



Department for  
Business, Energy  
& Industrial Strategy

# Better Regulation Framework

Interim guidance

March 2020



**OGL**

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# Introduction

This interim guidance explains how the better regulation system should operate. It is written for government Departments and replaces the Better Regulation Framework Guidance August 2018.

This guidance sets out a general threshold for independent scrutiny of Regulatory Impact Assessments (RIAs) and Post Implementation Reviews (PIRs) where the equivalent annual net direct cost to business (EANDCB) is greater than  $\pm$ £5m. For measures below this threshold, Departments should undertake proportionate cost-benefit analysis to inform decision-making, as well as demonstrating that the impact of a measure is below the  $\pm$  £5m EANDCB threshold. The guidance also sets out flexibilities for departments to decide how they comply with the better regulation principles of robust evidence, transparency and proportionality in their policy making cycles.

The government is considering how best to deliver its commitment to regulate more effectively over the course of this Parliament, including taking a view on a Business Impact Target (BIT). The intention is to revise this guidance once the BIT for this Parliament has been announced and the independent verification body appointed. However, until that point this guidance applies to measures implemented or due to be implemented following the December 2019 General Election.

All correspondence seeking collective agreement to a regulatory measure should continue to include an IA rated “fit for purpose” by the RPC, except where the impact on business is below the threshold for independent scrutiny. Departments may choose to continue to assess their measures under the administrative exclusions (as per [page 9](#)) that applied in the previous parliament, until the new BIT has been announced. However, until the BIT is announced for this parliament, measures relating to the safety of tenants, residents and occupants in buildings should continue to be assessed under the safety in buildings exclusion. This is intended to support Department in the event that the same administrative exclusions are maintained. The guidance on the previous exclusions should not be considered as prejudging the BIT exclusions or methodology for the current parliament.

# The Better Regulation Framework Principles

As set out in the HM Treasury Green Book<sup>1</sup>, the objective of appraisal and evaluation is to provide objective analysis to support decision making. Appraisal can take different forms, including the production and scrutiny of business cases for spending decisions. Where government intervention requires a legislative or policy change to be made, departments are expected to analyse and assess the impact of the change on the different groups affected – which should generally take the form of an impact assessment. For small regulatory changes, standalone IAs may not be required, though any analysis included to support these changes should be in line with Green Book methodology. When a policy change impacts business, the Better Regulation Framework will be relevant.

## HM Treasury Green Book: section 1.4

The role of appraisal and evaluation is to provide objective analysis to support decision making. Decision making processes include the scrutiny of business cases by government departments, [Treasury Approval Processes](#) and the [Regulatory Impact Assessment](#) process. The principles of the Green Book should also support options appraisal when formal decision-making processes are not required.

This guidance is intended for government departments and applies to those impact assessments which consider **regulatory** measures – regulatory impact assessments (RIAs). It includes information on how to comply with statutory requirements, including measuring progress against the Business Impact Target, as set under the Small Business, Enterprise, and Employment Act 2015 (SBEE Act).

This guidance applies to all regulatory measures (subject to the exclusions below) and is applicable to all domestic measures, including policies that relate to the UK's withdrawal from the European Union. During the transition period any directly applicable European Regulations that do not require domestic legislation are outside the better regulation framework.

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<sup>1</sup> HM Treasury: The Green Book: appraisal and evaluation in central government is available [here](#)

## Regulatory measures

A regulatory measure is one that relates to the regulation of business activity. The full definition in [section 22](#) (3) of the SBEE Act reads:

- 3) A “regulatory provision”, in relation to a business activity, means a statutory provision which—
- (a) imposes or amends requirements, restrictions or conditions, or sets or amends standards or gives or amends guidance, in relation to the activity, or
  - (b) relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which relate to the activity.

Regulatory measures can be legislative or non-legislative.

The following provisions and their impacts are excluded from the definition of regulatory provisions (see section 22 of the SBEE Act) where they are in connection with:

- imposing, abolishing, varying or in connection with any tax, duty, levy or other charge;
- procurement;
- grants or other financial assistance by or on behalf of a public authority;
- making or amending measures which will have effect for a period of less than 12 months.

The following are also excluded because they do not affect “business activity”, as set out in [section 27\(2\) and \(3\)](#) of the SBEE Act:

- measures affecting businesses that are controlled by a public authority;
- measures affecting businesses that are acting on behalf of a public authority in carrying out the activity.

Measures that are not regulatory provisions are not subject to this framework.

Until the Independent Verification Body is appointed for this Parliament the Regulatory Policy Committee will continue to assess that the estimates and analysis presented by Departments is robust, and will provide an opinion on whether exclusions have been correctly applied or certified. Estimated impacts and the application of the BIT methodology for this parliament will be subject to Independent Verification Body scrutiny once the BIT has been set and the verification body appointed. Measures certified as below the  $\pm$ £5 million EANDCB threshold or as relating to the safety of tenants, residents and occupants of buildings may be subject to ‘call-in’ only ([see section 2.4](#)). The flowchart at page 9 sets out the specific requirements for the administrative exclusions.

The Better Regulation Framework includes both legal and administrative requirements. It is only the statutory requirements set out in the SBEE Act, and duties set out in other

legislation<sup>2</sup>, that government departments are required as a matter of statutory obligation, to comply with (for example, submitting assessments of qualifying provisions to the Independent Verification Body to validate the numbers for the annual BIT Report).

This guidance also provides details of the administrative steps government departments may follow to support effective policy making and to meet the needs of collective decision making and stakeholder engagement, including parliamentary scrutiny. It may not always be possible to follow these additional steps in all cases, particularly where there is an urgent need for action, such as essential public safety reforms.

There are a number of other administrative requirements for the clearance and publication of proposals, legislation and documents that sit outside the Better Regulation Framework, and the advice here does not fetter the application of these other requirements. [Annex 2](#) lists other guidance that may need to be followed, including the [Guide for Making Legislation](#) or the [HMT Green Book](#).

The term 'business activities', as set out in the SBEE Act, includes activities of voluntary and community bodies, as defined in [section 27\(5\)](#) of the SBEE Act.

## Key bodies

Each department has a **Better Regulation Unit (BRU)**, which oversees that department's processes for better regulation and advises on how to comply with the requirements. Please consult with your departmental BRU to ensure you are working with the current guidance and for advice in relation to regulatory provisions for EU exit negotiation. You must consult your BRU as soon as possible if you are unable to follow the normal process.

Separate statutory guidance for independent regulators is available on [www.gov.uk](http://www.gov.uk)

The **Better Regulation Executive (BRE)** leads across Government on better regulation policy and is responsible for embedding better regulation in policy-making. This includes issuing guidance on how to operate the Better Regulation Framework, monitoring the Business Impact Target and publishing an annual report, and providing advice and support to BRUs.

The **Regulatory Policy Committee (RPC)** is the Government's independent advisory body set up to provide scrutiny of the evidence and analysis supporting regulatory changes affecting businesses. In previous parliaments, the RPC was appointed as the Independent Verification Body (IVB) of the BIT and was responsible for verifying assessments for the BIT reports, and confirming that the BIT administrative exclusions were applied correctly or certified. The appointment of the IVB has not yet been made for this Parliament.

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<sup>2</sup> Such as the Public Sector Equality Duty

## Further resources and training

Regular training is available on regulatory impact assessments via the Government Economic Service and the RPC. Please get in touch with the BRE if you are unsure how to access this training – your BRU can provide a contact.

**[Annex 2 Other Relevant Sources of Guidance](#)**: provides lists other guidance relevant to meeting the requirements of good policy development, Cabinet clearance, making legislation and parliamentary scrutiny.

**[Annex 3 International Trade and Investment Key Considerations](#)**: provides the **key considerations policy makers should bear in mind** when answering the question on trade and investment in the Impact Assessment template.

**[Annex 4 Checklist](#)**: provides a reminder of issues to be considered when appraising and evaluating measures, when consent from other departments may be required (for example the creation of new criminal offences, changing the role of local authorities, and measures that have impacts on competition in existing or new markets.)

## How to use this guidance

The guidance is divided into two parts:

**[Part one](#)** follows the policy cycle. Regulatory impact assessment (RIA), scrutiny and policy clearance processes apply to both pre-consultation and pre-implementation but are covered only once, under the former heading.

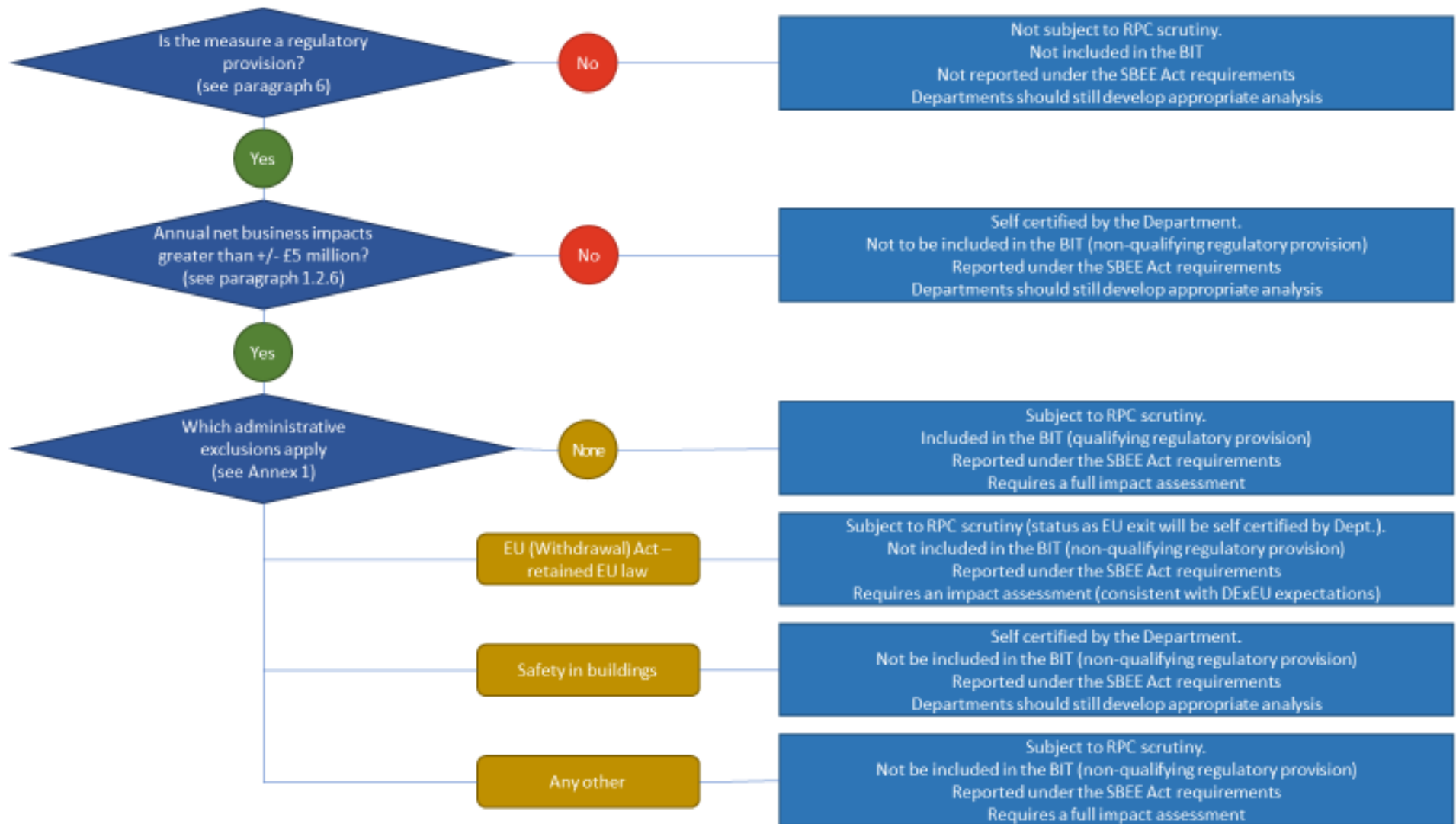
**[Part two](#)** sets out key policy considerations when developing regulatory policy.

**Table 1: Overview of expectations and process**

Overview of better regulation expectations		
	Impact assessment	RPC scrutiny
Consultation stage	Proportionate analysis	Optional
Final Stage		
<i>Measures with net direct cost to business:</i>		
- above ±£5m EANDCB	Full impact assessment	Required*
- below ±£5m EANDCB	Proportionate analysis	Optional*
<p>*RPC scrutiny is optional only for measures below the threshold of ±£5m EANDCB. and those measures that are certified as being within the exclusion for the safety of tenants, residents and occupants in buildings. Other NQRPs remain subject to RPC scrutiny, including those certified under the exclusions for measures related to the EU (Withdrawal) Act 2018 on retained EU law. The flowchart at page 9 sets out the specific requirements. While RPC scrutiny is not required for pre-consultation clearance, departments may seek an RPC opinion, informally or formally, where this might add value.</p>		



Better regulation flow chart (using the 2017 -2019 Parliament Business Impact Target methodology and determination of qualifying regulatory provisions)



# Part 1



## 1.1 Policy development

Understanding the costs, benefits, and risks of any new measure or proposal is fundamental to better regulation and better policy making.

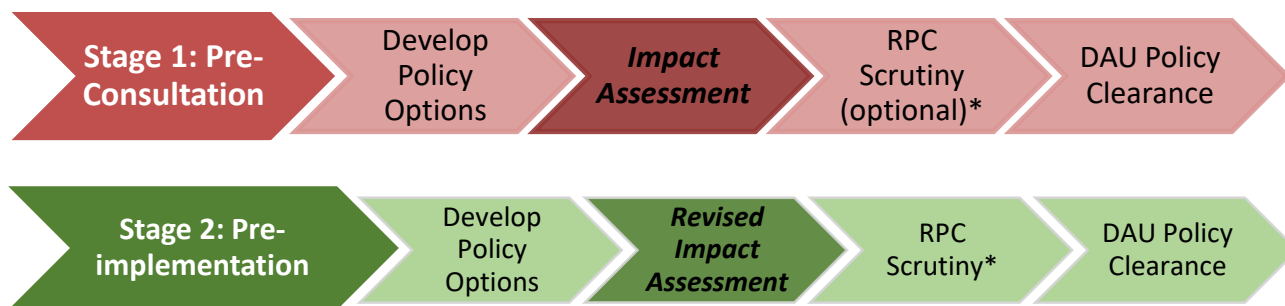
### Scope

- 1.1.1 Policy development should consist of two stages: identifying the rationale for government intervention; and appraisal of the options to deliver the Government's policy intention.
- 1.1.2 Identifying the rationale for government intervention should follow [HMT Green Book](#) guidance. Generally, identifying a market failure would serve as the rationale for intervention.
- 1.1.3 An options appraisal should consider a range of policy options. These should include alternatives to statutory regulation, such as industry-led approaches, as a means of delivering the policy outcome. Ask your BRU and/or BRE for advice and guidance.
- 1.1.4 Options appraisal, as well as covering those issues set out in [Annex 4](#) of this Guidance, should also explicitly consider the potential impacts of a policy on small and micro-businesses. This is explained in more detail in [section 2.3](#) (below). Options appraisal should also consider international evidence and how other countries, or international organisations have sought to address a problem - including any evidence on efficacy.
- 1.1.5 Consideration should also be given as to whether it might be beneficial to cooperate or adopt a similar approach as our international counterparts, in order to address the problem collectively, or whether it is desirable for the UK to take a divergent approach. The Foreign and Commonwealth Office and Better Regulation Executive can provide advice and support in relation to gathering relevant evidence.

### Devolved regulation

- 1.1.6 Where an area of regulation includes a mixture of devolved and reserved provisions, you should discuss this at an early stage with officials in the devolved administrations.

## 1.2 Impact Assessment



\* RPC scrutiny is optional for all measures at pre-consultation and is not required for measures below the  $\pm$ £5 million EANDCB threshold and those measures that are certified as being within the exclusion for the safety of tenants, residents and occupants in buildings.

1.2.1 In preparing your impact assessment, you should ensure it reflects the [HMT Green Book](#) guidelines. In particular, Chapter 2 provides a good overview of the stages to complete your impact assessment, while Chapter 7 should be followed for guidance on how to present results.

### How to appraise your measure

1.2.2 A regulatory impact assessment (RIA) is a tool used to inform policy decision-making. It is based on the ROAMEF<sup>3</sup> policy cycle and uses cost-benefit analysis, as set out in the Green Book, to ensure good practice in developing policy based on robust evidence.

1.2.3 The principles of cost benefit analysis, as set out in the Green Book, should be used in the development and appraisal of all policies. All new policies, programmes and projects should be subject to a proportionate assessment of costs and benefits. Parliament, especially the scrutiny committees, expect sufficient information on the impact of a measure, whether or not it impacts business. For qualifying regulatory provisions, a full RIA must be produced for independent scrutiny by the RPC. For non-qualifying regulatory provisions where the EANDCB is greater than  $\pm$ £5 million a year a full RIA will be expected, and will be subject to RPC scrutiny, but this is not a legal condition. Until the BIT is announced for this parliament, measures relating to the safety of tenants, residents and occupants in buildings should continue to be assessed under the safety in buildings exclusion (see [page 9](#)).

1.2.4 A RIA summarises the rationale for government intervention, the different policy options (including non-regulatory options) and the impacts of the intervention, as well as quantifying expected costs and benefits. A RIA should document:

- the total Net Present Social Value (NPSV)<sup>4</sup> the net benefit to society and the economy as a whole (including businesses);

<sup>3</sup> Rationale, Objectives, Appraisal, Monitoring, Evaluation, Feedback

<sup>4</sup> Net Present Social Value is the net benefit to society and the economy as a whole (including businesses). It shows the present value of all benefits (including benefits to business and society at large) less the present value of all costs (to business and society at large).

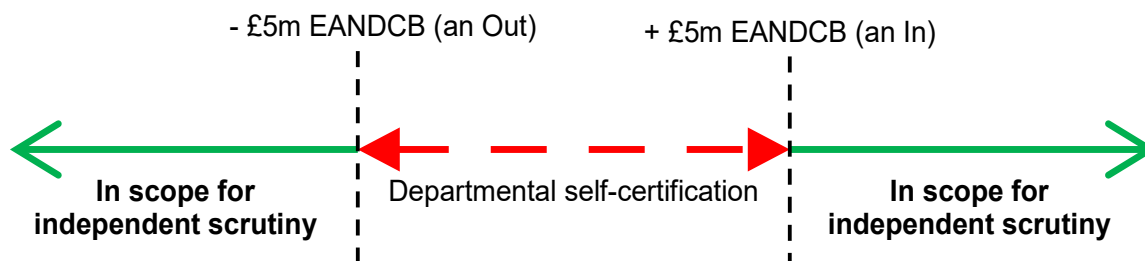
- the Net Present Value to business<sup>5</sup>; and
- the Equivalent Annual Net Direct Cost to Business (EANDCB)<sup>6</sup> of all policy options considered.

The cost-benefit analysis should also monetise the benefits of government policy.

## Scope

- 1.2.5 A RIA should be prepared for all significant regulatory provisions as a standard of good policy making and where an appropriate RIA is expected by parliament and other stakeholders. In addition to good policy making, the SBEE Act requires that qualifying measures which impact business are independently verified. The RPC will continue to provide assessments on the quality of Departmental impact assessments for qualifying regulatory measures until the Independent Verification Body has been announced for this Parliament.
- 1.2.6 The level of analysis should be proportionate to the problem it is addressing and reflect the scale or impact of the measure. Where quantitative assessment suggests that a policy will be below the  $\pm$ £5m EANDCB threshold, departments can choose to provide a less detailed, but proportionate, assessment of the impacts, that can be part of a department's process to certify that the measure is below the threshold ([see section 2.4](#)). The proportionate analysis should be used to support Cabinet Committee clearance or for parliamentary scrutiny.

## Certification of $\pm$ £5m threshold



- 1.2.7 Departments may still wish to request independent scrutiny for consultations or certain NQRPs, even when this is not required, in certain circumstances – see paragraph 2.4.7 for examples – or to help inform parliamentary scrutiny.
- 1.2.8 For measures above the de minimis threshold that are excluded from the BIT<sup>7</sup>, appropriate analysis still needs to be undertaken (such as a RIA) and submitted to the RPC for independent verification, to assist the Government's development of policy and for parliament's scrutiny of policy proposals.
- 1.2.9 Primary and secondary legislation can be part of a single policy development process. Therefore, where a measure is implemented through a combination of primary and secondary legislation, the RIA will evolve and develop as the requirements of both sets

<sup>5</sup> Net Present Value to Business is the net *direct* and reasonable *indirect* benefits of a policy to business only. It shows the present value of all benefits to business less the present value costs to business.

<sup>6</sup> Equivalent Annual Net Direct Costs to Business is the annualised net *direct* costs to business of a policy.

<sup>7</sup> This includes, but is not limited to, measures under the EU exit, pro-competition and systemic financial risk.

However, this does not apply to those measures that are self-certified as being excluded by the exclusion for the safety of tenants, residents and occupants in buildings.

of legislation are finalised and the underlying information and modelling is refined. In cases where the final policy position of future secondary legislation is unclear, the IA for primary stage legislation should describe examples of the potential scale or nature of impacts, if the powers are used. Where impacts cannot be monetised at that stage, Departments should provide at least a narrative based IA that describes the impacts. If further guidance is required, please contact your BRU, BRE or the RPC.

1.2.10 Where the RIA for the primary legislation covers all the expected impacts of the secondary legislation, the existing RIA can be re-used to support the clearance of the secondary legislation. If the policy changes significantly during the process, or further information – that was unavailable at the time of the primary legislation – substantially alters the impact of the measure, then the RIA for the secondary legislation should be revised proportionally to ensure it reflects:

- a) changes to the scope of the secondary legislation;
- b) greater clarity on the impact of the secondary legislation, if this had been uncertain when the RIA for the primary legislation was prepared;
- c) new information that has become available, which changes the assumptions underlying the RIA for the primary legislation.

This revision should be proportionate to the scale of the measure and the difference that the revision makes to the estimated impact of the measure.

1.2.11 If the direct impacts on business of either the primary legislation itself, or the exercise of the secondary powers arising from it, are greater than  $\pm£5m$  EANDCB, then the legislation is subject to the better regulation framework and may need independent scrutiny<sup>8</sup>. If the direct impact of the primary legislation and subsequent secondary legislation on business is below the de minimis threshold or falls under the safer building exclusion, then a proportionate impact assessment would be required (see page 9 and paragraph 1.2.6). The secondary legislation, if the direct impacts are above the de minimis threshold, would be subject to independent scrutiny. Commencement orders to bring primary legislation into force do not require RIAs.

1.2.12 Your BRU can advise on when you should produce a RIA and when you should submit it for independent scrutiny. They can also advise on whether the RIA needs to be revised post-consultation, and how the RIA should be reviewed for any subsequent legislative stage. You should engage with your BRU as early as possible to avoid delays later in the policy process.

## Trade

1.2.13 For measures with impacts on international trade and investment, you need to demonstrate those impacts, in consultation with the Department for International Trade to review your RIA and consider whether those impacts will require notification to the World Trade Organisation (WTO).

1.2.14 For example, for goods and services regulations Departments should include an assessment of whether the measure introduces different requirements for domestic and

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<sup>8</sup> Where there is uncertainty regarding how powers will be used, or what the impact of their use would be, the RIA for the primary legislation should be subject to independent scrutiny. Uncertainty and difficulties in estimating a robust EANDCB are not the same as declaring the impacts will be under the  $\pm£5$  million threshold.

foreign businesses, or different requirements for businesses from different countries. You should also demonstrate how the measure is consistent with the UK's international obligations.. For further guidance, please refer to the DIT guidance (available through your BRU) and contact the DIT Better Regulation Unit ([dit.bru@trade.gov.uk](mailto:dit.bru@trade.gov.uk)). Please see annex 3 for further guidance.

## Competition

1.2.15 Measures that affect a market where products and services are provided by private / public sector organisations may also affect competition. Departments should review and consider completing the Competition and Market Authority's (CMA) "competition assessment checklist" to assess the likelihood of impacts on competition and consider mitigations or alternative options, including those which could promote competition, supplementing the analysis in the RIA. Guidance on how to complete the checklist can be found in the [Competition impact assessment: guidelines for policymakers](#). Measures that could have a competition impact include those which could directly or indirectly limit the number or range of suppliers, the information and/or choices available to consumers, or the ability or incentives of suppliers to compete with one another. Departments who are undertaking a competition assessment with complex issues should speak to the CMA for further guidance ([advocacy@cma.gov.uk](mailto:advocacy@cma.gov.uk)).

## Enactment regulatory impact assessment

1.2.16 Enactment RIAs are required only for primary legislation that has been amended in its passage through Parliament in such a way as to significantly change the impacts of the policy on business. An enactment RIA replaces the final RIA and is then published alongside the enacted legislation on [www.legislation.gov.uk](http://www.legislation.gov.uk). Where amendments to the policy significantly change the impacts on business then the RIA may require RPC scrutiny. If the impacts of the Act remain unchanged then an enactment RIA is not needed.

## Further information and guidance

1.2.17 The impact assessment template can be downloaded from [here](#). It is accompanied by a user manual and practitioner guide to aid completion. Please check at the start of the process that you are using the up-to-date template.



## 1.3 Independent scrutiny

- 1.3.1 The [RPC](#) provides independent scrutiny of both RIAs and post-implementation reviews (PIRs) (see section 1.7)<sup>9</sup>. The RPC was also appointed to act as the independent verification body under the Small Business, Enterprise and Employment Act 2015, for the purposes of reporting against the business impact target in the previous Parliament (2017 – 2019). In this role, the RPC scrutinised the assessment of impacts of qualifying measures, and confirmed the classification of non-qualifying regulatory provisions. For certified exclusions, the RPC confirmed that the certification is in place. On a non-statutory basis, the RPC also provides informal scrutiny on measures with estimated impacts greater than the  $\pm$ £5m EANDCB threshold at pre-consultation stage.
- 1.3.2 In the interim and until the Independent Verification Body has been appointed by this Parliament the RPC will continue to issue an “opinion” on the quality of the analysis and evidence in the RIA or PIR, and on the robustness of the equivalent annual net direct cost to business (EANDCB) subject to the conditions below. The primary focus will be on the quality of the EANDCB metric and the small and micro business assessment (SaMBA). At pre-consultation stage, departments are encouraged to submit their analysis for RPC scrutiny where there is value in doing so, for instance if analysts have taken an unusual approach to modelling the potential impacts, or where a measure is considered to be contentious / sensitive.
- 1.3.3 At pre-consultation stage a ‘green opinion’ is an independent view that the analysis and consideration of options is fit for purpose and sufficient to inform an effective consultation. A ‘red opinion’ is an independent view that the analysis is not fit for purpose, with major concerns over the quality of the evidence and analysis that need to be addressed.
- 1.3.4 At implementation stage a ‘green opinion’ is an independent view that the analysis used to calculate the EANDCB is robust and fit for purpose. A ‘red opinion’ is an independent view that the EANDCB and the small and micro business assessment is not sufficiently robust.
- 1.3.5 The RPC offer these opinions to help ensure decisions are made on the basis of robust, evidence-based policy making in line with HM Treasury’s Green Book and this guidance.

### Scope

- 1.3.6 For measures with estimated impacts below the  $\pm$ £5m EANDCB threshold, or the other certified exclusions (see page 9), departments need not seek independent scrutiny. However, they are encouraged to consider the benefits of independent scrutiny, even though it is not a requirement, for example where independent scrutiny may be helpful for policy development or for parliamentary handling. Measures below the threshold

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<sup>9</sup> Under the Small Business, Enterprise and Employment Act 2015, regulatory provisions with an estimated impact above the threshold must be validated by the independent verification body, the RPC, before the estimated impact can be included in the better regulation – government annual report.



that meet the criteria in paragraph 2.4.7 may be subject to independent scrutiny as a result of the 'call-in' process described in paragraphs 2.4.6 to 2.4.12.

- 1.3.7 For measures with estimated impacts greater than the  $\pm$ £5m EANDCB threshold, departments would usually seek independent scrutiny before seeking Cabinet clearance to agree the final policy (see page 9) There may be times when a measure needs to be in place so urgently that independent scrutiny is delayed until implementation. Parliament may still expect cost-benefit analysis or information on the impacts of the measure to inform its scrutiny. Therefore, departments will need to consider the best way to do so in the particular circumstances.
- 1.3.8 Departments may seek independent scrutiny by the RPC at any stage – for example to test their analysis and receive early views. Please contact your BRU or the RPC secretariat for further information.

## What do I need to do?

### *RPC opinion: scrutiny of RIAs*

- 1.3.9 In accordance with your department's own internal procedures, once agreed with your BRU, RIAs should be submitted to [regulatoryenquiries@rpc.gov.uk](mailto:regulatoryenquiries@rpc.gov.uk). Please include the RPC reference number if the measure has previously been considered.

### *RPC service level agreement*

- 1.3.10 The RPC will issue an opinion on a regulatory impact assessment (IA) within 30 working days. If the RPC comes to an initial view that the quality of the RIA is likely to result in a red opinion, it will issue an Initial Review Notice (IRN) to the department explaining what needs addressing. Departments will be expected to respond within 15 working days and the RPC may take up to 45 days from the date of the initial IA submission to issue an opinion.
- 1.3.11 For measures that support the UK exit from the European Union, the RPC has agreed a reduced timescale for considering RIAs of 20 working days for an initial opinion. For cases where an IRN has been issued, the RPC may take up to 30 working days for cases, from the date of the initial IA submission to issue an opinion.
- 1.3.12 You can contact the Secretariat directly with any questions on [regulatoryenquiries@rpc.gov.uk](mailto:regulatoryenquiries@rpc.gov.uk).

## 1.4 Policy clearance

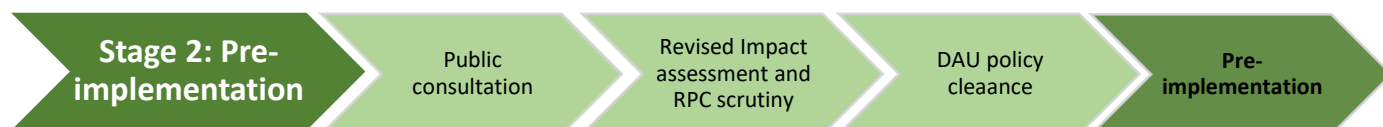
- 1.4.1 Domestic Measures that impact business and require collective agreement will usually need clearance from the Domestic Affairs & the Union Cabinet Committee (DAU) **in addition to any other relevant Cabinet committees**<sup>10</sup> before you can proceed. Clearance is provided through the collective agreement process known as write-round. For further information and advice on clearance, please consult your BRU or speak to your departmental desk officer in the Economic and Domestic Secretariat (EDS) of the Cabinet Office.

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<sup>10</sup> For example, the EU Exit Committee or the Social Reform (Home Affairs) sub-Committee



- 1.4.2 When the measure is above the  $\pm$ £5m EANDCB threshold, the write-round letter should be accompanied by the RIA, or **proportionate** cost benefit analysis and should include any relevant RPC opinion. At pre-implementation stage clearance, the write-round letter should include **any relevant** RPC opinion. This may not be possible for urgent measures.
- 1.4.3 For those measures where there is no RPC opinion, then the write round letter should note the rationale for why an RPC opinion has not been sought. Examples of the rationale are that the measure is below the  $\pm$ £5m EANDCB threshold, or that the department is confident that the analysis is sufficiently robust for consultation and therefore does not require independent scrutiny, or that it is exempt from independent scrutiny.
- 1.4.4 If changes are made to the RIA that substantially alter the impact of the measure as a condition of Cabinet clearance, then the RIA may need to be subject to a further round of independent scrutiny.



## 1.5 Pre-implementation

### Review and sunset clauses

- 1.5.1 At an early stage in policy development, you will need to consider whether either a statutory review clause is required or a sunset clause is appropriate (for reviews see the [statutory guidance on reviews](#)). Statutory review clauses impose a legislative duty to carry out and publish a [post-implementation review](#) of the measure within five years of it coming into force and then regularly on a five-year cycle, or more frequently if appropriate to the measure.
- 1.5.2 Sunset clauses are not a requirement, but a tool for policy makers to use where they are deemed appropriate and impose an automatic expiry of the measure on a specified date, usually within seven years, and ensure scrutiny of the decision on whether or not to renew the regulation.
- 1.5.3 The legislative requirements to use a statutory review clause are set out in [section 28 – 32 of the Small Business, Enterprise and Employment Act 2015](#) (SBEE Act), although statutory review clauses may be used even when not required under the SBEE Act. A ministerial statement is required if it is decided to not include review provisions in secondary legislation, explaining the rationale. This should form part of the explanatory memorandum.

### What do I need to do?

- 1.5.4 Refer to the [statutory guidance on reviews](#) and you may wish to contact your BRU for further guidance.

## Application to devolution measures

- 1.5.5 When using review and sunset clauses for legislation in a devolved area (whether wholly or partially devolved), you will need to consult colleagues in the relevant administration in the usual way, with agreement to legislate obtained as necessary through the applicable process.

## Reviews for new statutory bodies with regulatory functions

- 1.5.6 All new statutory bodies with regulatory functions must have a statutory review provision – a legislative duty contained within its founding legislation – requiring the relevant Secretary of State to conduct and publish a review of the body (at a frequency to be agreed collectively). This should address the extent to which the statutory body has been successful in achieving the objectives that led to its creation, and the case for its continued existence after a given period.
- 1.5.7 Although not a “sunset” clause in the sense that the regulator would cease to exist after a particular date should no action be taken to ensure its continuance, the review does enshrine the principle of a regular and transparent review of the underlying rationale for a regulator’s existence.



## 1.6 Publication

- 1.6.1 You should publish your impact assessment and, where applicable, the RPC opinion, alongside either the relevant consultation document on [GOV.UK](https://www.gov.uk) or the relevant legislation on [www.legislation.gov.uk](https://www.legislation.gov.uk). If a proportionate analysis has been prepared that does not use the standard template, (eg for measures that have been certified) in line with your department’s internal processes, it can be uploaded to the more resources tab.
- 1.6.2 For measures without a RIA, the relevant explanatory memorandum should set out the key impacts and include the rationale for not providing a RIA. This should refer to the impacts and effects of the policy, and not just use the better regulation framework or ±£5m EANDCB threshold as the justification. This will help to facilitate parliamentary scrutiny. Ask your BRU or departmental parliamentary team for advice.
- 1.6.3 If you have gone through independent scrutiny, you should notify the RPC when you have published your impact assessment.



## 1.7 Post-implementation

- 1.7.1 A post-implementation review (PIR) should be carried out to comply with a legislative provision to conduct one and prepare a statutory report. Most review clauses will require you to assess if the objectives of the regulation have been achieved, if the objectives are still valid and relevant, and if they could be achieved in a less burdensome way. You will need to work with your legal team to see what parts of the legislation the review clause applies to and ensure that these are covered in the review.
- 1.7.2 As well as statutory PIRs, a commitment in the regulatory impact assessment (RIA), explanatory memorandum, or other ministerial statement may mean a PIR is also required.
- 1.7.3 In preparing a PIR, you will want to refer to chapter 8 of the [HMT Green Book](#) on Monitoring and Evaluation and the [HMT Magenta Book](#) on Evaluation.
- 1.7.4 The threshold of  $\pm$ £5m EANDCB for independent scrutiny also applies to PIRs and applies to both statutory and non-statutory PIRs. Measures originally estimated to have a net annual impact below this threshold need not be submitted to the RPC. All reviews need to be conducted and published in line with the relevant statutory requirements – but for those below the threshold this should be done in a light-touch way.
- 1.7.5 The report, setting out the conclusions reached, will usually need clearance from the Domestic Affairs & the Union Cabinet Committee (DAU) and the relevant policy committee before publication. An opinion from the RPC on the PIR should be obtained before seeking DAU clearance on any measures above the threshold (see table 2).
- 1.7.6 Sunset clauses are an administrative tool at the disposal of departments, rather than a requirement. Typically, a sunset clause will come into effect seven years after the measure comes into force and will result in the related part or whole of the statutory instrument ceasing to have effect. Departments should track statutory instruments that include a sunset clause, to ensure that they are reviewed and acted upon (if required) in sufficient time before expiry. A post-implementation review, typically conducted within five years of a statutory instrument coming into force, is a good time for an initial review of a sunset clause.
- 1.7.7 PIRs for measures with a review clause must be published on the [Legislation website](#) alongside the relevant regulations. This publication requirement supersedes the requirement to lay a command paper in Parliament, unless your review clause states that you must lay the review in Parliament.
- 1.7.8 In light of the findings from the review, you will need to provide your Minister with information to help them decide whether the measure should be retained without changes, amended, repealed or replaced. The statutory report and supporting PIR must be published by the deadline stated in the review clause. This will normally be five years from the date the measure came into force and then regularly on a five-year cycle.

Reviews can be published before the deadline, but not after it, as the deadline is set in the legislation.

1.7.9 The [PIR template](#) can be found on GOV.UK. The [statutory guidance on reviews](#) provides advice on when to include a review clause. You may wish to refer to [Producing Post-implementation Reviews: Principles of Best Practice](#).

1.7.10 Cabinet Office’s [Open Policy Making toolkit](#) includes a section on how to measure the impact and success of Open Policy Making, which sets out useful principles for any post-implementation review. HM Treasury’s [Magenta Book - Guidance on Evaluation](#) also provides useful guidance.

**Table 2: Overview of Post-implementation Reviews**

Overview of Post-implementation Reviews			
	DAU clearance	RPC scrutiny	Publish
<b>Statutory PIR</b>			
Measures with net direct cost to business:			
- above ±£5m EANDCB	Required	Required	Yes – <a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a> with SI and original impact assessment, etc
- below ±£5m EANDCB	Required proportionate assessment	Not required	Yes – <a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a> SI and original impact assessment, etc
<b>Non-statutory PIR</b>			
Measures with net direct cost to business:			
- above ±£5m EANDCB	Required	Required	Yes – department’s Gov.UK website
- below ±£5m EANDCB	Not required – proportionate assessment*	Not required	Yes – department’s Gov.uk website
* Unless there are wider cross-departmental interests, controversy or proposed changes arising from the PIR.			

## Part 2

### 2.1 Business Impact Target

- 2.1.1 The scope and metric for the BIT will be set out for the parliament by 19 December 2020.

#### Scope

- 2.1.2 The SBEE Act broadly defines ‘regulatory provisions’ as those concerning the regulation of the activities of business and community and voluntary bodies (see [section 22](#) of the SBEE Act). Regulatory provisions include both primary and secondary legislation; activities undertaken by ministers under statutory powers; and the activities of relevant regulators (following implementation of the Enterprise Act 2016).
- 2.1.3 The Act also sets out what is excluded from the definition of a regulatory provision and so does not count towards the BIT (see [paragraphs 6 and 7](#)).
- 2.1.4 The Act provides for administrative exclusions, which will be set out once the BIT has been announced. Departments may choose to continue to assess their measures under the administrative exclusions (as per page 9) that applied in the previous parliament, until the new BIT has been announced. Measures that fall within one of the administrative exclusions are considered as regulatory provisions but do not score against the BIT. These are listed in the better regulation Government annual report as non-qualifying regulatory provisions (NQRPs) (see below).
- 2.1.5 Guidance on the statutory exclusions and the previous parliament’s administrative exclusions is provided in Annex 1 of this guidance.

#### Better Regulation – Government Annual Report – requirements

- 2.1.6 Every year the Government must publish a report on the progress made towards the Business Impact Target. This report must list the qualifying regulatory provisions (QRPs) and the legislative non-qualifying regulatory provisions (NQRPs) and summarise non-legislative NQRPs that have come into force or ceased to be in force in that reporting period. Information on the QRPs will include the impact of the measure once it has been verified by the IVB, once appointed by the Government. If the impact of an individual measure has not been validated in time, then the measure must still be listed with the impact omitted and the measure, along with its validated impact, must appear in the following year’s report.
- 2.1.7 Wider impacts of each qualifying measure are expected to be included in future BIT reports. This will be done by including the Net Present Social Value and Net Present Value to business (see page 13) figures from the impact assessment in the report alongside the metric in paragraph 2.1.2. These figures give departments the opportunity to describe the full benefit of a measure, beyond the direct impacts on business. However, there will be no change to the role of the Regulatory Policy Committee at this stage. The RPC will still only rate impact assessments as not “fit for

purpose” based upon the direct business impact or small and micro business assessments.

- 2.1.8 Where a measure has a negative Net Present Value, there will be the opportunity for the department to provide a brief description of wider benefits that have not been monetised, including either giving a range for the benefit or explaining why it could not be monetised.
- 2.1.9 Where a measure goes beyond the requirements in either an EU or International obligation (‘gold-plating’), the description of the measure must include both a description of the gold-plating and the rationale for doing so.
- 2.1.10 The report must also include a description of actions taken by government departments to mitigate disproportionate impacts on small and micro businesses. If a measure exempts or mitigates the impacts on smaller businesses, please get in touch with BRE to agree an appropriate description.
- 2.1.11 The report must list all the non-qualifying regulatory provisions introduced during the reporting period and identify the relevant administrative exclusion. Their impacts do not need to be included in the report, nor do they need to be validated by the Independent Verification Body, although the body should verify that the administrative exclusion has been correctly applied or certified.

## 2.2 Common commencement dates

- 2.2.1 The policy of bringing regulatory changes into force on one of two annual common commencement dates is intended to reduce the costs to business of keeping on top of their regulatory obligations. Where feasible and appropriate, you should aim to commence changes on 6 April or 1 October, although they can be laid or made in advance. Otherwise, you should make sure that the rationale for implementing at a different time is clear in your write-round letter.

### Devolved regulation

- 2.2.2 Where an area of regulation is reserved (i.e. where the measure is not within the legislative competence of the Scottish Parliament, Welsh or Northern Ireland Assembly), it would normally be commenced on a UK-wide basis. Where legislation includes a mixture of devolved and reserved provisions, you should discuss at an early stage with officials in the devolved administrations and seek to align commencement dates as far as possible on a UK-wide basis.

## 2.3 Small and micro-business assessment (SaMBA)

- 2.3.1 Although the proportion varies across sectors, approximately 99 per cent of businesses in the UK are small (10-49 employees) or micro-businesses (1-9 employees). These businesses also account for around 48 per cent of employment and 33 per cent of turnover<sup>11</sup>. In addition to the large volume of smaller businesses, a number of factors mean that regulatory changes may fall disproportionately on them. As a result, the

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<sup>11</sup> 2016, BEIS - Business Population Estimates for the UK and Regions 2016

Government has committed to considering whether the impacts of regulatory changes will fall disproportionately on them, and whether such businesses could be exempted from regulation, or the impacts mitigated in some way without compromising the policy objectives.

## What do I need to do?

- 2.3.2 At an early stage, when considering the options, it is important to consider the scope of the proposed measure, its impacts, including any disproportionate effects on small and micro-businesses and how this can be mitigated – see section 1.1 on policy development.
- 2.3.3 The default option is to exempt small and micro-businesses from the requirements of new regulatory measures. In many cases it may be possible to achieve the majority of the intended benefits even if smaller businesses are exempted – for example where larger businesses account for the majority of the intended regulated activity or where the activities of larger businesses account for the majority of the harms the regulation seeks to prevent.
- 2.3.4 If, after assessment, it is concluded that the measure should apply to small and micro-businesses, you should consider how burdens could be mitigated or minimised. There are a wide range of options that may include partial exemption, extended transition periods; simplifying requirements; or exempting smaller businesses from having to register. Also subject to Managing Public Money, there may be options to exempt small or micro businesses from the fees for registration or licensing, or having a different regime with different fees<sup>12</sup>.
- 2.3.5 If you believe that no mitigating actions are necessary because there is no disproportionate burden or that the policy could not be delivered if small and micro-businesses were exempted or the impacts on them mitigated, you must provide evidence of this in the supporting analysis.
- 2.3.6 A SaMBA is mandatory for all domestic measures that require policy clearance from the Domestic Affairs & the Union Cabinet Committee (DAU) and which have an impact on business greater than the ±£5m EANDCB threshold. Departments should also consider the impact on small and micro-businesses of regulatory policy which is below the threshold, and conduct an assessment where appropriate. For further guidance please see the RPC's guidance on [small and micro business assessments](#).
- 2.3.7 If your measure does not affect small and micro-businesses, you should make clear why this is the case when seeking DAU clearance and in the relevant analysis in the RIA.

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<sup>12</sup> The [Managing Public Money](#) rules on cost recovery and avoiding cross-subsidy.



## 2.4 Certification of measures that fall within certain administrative exclusions

### Scope

2.4.1 Departments should put in place their own internal procedures to ensure that all measures are accompanied by an appropriate level of analysis, in particular for measures covered by the self-certification exclusions in the previous parliament:

- to identify when measures are less than the  $\pm$ £5m EANDCB threshold;
- for measures correcting deficiencies in retained EU law under the EU (Withdrawal) Act and other legislation; or
- for measures related to ensuring the safety of tenants, residents and occupants in buildings that stem from, or relate to, the Government's response to the Grenfell tragedy, reviews, inquiries or working groups.

The responsibility for ensuring an appropriate process and record of decisions to certify that an exclusion applies lies with each departmental BRU. The  $\pm$ £5m EANDCB threshold applies to all regulatory measures that impose or amend provision relating to business activities and come into force or cease to be in force during this parliament. Your department's Chief Analyst continues to be responsible for ensuring that the analysis used for a measure which is under the threshold is sufficiently robust.

### What do I need to do?

2.4.2 Some form of appraisal will usually be undertaken to inform the policy decision and may also be required for the purposes of Cabinet clearance or parliamentary procedures<sup>13</sup>. This information may also be used to support discussions with departments on the appropriate level of analysis to be published alongside legislation.

2.4.3 It is for each department, led by the BRU, to decide the internal process that they wish to follow in assessing the impact of a measure and determining whether it falls below the  $\pm$ £5m EANDCB threshold. For very low value measures this may be as simple as recording that the measure will impact x hundred businesses and that the likely cost for each individual business will be £y a year and that this results in an annual impact well below the  $\pm$ £5m EANDCB threshold. Suitable estimates or ranges may have already been generated during option analysis.

2.4.4 BRE and the RPC are happy to provide support and/or comments on the processes that departments put in place to inform self-certification.

2.4.5 There are processes to support departments in certifying exclusions correctly. The 'call in' process will encourage a dialogue to provide assurance that the certified administrative exclusions (see 2.4.1) are being applied consistently, and that no other complicating factors such as those listed at 2.4.7 exist that suggest the need for independent scrutiny. In exceptional circumstances, the process may be used to

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<sup>13</sup> The Secondary Legislation Scrutiny Committee has [guidance](#) for departments submitting statutory instruments, which includes the information to be included in explanatory memoranda.



confirm assessments of individual measures through further consideration of the relevant analysis.

## ‘Call in’

- 2.4.6 BRE will be responsible for operating the ‘call in’ process. It is intended to ensure departments are correctly and consistently certifying administrative exclusions ([2.4.1](#)), and are actively considering the level of analysis that is appropriate for measures that fall into the certified exclusions, but may nonetheless benefit from more detailed analysis, for example to inform Parliament.
- 2.4.7 Decisions on the level of analysis to support policy proposals are for departments to make – departments will continue to be responsible for decision-making and stakeholder handling. However, BRE will play a ‘critical friend’ role by highlighting relevant considerations, such as discussing measures that have:
- elements that appear inconsistent with a department’s self-certification;
  - significant distributional impacts (such as significant transfers between different businesses or sectors);
  - disproportionate burdens on small businesses;
  - significant gross effects despite small net impacts;
  - significant wider social, environmental, financial or economic impacts; or
  - significant novel or contentious elements.
- 2.4.8 The ‘call in’ function is intended to be used early in the policy development phase and will be informed by several factors, including information provided through the legislative programme tool and concerns raised with BRE by stakeholders such as business groups or the RPC. However, ‘call in’ will not delay implementation.
- 2.4.9 The rationale for each individual call in will be set out when it is made. In the first instance, the call in will use the information that departments used to assure themselves that a proposal meets the certification exclusion criteria – no new or additional work should be required at this point. If there are any concerns about the evidence base, then the RPC may be asked to provide independent scrutiny on the quality of the supporting evidence. For most de minimis measures, a specific EANDCB figure will not be required. The focus will be on providing assurance that the exclusion has been correctly certified.
- 2.4.10 For measures using the  $\pm$ £5m EANDCB threshold exclusion this will confirm that the analysis does not inappropriately exclude some impacts, and that the department has taken appropriate and proportionate thought to assure itself that the impact is below  $\pm$ £5 million EANDCB and has considered how to ensure contentious policies are supported by an appropriate evidence base.
- 2.4.11 When a proposal is called in, the department should continue with policy development work as per the ROAMEF cycle. The starting presumption is that the exclusion certification is correct. Call in will not delay or hinder implementation of measures.

2.4.12 If the information provided does not appear to be sufficient, then further clarification or information may be sought. Departments should aim to resolve any concerns raised before seeking collective ministerial agreement for the proposal. This will enable any refinement to be reflected in the explanatory memorandum and supporting documents when published.

## Annex 1: Statutory and administrative exclusions from the business impact target

This annex provides information on the business impact target (BIT) statutory and the previous parliament’s administrative exclusion categories. Where part of the impact of a measure or part of a measure falls within one of the exclusions, the cost-benefit analysis for the measure should still reflect all the costs and benefits, including wider benefits to society. It is **only in calculating the equivalent annual net direct cost to business that the exclusions apply**.

Statutory exclusions are those prescribed in the Small Business, Enterprise and Employment Act 2015 (SBEE Act) (see page 6). If a measure falls within one of the statutory exclusions, it is not a regulatory provision and does not score against the BIT. In order to provide information for Cabinet consideration, parliamentary scrutiny or to stakeholders, impact assessments may be required.

The previous parliament’s administrative exclusions were published in the [written ministerial statement](#) on 20th June 2018 and Departments may choose to continue to assess measures under one or more of these administrative exclusions until the BIT is set for this parliament. The exclusion for implementing EU Directives or regulations or other international agreements does not apply to measures that include an element of gold-plating.

<b>Full Text</b>	The published text of the exclusion, taken either from the SBEE Act 2015, or the written ministerial statement.
<b>Scope (only applicable for administrative exclusions)</b>	What type of <b>regulatory provision</b> the exclusion applies to.  Most exclusions apply to all types of <b>regulatory provision</b> – i.e. both legislation and regulator activities. However, there are some exclusions that only apply to regulator activities i.e. activities falling within <a href="#">section 22(6)(c)</a> of the SBEE Act 2015, including the activities of ministers/departments.
<b>Definitions</b>	Definitions of any key terms (highlighted in bold).
<b>Notes</b>	Other notes that are intended to assist the user. May include a brief explanation of the policy rationale (where appropriate), or other guidance to assist with application of the exclusion.

## Statutory exclusions

### Exclusions under section 22 of the SBEE Act 2015

#### Tax, duty, levy or other charge – 22(4)(a)

<b>Full Text</b>	A “regulatory provision” does not include a statutory provision if or to the extent that it makes or amends — <ul style="list-style-type: none"> <li>(i) provision imposing, abolishing or varying any tax, duty, levy or other charge, or</li> <li>(ii) provision in connection with provision falling within sub-paragraph (i);</li> </ul>
<b>Definitions</b>	Please refer to <a href="#">Managing Public Money</a> for government guidance on handling public funds and determining the difference between charges and tax.
<b>Notes</b>	For the BIT, this exclusion only applies to tax, duty, levy or other charges (such as fees) directly made by or on behalf of a public body.  This exclusion extends to the impacts of provisions relating to taxes, duties, levies or other charges in their entirety. These impacts should therefore not be counted in the assessment of other provisions.

#### Procurement – 22 (4)(b)

<b>Full Text</b>	A “regulatory provision” does not include a statutory provision if or to the extent that it makes or amends provision in connection with procurement.
<b>Definitions</b>	Procurement has its common meaning.
<b>Notes</b>	

#### Grants or other financial assistance on behalf of a public authority – 22(4)(c)

<b>Full Text</b>	A “regulatory provision” does not include a statutory provision if or to the extent that it makes or amends provision in connection with the giving of grants or other financial assistance by or on behalf of a public authority.
<b>Definitions</b>	Public authority: has the same meaning as in the Freedom of Information Act 2000 (see <a href="#">section 3</a> of that Act).
<b>Notes</b>	Given pressure to reduce public spending it is particularly important to ensure that associated changes in regulatory burdens are reported transparently, and the departments (and regulators) have strong incentives to ensure that burdens are minimised and offset wherever possible. However, the statutory exclusion means that, for example,

	neither the regulatory burden of qualifying for grants, or the payment of grants themselves can be in scope of the BIT.
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### Measures that have effect for less than 12 months – 22(4)(d)

<b>Full Text</b>	A “regulatory provision” does not include a statutory provision if or to the extent that it makes or amends provision which is to have effect for a period of less than 12 months.
<b>Definitions</b>	
<b>Notes</b>	

### Definitions under section 27 of the SBEE Act 2015

#### Regulation of activities that are not “business activities” – 27(2)

<b>Full Text</b>	For the purpose of determining whether a “statutory provision” is in relation to a business activity, and therefore a regulatory provision: “Business activities” means any activities carried on—  (a) by a business for the purposes of the business, or  (b) by a voluntary or community body for the purposes of the body.
<b>Definitions</b>	Business: takes its natural meaning. Includes different legal forms (sole traders, partnerships, companies).  Voluntary and community body: <a href="#">section 27(5) and (6) of SBEE Act 2015</a>
<b>Notes</b>	The intention of the business impact target is to capture a wide range of business activities, reflecting the diverse range of regulatory requirements, as such this takes a broad view of business activity including activities that are essential for the operation of the business in delivering its aims.

#### Control by a public authority – 27(3)(a)

<b>Full Text</b>	For the purpose of determining whether a “business activity” is carried out by a business or a voluntary or community body: References to a business or a voluntary or community body do not include a business or a voluntary or community body which—  (a) is controlled by a public authority
<b>Definitions</b>	

<b>Notes</b>	The government has published statutory guidance on how “ <a href="#">control by a public authority</a> ” is to be determined.
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### Acting on behalf of a public authority – 27(3)(b)

<b>Full Text</b>	<p>For the purpose of determining whether a “business activity” is carried out by a business or a voluntary or community body: References to a business or a voluntary or community body do not include a business or a voluntary or community body which—</p> <p style="text-align: center;">(b) is acting on behalf of a public authority in carrying out the [business] activities.</p>
<b>Definitions</b>	<p>“Public authority” has the same meaning as in the <a href="#">Freedom of Information Act 2000</a> (see section 3 of that Act)</p> <p>Please refer to government guidance on how “<a href="#">control by a public authority</a>” is determined.</p>
<b>Notes</b>	<p>A key indicator of what counts as “on behalf of a public authority” is whether there is a statutory duty in respect of that provision, for example legal duty of a local authority under the Childcare Act 2006 to ensure that prescribed childcare is available free of charge. Childcare providers in receipt of funding under <a href="#">section 7</a> of that Act would be considered as acting on behalf of a public authority.</p>

## Administrative exclusions (2017 – 2019 parliament)

### A: De minimis threshold

<b>Full Text</b>	Regulatory provisions that have been certified by departments or regulators as falling under the de minimis rule, namely those that have an EANDCB of less than $\pm$ £5 million.
<b>Scope</b>	Any regulatory provisions where the equivalent annual net direct cost to business is less than $\pm$ £5 million that come into force or cease to be in force in this parliament
<b>Definitions</b>	See section 2.4
<b>Notes</b>	It is for departments to establish an appropriate process to record decisions on whether a measure is below the de minimis threshold. Such measures may be subject to ‘call in’ to confirm that the de minimis threshold has been appropriately applied or whether the factors listed at paragraph 2.4.7 are relevant.

### B: European Union Regulations, Decisions and Directives

<b>Full text</b>	Regulatory provisions that implement <b>new or changed obligations from European Union Regulations, Decisions and Directives</b> , and other international commitments and obligations, except in cases of gold-plating. This includes measures incorporating EU law into domestic law under the EU (Withdrawal) Act and legislation made for the purpose of implementing the EU Withdrawal Agreement, including implementation of new EU law during the implementation period.
<b>Scope</b>	All <b>statutory provisions</b> (i.e. both legislation and regulator activities)
<b>Definitions</b>	<b>Gold-plating:</b> Defined in <a href="#">EU Transposition Guidance</a> <b>Statutory provisions:</b> see paragraph 4, page 5
<b>Notes</b>	EU and international decisions includes decisions of European Supervisory Authorities (and equivalent bodies), and internationally agreed commitments and obligations, where these result in new or changed obligations.  Gold-plating includes: <ul style="list-style-type: none"> <li>• where legislation introducing or recasting a European Directive either (i) fails to take available derogations which would reduce costs to business or (ii) uses a derogation which imposes increased costs on business;</li> <li>• early implementation of a net burden EU directive or delayed implementation of a net deregulatory EU directive;</li> </ul>

	<ul style="list-style-type: none"> <li>• any aspects of implementing measures that are not consistent with, or directly related to, the commitment or obligation;</li> <li>• retention of higher pre-existing UK standards. This is classified as gold-plating. However as in such cases there is no change to the obligations on business, they would be scored as having a zero impact under the BIT.</li> </ul> <p>Changes required to address previous under-implementation (e.g. in the context of infraction proceedings, or a court decision) would also fall within the exclusion, as these still relate to implementation of the new or changed EU obligation.</p>
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### C: Regulatory provisions under the European Union (Withdrawal) Act 2018 to deal with retained EU law

<b>Full text</b>	Regulatory provisions that have been certified by departments or regulators as dealing with deficiencies in retained EU law (under the European Union (Withdrawal) Act 2018 and other legislation.
<b>Scope</b>	This follows the need to have an operational framework with appropriate protections for wider society as a result of EU exit. Such a framework will require some changes that go beyond 'lifting and shifting' existing legislative requirements.
<b>Definitions</b>	This relates to regulations made under section 8 and schedule 7 of the <a href="#">European Union (Withdrawal) Act 2018</a> .
<b>Notes</b>	For regulatory provisions taken out of scope by this exclusion, those above the de minimis threshold will be subject to scrutiny by the RPC before coming into Parliament. As an NQRP, these will be included in the Government's annual report on the wider impacts of regulation and progress towards the BIT.

## D: Pro-competition

<b>Full text</b>	Regulatory provisions that are intended to deliver – or to replicate – better competition-based outcomes in markets characterised by market power.
<b>Scope</b>	All <b>statutory provisions</b> (i.e. both legislation and regulator activities)
<b>Definitions</b>	<p>A regulatory provision can be considered to <b>promote competition</b> if it satisfies all of the following criteria:</p> <ul style="list-style-type: none"> <li>• The measure is expected to increase, either directly or indirectly, the number or range of sustainable suppliers; to strengthen the ability of suppliers to compete; or to increase suppliers' incentives to compete vigorously.</li> <li>• The net impact of the measure is expected to be an increase in [effective] competition (i.e. if a policy fulfils one of the criteria at (a) but results in a weakened position against another) and the overall result is to improve competition.</li> <li>• Promoting competition is a core purpose of the measure.</li> <li>• It is reasonable to expect a net social benefit from the measure (i.e. benefits to outweigh costs), even where all the impacts may not be monetised.</li> </ul> <p>The Financial Conduct Authority's, CMA-badged, <a href="#">Competition Law and wholesale markets</a> sets out what is meant by market power and measures to prevent any firm with a dominant position from behaviour that may constitute an abuse of this (which would be within this exclusion).</p>
<b>Notes</b>	<p>This exclusion is also capable of extending to pre-cursor measures i.e. in regulated monopoly sectors, interventions that can be shown to be a necessary step to the development of a competitive market in certain activities.</p> <p>This exclusion covers the delivery of better outcomes in monopoly markets where there is limited scope for competition. That includes the terms upon which access is provided to networks and systems, and effective network and systems operation and coordination. It also includes the introduction and removal of, and adjustment to, price controls where those deliver or replicate better competition-based outcomes in markets characterised by market power.</p> <p>The RIA should identify the underlying evidence of the need for action to deliver better competition-based outcomes.</p>



## E: Systemic financial risk

<b>Full Text</b>	Regulatory provisions relating to systemic financial risk
<b>Scope</b>	All statutory provisions (i.e. both legislation and regulator activities)
<b>Definitions</b>	<p><b>Systemic financial risk:</b> a risk of disruption in the UK financial system or to the supply of financial services in the UK with the potential to have serious negative consequences for the UK financial system and the real economy market. All types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree.</p> <p>Systemic risks may include</p> <p>(a) risks arising from structural features of, or the distribution of risk in, one or more financial markets;</p> <p>(b) risks to the stability, orderly operation or integrity of one or more financial markets in the UK, including threats to the integrity of widely used financial benchmarks used in a significant part of the UK financial system;</p> <p>(c) risks to the operation of authorised persons in a significant part of the UK financial system;</p> <p>(d) risks arising from unsustainable levels of credit growth, debt or leverage in the UK.</p> <p>It is immaterial if such risks arise in the United Kingdom or elsewhere.</p>
<b>Notes</b>	The RIA should identify the underlying evidence of systemic financial risk.

## F: Civil emergencies

<b>Full Text</b>	Regulatory provisions specifically relating to civil emergencies
<b>Scope</b>	All <b>statutory provisions</b> (i.e. both legislation and regulator activities)
<b>Definitions</b>	<b>Civil emergencies:</b> see section 1 of the <a href="#">Civil Contingencies Act 2004</a>
<b>Notes</b>	

## G: Fines and penalties

<b>Full text</b>	<b>Regulatory provisions</b> concerning fines and penalties and redress and restitution.
<b>Scope</b>	All <b>statutory provisions</b> (i.e. both legislation and regulator activities).
<b>Definitions</b>	Fines and penalties: fines and other penalties imposed on a regulated entity for non-compliance with a regulatory obligation.
<b>Notes</b>	<p>Fines and penalties associated with a specific enforcement decision are already classed as a non-qualifying regulatory provision under the case work exclusion (J1). This therefore covers fines and penalties at the policy level, which will usually be specified in legislation.</p> <p>There are a wide range of penalties that are potentially covered by this exclusion – for example withdrawal of obtained rights, permits or consents, disqualifications from the ability to hold a particular office (e.g. directorships).</p>

## H: Misuse of Drugs Act

<b>Full text</b>	Regulatory provisions that implement changes to the classification and scheduling of drugs under the Misuse of Drugs Act 1971, where these follow the recommendations of the relevant independent advisory body.
<b>Scope</b>	All statutory provisions (i.e. both legislation and regulator activities)
<b>Definitions</b>	Relevant independent advisory body means the Advisory Committee on the Misuse of Drugs.
<b>Notes</b>	

## I: Safety of tenants, residents and occupants in buildings

<b>Full text</b>	Regulatory provisions that have been certified by departments or regulators as relating to the safety of tenants, residents and occupants in buildings that stem from, or relate to, the Government's response to the Grenfell tragedy, reviews, inquiries or working groups.
<b>Scope</b>	<p><b>Examples of matters in scope, include:</b></p> <ul style="list-style-type: none"> <li>• Implementation of recommendations from the Independent Review of Building Regulations and Fire Safety.</li> <li>• The Government's response to the Grenfell inquiry, any other Grenfell-related or connected review or working group including amendments to Approved Documents (covering Building Standards and Fire Safety) and any restrictions on the use of construction products (e.g. combustible cladding).</li> </ul>
<b>Definitions</b>	<p><b>The Independent Review of Building Regulations and Fire Safety</b> was chaired by Dame Judith Hackitt and published an interim report in December 2017 and its final report in May 2018.</p> <p>The <b>Approved Documents</b> sit beneath the Building Regulations and offer one route to compliance with them (though not the only route). The relevant Approved Document for fire safety in residential buildings is Approved Document B.</p>
<b>Notes</b>	

## J1: Regulator case work

<b>Full text</b>	Regulator casework including specific investigation and enforcement activity, individual licence decisions, and individual advice.
<b>Scope</b>	Regulator activities only
<b>Definitions</b>	
<b>Notes</b>	Exclusion of individual casework is consistent with the maintenance of operational independence.

## J2: Educational, communications activities etc. by regulators

<b>Full Text</b>	Education, communications activities, and promotional campaigns by regulators, including media campaigns, posters, factsheets, bulletins, letters, websites, and information / advice helplines.
<b>Scope</b>	Regulator activities only
<b>Definitions</b>	<b>Guidance:</b> information provided to businesses on how to comply with their regulatory obligations.
<b>Other notes</b>	Although the activities covered by this exclusion may be carried out by regulators, they generally do not in themselves have a regulatory or deregulatory effect, or specifically relate to business compliance with regulation.

## J3: Policy development by regulators

<b>Full Text</b>	Policy development by regulators, including formal and informal consultations, policy reviews, and ad hoc information requests.
<b>Scope</b>	Regulator activities only
<b>Definitions</b>	
<b>Other notes</b>	Although consultation and related activities can result in burdens on businesses, policy development activities do not in themselves impose new regulatory obligations. Including them in the BIT would create a disincentive for regulators around their engagement with regulated businesses.

## J4: Changes to the organisation and management of the regulator

<b>Full Text</b>	Changes to the organisation and management of the regulator, except for those resulting from legislative changes or another policy change that is a qualifying regulatory provision.
<b>Scope</b>	Regulator activities only
<b>Definitions</b>	
<b>Notes</b>	<p>Major changes to regulatory organisation (e.g. merger of regulatory bodies, addition or transfer of functions, or addition of new duties) would normally be reflected in changes in legislation and so any impacts would already be captured for the BIT.</p> <p>There will be many other potential changes to regulator organisation and management that are not connected to changes in regulatory policy e.g. changes in staffing, location of offices etc. In theory, these could be</p>

	<p>read as “related to the securing of compliance with, or enforcement of, ...” (<a href="#">SBEE Act 2015 section 22(3)</a>). However, as these do not actually change the regulatory obligations on business, it would not be appropriate or proportionate to include them in the BIT.</p>
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## Annex 2: Other relevant sources of guidance

Competition Guidance	<a href="#">CMA's Competition Impact assessment: guidelines for policymakers</a>
Consultation	<a href="#">Cabinet Office's Consultation Principles</a>
Green Book	<a href="#">The Green Book: appraisal and evaluation in central Government</a>
Economic Growth Duty	<a href="#">Growth Duty: Statutory Guidance</a>
EU transposition principles	<a href="#">Guiding Principles for EU Legislation</a>
EU transposition guidance	<a href="#">Government's Transposition Guidance: How to implement European Directives effectively</a>
Guidance for Regulators on implementing the Business Impact Target (BIT)	<a href="#">Statutory Guidance</a>
Magenta Book	<a href="#">Guidance for Evaluation</a>
Managing Public Money	<a href="#">Managing Public Money</a>
Open Policy Making	Cabinet Office's <a href="#">Open Policy Making toolkit</a>
Policy profession	<a href="#">Signposting</a> to resources for the policy profession in government
Post-implementation reviews	Producing Post-implementation Reviews: <a href="#">Principles of Good Practice</a>
Primary Authority scheme	<a href="#">A statutory partnership between a business and a local authority that provides assured advice</a>
Primary Legislation	<a href="#">Guide to Making Legislation</a>
Principles of good regulation	<a href="#">Principles of Good Regulation</a>
Public authority - definition	<a href="#">Departmental Guidance Statement on Control by a Public Authority</a>
Regulatory Policy Committee	<a href="#">Reports and Guidance</a>
Regulators Code	<a href="#">Regulators' Code</a>
Rural proofing	<a href="#">Practical guidance to assess impacts of policies on rural areas</a>

Scottish Government

[Business Regulation](#)

Secondary Legislation Scrutiny Committee

[Guidance to departments on submitting SIs](#)

Statutory Reviews

[Statutory review guidance for departments:  
Small Business, Enterprise and Employment  
Act 2015](#)

Welsh Government

[Business and Economy](#)

## Annex 3: International Trade and Investment key considerations

This annex provides the key considerations policy makers should bear in mind when answering the new question (see below) on trade and investment in the Impact Assessment template.

### **Is this measure likely to impact on international trade and investment? (Yes/No)**

The purpose of this question is to ensure that policy makers are giving due consideration to the impacts that regulatory policy could have on foreign trade and investment into, and out of, the UK.

Relevant changes to regulation that could affect trade and investment include changes that affect:

- the ability of UK businesses to trade or provide services overseas, or
- the ability of overseas businesses to export to the UK or provide services in the UK.
- whether Foreign investors / companies operating in the UK are impacted differently to UK-owned companies / investors.
- Whether the assets of foreign investors / companies are entirely removed from them or otherwise substantially taken out of their control.

The ability of businesses to trade within the UK would be traditionally captured within impact assessments. However, the ability of overseas businesses to export to the UK is a new aspect that policy makers will need to consider.

There is no set format for how policy makers should answer this question. However, policy makers should consider the four points below.

For goods regulations, this should include an assessment of whether the measure could create a technical barrier to trade, identifying whether:

- the measure is a 'technical regulation', i.e. setting out product characteristics or production method;
- there may be a 'significant' trade impact;
- a less trade restrictive measure would achieve the same objective;
- the measure is not based on an 'international standard' when one exists or if no 'international standard' exists;
- it contains labelling requirements.

For services regulations, this should include an assessment of whether the measure could:

- 'significantly affect' international trade in services;



- grant monopoly rights;
- authorise or establish a small number of service suppliers and substantially prevent competition among those suppliers;
- alter the definition of a natural person who has the right of permanent residence in the UK. The UK is obliged to accord substantially the same treatment to its permanent residents as it accords to its nationals.

Measures relating to the balance of payments and national security measures may also require notification.

For both goods and services should include an assessment of whether the measure introduces different requirements for domestic and foreign businesses or different requirements for businesses from different foreign countries and demonstrate how the measure is consistent with the UK's international obligations for equal treatment.

When the analysis is likely to include a Yes answer to any of the above questions, it is important for departments to notify contacts in DIT so that they can provide further advice to complete the assessment if necessary.

## Annex 4: Checklist

This list is intended to indicate other cross-Whitehall policy issues and requirements that may be relevant to the development, assessment or implementation of your policy and regulatory provisions. These are separate from the requirements of better regulation and the relevant guidance pages should be checked.

### Issues to be considered in appraisal and evaluation

- Legislation – how the proposal aligns with the requirements of the Human Rights Act, Data Protection Act or Freedom of Information Act;
- [Impacts on competition in new or existing markets](#) – how proposals affect markets where products or services are supplied by private or public organisations.
- Trade impacts – how proposals are likely to impact on trade or investment, and how proposals are consistent with the UK's international trade obligations.
- [Environmental impacts](#);
- [Rural issues](#), including specific rural circumstances;
- Equality – [public sector equality duty](#);
- [Family test](#);
- [Health](#);
- Health and safety;
- Consumer focus;
- Regional perspectives;
- Design quality;
- [Sustainable development](#).

### Consent that may be required from departments

- Impact on the Justice System – Please refer to the [Criminal Offences Gateway Guidance](#) or [Justice impact test guidance](#) for any potential impacts on the Ministry of Justice, including prisons, courts, tribunals, Legal Aid, IT changes, criminal offences or Civil Procedure Rules. The Ministry of Justice also has [guidance on making new criminal offences](#).
- [Powers to impose certain civil sanctions](#) – see the Written Ministerial Statement [here](#).
- Local authorities - if the measure impacts any local authority role then the [new burdens doctrine](#) will apply.
- Statutory rights for officials to enter premises – [Powers of entry gateway](#).

- [Technical standards and regulations](#) notification.

#### Other issues that may need to be considered at policy development

- Data protection and expectation of privacy – [Privacy impact assessments code of practice](#).
- Enforcement by local authorities should mean considering if the measure should be brought within scope of [Primary Authority](#). Please refer to the [Primary Authority handbook](#) for more details.
- Departments delivering services in Wales should comply with the [Welsh Language Act 1993](#) in accordance with their departmental Welsh Language Scheme.

## Annex 5: Acronyms

BIT:	Business impact target
BRE:	Better Regulation Executive
BRU:	Better Regulation Unit (within Government department)
CCD:	Common commencement date
EAC:	European Affairs Committee
EDS:	Economic and Domestic Affairs Secretariat
EANDCB:	Equivalent annual net direct cost to business
EU:	European Union
IRN:	Initial review notice (issued by the RPC)
IVB:	Independent verification body
NPSV:	Net present social value
PIR	Post-implementation review
PV:	Present value
RIA:	Regulatory impact assessment
RPC:	Regulatory Policy Committee
DAU:	Domestic Affairs & the Union Cabinet Committee
SaMBA:	Small and micro-business assessment
SBEE:	Small Business, Enterprise and Employment Act 2015

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