



Department  
for Business  
Innovation & Skills

**ACCOUNTABILITY FOR  
REGULATOR IMPACT**

Guidance

JULY 2013

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# 1. Overview

## 1.1. Regulators are asked to:

- review how they engage with regulated businesses<sup>1</sup> and publish their approach online (see section 6);
- consider their wider approach to sharing their evidence base (section 6);
- make a public commitment that they will follow the Accountability for Regulator Impact (ARI) principles when considering introducing change (section 6);
- discuss with representatives of affected businesses what changes in the burden on business they should regard as significant enough to trigger an Assessment (section 4);
- prepare draft Business Engagement Assessments in respect of such changes, which should describe the proposed change and provide a sound and realistic assessment of its expected impact on business (section 5);
- engage business about such Assessments before finalising them (section 6);
- make public the draft and finalised Assessment (sections 6 and 7);
- report very limited information about Assessments to BRE every six months, with exception reporting on very large proposals between those returns (except to October 2014 where a separate return on each draft or final assessment should be submitted) (section 9).

1.2. If the impact cannot be broadly agreed, business representatives can choose to submit their own estimate of costs alongside that of the regulator and ask the independent Regulatory Policy Committee (RPC) to review the issue.

1.3. This guidance reflects engagement with Trade Associations and regulators, including the experience of seven “pioneer” regulators. **Comments continue to be welcome.** They should be sent to [betterregulation@bis.gsi.gov.uk](mailto:betterregulation@bis.gsi.gov.uk). We would also welcome information from regulators or businesses about examples of good practice. BRE is offering training and information-sharing opportunities to regulators to support implementation.

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<sup>1</sup> Throughout this guidance, “business” includes the voluntary sector.

**Good Practice Example:**

The Medicines and Healthcare Products Regulatory Agency (MHRA) regularly co-produce assessments of the impact of their regulatory changes with their Trade Associations. They believe that this encourages greater clarity about the impact of new proposals and increases the likelihood of agreement regarding the costs of the change.

## 2. The goal of this guidance

2.1. **Regulators' proposals to change their operational policies, processes or practices can have important impacts on the businesses they regulate, and hence on the prospects for economic growth.** By capturing and quantifying these impacts (both positive and negative) and engaging effectively with business in advance about the proposals, regulators can

- demonstrate that the impact on business of changes in these regulatory activities is proportional to their policy goal;
- identify alternative ways to achieve their desired regulatory goal whilst minimising costs to the regulated;
- increase the effectiveness of regulatory activity by getting a better understanding of its likely effect;
- highlight areas where burdens have been reduced as a result of a change in policy, process or practice; and
- improve their reputation with business, and therefore improve businesses' willingness to comply.

2.2. The Chancellor announced in his 2012 Autumn Statement that Government wants to see all regulators undertaking this sort of good practice. That outcome is the goal of this guidance.

2.3. The Chancellor's announcement was part of a wider package of measures which aim to help regulators to enable compliant businesses to grow. The package also included consultation on a statutory duty for regulators to have regard to growth; a revision of the Regulators' Code; a Focus on Enforcement Appeals Review looking at the appeals mechanisms of national and local regulators; and HM Treasury action on fees and charges applied by regulators.

2.4. Some regulators are already delivering excellent business engagement and are using innovative approaches to consult effectively and assess their impacts. This project aims to build on this activity and to help share best practice across the spectrum of regulatory bodies and supports the civil service reform objectives of better policy making and being open and accountable.

- 2.5. Quantification will also provide central government and external stakeholders with a useful indication of overall trends in the impact of regulatory activity. But it is not the goal of this project to produce a definitive measure of that impact.

### 3. Scope

- 3.1. **This guidance describes minimum expectations for engagement by national non-economic regulators about the impact on business of changes in regulatory policy and practice.** Other regulators may also want to adopt it. Where regulators' engagement practices already exceed these expectations we would encourage them to continue those practices and to share them with others.
- 3.2. **This guidance applies from July 2013.** Some regulators may choose to apply it to changes already under way at that date, but it should not be applied to any change announced before the 2012 Autumn Statement.
- 3.3. Regulating Departments are responsible for producing Impact Assessments for changes in policy which have the force of law. This guidance applies only to changes for which no Impact Assessment is required.
- 3.4. Whilst the Government wants regulators to reduce their overall burden on business, this guidance does not include an equivalent of the One-In, Two-Out rule for burdens arising from regulators' own decisions.
- 3.5. This guidance applies to national non-economic regulators operating in England. It only applies in Scotland to regulatory functions exercised in reserved matters; and in Northern Ireland to regulatory functions which have not been transferred. It does not apply to regulatory functions which are only exercisable in or as regards Wales.
- 3.6. This guidance does not generally apply to the regulatory activities of local authorities. It does, however, apply to the setting of an enforcement framework for local authorities by a national regulator.

### 4. What proposals should trigger an Assessment?

- 4.1. Any proposed change in policy, process or practice by a regulator which does not require a full Impact Assessment<sup>2</sup>, but which creates a **significant** increase or decrease in the burden of regulator activity on business should trigger an Assessment. This

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<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/211165/bis-13-1038-better-regulation-framework-manual-guidance-for-officials.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211165/bis-13-1038-better-regulation-framework-manual-guidance-for-officials.pdf)

includes enforcement and operational policy changes whether instigated by the regulator or central government. Examples – which are not exhaustive – include

- changes to the content or status of non statutory guidance<sup>3</sup>;
- moves from paper-based to electronic reporting;
- new or amended information obligations;
- changes to or new standards;
- changes to an inspection, enforcement or licensing framework or regime – but not individual enforcement decisions (see paragraph 4.4 – below) or changes to individual licenses;
- Changes in the regulator’s provision of information, advice or training to businesses.

4.2. Assessments are only required for proposed changes with **significant** effects on business, whether positive or negative. What is “significant” in the circumstances of a particular regulatory regime should be determined by the views of the businesses concerned. The interpretation of “significant” should take into account

- the total impact, of the proposal
- relatively large impacts on a particular **sector, size or type** of business
- the likely volume of proposals and the capacity of business representatives to deal with the cumulative impact of numerous proposals.

#### Example approaches to determining which proposals should trigger an Assessment:

1. The Coal Authority has engaged their key Trade Associations to agree their significant changes to which Accountability for Regulator Impact principles could be applied.
2. The Environment Agency has identified its programme of work for all changes being introduced during the year. By bringing this list together, the Environment Agency identified the changes which it believed to be significant, and it will then be able to discuss and agree this list with Business representatives before applying Accountability for Regulator Impact principles to the agreed significant changes.
3. The Food Standards Agency will apply preliminary assessments to all identified changes to identify those which are significant, and then develop these proportionally to the scale of the impact.

<sup>3</sup> As defined in the Better Regulation Manual (see preceding reference).

- 4.3. In areas in which the regulator expects to take repeated or rapid action it may make more sense to assess any changes to the regime which the regulator operates, rather than individual activities within that regime. For example, the Environment Agency has previously applied temporary measures to help fill farm reservoirs to ensure that farmers affected by drought conditions had enough water available to abstract. The application or dis-application of temporary measures of this type (which can occasionally be in response to emergency situations) would not normally be subject to ARI, but a change to the way the overall regime is implemented would be.
- 4.4. Where a significant precedent is set by a decision on a single case, regulators should consider whether it would subsequently be appropriate to prepare an assessment of the changed policy, without prejudice to the decision on the individual case.
- 4.5. Where national regulators operate in partnership with local authorities, the activity in scope is the enforcement framework which the national regulator sets for local authorities. Changes in individual local authorities' policies and practices within this framework are not in scope.
- 4.6. Where a regulator delivers some or all of its functions through another body (including another regulator) it should ensure the principles of ARI are applied appropriately.
- 4.7. Where the regulator is making policy or practice changes in addition to those reflected in a full Impact Assessment, the regulator should prepare a BEA in respect of its additional changes where these are significant. This may draw on the material in the Impact Assessment.

## 5. Content of Assessments

- 5.1. **The key requirement is that an Assessment should be sound and realistic, and make sense to the business representatives who will be discussing it.** The Assessment should use business-friendly language and presentation. Regulators should seek feedback from business representatives about the way in which Assessments are put together, so that future Assessments are increasingly helpful.
- 5.2. Each draft Assessment should set out the options for change (if there is more than one), and describe their impact on business, including both financial and non-financial factors. This description **may** include reference to indirect impacts of the change, and should cover the proposal's full geographical scope (e.g. UK). An Assessment should in addition:

- Include where possible a **quantification of the total expected direct<sup>4</sup> cost or benefit to business** and a transparent explanation of the calculation<sup>5</sup>;
- Consider whether there may be costs and benefits to business which are not readily quantifiable – for example if a change resulted in improved security or happiness for a business’s employees. When this is the case, a qualitative assessment of the impact on business should be provided;
- Estimate the positive and negative impacts on both current and potential future businesses;
- Specifically assess the proposal’s effects on **small and micro businesses** where the owner/manager often takes personal responsibility for regulatory matters;
- Make clear the geographical scope of the change in policy / practice e.g. England and Wales, England only.

### 5.3. When quantifying the impacts on business, regulators should

- Identify which impacts are transitional only (e.g. one off costs) and which are recurring (e.g. changes to annual reporting requirements);
- Analyse costs and benefits over an appropriate time period, discounted using the current year as the price base, and give the annual average figure. Costs and benefits should be analysed over a ten-year period with a discount rate of 3.5%, unless the Assessment makes a case for alternative figures; and
- Apply the principle of proportionality to assess what level of resources to invest in analysis, both for the measure as a whole, the presentation of any alternative options and when allocating resource to individual issues within the BEA.

### 5.4. Where a proposal has a significant impact on the regulator’s total costs, one of the impacts which should be discussed in the Assessment is the effect on any fees or charges which the regulator imposes.

### 5.5. A template for Assessments has been developed <https://www.gov.uk/government/publications/regulator-impact-accountability-guidance>. The majority of the template requires qualitative responses (for example asking regulators to provide the reasoning behind their intended action), with answers likely to be no more than 1 or 2 short paragraphs in most cases. **As long as**

<sup>4</sup> “Direct” costs and benefits are defined in the Better Regulation Manual (see preceding reference).

<sup>5</sup> Regulators may want to refer to the Green Book ([http://www.hm-treasury.gov.uk/data\\_greenbook\\_index.htm](http://www.hm-treasury.gov.uk/data_greenbook_index.htm)), or the Standard Cost Model (<http://www.berr.gov.uk/files/file44503.pdf>)

**the requirements in paragraphs 5.1 to 5.4 above are met, regulators need not conform to this template.**

- 5.6. A spreadsheet to support discounted cost calculations has also been developed.  
<https://www.gov.uk/government/publications/regulator-impact-accountability-guidance>. Alternatively regulators may wish to develop and use their own tools, which should be publicly available.

### Good Practice:

The Environment Agency has developed a simple spreadsheet tool to help teams calculate the costs or savings to businesses of proposed new measures. It offers standard costs and discount rates and allows for high/medium/low estimates where precise data are not available. It provides a clear audit trail to show how figures have been arrived at, which will help identify the source of any differences with industry estimates. Final figures are expressed as the Equivalent Annual Net Cost to Business (EANCB) for each option assessed.

## 6. Engagement with business

- 6.1. Each regulator will need to consider the best way to engage regulated businesses in the light of its own circumstances.** A regulator may want to consider the good practice in the Government's Consultation Principles<sup>6</sup>, but is free to agree alternative arrangements with representatives of relevant businesses.
- 6.2. As noted above, many regulators already have established channels to engage businesses on at least some issues. Regulators are encouraged to build on this existing good practice. When planning how to implement this guidance they may want to discuss the issues through those channels.
- 6.3. Where there are no established channels, or they do not cover the bulk of regulated businesses, for many regulators the best way forward will be to approach relevant Trade Associations. To ensure that participants have the best practical knowledge of the impact of regulatory activity, Trade Associations may want to nominate practitioners from member firms rather than their own staff. Relevant business representatives could also include professional bodies, other groupings or individual businesses where that is appropriate given the composition of the group of businesses affected.
- 6.4. Where Government has prepared an Impact Assessment to support consultation on new legislative changes, the regulator

<sup>6</sup> <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

should discuss with its parent Department how to manage joint engagement with business around the Impact Assessment in a way which will make sense for business. Where a change in policy originates in the regulator's parent Department but does not require an Impact Assessment, the regulator should agree with the Department a co-ordinated approach to engagement.

- 6.5. Regulators should publish online a brief summary of their approach to engaging businesses about their Assessments, including a commitment to following the Accountability for Regulator Impact principles and a reference to this guidance.
- 6.6. Most regulators are unlikely to have the capacity to engage directly with all regulated businesses. However draft Assessments should be posted online so that businesses can comment on them either directly or via representatives.
- 6.7. Regulators should be willing to share with business the evidence underpinning their Assessments except where there are good reasons to the contrary. Regulators may wish to consider their wider approach to sharing their evidence base – for example online – outside the context of individual proposals for change.
- 6.8. Businesses and their representatives who believe that they have not been properly engaged about the impact of a significant change should approach their regulator to discuss and resolve concerns, using the regulator's complaints process if needed. If a regulator does not have a complaints process, businesses may approach the regulator's parent Department, and failing that the Better Regulation Executive. Contact details are available on the gov.uk website. Disagreements about the impact of a significant change should be dealt with under section 8 below.

## 7. Finalising Assessments

- 7.1. One of the objectives of this project is that, having considered business feedback on Assessments, regulators may change some proposals to ensure a more favourable impact on business and/or a more effective regulatory outcome.
- 7.2. In the light of business feedback, once a regulator has finalised its proposed change it should **publish online a finalised Assessment** in respect of the option which is being taken forward. This should be done before the change is implemented.
- 7.3. A regulator should take the (draft or final) assessment into account in its decisions on proposed changes.

## 8. What if impact can't be agreed?

- 8.1. If business representatives consider that a regulator's Assessment prepared under this guidance significantly mis-states the impact of the proposal on business, they should try to resolve the issues with the regulator.
- 8.2. Where both parties have a discussion in good faith based on openly shared evidence, broad agreement should be possible in the great majority of cases. However if following such discussions representatives of a significant group of businesses believe that the financial impact figure in a finalised Assessment is substantially mis-stated they may **ask the Regulatory Policy Committee<sup>7</sup> (RPC) to review the regulator's Assessment.**
- 8.3. To seek such a review they should send to the RPC their own assessment of the proposal's impact, alongside that of the regulator, highlighting where this differs from the regulator's Assessment. They should quantify the differences wherever possible. They should indicate their evidence sources within their assessment.
- 8.4. The RPC will not consider a case unless the business representatives' assessment has been shared in full with the regulator concerned, to allow the opportunity to reach agreement about impact.
- 8.5. The RPC will aim to complete consideration of the cases presented to them within 30 working days. An RPC reference does not require a regulator to delay implementation of its proposals. However it would be good practice to do so unless a change is genuinely urgent or a request for review is clearly vexatious.
- 8.6. The RPC should decide whether to review a case put to them by business representatives taking into account the following criteria:
  - There should be a substantial difference between the assessments made by the regulator and business representatives – typically at least 50% of the impact for smaller proposals and, in any event, usually reflecting a difference in opinion over the basic assumptions or analysis contained in the regulators assessment; or if those representatives could not reasonably have produced their own quantified assessment, RPC should be satisfied that they

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<sup>7</sup> The RPC is an independent Non-Departmental Public Body comprising eight independent experts with a wide range of experience and current knowledge of business, employee and consumer issues. Its main role is to scrutinise the evidence and analysis contained in Impact Assessments which Departments prepare in respect of changes to regulations, and publish Opinions which explain the outcome of this scrutiny, prior to Ministers making final decisions.

have a credible case in respect of an issue with substantial impact.

- The case should be supported by representatives of a significant group of businesses already in the sector, or credible potential new entrants.

8.7. The RPC will not consider references which it believes to be vexatious. It will not review any proposed change more than once.

8.8. Following investigation, the RPC will determine the best means of resolving the dispute, which may include arbitration.

8.9. In the event of arbitration, RPC will review the assessments provided by the regulator and business representatives, and decide which of them is more consistent with the evidence. RPC will not make any comment on the proposed changes in regulatory activity, but it may choose to make comments on the assessment methodology or the approach to engaging business representatives.

8.10. The regulator should publish the RPC's decision online. If RPC's finding is that the regulator's assessment was substantially mis-stated, the regulator should

- Reconsider the proposed change in regulatory activity, taking into account the business representatives' assessment;
- Send to relevant Ministers and the BRE the RPC's conclusion, together with an explanation of what action it proposes to take in the light of the RPC's decision.

8.11. There will be no changes to the role of the RPC in assessing Impact Assessments for legislative changes undertaken by Departments.

## 9. Reporting to Government

9.1. Regulators will be asked to **submit brief returns** on their implementation of this guidance. Returns should be sent to BRE, with a copy to the regulator's parent Department's Better Regulation Unit.

9.2. Until October 2014 a separate return on each draft or final assessment should be submitted as soon as it is posted online, so that BRE can share early good practice with other regulators.

9.3. From November 2014 returns should only be submitted on individual assessments with an impact of more than £5 million, whether positive or negative.

- 9.4. A summary of assessments will be published with the Statement of New Regulation, which is published at six-month intervals in July and December. Before each Statement – probably in May and October – each regulator should submit a summary return covering all the assessments it has posted online since the previous summary return, including those for which it has already made individual returns. A nil return will be required if no Assessments have been made in the period.
- 9.5. Returns should cover, for each draft and final Assessment:
- Title of Assessment;
  - Short description of the change in plain English;
  - Whether draft or final;
  - Total estimated financial impact on business, with the year used as the price base;
  - The expected implementation date;
  - Whether the Assessment deals with Red Tape Challenge implementation;
  - A link to the Assessment online; and
  - If subject to RPC review, a link to the RPC’s findings.
- 9.6. Where regulators work together to change policies or practices they should decide between them whether they should assess changes, and consult businesses, jointly or separately. They should ensure that their returns to BRE do not double-count any financial impacts.

## **Better Regulation Executive**

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