formal requirement? | The policy is 'comply or explain': any decision to depart from the standard policy must be explained in public. |
| What are the criteria for doing a PIR? | Any regulatory policy that has been subject to an Impact Assessment should be subject to a PIR. Other policies may also be subject to PIR. A PIR should normally be carried out 3-5 years after policy implementation. PLS and PIR should be carried out on a timetable that avoids duplication of work. |
| What are the benefits of PIR? | The objectives are: <ul style="list-style-type: none"> • to identify whether the policy change is achieving the desired results; • to identify whether costs and benefits are in line with expectations; • to inform future policy development; • to improve delivery methods; and, • to develop the techniques used to assess the impact of policy interventions. |
| What does PIR involve (overview)? | A PIR involves a review of the extent to which the policy is working as expected; the extent to which objectives and success indicators are met; and the extent of unintended consequences. The resources devoted to the review should be proportionate to the likely benefits. |
| How will findings be reported? | Review Stage Impact Assessment (IA) is published on the IA Library. Ministerial sign-off is required. |
| Who is the audience for this? Is there formal external scrutiny of results? | There is no formal external scrutiny. Any party with an interest in policy effectiveness may comment on the published IA. Interested parties include Parliamentary committees, business groups and academics. |
| Will a PIR draw on policy evaluation and/or PLS? | PIR should draw on, and reflect the results of, any policy evaluation. |
| Where can you find guidance on PIR? | There is guidance on PIR in the Impact Assessment Guidance and Toolkit, on the Better Regulation Executive (BRE) website. |
| Who within Government owns PIR? | BRE co-ordinates the policy through the Better Regulation Unit (BRU) network across departments and regulators. |
| Contact | Debra Theabould, Better Regulation Executive. |

Policy Scrutiny – Illustrative Timelines

Example 1 – EU Legislation with EU evaluation

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| March 2003 | EU Directive is enacted. |
| March 2005 | Act receives Royal Assent. |
| June 2005 | Act enters into force. |
| July-Dec 2005 | SIs are made under the Act. |
| June – Dec 2006 | SIs enter into force |
| Jan-March 2010 | PIR carried out and published. |
| March 2010 | PLS memorandum submitted to Parliament. |
| June 2010-March 2011 | EU Directive is evaluated by European Commission and Member States. |

Example 2 – Domestic Legislation With Delayed Commencement

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| March 2005 | Act receives Royal Assent. |
| Dec 2005-May 2006 | Act enters into force. |
| Jan-Dec 2006 | SIs are made under the Act. |
| Jan-Dec 2007 | SIs enter into force. |
| Jan 2010 | Department negotiates an exceptional extension to PLS timetable with Select Committee, on grounds of delayed commencement and in order to fit into PIR timetable. |
| Jan-March 2011 | PIR carried out and published. |
| March 2011 | PLS memorandum submitted to Parliament. |



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