



Department for
Business, Energy
& Industrial Strategy

BUSINESS IMPACT TARGET

Appraisal of guidance: assessments for
regulator-issued guidance



April 2017

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Introduction and purpose

In this parliament, guidance measures have been brought into scope of the Business Impact Target (BIT). As a result, a number of new methodological and appraisal issues have emerged as departments and regulators have started to undertake economic appraisal of such measures. In order to support regulators undertaking BIT assessments of guidance changes, the Better Regulation Executive (BRE) has worked with the Regulator Appraisal Subgroup (RAS) to produce some initial guidance on the appraisal of guidance. The purpose of this note is to summarise this work. The rest of the note is structured as follows:

- [Section 1](#) defines “guidance” and sets out some scope issues relevant to the appraisal of guidance;
- [Section 2](#) sets out some overarching issues related to the appraisal of guidance;
- [Section 3](#) deals with appraisal of revisions to existing guidance;
- [Section 4](#) deals with the appraisal of new guidance; and
- [Section 5](#) summarises and concludes the paper.

Section 1: Scope and coverage

The Business Impact Target covers measures that are considered to be Qualifying Regulatory Provisions. This definition is made by reference to **Regulatory Provisions**, which are defined under the Small Business, Enterprise and Employment Act 2015 (SBEE Act) in a three stage process. The measure must:

- relate to a business activity; and
- have a regulatory effect – such as imposing or amending requirements, restrictions or conditions, giving guidance, or relating to securing compliance/enforcement activities; and
- be primary legislation; subordinate legislation made by a minister of the crown; or any other provision which has effect by virtue of the exercise of a function conferred on a minister of the Crown or a relevant regulator.

Certain categories of measure are excluded from being a Regulatory Provision in the SBEE Act. These are known as the **statutory exclusions** and generally relate to:

- Tax, levies or other charges;
- Procurement;
- Temporary measures of less than 12 months duration; or
- The giving of grants or other financial assistance by or on behalf of a public authority.

The Secretary of State can further determine categories of Regulatory Provisions that do not qualify for the BIT. These are known as **administrative exclusions** or “Non-qualifying Regulatory Provisions” (NQRPs) and were set out in a written ministerial statement on 3 March 2016¹. Annex 1 in the Better Regulation Framework Manual (BRFM) (July 2016) explains the categories of measure that the Secretary of State has excluded from the BIT, and also provides an indicative list of types of measures that are *not* excluded. The BRFM is available on the Alfresco ‘BIT Implementation for Regulators’ web portal and via departmental Better Regulation Units.

All other Regulatory Provisions – that is, those that are not excluded either by the SBEE Act or in the Secretary of State’s written ministerial statement – are considered to be **Qualifying Regulatory Provisions** (QRPs) and are therefore in scope of the BIT.

It is important to note that the BRFM refines the coverage of the BIT in relation to guidance measures. Specifically **guidance is defined** as: “*Information provided to business on how to comply with their regulatory obligations*”. Defined as such, ‘guidance’ can include guidance documents, ‘best practice documents’ and codes of practices.

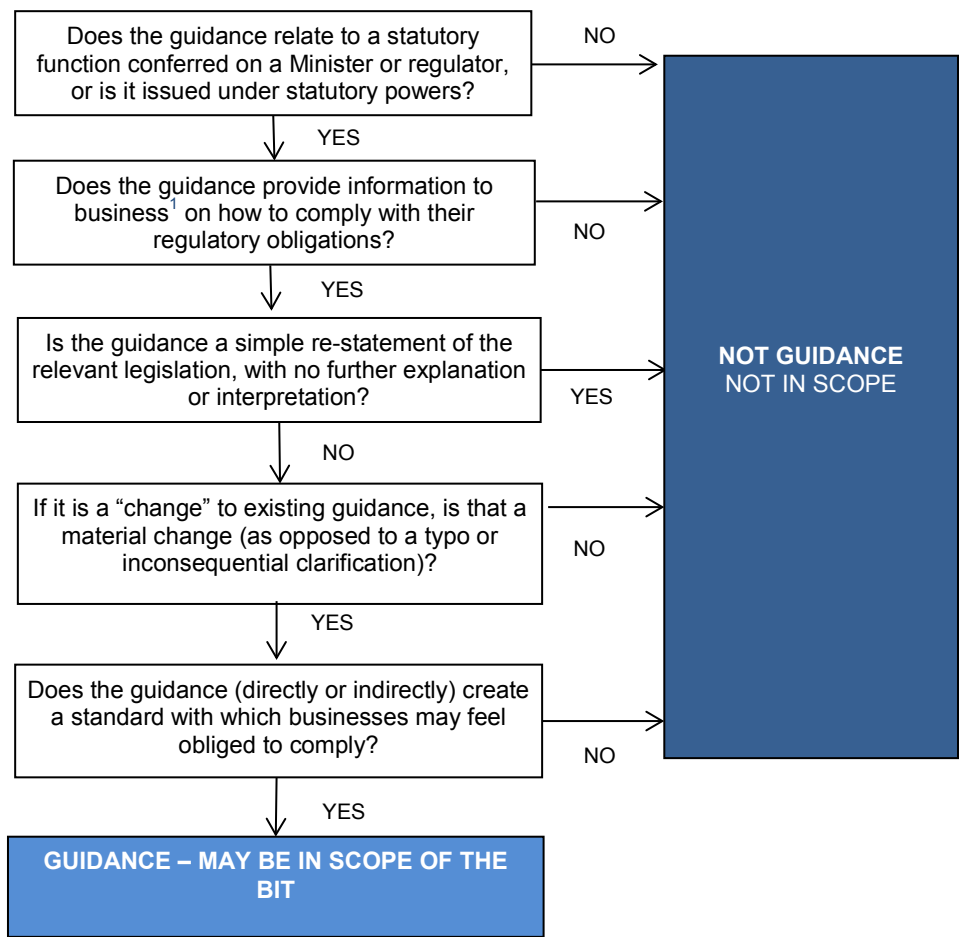
¹ See www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-03/HCWS574/

Given the range of guidance material produced across all regulators there is no simple one-size-fits-all approach in terms of the application of the BIT. However there are a number of key tests to consider. Guidance material will generally be in scope of the target if:

- a. It relates to the exercise of a regulatory function of a Minister or regulator (for example guidance which is designed to enable individuals to determine whether they are a ‘worker’ for the purpose of National Minimum Wage. This has a link to the Minister’s power to set a NMW).
- b. It is regulatory in nature. Guidance which is not regulatory (for example, where a regulator has decided to provide a guide to ‘what is a [mushroom]?’ which does not contain any guidance regarding the regulation of mushrooms/growing of mushrooms, such guidance would be excluded).
- c. It does not relate to an ‘excluded’ category of measure – i.e. a statutory or administrative exclusion (see section x above). An example of an excluded category would be guidance on regulatory charges/fees which would fall within the exclusion of provisions that relate to taxes, duties or levies.

To assist decision-making around the application of the target to guidance measures, the following flowcharts have been developed.

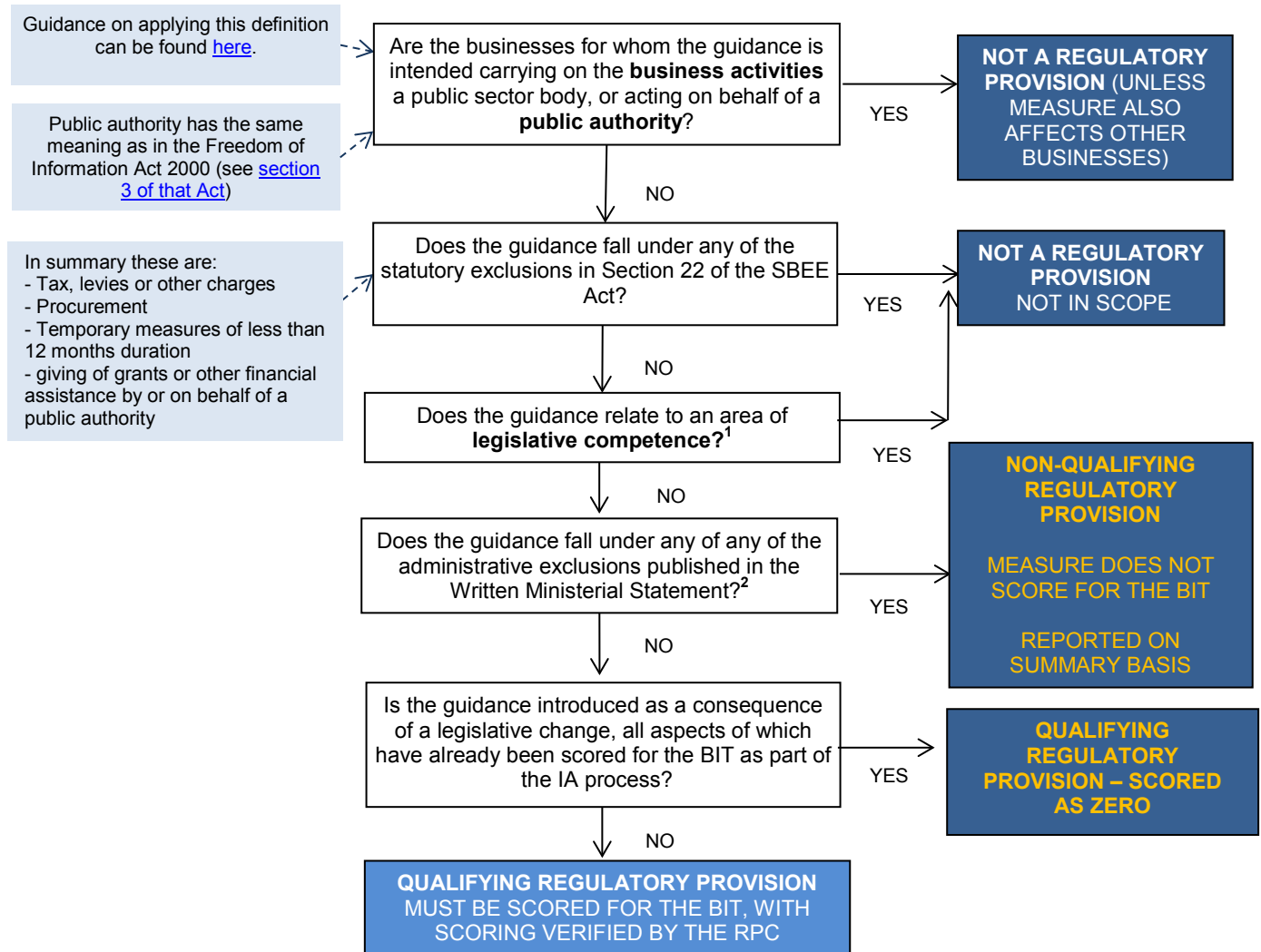
Flowchart 1 – Is what I am doing ‘Guidance’ and therefore potentially within the scope of the BIT?



¹ Including voluntary and community bodies

Flowchart 2 – Does the guidance need scoring for the BIT?

This flowchart relates to the treatment of guidance under the BIT. Terms in **bold** have specific meanings set out in the Act.

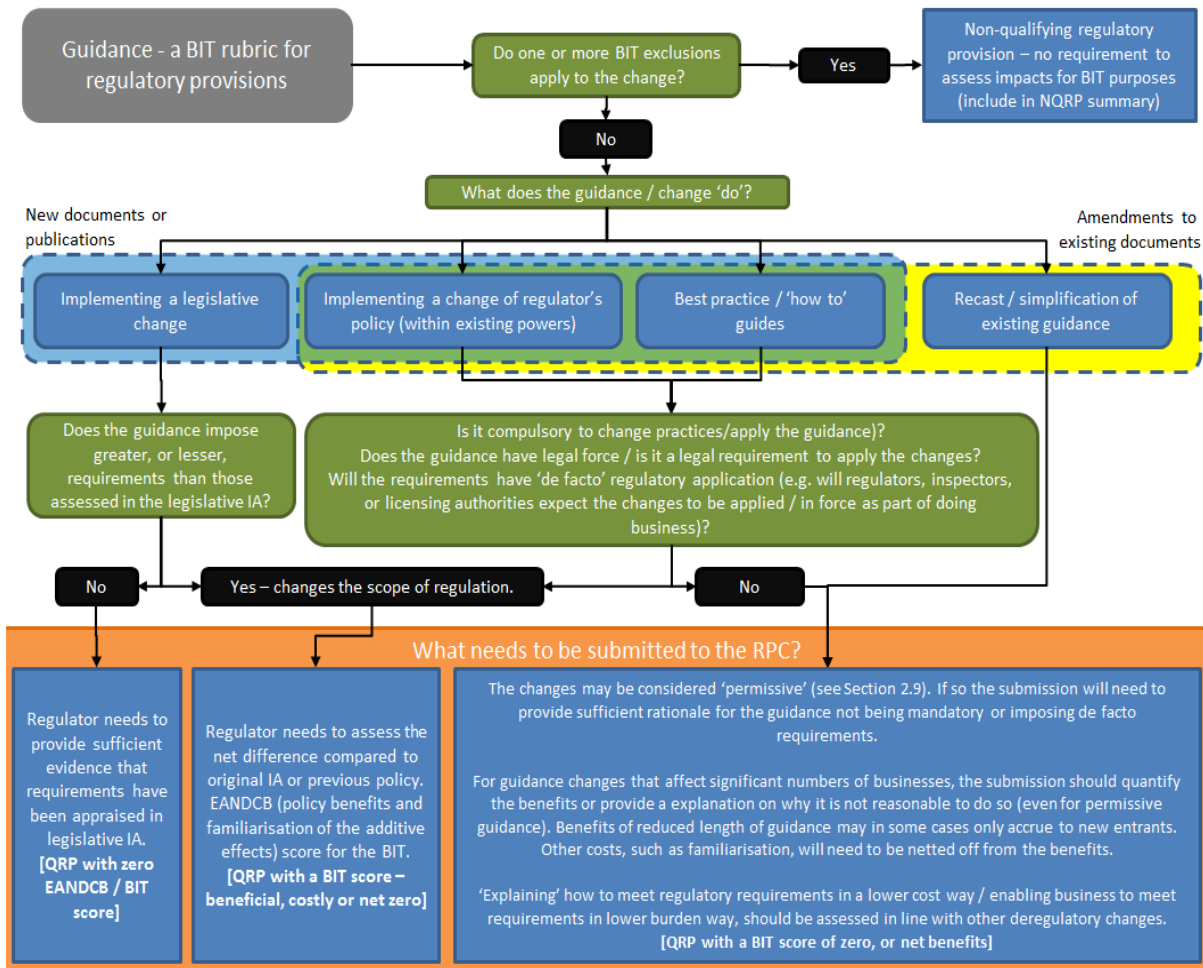


¹ Legislative competence of the Scottish parliament / welsh assembly / NI assembly

² Determination of Non-Qualifying Regulatory Provisions

<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-03/HCWS574/>

Flow chart 3 – What needs to be submitted to RPC?



Note: for further guidance on what can be considered to be “permissive change” see [Section 2.9](#)

Section 2: Overarching issues related to the appraisal of guidance

2.1 General principles

If a measure is considered a Qualifying Regulatory Provision then a proportionate assessment of its economic impact is required.

As mentioned above, guidance has been defined as ‘information provided to business to help them comply with regulation’. Although the overarching objective of guidance may be to secure business compliance as far as possible, good guidance can also make the process of compliance easier for businesses. For example, it is not always straightforward for businesses to understand what a new regulation requires them to do. Simple and accessible guidance can therefore help reduce costs associated with finding out how to comply. This can include both time costs and costs otherwise spent on e.g. consultants, external advice or training. Similarly, improvements of existing guidance, for example in terms of making guidance simpler, easier to find, read, and understand, can also facilitate this process and lead to a reduction in administrative and other costs to business. These benefits are expected to be direct (see [section 2.7](#)).

The starting point for appraising these types of impacts would be to think about the *counterfactual*, i.e. what would be the costs to business associated with finding out how to comply with regulation in the absence of guidance, and how would these costs change if guidance would be introduced (or improved).

2.2 The Standard Cost Model approach

A good starting point for any type of appraisal is the Standard Cost Model (SCM)², which is frequently used to quantify and monetise administrative burdens which have a time-cost element. The model measures the cost of regulatory activity through multiplying the *price* of the activity by the *quantity*.

Price consists of a tariff and time. For activities carried out internally, the *tariff* comprises wage costs and non-wage costs (e.g. national insurance and pensions contributions). For activities carried out by an external provider, the tariff is comprised of the hourly external rate. *Time* is the amount of time required to complete the activity. The ONS Annual Survey of Hours and Earnings (ASHE)³ can be used for obtaining median hourly wage rates, and EUROSTAT can be used to estimate non-wage costs (the 2016 uplift factor based on EUROSTAT wage data⁴ is 20.2%). For external costs, an estimate of the national average can be used.

Quantity consists of the size of the business *population* affected and the *frequency* of the activity per year. Typical data sources for the business population include BIS Population Estimates (BPE)⁵; the Annual Business Survey (ABS)⁶; and the Interdepartmental Business Register (IDBR)⁷.

For the parameters time and frequency, the data available will depend on the measure being implemented. It is expected that regulators either hold some of this data or will use the best available data to make reasonable assumptions. Combining the above elements provides the following basic SCM formula:

$$\text{Activity cost} = \text{Price} * \text{Quantity} = (\text{Tariff} * \text{Time}) * (\text{Population} * \text{Frequency})$$

As with any appraisal, the starting point would be to consider the counterfactual, i.e. the current situation in terms of relevant costs and benefits, and how these relevant costs and benefits would change as a result of the guidance, or amended guidance.

² CO (2005), Measuring Administrative Costs: UK Standard Cost Model Manual, <http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file44503.pdf>

³ ASHE 2015, http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour_costs_per_hour_in_EUR,_2004-2014_whole_economy_excluding_agriculture_and_public_administration.png
www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/previousReleases

⁴ EUROSTAT 2016 wage cost data, http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour_costs_per_hour_in_EUR,_2004-2014_whole_economy_excluding_agriculture_and_public_administration.png

⁵ BIS Business Population Estimates 2015, www.gov.uk/government/statistics/business-population-estimates-2015

⁶ ONS ABS 2014, www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-387456

⁷ ONS IDBR 2013, www.ons.gov.uk/ons/rel/bus-register/uk-business/index.html

2.3 Relevant business population

Although, theoretically, it could be argued that all guidance is to some extent voluntary, evidence suggest that a proportion of businesses do use guidance as a source of information on how to comply with regulation. However, not every business uses guidance, and for the purposes of appraisal, the *relevant business population* needs to be identified, i.e. those businesses which use the particular piece of guidance that we are attempting to assess. This proportion of businesses is often unknown, and if so, a proxy needs to be found. One known data source that has been used for this purpose is the Business Perception Survey (BPS)⁸ which provides data by sector and firm size on the proportion of businesses that “*use government websites to find out about how to comply with regulation*”. Overall, across BPS sectors, this proportion is 54% (BPS 2014). The proportion varies, however, between different sectors, within a range of between 35% (fire safety regulation) to 70% (company law).

2.4 Compliance impacts

There are two relevant rules in the BRFM related to compliance impacts:

- When introducing, amending or removing a regulatory measure, costs and benefits should assume 100% compliance, unless there is evidence to the contrary, in which case evidence on actual levels of compliance should be used. (BRFM 2.3.45-46)
- Costs and benefits that businesses incur *only* because they are non-compliant should not be included in the EANDCB. (BRFM 1.2.16)

In the case of guidance, we know that although a proportion of businesses do read guidance, not every business reads guidance. For the purposes of appraisal, therefore, regulators need to identify the relevant business population (i.e. the actual readership). If the actual readership is unknown, the BPS estimate of around 50% can be used as a proxy. (See 2.3 above).

Guidance is defined as information provided to business to help them comply with their regulatory obligations. Often guidance is introduced alongside the regulation which it is intended to help interpret. In some cases, a regulator may become aware, at a later point following the issuing of guidance, that there is less than full compliance in the sector. If the regulator in response revises existing guidance with the intention to raise compliance, it can be assumed that only businesses that are non-compliant would take further action. Any costs or benefits incurred by business as a result of taking such further action to become compliant would not score for the BIT.

⁸ Business Perception Survey 2014, www.gov.uk/government/uploads/system/uploads/attachment_data/file/314378/14-p145-business-survey-2014.pdf

The focus of regulation is on compliance. Nevertheless, many regulators produce guidance which encourages businesses to go ‘beyond compliance’. Although such material (e.g. best practice material) is not strictly about securing compliance they are considered to be activities in scope of the BIT. This is because they may in practice create standards which businesses feel obliged to comply with. This can for example be true in a scenario where following the regulator’s best practice is a recognised defence in court against a charge that regulatory obligations were being breached. An assessment of such material is therefore necessary. In such cases, treatment may be dependent on the context. If a regulator makes it clear that guidance only applies to businesses wanting to go beyond compliance, and that doing so is optional, then any costs to business associated with taking actions to become ‘better than compliant’ may be considered to be the result of a voluntary business decision, not an immediate effect of regulation (and would therefore not score).

2.5 Treatment of existing and new regulatory obligations

The treatment of guidance depends on whether the guidance creates a new regulatory obligation or not. Regulatory obligations have many different sources including: statutory instruments, statutory codes of practice, guidance issued under statutory powers and primary legislation (see BRFM 1.1.4).

In some situations, primary legislation creates the power for guidance to be issued that specifies a regulatory obligation. The economic appraisal of the introduction of the subsequent guidance document would then adopt a similar approach to that seen in impact assessments relating to other changes in regulatory obligations made through primary or secondary legislation. I.e. businesses will need to familiarise themselves with the new obligation and incur policy costs and benefits as a result of compliance. In many cases, this cost-benefit analysis would have been presented as part of the impact assessment supporting the legislation where the power to issue the guidance was created, and so to avoid double-counting, does not need to be repeated. However, if the appraisal of the guidance was not assessed in the original impact assessment, then it will need to be assessed and scored for the BIT separately. The QRP template can be used for this purpose.

Following the introduction of the guidance outlining the regulatory obligations, any future changes to the guidance which alter the obligations would also need to be assessed. This assessment of business impacts would also be produced using the QRP template.

In cases where guidance specifies obligations which allow, but do not force, businesses to do something, then “permissive change” may apply where it may be reasonable to assume that for business that do adopt the changes, the benefits at least outweigh the costs (see BRFM 1.9.21).

The context needs to be taken into account when judging whether guidance creates a regulatory obligation or not. An example of this is a scenario where “following the regulator’s best practice” is a recognised defence in court against a charge that regulatory obligations

were breached. In this case, although best practice does not ostensibly set out how to comply with regulatory obligations, it may in practice create a regulatory obligation.

In other situations, guidance is not used to create or change regulatory obligations. Examples of this include revisions of existing guidance (e.g. simplification), or the issuing of new guidance to clarify an existing regulatory obligation. A cost-benefit analysis of these guidance changes also needs to be performed, with particular focus on the impacts on business. This note sets out some general principles for the appraisal of this category of guidance changes.

2.6 Proportionality and rounding of measures

BRFM 1.5.17 states that “You should ensure that the resource you invest in undertaking an impact assessment is proportionate. Some of the factors that should be considered when deciding what level of analysis would be appropriate include: the scale of the expected impact, stage of the policy, sensitivity of the policy and the ability and cost of doing further analysis relative to the benefits this analysis may yield.”

This principle is supported by the rules around the scoring of smaller measures (BRFM 1.2.20). Under the BIT, smaller measures are scored to the nearest £100K (EANDCB). In effect this means that measures under £50K (EANDCB) will score as £Nil. For such smaller measures, regulators would only need to demonstrate that the impact will be lower than £50K, which is expected to reduce the level of detail required in the assessment. Such lighter-touch assessments will still need to be submitted to the RPC. The RPC has been clear that it supports a proportionate approach to the assessment of qualifying regulatory provisions, and will take a proportionate approach to verification. Factors that affect the scale of the impact may include the number of businesses affected and the scope of the measure.

Case Study 1: Applying a proportionate approach to smaller measures

Department: Regulatory Delivery Directorate (RDD)

Title: Change in the approach to the submission of due diligence submissions under the EU Timber Regulations (EUTR) (2016)

Regulatory Delivery Directorate (RDD) can require companies to submit the due diligence systems that they apply to timber products placed on the market. Where businesses are found to be non-compliant, RDD would serve a notice of remedial action, requiring businesses to undertake retrospective due diligence and submit evidence. In 2015, RDD adjusted this approach, so that instead of demanding proof of retrospective due diligence, companies must instead confirm that they have adjusted their systems and will apply due diligence appropriately to future shipments.

Based on historical data, the RDD estimated that this change would only affect around 15 businesses per year, with the main impact being the time saving associated with the removal of the requirement to retrospectively undertake due diligence and submit evidence. RDD estimated this time saving to be around 22 hours per year for between 10 and 20 businesses, which would generate an approximate total saving to industry of around 10K per year (i.e. clearly below an EANDCB of £50K). Hence, only a light-touch appraisal was required. In their 2-page long BIT assessment, RDD described the impact of the policy and the likely scale, included the above numerical information, and demonstrated with a simple calculation that the impact would fall below £50K.

Validated by RPC in 2016

2.7 Direct/indirect effects

In the legislative context, only direct impacts on business are scored for the BIT. The BRFM defines a direct impact as “*an impact that can be identified as resulting directly from the implementation or removal/ simplification of the measure*” (BRFM 1.22). The same will apply in the context of the activities of regulators that fall within the scope of the BIT, including impacts related to guidance changes. We do not anticipate that the distinction between direct and indirect would work differently in the context of regulators. RPC Case Histories⁹ provides a useful guide for classifying impacts as direct or indirect.

⁹ <http://regulatorypolicycommittee.weebly.com/case-histories.html>

2.8 Exclusions relevant to the appraisal of guidance

There are a number of administrative exclusions (see [section 1.3](#)) relevant to the appraisal of guidance. These include:

- **Exclusion A:** New guidance related to the implementation of a new EU obligation
- **Exclusion K:** Industry codes, except where arising from regulator action or legislation, or where a code is produced jointly by industry and the regulator
- **Exclusion L1:** Individual advice related to compliance
- **Exclusion L2:** Education, communications activities, and promotional campaigns by regulators, including media campaigns, posters, factsheets, bulletins, letters, websites, and information / advice helplines
- **Exclusion L3:** Formal and informal consultation with stakeholders

2.9 Permissive change

As a general rule, guidance is a QRP and therefore a proportionate assessment would be required on the associated business impact. However, if there is no evidence available, and it would not be proportionate to collect further evidence, then “permissive change” might apply.

On the legislative side, regulatory changes are permissive in nature where they allow, but do not force, businesses to do something. If there is reasonable expectation that business will adopt these changes only where they lead to net benefits for business, the analysis can assume that benefits are at least equal to costs, even if it is not proportionate or possible to quantify or monetise the benefits. (BRFM 1.2.23-24)

For permissive change to apply (for larger measures), the regulator would need to be able to demonstrate that the following conditions hold (for smaller measures, the regulator would be expected to apply a proportionate approach):

- Sufficient evidence does not exist to monetise, and it would not be proportionate to collect further evidence
- The guidance is clearly voluntary (i.e. does not have legal force, does not have de facto regulatory application)
- It can be reasonable to expect that businesses would only read/ follow the guidance if benefits would clearly exceed costs

When determining whether permissive change may apply, the starting point would be for the regulator to estimate the potential scale of the impact. If the guidance potentially would have a significant impact (e.g. applies to a large number of business), then more evidence is required to demonstrate the bullet points above. (See case study 7 on permissive change).

Section 3: Revisions of existing guidance

3.1 Simplification: Reduced volume of guidance

A key category of guidance change is expected to be simplification or consolidation of existing guidance, resulting in a reduced volume of existing guidance. Such changes can be assumed to be associated with a reduction in the time spent by businesses reading and understanding guidance. A key part of the appraisal problem would therefore consist in identifying and collecting the data required to monetise this potential time saving. There are several different ways this time saving can be calculated, so in this section we focus on outlining some general principles, potential data sources and known examples.

It should be noted, that simply reducing the number of pages of guidance may not necessarily lead to better outcomes for businesses. Therefore, in addition to estimating the time saving, regulators should be required to demonstrate that the simplification has not led to any reduction in the quality of guidance. This can for example be done through demonstrating that stakeholders have had an input into the process through stakeholder engagement and consultation.

It also needs to be assessed whether the simplification exercise is associated with a familiarisation cost to business. In the Defra guidance reform example (Case Study 2), the department assumed that since there has been no change in the underlying regulatory obligations and businesses already use the guidance, there would be no need for them to re-read the guidance and incur familiarisation costs as a result of the simplification. Whether this applies in all cases will however need to be assessed on a case-by-case basis.

Data that needs to be collected to monetise the time saving associated with simplification would/ can include:

Table 1: Data for monetising time saving from simplification

Data required/ that can be used	Potential data sources
<p>Current time spent on reading and using guidance</p> <p>Frequency of reading guidance</p>	<ul style="list-style-type: none"> • EFTEC 2013¹⁰: average time to read different type of text (words per minute): prose 250-300; technical text 50-100 • ReadingSoft (speed reading software): Average reading speed: ~200wpm • HSE 2013: average time taken to read H&S guidance (minutes per page): low estimate 0.18; central estimate 0.24; high estimate 0.33 • HSE 2013: frequency of reading H&S guidance [estimate of xxx] • Defra 2014: hours spent per year on reading environmental guidance (small, medium, large businesses): low estimate 46hrs; high estimate 114hrs • Defra 2014: hours spent per year on reading environmental guidance (micro business): low estimate 12hrs; high estimate 36hrs • Web analytics (e.g. web page views, duration, frequency) may be available for regulators through IT services • Alternatively: own survey of businesses
<p>Reduction in page count or time taken</p>	<ul style="list-style-type: none"> • Own estimates
<p>Other costs/benefits</p>	<ul style="list-style-type: none"> • EFTEC contains estimates of costs to regulator of revising guidance [environment]
<p>Other data sources required for appraisal</p>	<ul style="list-style-type: none"> • E.g. number of businesses (BIS Business Population Estimates, IDBR, ABS); wage rates (Annual Survey of Hourly Earnings, ASHE); relevant business population (e.g. BPS), etc.

¹⁰ EFTEC (2013), "Evaluating the cost savings to business from revised EA guidance – method paper"

Case Study 2: Simplification of guidance**Department:** Defra**Title:** Defra Guidance and Data Reform IA (2014)

In 2014, Defra carried out a guidance simplification exercise, with the aim to make guidance simpler, quicker to find, and clearer to read and understand. Since reducing the volume of guidance by x% doesn't necessarily reduce the time spent on reading the guidance by x%, Defra qualitatively assessed the most likely time saving. As result, Defra estimated that the changes would lead to a reduction in the time spent by business on reading and understanding guidance of between 60-90%. In order to monetise the resulting time saving, data was collected on the average time spent by businesses on reading and understanding guidance before the changes. For small, medium and large businesses Defra used the Business Perception Survey (BPS), for an estimate of the time spent by businesses on environmental law compliance issues (80.4 days per year), combined with a PWC Defra-specific estimate of how much of this time would be spent on reading guidance (range of 10-25%). For micro businesses Defra used an estimate from the GHK micro business study on the time spent by micro businesses on reading and understanding environmental guidance (range of 12-36 hours per year).

Since not all businesses use guidance as a source of information on compliance, Defra used the BPS to identify the relevant business population. The BPS estimates that, across sectors, 51% of businesses use government websites to find out about compliance. Using wage rates from ASHE and the number of businesses from BIS Business Population Estimates, Defra was then able to calculate the cost of reading and using guidance before and after the simplification changes (see Table 2 below).

Note that the department assumed that there would be no familiarisation costs, as there had been no change in the underlying regulations, businesses already use the guidance, and therefore would not have to re-read the guidance and incur familiarisation costs.

Table 2: Defra approach to monetising simplification

	Low	High	
1. Time spent by small, medium and large companies on environmental law compliance issues (average hours per year)	80.4 multiplied by 5.7 productive hours per day = 458		1: Business Perception Survey
2. Proportion of time spent on reading and understanding guidance (%)	10	25	2: PWC estimate for Defra
3. Time spent by micro-businesses on reading and understanding environmental guidance (average hours per year)	12	36	3: GHK micro business study
4. Proportion of businesses using government websites (%)	51		4: BPS 2014
5. Business population (small, medium and large)	116k		5: BIS Business Population Estimates
6. Business population (micro-business)	573k		6: BIS Business Population Estimates
7. Wage rate	29	36	7: ASHE
8. Time saving (%)	60	90	8: Defra estimate
Workings:	Total option 0 business hours: (1x2x5)+(3x6) Multiplied by the wage rate (7) Divided by option 1 time saving: (8)		
Total annual cost savings per annum (£m)	109	539	

Case Study 3: Simplification of Guidance

Department: Health and Safety Executive (HSE)

Title: HSE Guidance simplification exercise

In 2013, HSE carried out a review of their guidance, with the aim to make it simpler and easier to navigate, by reducing the page count by 1/3 and making the documents accessible to everyone with a reading age of 12 years or older. Whilst benefits from increased accessibility and reading age were not monetised, HSE calculated the time saving from the reduced page count. In order to monetise this time saving, HSE used web analytics provided by the Health & Safety Laboratory (HSL) on the time spent viewing and reading three HSE guidance documents online. Based on this data, HSE estimated the average time taken to read health and safety guidance per page (range of 0.18-0.33 minutes per page).

Table 3: HSE estimates of average time taken to read guidance per page

Guidance Document	Average time taken to read (minutes)			Page count	Average time taken per page (minutes)		
	Low	Likely	High		Low	Likely	High
HSG90	1.89	1.94	1.98	32	0.06	0.06	0.06
INDG36 (rev 3)	1.27	1.29	1.3	16	0.08	0.08	0.08
INDG36 (rev 4)	2.54	3.52	5.08	6	0.41	0.59	0.85
				Average:	0.18	0.24	0.33

Source: HSL web analytics research (time spent viewing online)

This estimate was then multiplied by the wage rate of the presumed reader of guidance (production manager, wage including non-wage labour costs of £24) to calculate the average cost per page of reading health and safety guidance (range of 9-16 pence per page). HSE estimated the frequency of reading guidance by looking at the number of web page hits and the number of hard copy sales in a year, assuming that every page hit and every sale represented one average guidance interaction [estimate of xx]. Although this approach does not capture cases where readers have downloaded the guidance document to their laptop, and subsequently read it on their computer; it was deemed to be the best available data at the time. The total saving to business was then calculated as:

Cost saving = number of times read p.a. * reduction in page length * average cost per page

Case Study 4: Simplification of guidance

Department: Office for Nuclear Regulation (ONR)

Title: Guidance for undertaking leadership and management for safety reviews

The assessment relates to the revision of pre-existing guidance for ONR inspectors undertaking reviews of a duty holder's leadership and management for safety (LMfS). The guidance has been revised to provide greater alignment to ONR's Safety Assessment Principles (SAPs) which in turn has simplified the process, reducing the assessment topic areas from nine to four. The purpose of the LMfS review is to make a judgement about the extent to which a duty holder meets the expectations set out in four LMfS SAPs, this may lead to future interventions where shortfalls with relevant good practice are identified.

ONR has estimated that 37 duty holders will be affected by this guidance change. LMfS reviews are carried out a maximum of once per year.

The revision to the guidance will reduce the time spent by ONR inspectors undertaking the assessment. As the costs associated with inspectors' time are recoverable from industry, this will result in a saving to industry. ONR has estimated that 3 days per LMfS review are saved as a direct result of simplifying the guidance. This figure has been derived by comparing the time taken to compile three LMfS reviews for calendar year 2016 (newly revised guidance) and the time take to compile the same three LMfS reviews for calendar year 2015 (superseded guidance). Assuming 8 reviews per annum, this equates to a total of 24 days, or a saving to industry of £30,024, based on current ONR nuclear safety day rate of £1,251 per day (3days*8*£1,251).

The guidance will be re-read by duty holders. It is estimated that the guidance, totalling 3,200 words will take 48mins to read, assuming 200 words per minute and that three readings would be required for understanding (3,200/200*3). ONR has estimated that two persons per duty holder not subject to the review will read the guidance, compared to six persons per duty holder subject to the review. In addition, it is estimated that one person for each duty holder subject to the review will study the guidance in more depth. The total time spent by industry re-reading the guidance is hence as follows:

- 29 duty holders not subject to the review: $29*2$ persons*48mins =46.4 hrs
- 8 duty holders subject to the review: $(8*6$ persons*48mins) + $(6*1$ person*60mins) =44.4hrs

This is a total of 90.8hrs spent re-reading the guidance. Assuming an industry hourly rate of £47.86, the cost of re-reading guidance is £4,345. Overall this represents a net saving to industry of £25,679 (£30,024-£4,345). As the net benefit to industry is estimated to be less than £50,000 EANDCB per annum, the BIT score was rounded to zero.

Validated by RPC September 2016

3.2 Improved Readability

Another possible category related to existing guidance is measures undertaken to increase the readability of guidance documents. Improved readability can be associated with a time saving, as it can be assumed that the more readable a document is, the quicker the user will get to grips with the content of guidance.

MS Word provides three types of readability scores: (i) the proportion of passive sentences (the lower proportion, the more readable is the text); (ii) the document's score against the Fleisch Reading Ease (FRE) test, which measures how easy it is to read and understand the text (the higher the score, the more readable); and (iii) the score against the Fleisch-Kincaid Grade Level (FKGL) scale, which shows how many years of education the reader need to have undertaken to understand the text (the lower the score, the more readable). Both FRE and FKGL are tests based on the number of words, syllables and sentences in a text. Table 4 shows the test scores of the Fleisch and Fleisch-Kincaid tests, the associated UK reading age and level of difficulty. This data can be combined with other data relevant to the particular readability change to calculate a potential time saving.

Table 4: Readability test scores¹¹

Fleisch Reading Ease	UK reading age	Fleisch-Kincaid Grade Level	Level of difficulty¹²
90–100	10	5	Very easy
80–90	11	6	
70–80	12	7	Fairly easy
60–70	13–14	8–9	Standard
50–60	15–17	10–12	Fairly difficult
30–50	18–21	13–16	Difficult
0–30	Graduate	Graduate	Very difficult

¹¹ Originally from Oxford Guide to Plain English, <http://thecreativegenie.com.au/effective-writing/applying-readability-tests-to-a-document/>

¹² Adapted from: www.plainwords.co.uk/articles/readability_scores.html

Case Study 5: Hypothetical example on improved readability

In the absence of any existing examples on improved readability we have constructed a hypothetical example to illustrate how the readability tests could be used to calculate a time saving. Assume that a regulator, following feedback from the core users of their guidance, have identified that their guidance in its current shape is too technical, too long and too complex. After having conducted a FRE test of their guidance, they have identified that the guidance is 10,000 words long and has a FRE score of 25 (i.e. very difficult). As a result, they undertake an exercise to make their guidance more readable, with the overall objective to bring the readability of the document in line with the average reading age of the UK working population (11 years). After the changes, the revised guidance has been reduced to 8,000 words and has a FRE readability score of 85.

The expectation is that the improved readability of the guidance will be associated with a time saving. In order to monetise this time saving, the regulator combines the information in Table 4 above with data on average reading speed. EFTEC 2013 provides the average time taken to read different types of text (words per minute), including for technical text (50-100 wpm) and for prose text (250-300wpm). In addition, many speed-reading software websites provides data on the average reading speed. For example, according to readingsoft.com , the reading speed of the average reader is around 200wpm. The regulator uses these estimates to make the following assumptions on reading speed by FRE reading score:

Table 5: Assumed reading speed (wpm) by Fleisch Reading Ease score

Fleisch Reading Ease	Level of difficulty	Words per minute assumptions
90–100	Very easy	250-300wpm (assume similar reading speed as prose)
80–90		
70-80	Fairly easy	
60–70	Standard	Around 200wpm (assume average reading speed)
50–60	Fairly difficult	50-100wpm (assume similar reading speed as technical text)
30–50	Difficult	
0–30	Very difficult	

The time saving can then be estimated by calculating the time cost, before and after the change, and subtracting the latter from the former, using the following formula:

Time cost = number of words to read / wpm / 60 * wage * frequency * relevant business population

Section 4: New guidance

4.1 Issuing of new guidance

In many cases the production of new guidance is directly triggered by a new legislative change. Such changes are implemented by Departments, who produce impact assessments on the impact of the legislative change. It is expected that these assessments will pick up the totality of the impacts of the legislative change, including any costs or benefits associated with new guidance. The focus on this section is on a scenario where new guidance is being produced, but where there is no change in the underlying regulatory obligations (See also [section 2.5](#)). However, general principles for appraisal may apply in both scenarios.

The objective of new guidance is to help businesses understand how to comply with regulation, and we know that at least a proportion of businesses use guidance as a source of information on how to comply. New guidance could therefore be assumed to be associated with some potential benefits in terms of reduced costs associated with finding out about compliance (e.g. time and/or money otherwise spent by businesses on consultants, training, or other external advice). There are several different ways these benefits can be estimated, so in this section we focus on outlining some general principles, potential data sources and known examples.

In addition, the introduction of new guidance may be associated with some familiarisation cost from reading the guidance. Monetisation of familiarisation costs is not a new issue specific to the appraisal of guidance; in the legislative context, departments are already required to assess the cost to business from having to familiarise themselves with new regulation. Guidance produced alongside a regulation to help businesses understand what the regulation requires them to do is however expected to reduce the familiarisation costs associated with the regulation. There is not a common or standardised approach to assessing familiarisation costs. Most departments tend to make reasonable assumptions based on stakeholder engagement.

In addition to the potential time saving and familiarisation cost, there may be costs to business associated with the development of new guidance. When developing new guidance, departments and regulators often rely on businesses to provide input into the process. Businesses might for example participate in meetings, surveys, interviews or focus groups to provide input into what should be included in new guidance. Such activities are however expected to fall within the policy development exclusion (i.e. Administrative Exclusion L3).

Data that needs to be collected to monetise the time and cost saving associated with new guidance would/ can include:

Table 6: Data for monetising time and cost saving from new guidance

Data required	Potential data sources
<p>Reduced time to find out how to comply</p> <p>Reduced £s spent on external advice or training</p> <p>Frequency of reading guidance</p>	<ul style="list-style-type: none"> • BPS has data on time spent on compliance issues by sector (but finding out how to comply is only a % of that; Defra estimate for environment: 10-25%) • BPS has data on proportion of businesses using external advice: 51% of businesses across sectors • BPS has £s spent on external agents per year: £3,900 across sectors (range of ca 1,000 to ca 7,000) • Masson/Kimble¹³: converting legal text to plain English could lead to 20-30% improvement in understanding of content and implications of legal text • EFTEC 2013: cost of using external advice to help with compliance, estimate is dependent on how technical/complex the issue is: low estimate £500, high estimate £2,000 (note: source is unclear) • Own survey/consultation
Other costs/ benefits	<ul style="list-style-type: none"> • EFTEC contains estimates of costs to the regulator of producing guidance [environment]
Other data sources required for appraisal	<ul style="list-style-type: none"> • E.g. number of businesses (BIS Business Population Estimates, IDBR); wage rates (ASHE); relevant business population (e.g. BPS), etc.

Data that can be used to monetise the familiarisation cost associated with new guidance could include:

Table 7: Data for monetising familiarisation costs

Data required	Potential data sources
Time spent on familiarisation	<ul style="list-style-type: none"> • EFTEC 2013: average time to read different type of text (words per minute): prose 250-300; technical text 50-100 • ReadingSoft (speed reading software): Average reading speed: ~200wpm • Own survey/consultation/stakeholder engagement • HSE omnibus survey: median/mean hours spent on finding out about changes to H&S regulation (i.e. familiarisation): 0.5hrs/2.4hrs

¹³ Masson (1994) estimates a 29% increase in understanding of a test group when legal text has been converted to plain language (i.e. removing 'archaic terms', using plain language, defining legal terms), <https://web.uvic.ca/psyc/masson/MW94.pdf>. Kimble (1994) estimates a 21% increase in understanding in a test group after a statute had been converted from legal text to plain language. Test group consisted of an "educated population with on average 3 years of college", www.plainlanguage.gov/whypl/arguments_in_favor/critics.pdf, for more general data in support see Kimble 62ff

4.2 Note on guidance that is published on a website

We have identified two main categories of guidance material that are published online. The first is where guidance is a standalone document which is published as a *link on a website* (e.g. to a word document). The second is where guidance material forms *part of a website* (e.g. webpages, decision making tools, etc.). Tables 8 and 9 below have been produced to provide some guidelines on how to determine whether guidance that is published on a website is a regulatory provision or not.

Table 8: Standalone document published as a link on a website

The material is a regulatory provision if:	The material is not a regulatory provision if:
<ul style="list-style-type: none"> • A new guidance document is produced • A guidance document is amended • Relevant bits of guidance from different areas are collated for a specific sector, essentially producing a new bespoke guidance document that makes regulatory obligations easier to understand 	<ul style="list-style-type: none"> • The guidance document is simply moved within the structure of the website to make it easier to find with no underlying changes • Minor inconsequential updates/clarifications are made to the document that do not change underlying requirements • The material that is published is not guidance, but is information

Table 9: Guidance material which forms part of a website

The material is a regulatory provision if:	The material is not a regulatory provision if:
<ul style="list-style-type: none"> • New webpages containing guidance are produced • Webpages containing guidance are amended • Webpages containing guidance are re-designed for specific user journeys (essentially tailoring generic or badly-structured guidance material that makes regulatory obligations easier to understand for different users) 	<ul style="list-style-type: none"> • Minor inconsequential updates/clarifications are made to the pages/tool that do not change underlying requirements/guidance • The material that is published or amended is not guidance, but is information • The structure of the website is changed, with no changes to underlying requirements/guidance material

Case Study 6: Introduction of new guidance

Department: Food Standards Agency (FSA)

Title: Online guidance tool myHACCP

A key finding of the Focus on Enforcement Review into Small Food Manufacturers was that small food businesses struggle to understand the regulatory requirements related to the management of food safety. Following the review, the FSA developed a new online step-by-step guide to help small businesses setting up their food safety management system. Registered users of the tool benefit from targeted advice and guidance specific to the characteristics of the business using the tool (e.g. level of food safety risk), which reduced both the time taken for businesses to understand how to comply with food safety requirements as well as costs spent on e.g. consultants.

In order to estimate the impact on businesses, the FSA undertook a survey of small businesses. The survey showed that the average familiarisation time of the tool was 3 hours per business. 58% of surveyed businesses reported that they had saved both time and money from using the tool. On average, businesses saved 88 hours per business and year, and in addition, results suggested that businesses on average saved £2,000 per business and year, from reduced costs of having to hire consultants, undertake training, or other external advice, in order to understand how to comply with regulation. Combining this information with the number of businesses in the sector (12,390) and the average wage rate of users of the tool (£15), the FSA estimated a net saving of £9m per annum to small food manufacturers (i.e. time and cost saving minus familiarisation cost).

Case Study 7: Introduction of new guidance – Permissive change

Department: Maritime and Coastguard Authority (MCA)

Title: High Speed Offshore Service Code

This proposal introduces the High Speed Offshore Service Craft Code (HS-OSC). Before this policy change, high speed cargo-carrying craft were not allowed to carry more than 12 passengers at a time. Under the new code, high speed cargo craft are allowed to transport more than 12 *windfarm technicians* at a time, as these individuals are not considered to be passengers in the normal sense (e.g. they have more safety training).

The MCA expected this to lead to efficiency savings to industry, reducing the need for craft to make multiple trips to offshore windfarms when transporting technicians and also reducing the need to use helicopters to transport quickly large numbers of windfarm technicians to offshore windfarms.

However, MCA was not able to monetise these impacts, and explained it would also not be proportionate to collect further evidence from businesses as the change was small and permissive. I.e. the policy change allows businesses to do something they previously couldn't do, but does not force them to do anything differently. It could therefore be expected that businesses would only take up this opportunity if the benefits from doing so would exceed costs.

Validated by RPC April 2016

Case Study 8: Introduction of new guidance - Proportionality

Department: Regulatory Delivery Directorate (RDD)

Title: Updated guidance in relation to the Restriction of the Use of Certain Hazardous Substances (RoHS) Directive

In 2015, RDD published new guidance for industry in regards to the RoHS Directive. The new guidance contains a number of improvements, including making advice in a number of areas clearer, the inclusion of compliance “check lists” and decision trees to provide further support in the decision making process.

Familiarisation costs: RDD estimated that the new guidance would be read by 1,000 businesses in the first 12 months of publication (based on download rates to date), that the guidance would be read by compliance managers and company directors (wage rate of £31.48, ASHE including uplift), and that it would take 1 hour on average to read the new guidance, resulting in a familiarisation cost of £31,480 per annum (1,000*£31.48).

The new guidance was expected to lead to a number of business benefits, including reduced time taken to understand obligations, to implement compliance related systems, and reduced need to rely on consultants. RDD identified two main groups with different benefits:

- Based on levels of compliance encountered through engagement and enforcement activities, RDD estimated that 80% of the market (800 of 1,000 forecast readers) had a strong understanding of the legislation. For this cohort, RDD expected that the new guidance was unlikely to deliver significant savings. For this group, RDD estimated a time saving of 1hr per year (based on industry feedback), or £25,180 (800*1hr*£31.48).
- For the remaining 20% of companies (200 of forecast readership), which were expected to have little or no knowledge of the RoHS Directive, RDD estimated that the new guidance would generate greater business benefits. For this group, it was anticipated that reading the guidance would save businesses 4.5hrs per year (based on feedback from industry), or £28,330 (200*4.5hrs*£31.48).

The overall guidance saving would therefore be £22,030 (£28,330+£25,180-£31,480) in the first year, with a diminishing impact year-on-year as fewer companies will read it, and those that have already read it will need to refer to it less often.

Based on this evidence, RDD explained that they were confident that the magnitude of the guidance change would be comfortably below £50,000 per year, and therefore, no further analysis would be required.

Validated by RPC May 2015

Case Study 9: Introduction of new guidance

Department: Environment Agency (EA)

Title: Water Framework Directive assessment guidance for estuarine and coastal waters

The Water Framework Directive (WFD), which is transposed into English law by the Water Environment (Water Framework Directive), place duties upon public bodies to assess the impact of their activities on WFD objectives, for example when undertaking development in or near water.

In response to stakeholder demand, EA has produced new guidance on WFD assessments, which will update and revise the 2012 dredging guidance to cover all activities in estuarine and coastal waters. The guidance sets out a three-stage, risk-based approach to WFD assessments. These stages allow the level of assessment to be proportionate to the risks posed by the activity. Only the highest risk activities will go through all three stages.

- **Stage 1: Screening:** this identifies activities which present a low risk to WFD objectives. Activities which are considered low risk are screened out and would not require any further assessment. This is a change to the counterfactual which is expected to reduce costs to business.
- **Stage 2: Scoping:** this identifies the risk to WFD objectives posed by the activity. Businesses will compare their activities to assessment criteria and some (or all) aspects may be scoped out. This is a change to the counterfactual which is expected to reduce costs.
- **Stage 3: Further assessment:** only the highest risk projects will go through to this stage. The guidance is not expected to result in savings to businesses for activities which reach this stage.

Activities covered: The guidance only applies to activities taking place in estuarine and coastal waters regulated by EA or MMO. EA and MMO databases do not distinguish between estuarine, coastal, and other waters when recording activities. Number of activities have instead been estimated based on the number of permits (35) and licences (434 in 2016, 426 in 2015) granted for activities taking place in marine waters, combined with information on the proportion of those activities taking place within estuarine and coastal waters (80%). This gives an estimate of around 380 activities $((434+426)/2*0.8+35)$ to which the guidance applies (345 consented by MMO and 35 consented by EA).

Risk of activity: In order to establish the risk of the activities, EA has looked at how MMO place their applications into fee bands. Band 1 is low risk, band 2 is medium risk, and band 3 is high risk. These bands approximate to the three stage assessment developed for this guidance. Band 1 cases are expected to only go through stage 1 of the assessment; band 2 are expected to finish at stage 2; and band 3 are expected to finish at stage 3. Based on

data from 2015 and 2016, on average, 26% of activities consented by MMO were low-risk, 42% were stage 2-type of activities, and 33% were stage 3 type of activities. If applied to the 345 activities a year that the MMO consent, this would translate into 89 low-risk activities, 144 medium-risk activities, and 113 high-risk activities per year. For the activities consented by EA, these were all considered to be high-risk for the purposes of the assessment.

Time saved: In the absence of data on the time spent by business on their WFD assessments, EA gathered data on assessments the EA undertakes internally for similar activities, which has been used as a proxy. For low-risk activities, EA spend on average 1.5 days per assessment, and for medium-risk activities, EA spend on average 27 days. These estimates are used to estimate time spent in the counterfactual.

Following the publication of the new guidance, it is expected that the time spent on assessments will reduce. Based on the time taken by EA staff testing the guidance, it is estimated that the time required to assess low-risk activities in the future will be 0.5 days, and the time required to assess medium-risk activities will be 20.5 days.

Type of activity	Number p.a.	Counterfactual (no. days to assess)	Policy scenario (no. days to assess)	Change from baseline (number of days)
Low-risk activity	89	1.5	0.5	-1.0
Medium risk	144	27	20.5	-6.5
High risk	No change in costs expected			

Assuming an 8 hour work day, and applying a wage rate of £25 (average wage rate of personnel in harbour authorities, water companies, marina operators, dredging companies), results in an overall saving to industry of £205,000
 $(89 \times 1 \text{ day} \times 8 \text{ hrs} \times £25 + 144 \times 6.5 \text{ days} \times 8 \text{ hrs} \times £25)$

Validated by RPC July 2016

Case Study 10: Introduction of new guidance – Proportionality & rounding

Department: Office for Nuclear Regulation (ONR)

Title: Revised Investigation Process and Guidance

ONR produces guidance for the nuclear industry on how to comply with its regulations and also guidance for its inspectors so that the nuclear industry knows what to expect when they are inspected. ONR has revised the latter guidance on its investigation process and produced a supporting guide for use solely by ONR inspectors.

Based on its duty holder base and website traffic, ONR has estimated that approximately 82 duty holders will incur a familiarisation cost. The investigation guide is approximately 24 pages and comprises 8,450 words. Assuming an average reading speed of 200 words per minute, and that on average three readings are required for understanding the document, this would give an estimate of 2.1 hours ($8,450/200/60*3$) in reading time. Assuming that one representative per site would read the guidance (average wage rate of £47.86) would give a one-off cost in year one of £8,242 ($2.1\text{hrs}*82*£47.86$). As the net impact to business is estimated to be less than £50,000 EANDCB per annum, the BIT score was rounded to zero.

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Case Study 11: Introduction of new guidance

Department: Environment Agency (EA)

Title: Onshore Oil and Gas Sector Guidance

EA has recently developed and published guidance for oil and gas companies which sets out which environmental permits they need for onshore oil and gas operations in England. This guidance will help oil and gas companies to understand how the existing legislation within the EA remit applies to oil and gas activities and what they need to do to comply. Prior to publishing the guidance there was no central point where oil and gas operators could go to understand what permits and permissions they would need and no sector-specific guidance.

EA estimate that 30 onshore oil and gas operators that hold petroleum exploration and development licences (PEDL) will be directly impacted by the guidance. In order to understand the impact on operators, the EA conducted structured telephone interviews with 6 operators. This represents a sample of approximately 20% of the total population, and the sample included a mix of both large and smaller operators.

Hours spent: Operators told EA that on average they could spend up to 197 hours annually searching for guidance before the sector-specific guidance was introduced. They anticipate this reducing to 99 hours annually now that sector-specific guidance has been introduced (a saving of 98hrs per annum). Assuming a median hourly wage rate of £23.24 this represents a saving to industry of £68,325 per annum (98hrs*£23.24*30).

Third party costs: Operators also told EA that on average they currently spend approximately £60,500 annually on additional third party monetary costs, and that they anticipate an annual saving on average of 26,500 now that sector-specific guidance has been introduced. This represents a saving to industry of £795,000 per annum (30*26,500).

Therefore, the total annual estimated direct saving to industry from introducing the guidance is £863,325.

Validated by RPC August 2016

Section 5: Summary

This note has attempted to set out some general principles for the appraisal of guidance, summarised available data sources and known examples. In cases where we have not been able to identify existing examples we have constructed hypothetical examples in the attempt to illustrate principles. It is expected that hypothetical examples will be replaced with real world examples as and when such examples are identified. The intention is that this note will be a live document, and we will continue to revise and update the note as appraisal in this area develops.



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