



Department  
for Business  
Innovation & Skills

**GOLD-PLATING REVIEW**

**The Operation of the Transposition  
Principles in the Government's  
Guiding Principles for EU  
Legislation**

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## Summary

The Coalition Programme for Government committed to ‘end the so-called ‘gold-plating’ of EU rules’. The Guiding Principles for EU Legislation, finalised in June 2011<sup>1</sup>, establish how Government manages the flow of EU legislation that the UK is legally obliged to implement into UK law. This review examines the operation of the Guiding Principles over the eighteen-month period since the principles were finalised, from 1 July 2011 to 31 December 2012.

The analysis shows that the Government has been successful in preventing the ‘gold-plating’ of EU legislation and, since the Guiding Principles have been in place, there has been very little evidence of gold-plating of EU legislation placing new burdens on business.

## Review of the Operation of the Transposition Principles

When implementing EU legislation (either transposing an EU Directive or introducing legislation to implement and enforce an EU Regulation), Departments are required to demonstrate how they have applied the five transposition principles in the Guiding Principles for EU legislation. In this review, we have examined 88 proposals to implement EU measures over the eighteen-month period, from 1 July 2011 to 31 December 2012.

The analysis of the operation of the transposition principles is summarised below:

Transposition Principles: When transposing EU law, the Government will:	Summary of analysis
a) wherever possible, seek to implement EU policy and legal obligations through the use of alternatives to regulation	Departments have consistently considered the use of alternatives to regulation and there have been some good examples where Departments have used non-statutory alternatives to implement certain EU obligations. However, in the majority of cases, it was not possible to meet our obligation to transpose EU legislation into UK law other than by regulatory means.
b) endeavour to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts	There were twelve examples where Departments went beyond EU minimum requirements as a consequence of retaining pre-existing stricter UK rules, but with no new burdens imposed on business. In each instance, the Department in question argued that there was a justification for retaining existing UK requirements e.g. for safety reasons, to maintain

<sup>1</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/78800/Guiding\\_Principles\\_for\\_EU\\_legislation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78800/Guiding_Principles_for_EU_legislation.pdf)

Transposition Principles: When transposing EU law, the Government will:	Summary of analysis
	<p>current animal welfare standards, or to prevent unnecessary costs to business.</p> <p>In only one instance did a Department propose placing additional burdens on UK business. The proposal was to go beyond EU minimum requirements in order to move to 'full cost recovery' for the provision of statutory services. However, this proposal was not approved by Ministers.</p>
<p>c) always use copy-out for transposition where it is available, except where doing so would adversely affect UK interests e.g. by putting UK businesses at a competitive disadvantage compared with their European counterparts. If departments do not use copy-out, they will need to explain to the RRC the reasons for their choice</p>	<p>Where 'copy-out' was available, it was used in over two-thirds of cases. Where 'copy-out' was available but not used, Ministers provided a justification. ('Copy-out' was not available in 30 cases).</p>
<p>d) ensure the necessary implementing measures come into force on (rather than before) the transposition deadline specified in a directive, unless there are compelling reasons for earlier implementation</p>	<p>There were only four cases where Departments sought agreement to implement measures ahead of the transposition deadline. In each case, Departments confirmed that it was in the interest of UK businesses to do so.</p>
<p>e) include a statutory duty for Ministerial review every five years</p>	<p>A statutory Ministerial review clause was included in three-quarters of UK implementing measures. Where a review clause was not included, this was because the proposed approach was deregulatory or revoked existing legislation.</p>

## Context

It has been estimated that between one-third and one-half of the total administrative burden on businesses in Europe derives from EU regulation<sup>2</sup>. The UK is under a legal obligation to transpose EU Directives into UK law and, in some cases, we also introduce legislation to implement and enforce EU Regulations. However, as additional burdens can

<sup>2</sup> Europe Can do Better; Report on best practice in Member States to implement EU legislation in the least burdensome way; High Level Group of Independent Stakeholder on Administrative Burdens (The 'Stoiber Report'), November 2011

be placed on business in the way EU legislation is implemented into national law, the Coalition Programme for Government committed to “...end the so-called ‘gold-plating’ of EU rules so that British businesses are not disadvantaged relative to their European competitors”.

Given that the implementation of EU legislation was not included in the ‘One-in, One-out’ rule, the European Affairs Committee (EAC) and Reducing Regulation sub-Committee (RRC) agreed on the need to put in place a strong alternative scrutiny and challenge process for proposed EU legislation.

The Government agreed Guiding Principles for EU Legislation in December 2010, which outline a ‘transposition framework’ that all Departments must abide by when implementing EU legislation. In June 2011, three further Operating Principles were added, with a focus on EU early influencing. The Guiding Principles are intended to ensure Departments engage proactively at an early stage in EU policy-making; tackle the flow of EU legislation to bear down on costs to business; and set out how EU legislation should be transposed to prevent ‘gold-plating’.

The UK is seen as a leader within the EU for low-burden implementation of EU legislation. In a Commission Report, published last year, the UK was highlighted as an example of best practice as a result of our publication of the Government’s Guiding Principles for EU Legislation<sup>3</sup>.

## Compliance with Principles analysis

**Principle 5(a): When transposing EU law, the Government will, wherever possible, seek to implement EU policy and legal obligations through the use of alternatives to regulation.**

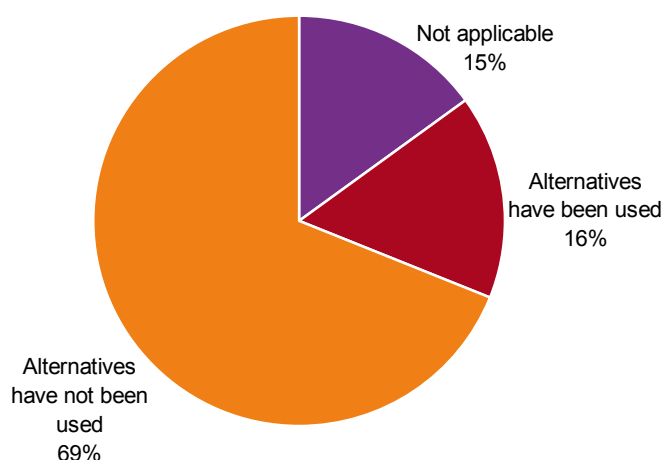
Departments are required to explain whether they have sought to use alternatives to regulation when implementing EU legislation. Since 1 July 2011, Departments have consistently considered alternatives to regulation where available.

It should be noted, however, that only 16% of letters seeking clearance indicated that an ‘alternative’ to regulation had been applied. This is because failure to transpose Directives into UK law could leave the UK open to infraction proceedings. Our analysis shows that it is difficult for Departments to use alternatives to regulation if this was not explicitly foreseen as an implementation option in the EU legislation.

Where alternatives were used this was where EU legislation had foreseen, or provided some flexibility for, the use of alternatives. However, in the majority of cases it was not possible to use alternatives to regulation. This underlines the need for the use of alternatives to be advocated by UK negotiators during the early influencing stages of EU proposals so that non-legislative options are foreseen as an implementation option.

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<sup>3</sup> *Ibid*

**Figure 1: Principle 5(a) – Use of alternatives to Regulation**

**Principle 5(b): When transposing EU law, the Government will endeavour to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts.**

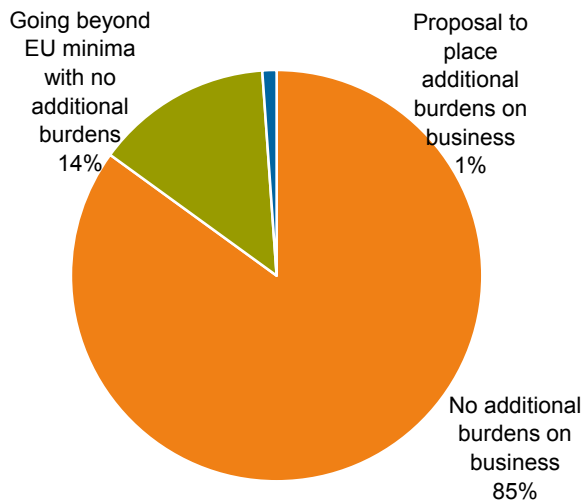
Departments are required to show that their approach to transposition will not put UK businesses at a competitive disadvantage compared to businesses in other Member States. Government policy, as set out in the Guiding Principles for EU Legislation, is that Departments should not go beyond the minimum requirements of European legislation, unless there are exceptional circumstances, justified by a cost/benefit analysis in an Impact Assessment (IA) that has been independently scrutinised by the Regulatory Policy Committee (RPC). The RPC reviews IAs for all proposals which impose burdens on business, and explicitly examines whether Departments have gone beyond the minimum requirements of EU legislation.

‘Gold-plating’ occurs, in accordance with the Government’s Transposition Guidance<sup>4</sup>, where implementation extends the scope of the Directive; does not take full advantage of derogations; retains pre-existing higher UK standards; or implements early, before the date given in the Directive.

Our analysis shows that, in 85% of cases, no burdens in excess of EU requirements had been placed on UK businesses as a result of ‘gold-plating’. In 14% of cases there was some retention of existing higher UK standards, but with no new burdens imposed. There was only one case where a Department proposed placing additional burdens on UK businesses that would put them at a competitive disadvantage – this was a proposal to go beyond EU minimum requirements in order to move to ‘full cost recovery’ for the provision of statutory services. However, this proposal was not approved by Ministers.

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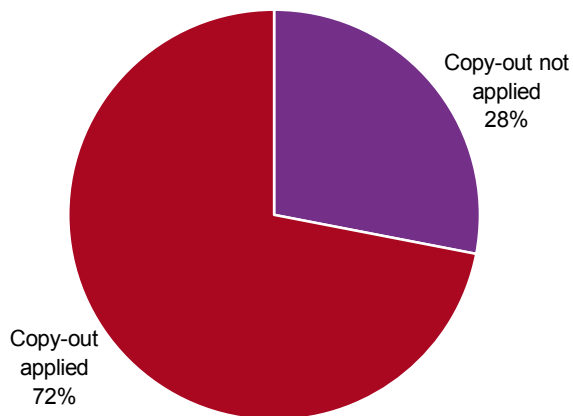
<sup>4</sup> Transposition Guidance: How to implement European Directives effectively.  
<https://www.gov.uk/government/publications/implementing-eu-directives-into-uk-law>

**Figure 2: Principle 5(b) – UK business not put at a competitive disadvantage**

**Principle 5(c):** *When transposing EU law, the Government will always use copy-out for transposition where it is available, except where doing so would adversely affect UK interests e.g. by putting UK businesses at a competitive disadvantage compared with their European counterparts. If departments do not use copy-out, they will need to explain to the RRC the reasons for their choice.*

Departments are required to use the principle of 'copy-out' where available when transposing EU Legislation, except where this would put UK business at a competitive disadvantage. (Copy-out is where the implementing legislation adopts the same wording as that of the Directive or where it cross-refers to the relevant Directive provision.) 'Copy-out' is not always available. For example, where there is a directly applicable EU Regulation and Member States are required to implement domestic enforcement regulations or where UK regulations require updating. Our analysis shows that, where it was available, 'copy-out' had been applied in 72% of cases.

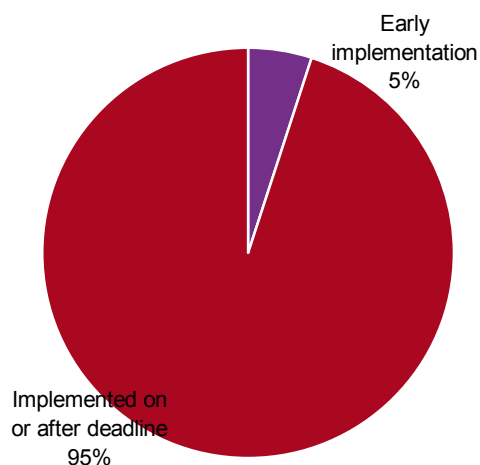
Of the remaining cases where 'copy-out' was available but not used, Departments argued against the use of 'copy-out'. The most common explanation provided by Departments was that the amendment was being made to an existing UK regulatory regime, with which businesses were already familiar. Departments also departed from 'copy-out' where it was argued that the EU Directive did not provide sufficient clarity or where implementation needed to provide legal certainty. It was also necessary in some cases to specify and clarify how derogations could be exploited by relevant business sectors in order to reduce burdens on business.

**Figure 3: Principle 5(c) – Use of copy-out where available**

**Principle 5(d): *When transposing EU law, the Government will ensure the necessary implementing measures come into force on (rather than before) the transposition deadline specified in a directive, unless there are compelling reasons for earlier implementation.***

Departments are, in general, transposing Directives on the date specified. In 95% of cases over the eighteen-month period Departments have implemented on or after the transposition deadline, with only four examples where Departments sought agreement to implement measures early.

In all four cases, Departments confirmed that there was a compelling reason to implement early, i.e. to achieve the reduction of burdens on business at the earliest opportunity.

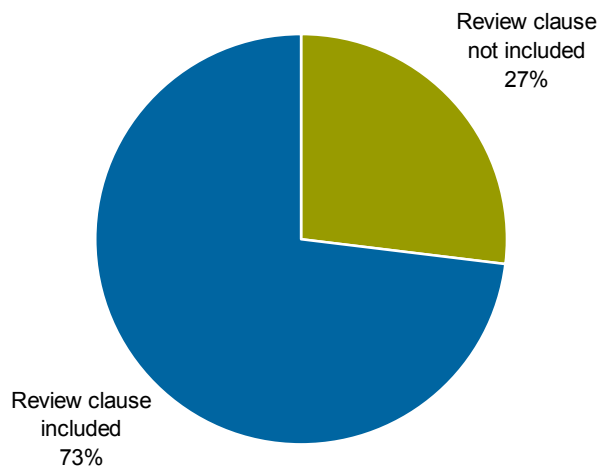
**Figure 4: Principle 5(d) – Implement on or after, rather than before, the date specified in EU legislation**



**Principle 5(e): When transposing EU law, the Government will include a statutory duty for Ministerial review every five years.**

Departments generally include a statutory Ministerial review clause in legislation implementing EU legislation. Over the eighteen-month period reviewed, in 27% of cases, Departments did not include a review clause. Where a review clause was not included, this was because the proposed approach introduced legislation that was deregulatory or revoked existing regulations.

**Figure 5: Principle 5(e) – Inclusion of a Statutory Ministerial Review Clause**



## Conclusions

Significant progress has been made in scrutinising how EU legislation is implemented in the UK and, since the Guiding Principles have been established, there has been very little evidence of ‘gold-plating’.

Over the eighteen-month period there has been only one instance (out of eighty-eight cases) where a Department proposed placing additional burdens on UK businesses that would put them at a competitive disadvantage: the Department in question proposed going beyond EU minimum requirements in order to move to ‘full cost recovery’ for the provision of statutory services. This proposal was not approved by Ministers.

There were only four cases where EU legislation was implemented before the transposition deadline: in all four cases, early implementation was in the interest of UK business.

Departments routinely apply the five transposition principles when introducing UK legislation to implement EU legislation.

The transposition principles have proved to be an effective means of ensuring there is an appropriate level of scrutiny on Departments when implementing EU legislation. However, it is important that Departments’ adherence to the transposition principles continues to be

monitored and scrutinised closely to prevent 'gold-plating' or unnecessary burdens on businesses. Consideration should therefore be given to strengthening the process. And, since the transposition principles only control the gold-plating of the flow of new regulation, we should again invite business organisations to provide examples of gold-plating of the stock of existing regulation which we can examine.

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