



## **Impact Assessments: Room for Improvement?**

This paper sets out some points based on the RPC's experience of independently scrutinising Government's regulatory policies. It is intended to stimulate discussion and comment internally and externally to Government rather than seeking to make concrete proposals for change. The paper reflects the Committee's views and is not necessarily a statement of Government policy.

**August 2020**

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# 1 Executive Summary

1. This is the first in a series of short papers being developed by the Regulatory Policy Committee (RPC) to stimulate discussion and comment. This paper reflects our Committee's experience of independently scrutinising the evidence underpinning Government regulatory proposals and sets out some of our Committee's thinking on how things might be improved – **it does not represent Government views on these issues.**
2. Regulatory Impact Assessments (RIAs – often shortened to IAs) are documents used within government to support legislative change, the regulation of markets, policy development by economic regulators<sup>1</sup>, and to inform parliamentary decision making. While the RPC's *formal* interest in IAs is limited to assessing whether the impacts on businesses (and small businesses in particular) are 'fit for purpose', we have a wider interest in ensuring high-quality IAs and encouraging departments to improve the quality of the evidence and analysis underpinning their policy measures. We endeavour to improve IAs in as many areas as we can through producing feedback, providing training and guidance, publishing methodology notes and case histories, and stimulating discussion – including through papers such as this.
3. Over the last ten years, the RPC has reviewed over 2,600<sup>2</sup> IAs. This gives us extensive insight into the creation, characteristics, quality and uses of IAs. In particular, we are aware of various problem areas and potential modifications that could improve the analysis, evidence and communication within IAs. These include:
  - *A tendency for IAs to be limited in scope* (for example, suboptimal Small and Micro Business Assessments (SAMBAAs), lack of consideration of wider impacts) *when considering regulatory impacts and to lack proportionate evidence for the proposed policy.* We discuss methodology and sources of evidence such as big data, the use of thematic reviews, more detailed guidance and methods on analysing costs and benefits, departmental and RPC-BRE (Better Regulation Executive) training, and a wider range of impacts being considered in an RPC rating.
  - *IAs that lack detailed monitoring and evaluative plans for policy implementation and Post-Implementation Reviews (PIRs).* We discuss further promotion of the well-established ROAMEF cycle (Rationale, Objectives, Appraisal, Monitoring, Evaluation and Feedback)<sup>3</sup> and learning from other practices such as the EU format of roadmaps, Inception IAs and full IAs.
  - *IAs delivered in too short a timescale.* We discuss whether it is possible to raise awareness of different evidence bases created by government bodies and promoting the accumulation of internal and cross-government evidence bases.

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/685903/The\\_Green\\_Book.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf) - page 21

<sup>2</sup><https://www.gov.uk/government/publications/securing-the-evidence-base-for-regulation-rpc-scrutiny-in-the-2010-to-2015-parliament>, <https://www.gov.uk/government/publications/regulatory-overview-rpc-scrutiny-during-the-2015-17-parliament>

<sup>3</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/685903/The\\_Green\\_Book.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf) - page 9

## 2 Regulatory Appraisal

### 2.1 Production of Regulatory Impact Assessments

4. The regulatory policymaking process starts with a policy proposal to solve a market failure, a shortcoming in an existing policy, or unmet strategic or distributional objectives. Policy options should consider interventions to address the identified issue, and if it is concluded that new legislation is required for the policy change, it will be expected that the impacts of the legislation will be analysed and assessed. In most circumstances, a full Regulatory Impact Assessment (IA) is required<sup>4</sup>.
5. The BRE is responsible for embedding smarter, more cost-efficient, better regulation across government<sup>5</sup>. The BRE IA template outlines what is needed fully to assess a policy proposal and is supported by the guidance in the Green Book<sup>6</sup> and the Better Regulation Framework (BRF)<sup>7</sup>.
6. The documents supporting a regulatory proposal should clearly set out:
  - the problem under consideration;
  - the rationale for intervention, including a ‘counterfactual’ scenario representing the consequences of no change in policy;
  - SMART (Specific, Measurable<sup>8</sup>, Achievable, Realistic, Time-Limited) policy and implementation objectives to enable proper analysis and evaluation of the proposal;
  - Its options generation – initially a long list of options should be considered in respect to scope, solution, delivery, implementation and funding. These should be appraised against various critical success factors to produce a short-list of options, including a preferred option, a do-nothing option and other credible options;
  - proportionate monetised and non-monetised analysis of costs, benefits and risks considered together – the costs, benefits and risks of all the options should be identified quantitatively and qualitatively as far as is possible and proportionate. If necessary, these estimates should be adjusted proportionately for inflation, time discounting, risk and optimism biases via sensitivity analysis to produce figures such as the Equivalent Annual Net Direct Cost to Businesses (EANDCB), Business Impact Target (BIT)<sup>9</sup>, Net Present Social Value (NPSV) and Net Present Business Value (NPBV). Costs, benefits and risks should also be split into ones which directly impact business and ones which indirectly impact affected groups and individuals within society;

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<sup>4</sup>With the exceptions of non-regulatory provisions, regulatory provisions with an annual net business impact below  $\pm$ £5 million (non-qualifying regulatory provisions) and non-qualifying regulatory provisions above *de minimis* with administrative exclusions around safety in buildings

<sup>5</sup>See Annex 1 for more information on the BRE

<sup>6</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/685903/The\\_Green\\_Book.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf) - pages 13-37

<sup>7</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/735587/better-regulation-framework-guidance-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/735587/better-regulation-framework-guidance-2018.pdf)

<sup>8</sup>This can often be expressed as ‘verifiable’ rather than exact measurements

<sup>9</sup>See Annex 2 for more information on the EANDCB and BIT.

- all uncertainty, risks, sensitivities and assumptions and how each of these impact the policy options and analysis;
- any disproportionate adverse direct or indirect impacts on small and medium businesses (SMBs) that should be considered, ideally in quantified terms, with appropriate exemptions or mitigations where possible;
- proportionate quantification of the wider impacts of the policy on groups and individuals within society (for example, impacts on particularly vulnerable groups and on the environment);
- where relevant and significant, the assessment of the potential implications of the measure for competition, innovation and trade/trade negotiations;
- where relevant and significant, distributional impacts of the policy on individuals and society;
- a full description of the preferred option implementation plan<sup>10</sup>; and
- an indication of how implementation and impacts will be monitored and evaluated to assess its effectiveness together with any areas for improvement, or unintended consequences of the policy.

## 2.2 Different types of Regulatory Impact Assessment

7. UK regulatory analysis is formulated by three core stages: pre-consultation stage IAs; final stage IAs; and PIRs.
8. Pre-consultation stage IAs are the first form of IA in the policymaking process. They tend to be produced during the policy formation phase to assess and compare a range of regulatory and non-regulatory options using as much relevant information as possible. An IA at this stage should be used to test the list of options and to identify and fill in knowledge gaps. They should usually be published alongside the policy consultation and are generally based on analysis performed internally by departments, with requests for further information and evidence from external stakeholders.
9. Final stage IAs are the second form of IA in the policymaking process. These build on the evidence gathered from consultation to produce more detailed quantitative and qualitative analysis of the costs, benefits and risks of the shortlisted options and identify a preferred option.
10. PIRs are conducted after the policy has been implemented – typically five years later – and can form the basis for subsequent regulation. The objectives of a PIR are to assess:
  - whether the policy is achieving or has achieved its anticipated objectives with the intended impacts;
  - whether any significant unanticipated impacts have been identified; and
  - whether the relevant regulation should be renewed, amended, repealed (or allowed to expire) or replaced.

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<sup>10</sup>This is often more relevant for secondary measures and primaries that will not have secondaries

11. Under the BRF, departments are only *required* to formally submit final stage IAs and PIRs to the RPC<sup>11</sup> for scrutiny and EANDCB confirmation and validation if their measure is above the *de minimis* threshold<sup>12</sup>. However, departments are also *encouraged* to voluntarily submit pre-consultation stage IAs as well as PIRs and final stage IAs for measures that are below *de minimis*.

	IA/PIR	RPC scrutiny
<b>Pre-Consultation stage IA</b>	Proportionate analysis	Optional
<b>Final stage IA</b>		
<i>above ±£5 million</i>	Full IA	Required
<i>below ±£5 million</i>	Proportionate analysis	Optional*
<b>Post Implementation Review</b>		
<i>above ±£5 million</i>	Full PIR	Required*
<i>below ±£5 million</i>	Proportionate analysis	Optional*
Source: <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872342/better-regulation-guidance.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872342/better-regulation-guidance.pdf</a>		

### 2.3 Scrutiny of Regulatory Impact Assessments

12. During the 2010-15 Parliament, RPC scrutiny improved the accuracy of departments' estimated EANDCBs by over £585 million<sup>13</sup>. We have continued this scrutiny in recent years, and in one instance our scrutiny increased the accuracy of the EANDCB calculation by over £1 billion<sup>14</sup>.
13. From 2015 to 2019, the RPC has also carried out its role as Independent Verification Body (IVB) to validate various BIT scores and provide government with an important indicator of the burden on businesses of regulations, which is then compared against the target set by Parliament<sup>15</sup>.
14. The RPC holds government departments and regulators to account more generally by scrutinising the robustness of all the evidence and analysis presented in IAs. We aim to promote more reliable and relevant analysis at all stages of policymaking, where it is proportionate and possible to present balanced, objective and credible evidence. We also publish extensive best-practice case studies, methodology papers and guidance<sup>16</sup> to help departments undertake IAs and improve IA quality, as well as a map to all relevant forms of guidance<sup>17</sup>.

<sup>11</sup>See Annex 2 for more information on the RPC and Annex 3 for the more benefits of independent RPC scrutiny

<sup>12</sup>The BRF states that "a commitment in the regulatory impact assessment (RIA), explanatory memorandum, or other ministerial statement may mean a PIR is also required - <http://www.legislation.gov.uk/ukpga/2015/26/part/2/crossheading/secondary-legislation-duty-to-review>.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/674755/small-business-act-s31-statutory-review-requirements.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674755/small-business-act-s31-statutory-review-requirements.pdf)

<sup>13</sup><https://www.gov.uk/government/publications/securing-the-evidence-base-for-regulation-rpc-scrutiny-in-the-2010-to-2015-parliament>

<sup>14</sup><https://www.gov.uk/government/publications/breathing-space-rpc-opinion>

<sup>15</sup><https://www.gov.uk/government/publications/regulatory-overview-rpc-scrutiny-during-the-2015-17-parliament>

<sup>16</sup><https://www.gov.uk/government/collections/rpc-guidance-for-departments-and-regulators>

<sup>17</sup><https://www.gov.uk/government/publications/rpc-summary-diagram-of-existing-appraisal-and-framework-guidance>

### 3 Quality of Regulatory Impact Assessments

15. The RPC has identified various common areas for improvement in the analysis and evidence presented in Regulatory Impact Assessments (IAs). This section discusses the most frequent issues seen during review and considers possible solutions to overcome the issues. **The discussion below does not represent the Government's views on these issues nor indicates any future policies or RPC guidelines or practises.** Some of the below limitations may be unavoidable in certain situations; in this case, we recommend that departments follow the guidance in the Green Book and the BRF to produce proportionate analysis in these areas.

#### 3.1 Lack of wider analysis

16. One potential area of concern is the tendency for IAs to be limited in scope when considering regulatory impacts and lack proportionate evidence for the proposed policy. It is therefore unlikely to satisfy wider stakeholder or ministerial interests in the policy proposal. This can arise if an IA:
- only provides the most basic and limited analysis around the EANDCB, BIT and Small and Micro Business Assessment (SaMBA), when more thorough analysis would be beneficial to understand the full impact of the policy; and/or
  - does not adequately consider the broader effects of the policy, such as impacts on competition, trade, innovation, the environment, vulnerable groups and wider societal interests to name just a few.
17. The SaMBA is often the least analysed area of the three primary RPC interests, due to it often being easier to argue that an exemption from a policy is inappropriate than it is to design a policy that does not impose inefficient or inequitable burdens in the first place<sup>18</sup>. This constraint may limit the design process for new regulations. Figure 1 on the next page shows an approach to developing a SaMBA that enables potential mitigations and exemptions to be fully considered.
18. The Green Book encourages the consideration of the broader effects of a policy<sup>19</sup> in IA analysis. This could reduce the unintended costs from regulations, as wider impact analysis is more likely to identify and consider the full social effects of a proposal. This should also simultaneously increase the chances of measures delivering their anticipated impacts<sup>20</sup> as well as Government achieving its desirable overarching commitments, such as the 2050 net zero target<sup>21</sup>.

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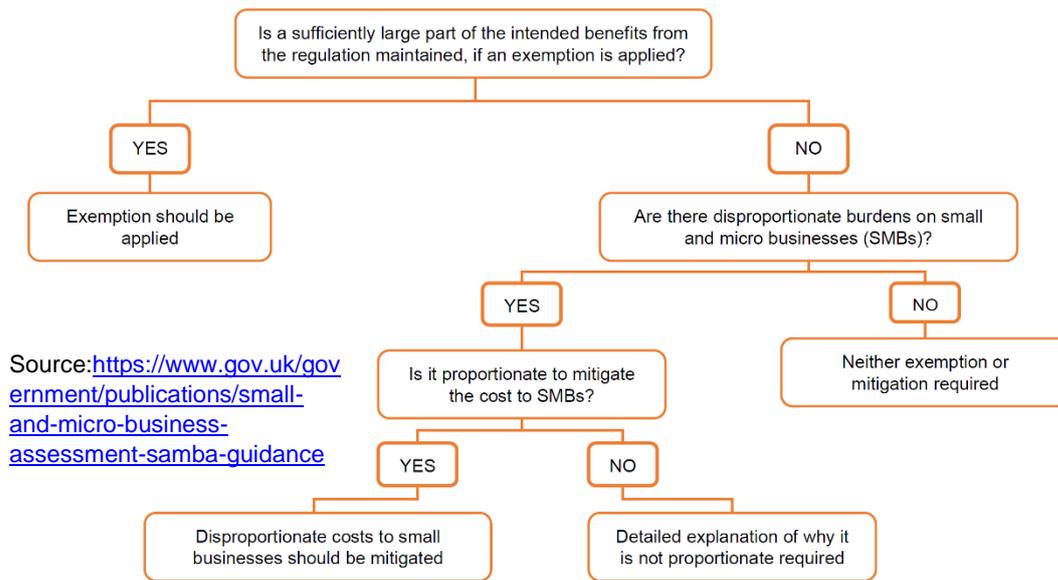
<sup>18</sup>Fletcher's article on "*Burden or benefit? Regulation as a dynamic influence on small business performance*" supports this concern over SMBs suffering disproportionately from burdens of regulation due to resource constraints - <https://journals.sagepub.com/doi/full/10.1177/0266242613493454>

<sup>19</sup>The Green Book encourages departments to analyse the principle problem for society when looking at wider impacts

<sup>20</sup><https://www.gov.uk/government/publications/regulatory-overview-rpc-scrutiny-during-the-2015-17-parliament>

<sup>21</sup><https://www.gov.uk/government/news/uk-becomes-first-major-economy-to-pass-net-zero-emissions-law>

**Figure 1: Approach to mitigation for SMBs**



### 3.1.1 Lack of complete, relevant, and credible evidence

19. One of the reasons why IAs lack wider analysis could be due to a lack of complete, relevant, and credible evidence, which itself could lead to a lack of complete, relevant, and credible analysis. The underlying causes of a lack of evidence often reflects incomplete information or availability of data, which could be caused by:
- departments not collecting relevant information because they might not recognise its usefulness or might overestimate the difficulty of collecting it;
  - departments not exploiting the full potential of collected data, either by possibly overstating the difficulty of analysis or stopping before all relevant information was extracted;
  - departments disproportionately favouring a preferred option which may have been predetermined, perhaps due to Ministers having specific manifesto commitments to implement or specifying preferred options. Data on other options may thus not be collected, which could limit the usefulness and transparency of comparative analysis between the full set of options; and/or
  - stakeholders not providing the Government with useful information due to lack of response to consultation, the department failing to ask the right questions during consultation, or concerns around confidentiality and security of proprietary data.
20. When regulations are developed without complete, relevant, and credible evidence, any analysis based on this will exhibit the same weaknesses and hence ministers and parliament may not be able to guarantee that the estimated costs, benefits and risks of policies are based on adequate analysis. This would limit the ability of IAs to guide

decision-making, provide transparency, improve accountability and build trust with stakeholders, particularly with businesses and the public<sup>22</sup>.

21. Where it is impossible to collect a complete evidence base, proportionate effort and time should be spent on evidence gathering in line with the Green Book and BRF guidance. Any weaknesses of the data or analysis should be acknowledged when discussing the uncertainty and risks, to ensure that the IA accurately reflects the quality of the evidence supporting the preferred option. Time should also be used to ensure departments have the appropriate authority to retain and hold data in order for it to be reused or repurposed in assessing future measures, which will save time in the long-run.
22. One possible solution to address a lack of complete, relevant, and credible evidence for wider impact analysis could be better utilisation of methods and sources such as big data. The three properties that make big data different to previous datasets are its vast volume, variety and velocity<sup>23</sup>. Big data is already used in the private sector to analyse and facilitate innovation and has improved decision-making in the education, banking, finance and healthcare sectors<sup>24</sup>. It is also being used within government, for example, by DWP in helping provide more targeted advice and personal opportunities to job seekers, and by the Land Registry in informing its UK House Price Index and Flood Risk Indicator service<sup>25</sup>. This wider array of data – and associated ‘unstructured’ data analysis tools, which should be used on data which does not follow a predetermined model<sup>26</sup> – could be applied to regulatory appraisal to increase the likelihood of departments finding complete, relevant, and credible evidence, lower the chances of omitting data, and gain maximum insight from what data is available when assembling and analysing evidence for an IA.
23. However, more data and use of big data analytics does not necessarily mean better analysis. The emergence of big data has also coincided with the growth of faster analysis tools, such as RegTech<sup>27</sup> (regulatory technology) and data analytics. These instruments could promote more effective and consistent optimisation of reliable data relating to important policy areas and other government processes, resulting in more meaningful and insightful IA analysis<sup>28</sup>. However, as effective as this may be, these analysis tools are limited by concerns around privacy, confidentiality and their ability to distinguish whether a pattern is derived from a definite correlation between two or more variables or is just a coincidence due to improper analysis of the vast dataset<sup>29</sup>.

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<sup>22</sup>Wayne B. Gray’s article on “The Cost of Regulation” put the reduction in productivity growth in the US between 1958 and 1978 down to regulation, whilst a Guardian article states how the plastic bag charge regulation has decreased usage by 85%. This shows that different circumstances need different solutions, such as regulating or deregulating, which cannot be found without robust evidence.

<sup>23</sup><https://pdfs.semanticscholar.org/e527/d3c3d02f3493097be0d0f190bdc322c7519b.pdf> - page 1

<sup>24</sup><https://intellipaat.com/blog/7-big-data-examples-application-of-big-data-in-real-life/>

<sup>25</sup><https://www.gov.uk/government/speeches/big-data-in-government-the-challenges-and-opportunities>

<sup>26</sup><https://expertsystem.com/unstructured-data-analytics-tools/>

<sup>27</sup><https://www.fca.org.uk/publication/feedback/fs-16-04.pdf>

<sup>28</sup>[http://www.ece.ubc.ca/~minchen/min\\_paper/BigDataSurvey2014.pdf](http://www.ece.ubc.ca/~minchen/min_paper/BigDataSurvey2014.pdf)

<sup>29</sup><http://cast.b-ap.net/arc619f11/wp-content/uploads/sites/32/2015/12/Six-Provocations-for-Big-Data.pdf> - page 8

24. Another possible approach could be better use of thematic reviews. These are qualitative analysis tools which examine themes or patterns within data and can be used to identify factors linked to the data<sup>30</sup>. Like big data, thematic reviews are already being used in the public<sup>31</sup> and private sector<sup>32</sup>. In an IA context, this assessment method could theoretically give a better understanding of a policy area and could even be used to analyse the relevance and efficiency of different policy options; but this would be difficult to quantify.

### 3.1.2 Lack of thorough estimation methods

25. Another reason why IAs lack wider analysis is due to a lack of thorough estimation methods. The principal method for assessing policies is cost benefit analysis (CBA). The Green Book sets out the various quantitative tools that constitute a thorough CBA<sup>33</sup>, such as:

- *sensitivity analysis* – this method accounts for changes in the projected outcomes if certain activities occur or parameters change, and should be used to test the importance of assumptions under uncertainty and if varying these would make a difference to the ranking of policy options;
- *cost-effectiveness analysis (CEA)* – this is a selective process to establish what attains a specific target most efficiently and is targeted at picking the best option out of a variety of proposals with similar outcomes;
- *willingness to pay or accept (WTP/WTA) calculations* – these are the maximum one would pay to receive or avoid a desirable outcome, and the minimum one would accept as compensation to accept a loss;
- *econometric models* – these include various models and statistical tests that can distinguish and prove whether a link is deterministic or merely a coincidence, and can also give a quantified assessment of the importance of specific factors and forecast future policy impacts; and
- *loss and gain analysis* – this mathematical technique estimates uncontrolled potential loss or gain.

26. Each tool answers a specific question around the impact of the regulatory proposal and using all of these in tandem can result in a thorough and well-informed CBA. However, there are times where detailed estimation methods do not and cannot be undertaken due to a lack of time, resources or evidence. This does not falsify the policy or invalidate its proposal; rather, it calls for a proportionate response depending on the reason for the difficulty in undertaking the estimation in line with the Green Book and BRF guidance. It is also important to consider that we should not force

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<sup>30</sup><http://westeastinstitute.com/journals/wp-content/uploads/2013/02/4-Mohammed-Ibrahim-Alhojailan-Full-Paper-Thematic-Analysis-A-Critical-Review-Of-Its-Process-And-Evaluation.pdf>

<sup>31</sup>Bodies such as the Financial Conduct Authority (FCA) carry out thematic reviews to ensure that firms are working effectively and efficiently. This data is collected through consumer and market research and site visits or mandatory and voluntary data submissions and questionnaire responses from relevant regulated firms - <https://www.fca.org.uk/about/supervision/thematic-reviews>

<sup>32</sup>Private firms often use systematic review instruments to assess the emerging risks, estimated compliance and predicted behaviour across multiple firms, sectors, and markets as a result of a certain action or situation.

<sup>33</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/685903/The\\_Green\\_Book.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf) - page

quantification when the acknowledgement of the legitimacy of qualitative information does the job sufficiently.

27. One possible solution could be more detailed guidance about different quantitative methods. This would give IA authors another resource to draw on to present analysis and evidence more effectively, similar to the Green Book and BRF. Developing this guidance could increase the use of mathematical models or other numerical techniques in IAs as well as the quality of them.
28. Another possible solution could be enhanced departmental internal training, and BRE-RPC provided external training. Thorough training sessions could give a better understanding of different CBA techniques and make departments more likely to use them in their IAs.

### **3.2 Lack of evaluation**

29. A second area identified as a potential concern around IAs is a lack of evaluation, which itself is often a result of a lack of planning for monitoring and evaluation during policy development. The Green Book places particular importance on evaluation, as well as appraisal, within the ROAMEF cycle<sup>34</sup>.
30. The ROAMEF cycle (Figure 2 on the next page) sets out a continuous positive feedback loop, in which the appraisal of previous regulation is subject to evaluation following implementation, which is then used as a contributing element of the evidence base for future regulation in similar or overlapping policy areas. This cycle can capture not only the intended outcomes of regulatory policy, but any unintended effects or wider impacts which occur as a result.
31. Monitoring and evaluation plans, alongside SMART objectives, give a framework for the policy to be evaluated, and a lack of these can make it harder to assess how effective a certain regulation has been and how accurate its accompanying IA has been. The omission of plans for monitoring and evaluation also have an effect on the subsequent PIR, often legally required to be produced three to five years after the legislation has been implemented. Without a well-informed plan, departments may not have important details about the policy available, which could negatively impact the quality of analysis performed in the PIR.
32. One possible solution could be for legislative policy proposals to identify and consider all existing regulation related to the policy. This would give an equivalent outcome to the European Commission's 'Evaluate First' principle<sup>35</sup>, which is a commitment to evaluate all regulation before proposing a new one when assessing a market failure area; 75 per cent of EU IAs are based on an initial evaluation of relevant regulation

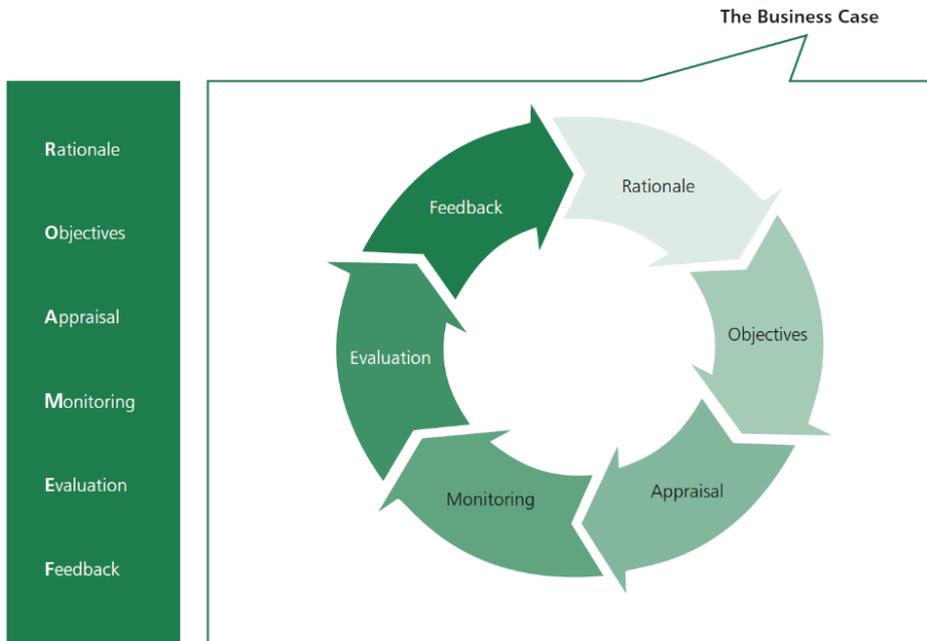
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<sup>34</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/685903/The\\_Green\\_Book.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf) page 9

<sup>35</sup><https://www.oecd-ilibrary.org/sites/8f45245f-en/index.html?itemId=/content/component/8f45245f-en>

already in place<sup>36</sup>. A similar approach in the UK could lead to more evaluation being undertaken at an earlier stage, and could promote a stronger cultural idea of evaluating, assessing, monitoring and reviewing in that order.

**Figure 2: The ROAMEF cycle**



33. There is also scope for the UK to learn from international practices and explore the EU process, which incorporates the use of developing policy roadmaps, inception IAs and full IAs. Roadmaps are very similar to a pre-consultation IA but have a shorter format:
  - what the problem is;
  - the policy objectives;
  - why EU action is needed;
  - an outline of policy options; and
  - main features of the consultation strategy.
  
34. All EU policies have a roadmap produced for them, and this is only replaced by an Inception IA – the equivalent to a UK pre-consultation stage IA – if a policy is likely to have a significant impact on the economy, on the environment, or on society. Their shorter format means that EU roadmaps are more often performed at an earlier stage than UK pre-consultation stage IAs, which could allow departments to collect input and feedback from stakeholders, including the public, and other departments at an earlier stage where there is more time to change or adapt the policy to take account of stakeholder concerns and unanticipated effects.

<sup>36</sup>[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_2117](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_2117)

### 3.3 Short timescales

35. A third area of concern is the short timescales in which IAs are sometimes produced. The political cycle is unpredictable and dependent on external factors, such as public opinion or relationships with other nations. This can often lead to legislation needing to be developed and implemented quickly, with the timescale for developing the IA being shorter than one might ideally want.
36. In order to deal with such time constraints, government departments often attempt to trade-off the robustness and relevance of existing evidence with the time and effort required to collate further data to support the policy<sup>37</sup>. Measuring and performing this trade-off inefficiently could lead to a lack of information when more evidence is needed. Conversely, too much time committed to gathering new data when more should be placed on utilising the already-sufficient existing data or information can be equally inefficient. The resulting IAs from either scenario may not sufficiently inform policymaking or accurately estimate the likely impacts of the regulation in question.
37. One possible solution could be to raise awareness and encourage use of different existing evidence bases from government bodies, such as from the Office for National Statistics (ONS) or the National Audit Office (NAO). This type of information could help by informing and comparing decisions with what has happened in the past and allowing previous good practice to be replicated and bad practice to be avoided.
38. Another possible solution could be to encourage cross-departmental evidence bases. The BRE already encourages departments to utilise any existing analysis they have previously produced, with some departments showing a desire to have a standard evidence base in place and beginning to accumulate such data. Further incorporation of this concept across government could open up an opportunity for cross-departmental training on how to build similar systems for their own policy areas or shared databases. This would also encourage cross-fertilising of ideas around internal evidence bases and could even plant the seeds for an open government-wide evidence base or depository, which could be very time-efficient.

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<sup>37</sup>Copestake, JG 2014, 'Credible impact evaluation in complex contexts: Confirmatory and exploratory approaches', *Evaluation*, vol. 20, no. 4 - pages 412-427, [https://doi.org/10.1177/1356389014550559https://researchportal.bath.ac.uk/files/93354485/Credible\\_impact\\_evaluation\\_in\\_complex\\_contexts\\_FINAL.pdf](https://doi.org/10.1177/1356389014550559https://researchportal.bath.ac.uk/files/93354485/Credible_impact_evaluation_in_complex_contexts_FINAL.pdf) - pages 6-7

## 4 Enhancing RPC Scrutiny of Regulatory Impact Assessments

39. The previous section examined several potential areas for improvement in Regulatory Impact Assessments (IAs) generally. In this section, we build on the RPC's experience over the last ten years and set out how our Committee is already discussing how to enhance its support for departments and regulators in their development of regulation. **Again, these are the views and intentions of the independent RPC and do not necessarily represent the Government's position.**

### 4.1 A collaborative approach

40. The RPC seeks to establish strong collaborative relationships with departments to allow it to support the best possible regulatory policymaking. RPC Secretariat support is offered to departments and regulators throughout the policy development process and departments are encouraged to engage with us at the earliest stage possible.
41. This support can take a range of forms:
- informal advice on what an IA should contain;
  - an independent perspective of the possible impacts of a regulatory proposal;
  - discussions on possible approaches and how to configure successful drafting teams and resources;
  - helping departments interpret and understand BIT requirements so that these requirements do not overshadow the overarching requirement to consider the total impact of a proposal;
  - a flexible approach to accommodate short departmental timescales; and
  - training on best practice in undertaking IAs.
42. This collaborative approach carries a risk that we might end up scrutinising our own work. To avoid this, we always maintain clear boundaries to keep a clear separation between our support to departments to assist in improvement the production of IAs and the processes of formal scrutiny of IAs and verification of EANDCB calculations.
43. We are always seeking to develop our approach and **welcome input from departments and regulators on what more we might do.**

### 4.2 Offering input as early as possible

44. The BRF was changed in 2018 to make submission of IAs at pre-consultation stage voluntary. Engagement of the RPC and our Secretariat only at later stages means we are generally less able to help and advise departments on how to assess policy or regulatory proposals, and cannot, for example, advise on whether sufficient alternative options have been considered at the correct stage.
45. We believe that we can add more value, and help departments produce better opinions, when we are involved at the early stages of the policymaking cycle. Our

guidance on proportionality<sup>38</sup> recognises that pre-consultation stage IAs can sometimes be based on limited information, (and part of the purpose of the consultation is often to gather further evidence) and we can assist in how best to use or supplement this evidence. The ‘Better consultation, better evidence’ external report highlights the problems departments have around effectively targeting consultation, which again we believe we can help with as discussed in this paragraph<sup>39</sup>.

46. We see it as key to effective delivery of our role to work with departments to ensure proportionate evidence, analysis and explanations are presented for IAs at the different stages in policy development. **We believe that this will be most effectively achieved by returning to a system which mandates submission of pre-consultation stage IAs.** In the absence of mandatory submission of pre-consultation IAs, **we want to engage with departments to increase the number of voluntary pre-consultation IAs submitted for scrutiny.**
47. Again, **we would welcome a discussion on what would encourage this.**

### **4.3 Offering input on a wider range of impacts**

48. Our determination of whether an IA is ‘fit for purpose’ or ‘not fit for purpose’ is currently constrained by the BRF to the evidence in the IA on the EANDCB, BIT and SaMBA. While these are critical issues, we believe it is important that IAs consider a wider range of the impacts on business.
49. The Green Book already encourages departments to carefully analyse a wider range of issues than those formally rated by the RPC. We want to work with departments to ensure RPC opinions can offer more effective input on proportionate analysis and evidence for wider aspects.
50. Without expanding what we formally consider in producing fit for purpose ratings, **we are currently exploring more explicit consideration in IAs and our opinions of the wider impacts of regulatory proposals on:**
  - *trade and trade negotiations* – requiring all government departments to consider the impact of potential regulations on UK trade and trade negotiations should help to ensure that the regulatory landscape is supportive of developing our trade with the rest of the world following our exit from the EU, and that regulation does not compromise trading opportunities;
  - *innovation* – an IA should contain well-informed consideration of the impact of the proposal on innovation in both the regulated sector and other sectors. This includes analysing the role that alternatives to regulation might play in providing the maximum freedom to innovate, considering when is the right time to introduce regulation in order to encourage innovation, and whether a certain regulation might be counterproductive to innovation or vice versa;

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<sup>38</sup><https://www.gov.uk/government/publications/proportionality-in-regulatory-submissions-guidance>

<sup>39</sup><https://www.gov.uk/government/publications/better-consultations-better-evidence>

- *competition* – analysis of how a policy affects competition; identifying the markets that it impacts on should lead to measures simultaneously maximising their effects on the targeted market failure and minimising the burdens imposed on businesses and consumers<sup>40</sup>. It also promotes proportionate analysis of compliance behaviour for businesses and the market influence on compliance; and
- *monitoring and evaluation plans* – well-informed evidence should allow clear and concise reviews to be undertaken in the future. These plans ensure the effectiveness of how a policy is implemented, as well as making the drafting and findings of PIRs more credible and informed.

51. Another potential area for further consideration is whether the RPC should have a role in scrutinising impacts beyond those on business. For example, given the Government’s commitment to net-zero emissions by 2050, understanding the consequences of new regulatory policies on emissions and the environment should be an integral part of the policymaking process and might benefit from the same independent scrutiny that the RPC offers on impacts on business.

52. **We welcome discussions, formal or informal, with departments and others about these proposals and whether it would be helpful if the Committee was to more explicitly offer scrutiny or produce detailed guidance on wider impacts.** This should encourage greater consideration of such issues across government and help make departments’ analysis even more transparent, proportionate and robust.

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<sup>40</sup>The CMA Report on Regulation and Competition recommended that the RPC should have the ability to red-rate an IA that does not appropriately consider the impact on competition or innovation, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/857024/Regulation\\_and\\_Competition\\_report\\_-\\_web\\_version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857024/Regulation_and_Competition_report_-_web_version.pdf)

## 5 Conclusion

53. Regulatory Impact Assessments (IAs) have evolved into an important and valuable component of the UK's 'Better Regulation' system. Mandatory final stage IAs have added an analytical dimension to policy development due to the accountability that they have given<sup>41</sup>. This has increased the amount of evidence presented alongside policy proposals, and the existence of the independent RPC has increased both the transparency of the process and the accountability of Government.
54. The IA process is however not perfect. We have attempted to stimulate a discussion by raising ongoing issues with IAs and offering possible solutions. Some are more realistic and achievable than others. For example, requiring departments to submit IAs to the RPC at pre-consultation stage would be much easier to deliver than the introduction of an EU approach of roadmaps, inception IAs and full IAs. We welcome discussion and comments on the ideas included in this paper, as well as ideas for other changes to the BRF.
55. In conclusion, IAs are very valuable documents and the government should be applauded for encouraging their production and the transparent scrutiny of them. But, as with many IAs themselves, there is certainly room for improvement!

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<sup>41</sup><http://aei.pitt.edu/32591/1/30. Impact Assessment in the EU.pdf>

# Annex

## 1 The Better Regulation Executive

1. The concept of UK impact assessment was first incorporated into cost compliance assessments in the 1980s<sup>42</sup>. These documents were introduced specifically to reduce the cost of complying with regulation for small businesses, and generally to help government departments assess themselves on performance and efficiency rather than solely on procedure<sup>43</sup>.
2. These early analytical documents were formalised into the standardised process of Regulatory Impact Assessments (IAs) in 1998. Over time, IAs have become a key instrument used by the BRE to embed the Better Regulation agenda into government policymaking.
3. Created in 1997 as the Better Regulation Taskforce, the BRE was originally situated in the Cabinet Office, but moved to the Department of Business, Enterprise and Regulatory Reform (BERR) in 2007<sup>44</sup>, which has since been reformed into the Department for Business, Energy and Industrial Strategy (BEIS). The BRE uses its Better Regulation Framework (BRF) and departmental Better Regulation Units (BRU) to embed its agenda across Government and help the department follow and utilise the BRE guidance effectively. They also oversee the policymaking process and the preparation of IAs and are responsible for writing, maintaining, and updating the BRF<sup>45</sup>. This guidance describes the steps of the regulatory policy development cycle and can be supplemented with other departmental or cross-Government guidance, such as the Green Book<sup>46</sup> and other complementary guidance<sup>47</sup>.
4. The BRE promotes IAs that demonstrate best-practice characteristics such as:
  - open and transparent regulatory decision-making, with clear objectives and proportionate measures;
  - affected parties, including individuals and business stakeholders, being assured that their interests are being fairly taken into account and that they are given a chance to contribute throughout the policymaking process;
  - the impacts of government intervention, which may constrain business behaviour, being based on proportionate and objective evidence;
  - minimising unnecessary regulatory impacts on businesses, civil service organisations, individuals, and public administrations; and
  - policies being assessed in ways that take proportionate account of risk, minimises avoidable errors and provides for learning from experience.

<sup>42</sup><https://assets.publishing.service.gov.uk/media/57a08c9740f0b649740012f4/CRCwp102.pdf>

<sup>43</sup>[http://aei.pitt.edu/32591/1/30\\_Impact\\_Assessment\\_in\\_the\\_EU.pdf](http://aei.pitt.edu/32591/1/30_Impact_Assessment_in_the_EU.pdf)

<sup>44</sup><https://discovery.nationalarchives.gov.uk/details/r/C17921#:~:text=Administrative%20%2F%20biographical%20background%3A,public%2C%20private%20and%20voluntary%20sectors.>

<sup>45</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/735587/better-regulation-framework-guidance-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/735587/better-regulation-framework-guidance-2018.pdf)

<sup>46</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/685903/The\\_Green\\_Book.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf)

<sup>47</sup><https://www.gov.uk/government/collections/useful-links>

5. The BRE is structured into four core areas:
- Frameworks:
    - Develops the BRF, and provides advice and guidance to Departments and regulators on the framework;
    - Leads on the BIT Report; and
    - RPC sponsorship.
  - Strategy and International:
    - Leads on the good Regulatory Practice & Regulatory Cooperation sections for UK Free-Trade Agreements;
    - Shares UK regulatory best practice through forums including the OECD, WEF, and Commonwealth Connectivity & Trade Programme; and
    - Leads on external engagement with bodies such as the Regulatory Horizons Council (RHC).
  - Whitehall Engagement and Alternatives (WEAT):
    - Promotes principles of better regulation to Departments and regulators;
    - Runs the Regulators' Forum, and the Network of Experts;
    - Leads on the GovTech Catalyst and Digital Regulation Navigator projects;
    - Acts as a consultancy to promote regulatory best practice across HM Government; and
    - Runs digitally-related projects.
  - Regulatory Development & Opportunities (RegDOT):
    - Leads on the Regulators' Pioneer Fund;
    - Develops metrics on regulators' support for innovation;
    - Secretariat for the RHC; and
    - BRE Management Support Office.

## 2 The Regulatory Policy Committee

6. The RPC is a non-departmental public body (NDPR) sponsored by BRE within BEIS. We are an advisory body formed in 2009 to independently scrutinise the evidence and analysis supporting regulatory measures. We do not comment on policy intent or objectives. We were formalised as an NDPR in 2012 and have adapted our scrutiny to various government initiatives such as:
- One-In One-Out (OIOO) – in 2010, the OIOO rule decreed that no new regulation would be enacted without changing existing regulation in order to reduce the cost on business of the latter by at least the same amount as the benefit on business of the former;
  - One-In Two-Out – in 2013, the OIOO rule was replaced by One-In Two-Out, a rule with a similar sentiment;
  - SaMBA – introduced in tandem with the One-In Two-Out rule, the SaMBA assesses the impacts of regulations on SMBs<sup>48,49</sup>;

<sup>48</sup>Small businesses with between 10 and 49 employees

<sup>49</sup>Micro businesses with up to 9 employees

- Red Tape Challenge – this review ran between 2011 and 2013 and gathered the public’s thoughts on over 21,000 UK statutory rules and regulations. After this information was collected, the RPC ensured that the analysis and conclusions were based on robust evidence<sup>50</sup>;
  - One-In Three-Out – in 2016, the One-In Two-Out rule was replaced by a rule with a similar sentiment<sup>51</sup>; and
  - Business Impact Target (BIT) – in 2016, the BIT calculates the impact of regulations on businesses. The first BIT was set at £10 billion of net business savings over the life of the parliament<sup>52</sup>.
7. The RPC states that the purpose of an IA is to assess and estimate costs and benefits and present associated risks of a regulatory proposal that is likely to have an impact on business, civil service organisations, the public sector and individuals. As well as assessing IAs against the Green Book and BRF, we also set out seven common themes that we consider when scrutinising IAs:
- Do not presume regulation is the answer – Does the market or regulatory failure necessitate government intervention, or could have fully considered non-regulatory alternatives adequately correct the causes of the failure?
  - Take time and effort to consider all options – Have a sufficiently wide range of regulatory and non-regulatory options been fully considered without ruling out detailed appraisal on any potentially promising options?
  - Make sure you have substantive evidence – Does the evidence collected internally and externally describe how the market works and how the market failure identified is causing the observed market behaviour?
  - Produce reliable estimates of costs and benefits – Have all intended and unintended impacts been identified, valued with respect to time periods, discount rates, the most important risks and uncertainties and opportunity costs, and compared with the correctly established ‘do nothing’ scenario?
  - Assess non-monetary impacts thoroughly – Has the valuation of non-monetised impacts been undertaken and presented in a manner which enables clear consideration and comparison across options?
  - Explain and present results clearly – Are the impacts of the different options clearly set out and sourced with the data, research and evidence used and do they show how the measures differentially impact on different groups?
  - Understand the real cost to business of regulation – How robust is the calculation of the EANDCB?<sup>53</sup>
8. The RPC specifically verifies, validates and rates IAs based on three specific areas, giving them either a ‘fit for purpose’ or ‘not fit for purpose’ rating:

<sup>50</sup><https://www.gov.uk/government/publications/2010-to-2015-government-policy-business-regulation/2010-to-2015-government-policy-business-regulation#appendix-4-operating-a-one-in-two-out-rule-for-business-regulation>

<sup>51</sup><https://www.gov.uk/government/news/government-going-further-to-cut-red-tape-by-10-billion>

<sup>52</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/709156/business-impact-target-bit-final-report-2015-2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/709156/business-impact-target-bit-final-report-2015-2017.pdf)

<sup>53</sup><https://www.gov.uk/government/publications/how-the-regulatory-policy-committee-scrutinises-impact-assessments/regulatory-policy-committee-recommendations-used-when-scrutinising-impact-assessments>

- Small and Micro Business Assessment (SaMBA): Each IA sets out any mitigations and exemptions for small and micro businesses (SMBs);
  - Equivalent Annual Net Direct Cost to Business (EANDCB): Each IA sets out an estimate of the direct impact on business of the proposed regulatory or deregulatory measure. Measures with an EANDCB greater than  $\pm$ £5 million are considered significant. Under the Small Business Employment Enterprise (SBEE) Act 2015, these measures must be validated by the RPC before their estimated impacts can be put into the annual BIT report<sup>54</sup>. Measures with an EANDCB below this threshold are considered *de minimis* by the BRF, and their IAs need not be independently verified.
  - Business Impact Target (BIT) score: Since the beginning of 2015, a BIT that accounts for the total economic impact of regulation on businesses is set at the beginning of each Parliament. The BIT score for an individual measure is its EANDCB multiplied by the typical parliamentary period of five years (or the length of the policy measure if shorter).
9. The SBEE Act 2015 also requires Government to appoint an Independent Verification Body (IVB) for the BIT, who have the statutory responsibility to validate government department assessments of BIT scores and EANDCBs, as well as confirming whether government departments have correctly applied or certified the BIT's administrative exclusions<sup>55</sup>. The Government appointed the RPC as the IVB for both the 2015-17 and 2017-19 Parliaments.
10. The *de minimis* threshold of  $\pm$ £5m was introduced with the 2017-19 parliament and is the interim position for the current parliament. Only measures with an EANDCB above the *de minimis* threshold are considered significant and need to be included in the annual BIT report and scrutinised at final stage by the RPC.

### 3 Benefits of independent RPC scrutiny

11. RPC scrutiny at final stage is optional only for measures below the *de minimis* threshold of  $\pm$ £5 million 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. While RPC scrutiny is not required for pre-consultation clearance, we recommend that departments seek an RPC opinion either informally or formally.
12. Independent scrutiny helps ensure that robust analysis and credible evidence is available to inform significant policy decisions and provides confidence in the analysis

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<sup>54</sup><https://www.gov.uk/government/collections/useful-links>,  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/735587/better-regulation-framework-guidance-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/735587/better-regulation-framework-guidance-2018.pdf) - page 15

<sup>55</sup>The process of appointing an IVB is repeated with each new Parliament. At the time of publication [3 August 2020], the government had not yet appointed an IVB for the 2019 Parliament.

to external stakeholders. This in turn enhances the usefulness and validity of IAs. Well-evidenced IAs can be used for:

- policy consideration - an IA that proportionately assesses each salient aspect of a policy will allow more informed consideration within the policy development cycle;
- ministerial and departmental decisions and collective agreement - an IA that clearly lays out the relevant costs, benefits and risks associated with different policy options will support better decisions between those options and establish their accountability;
- parliamentary scrutiny – IAs can inform and provoke accurate and useful discussion among parliamentarians, which should be beneficial to the policy as finally implemented; and
- stakeholder communication and public accountability – high-quality IAs will give stakeholders and the general public confidence in government analysis and encourage them to engage with consultations and calls for evidence throughout the policy development process.