

COMPANY LAW REFORM: THE ROLE OF REGULATORY IMPACT ASSESSMENT

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**Paper presented to the Society of Legal Scholars Annual Conference,
Company Law Section
Keele University**

5th September 2006

ABSTRACT

A “regulatory impact assessment” (“RIA”) is required for any policy change, which could affect the public or private sectors, charities, the voluntary sector or small businesses. The content of a RIA must identify the issue the policy seeks to address, the best available option and be signed by the responsible minister to confirm that the benefits justify the costs. The reform of company law is no exception and RIAs have been published at various stages in the development of the Companies Bill. Whilst the quality of RIAs is regularly scrutinised by the Better Regulation Executive, there are grounds to question their effectiveness. For example, a Final Regulatory Impact Statement was published with draft regulations for the introduction of the Operating and Financial Review in March 2005, whereby the responsible minister confirmed that she was satisfied that the benefits justified the costs. In November 2005, the Chancellor announced the repeal of the relevant policy measure, now given effect by The Companies Act 1985 (Operating and Financial Review) (Repeal) Regulations 2005. The rationale for this repeal appears to have been the proportionality of the burden imposed – precisely the sort of issue which the requirement for a RIA was intended to address. This paper provides a critical examination of the RIAs published in relation to the development of the Companies Bill in relation to important policy areas, such as the reform of directors’ duties. It concludes by addressing whether the RIA was a sound tool to support the reform of company law.