



## Challenging Regulation

An independent report on the analysis  
supporting regulatory proposals,  
September-December 2010

February 2011



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# Foreword

By Michael Gibbons OBE

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Ministers have placed a rigorous approach to regulation at the heart of the Government's agenda, with the particular aim of reducing the regulatory burden on business and civil society organisations. The importance of regulatory reform has become even more evident in the current economic climate, as there is an increasing need to help support growth of the UK economy and put in place the conditions needed for UK businesses to drive economic recovery.

To deliver this, a new Cabinet sub-committee – the Reducing Regulation Committee (RRC) – has been established, chaired by the Business Secretary, the Rt Hon Vince Cable MP, and committed to assessing new regulation against a set of operating principles. In addition, the Government has implemented a 'One-in, One-out' rule, which means that when any new domestic regulation that imposes a net cost on businesses or the third sector is introduced, existing regulation must be removed to offset that cost.

I am pleased that Ministers have at the same time recognised the merit of independent scrutiny in the development of new regulatory proposals. They have tasked the independent Regulatory Policy Committee (RPC) to provide an even stronger challenge to Government via a much enhanced role in the development of new regulation. The RPC will also play a key role in ensuring the rigorous application of the One-in, One-out rule.

Ministers have asked the RPC to review and issue Opinions to Government Departments on the quality and robustness of the evidence and analysis – including the impact on business – supporting all new regulatory proposals that have to be submitted to the RRC, and before consideration by the RRC. Most recently, they have taken an important further step and made it clear that they will not accept any new regulatory proposal without an accompanying impact assessment that the RPC has concluded is "Fit for Purpose".

RRC Ministers have thereby sent an unmistakeable message about the priority they attach to evidence-based regulation, and to reducing the burden on business and civil society organisations. It is equally clear that independent scrutiny is intended to play an important part in achieving these goals, and the culture change to underpin them.

This report, the second on the work of the RPC, covers work undertaken by the Committee between September and December 2010. In particular it highlights a worryingly high proportion, over 40%, of new regulatory proposals that the RPC considered were not fit for purpose.

As a consequence of our new role, this period has been a challenging and important period for the Committee and the RPC Secretariat. Both have risen to the challenges and increased workload very successfully. For that reason, and especially following such a busy time, I



would like to pay tribute to the members of the Committee and the staff of the RPC secretariat and thank them for their commitment, passion and support over the past months.

**MICHAEL J S GIBBONS OBE**  
*Chairman of the Regulatory Policy Committee*

# Chapter 1. Our New Role

## Introduction

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**1.1.** The Regulatory Policy Committee (RPC) was established in 2009 to provide, for the first time in the UK, real-time independent scrutiny of proposed regulatory measures put forward by Government. It does this by assessing the quality of the evidence and analysis presented in the associated Impact Assessments (IAs) for regulatory proposals, and draws attention to those that fall short of making a strong case. The Committee is made up of a mix of independent experts with a wide range of experience and current knowledge of business, employee and consumer issues. See Annex D for further details on the Committee.

**1.2.** The RPC's role is not to comment on the Government's underlying policy objectives, but rather to ensure that when Ministers make decisions on proposed new regulations, they do so on the basis of a robust, evidence-based policymaking process. Details of the RPC's initial work and findings were set out in its first report issued in August 2010<sup>1</sup>.

## The new, strengthened role of the RPC

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**1.3.** Between December 2009 and May 2010, the RPC reviewed the analysis and evidence supporting regulatory proposals which were subject to public consultation and only issued Opinions on proposals where there were major concerns. However, to support the Government's new approach to regulation, the RPC was asked by Ministers in August 2010 to take on an enhanced role, placing independent challenge more firmly in the centre of the regulatory development process.

**1.4.** We now consider IAs prior to them being considered by the new ministerial Reducing Regulation Committee<sup>2</sup> (RRC), chaired by the Secretary of State for Business, Innovation & Skills. The RRC has the role of scrutinising and challenging new government regulations within its scope, and must ultimately approve them.

***“These developments in terms of earlier involvement of the RPC... are welcome. Government should support the RPC's work and provide appropriate resources so that it can provide a robust and effective challenge.”***

***From ‘Reforming Regulation – improving competitiveness, creating jobs’.***

*EEF report, September 2010\**

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<sup>1</sup> Reviewing Regulation: An independent report on the analysis supporting regulatory proposals, December 2009-May 2010 <http://regulatorypolicycommittee.independent.gov.uk/rpc/publication-of-first-rpc-report-reviewing-regulation>

<sup>2</sup> <http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=414183&NewsAreaID=2>

\*<http://www.eef.org.uk/eef1/handlers/resource.ashx?http://www.eef.org.uk/NR/rdonlyres/057656F6-5F88-49B1-AB9B-38B39B47ECC5/17768/ReformingRegulation1.pdf>

1.5. To support them in making their decisions, the RRC has asked that the RPC provide an independent view on the quality of analysis in the supporting IAs. All regulatory proposals submitted to them must be accompanied by an RPC Opinion.

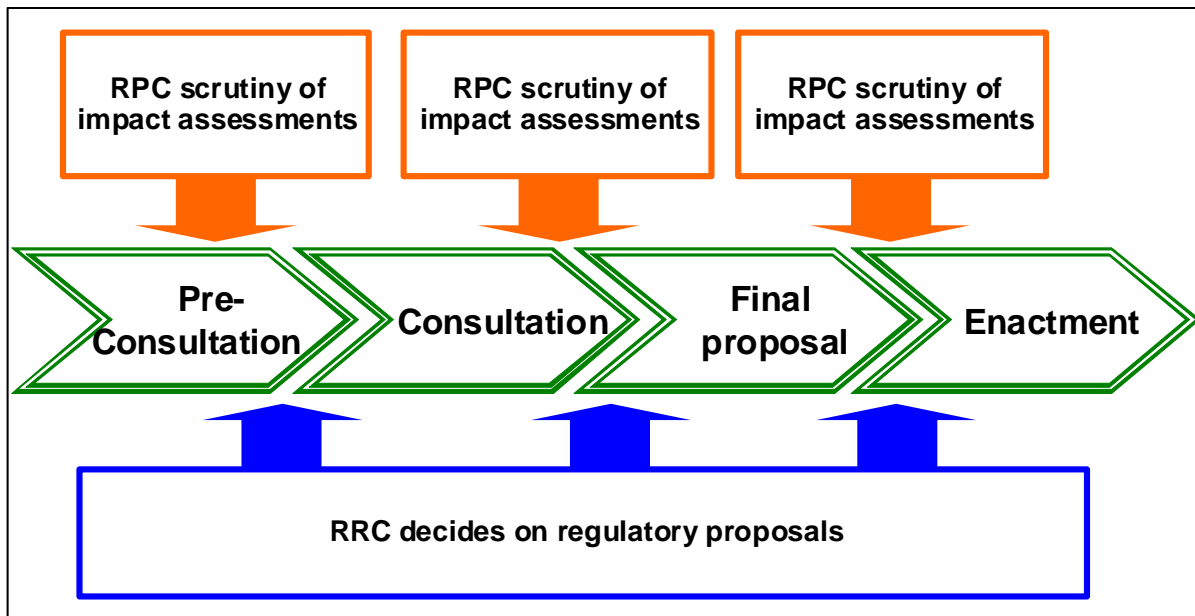
1.6. This new role means that we now review and comment on the analysis and evidence supporting regulatory proposals that go before the RRC, be they of domestic, European or international origin, and at each stage of their development (consultation, final or enactment). Figure 1.1 shows where the RPC’s scrutiny of IAs now fits into the policymaking process. This is further expanded in Annex B.

**“New regulatory proposals should only be submitted to the RRC for clearance once the RPC has agreed the associated impact assessment is fit for purpose, in particular that the net cost to business has been sufficiently costed.”**

*‘Reducing Regulation Made Simple’, December 2010<sup>3</sup>*

1.7. The importance of RPC Opinions has now been further enhanced by the Government’s decision that new regulatory proposals will only proceed to the RRC for clearance once the RPC has agreed the impact assessment is “fit for purpose”<sup>3</sup>. This means that for the first time in the UK, regulatory proposals must have an IA that is independently verified as fit for purpose in order to proceed. We will report on the impact of this key change in later publications.

**Figure 1.1: Where we fit into the policy development process**



1.8. It should be noted that the RPC does not scrutinise the full range of regulation that affects the UK economy. We provide independent advice to the Reducing Regulation

<sup>3</sup> <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/r/10-1155-reducing-regulation-made-simple.pdf>



Committee (RRC) which considers regulatory proposals from Government and some Agencies, and we are not involved in the decisions as to what requires RRC approval. The RRC does not consider regulation from organisations such as the independent economic regulators (e.g. OFGEM and OFCOM), and some other independent regulators such as the Financial Services Authority.

### **One-in, One-out**

**1.9.** In September 2010 the Government introduced a ‘One-in, One-out’ rule<sup>4</sup> to control the flow of domestic regulation. The rule means that no new primary or secondary UK legislation which imposes costs on business or civil society organisations (‘INs’) can be brought in without the identification of existing regulations with an equivalent value that can be removed (‘OUTs’). The Government has asked the RPC to take on the important role of reviewing all INs and OUTs.

**1.10.** The importance of independent scrutiny in the application of One-in, One-out is twofold. First, the magnitude of INs must be accurately reflected in the IA so that the corresponding OUT will compensate businesses and the third sector to the appropriate degree. Secondly, where OUTs are calculated and “banked” by departments to allow for future INs, the goal of independent scrutiny is to ensure that these are not over-estimated so that new regulations of an equivalent value are not introduced.

**1.11.** We are conscious that departments now have an incentive to inflate the value of Outs and minimise the value of Ins. We will therefore be paying particular attention to IAs that fall within the scope of One-in, One-out to ensure that the claimed values are robust.

## **How we operate now**

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**1.12.** Since August 2010, when we produced our first report, the RPC has adapted to focus on delivering its new role, while retaining important elements of the old system.

**1.13.** As before, the Committee is actively involved in the scrutiny of IAs. Each IA submitted for RPC consideration is allocated to a Member who leads on the analysis for the Committee. The lead Member is supported in this by members of the secretariat, consisting of civil servants with a mixture of analytical, policymaking and economic expertise. The assessment is then reviewed and agreed by the full Committee.

**1.14.** We review each IA by assessing it against well-established standards set out in the Better Regulation Executive’s (BRE’s) toolkit and guidance for impact assessments,<sup>5</sup> along with HM Treasury’s Green Book<sup>6</sup> and against the latest One-in, One-out methodology, which is the responsibility of the BRE.


**1.15.** The output from this process takes the form of a written Opinion sent to the responsible Minister. All of our opinions now follow the same template (see Annex C) focussing on two

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<sup>4</sup> One-in, One-out: <http://www.bis.gov.uk/policies/better-regulation/better-regulation-executive/reducing-regulation-made-simple/one-in-one-out>

<sup>5</sup> Impact Assessment Toolkit and Guidance: <http://www.bis.gov.uk/policies/better-regulation/policy/scrutinising-new-regulations/preparing-impact-assessments>

<sup>6</sup> The Green Book: [http://www.hm-treasury.gov.uk/data\\_greenbook\\_index.htm](http://www.hm-treasury.gov.uk/data_greenbook_index.htm)



areas from the Government's principles of regulation<sup>7</sup> where the external scrutiny body's opinion has been explicitly sought:

- Have the costs and benefits, and the impacts on small firms, public and third sector organisations, individuals and community groups been robustly identified and reflected in the choice of options?
- Have the necessary burden reductions required by the One-in, One-out rule been identified and are they robust?

**1.16.** The Opinion also includes a summary assessment which aims to provide a clear steer to Ministers regarding the quality of the IA. In addition, the Opinion considers other issues relating to the quality of analysis, such as the rationale for intervention and consideration of non-regulatory options.

**1.17.** Where we have raised serious concerns with the quality of analysis of the IA in an Opinion, the Department has the opportunity to seek a new opinion on a revised version of the IA. Revised IAs are treated as a new IA in our system and there is not a fast-track process for re-submissions. This is to encourage Departments to make sure they submit the best possible IA as their initial submission, and not rely on RPC feedback in the development of the IA.

### *Fit for Purpose*

**1.18.** As of January 2011, and following a request from the RRC for further clarity regarding our overall assessments, all our Opinions include a Red–Amber–Green rating. In our future reports we will be issuing details of overall rankings of departmental performance against these classifications. The categories are defined as follows:

- **RED:** The IA is "**Not Fit for Purpose**". Major concerns over the quality of the evidence and analysis and overall quality of the IA.
- **AMBER:** The IA is "**Fit for Purpose**". However, we will set out areas of concern with the IA which should be resolved before the IA is submitted to the RRC.
- **GREEN:** The IA is "**Fit for Purpose**". We may still highlight some minor issues with the IA.

### *Challenges of the new role*

**1.19.** We aim to be as open as possible in our work. However, the new role of the RPC presents significant challenges, particularly in relation to independence and transparency. The Committee remains independent and it is the members who take the final decisions on Opinions. We are committed to remaining independent of political and Departmental

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<sup>7</sup> <http://www.bis.gov.uk/policies/better-regulation/better-regulation-executive/reducing-regulation-made-simple/regulatory-decision-making/general-principles>

interests and influence, and we are not drawn into the drafting process for IAs. Generally we have found a constructive approach from most Departments.

**1.20.** We are also keen to provide the maximum reporting of our processes, Opinions and conclusions within the constraints imposed by our new position within the policy making process. Under our previous system, the IAs which the RPC reviewed were already in the public domain and we were therefore in a position to publish our Opinions on our website. However, in our new role, the Opinions issued by the RPC to the relevant Department are on documents that are not in the public domain and are considered as part of the confidential policy development process. In addition, as the IAs are often modified as a result of the comments made by the RPC, the Opinions may not refer to the final published version of the IA, which could potentially be misleading or cause a degree of confusion.

**1.21.** The RPC therefore does not currently make its Opinions available publicly. However, we wish to be as transparent as possible in our work and will decide how best to achieve this. As stated above, we will report in future on Departmental performance against the new Red-Amber- Green ratings system, and we will highlight those specific regulatory measures which were classified as Red. In the meantime, we intend to use this and future reports to set out our overarching findings without compromising any part of the policymaking process.



# Chapter 2. Our Latest Findings

## Introduction

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**2.1.** This Chapter outlines the results of our work undertaken between September and December 2010. We hope our latest findings will be taken as a positive contribution to the development of Impact Assessments (IAs) and how they are used in the policymaking process in the future.

## Analysis

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**2.2.** Between September and December 2010, the RPC issued **189 Opinions** to Departments and their Agencies on IAs they submitted to us. The IAs we reviewed covered a wide range of regulatory proposals at different stages of policy development, i.e. consultation, final and enactment stage. Table 2.1 provides a breakdown of the Opinions we produced based on the policy development stage and the origin of regulatory proposal.

**Table 2.1: Breakdown of the 189 Opinions based on their origin and stage of policy development.**

	<b>Domestic</b>	<b>European</b>	<b>International</b>	<b>TOTAL</b>
<b>Consultation</b>	42	21	4	<b>67 (36%)</b>
<b>Final</b>	86	27	1	<b>114 (60%)</b>
<b>Enactment</b>	4	4	0	<b>8 (4%)</b>
<b>TOTAL</b>	<b>132 (70%)</b>	<b>52 (27%)</b>	<b>5 (3%)</b>	<b>189 (100%)</b>

**2.3.** This data should be treated with caution. Not all these proposals will have gone forward for consideration by Ministers. The quantity of proposals may reflect a backlog of proposals which could not be taken forward during the election period, as well as the activity of a newly-formed Government immediately after the election. In addition, not all the final-stage IAs relate to proposals that are due to be implemented in the short term – many will be implemented over several years. An accurate representation of the flow of new regulation set to be implemented in 2011 is due to be provided by the Government later this year.

**2.4.** Table 2.1 shows that 60% of the IAs we reviewed were at the final stage of their development. The majority of the 189 proposals we reviewed were domestic and within the

scope of the Government's One-in, One-out policy<sup>8</sup> while 27% and 3% were of European and International origin respectively.

**2.5.** UK Regulations that are derived from European Union (EU) requirements (whether via Directives, Regulations or Decisions) are currently out of scope of One-in, One-out, provided UK implementation does not involve going beyond the minimum EU requirements ('gold-plating') and provided it does not ignore taking-up available derogations. This does not mean, however, that we do not scrutinise their associated IAs with any less rigour than domestically originated regulations.

**2.6.** We expect IAs supporting EU requirements to provide a robust assessment of the costs and benefits of EU requirements, not least because this enables UK citizens to see how they are affected by requirements originating from the EU.

**Table 2.2: Breakdown of 189 Opinions by Department/Agency and origin September-December 2010**

<b>Department</b>	<b>Domestic</b>	<b>European / Int'l</b>	<b>Total</b>
Cabinet Office	1	0	1
Department for Business, Innovation & Skills	15	7	22
Department for Communities and Local Government	33	0	33
Department for Culture, Media and Sport	5	0	5
Department for Education	2	0	2
Department for Environment, Food and Rural Affairs	17	6	23
Department for Transport	18	23	41
Department for Work and Pensions	3	0	3
Department of Energy and Climate Change	18	13	31
Department of Health	1	1	2
Foreign & Commonwealth Office	1	0	1
Government Equalities Office	5	0	5
Health and Safety Executive	0	1	1
HM Treasury	6	5	11
Home Office	6	0	6
Ministry of Defence	0	1	1
Ministry of Justice	1	0	1
<b>GRAND TOTAL</b>	<b>132</b>	<b>57</b>	<b>189</b>

**2.7.** Table 2.2 shows a breakdown of the 189 IAs we reviewed between September and December 2010 by Departments and their Agencies. As noted in paragraph 1.8, the RRC's remit does not cover all regulatory proposals that affect the UK economy, and does not

<sup>8</sup> One-in, One-out: <http://www.bis.gov.uk/policies/better-regulation/better-regulation-executive/reducing-regulation-made-simple/one-in-one-out>

include, for example, regulatory measures from independent regulators such as OFGEM, OFCOM and the Financial Services Authority.

2.8. Table 2.2 needs some interpretation. Unlike the work we did which formed the basis of our first report, we now produce Opinions on all IAs submitted to us. This means that an Opinion now does not mean a ‘negative Opinion’ as it did in our first report. It could mean we have a positive view on the IA. Our work now means we produce an Opinion on all the IAs and the Table above should be read with this in mind.

2.9. Table 2.2 also does not distinguish between proposals to introduce new regulations and proposals to simplify or remove existing regulations. In addition, there is not always a one-to-one relationship between IAs and Opinions, as a single IA can support one or more regulatory measures, or an Opinion can cover a number of IAs where, for example, these are short.

2.10. In formulating our Opinions we were asked by the RRC to focus our assessment, though not exclusively, on two key areas from the Government’s own ‘Principles of Regulation’<sup>9</sup>. These are:

- Have the costs and benefits, and the impacts on small firms, public and third sector organisations, individuals and community groups been robustly identified and reflected in the choice of options?
- Have the necessary burden reductions required by One-in, One-out been identified and are they robust?

2.11. Table 2.3 provides a breakdown of the estimated costs and benefits for the regulatory proposals we scrutinised. This gives an idea of the size of measures we are looking at.

**Table 2.3: Comparison of cost and benefit ranges for measures**

	<b>Costs</b>	<b>Benefits</b>
<b>Greater than £100 million</b>	<b>6%</b>	<b>9%</b>
<b>Greater than £ 20m and up to £100m</b>	<b>6%</b>	<b>11%</b>
<b>Greater than £ 10m and up to £20m</b>	<b>5%</b>	<b>8%</b>
<b>Greater than 0 and up to £10m</b>	<b>34%</b>	<b>26%</b>
<b>Zero</b>	<b>18%</b>	<b>10%</b>
<b>None provided</b>	<b>31%</b>	<b>36%</b>

<sup>9</sup> The Coalition Government’s principles of regulation: <http://www.bis.gov.uk/policies/better-regulation/better-regulation-executive/reducing-regulation-made-simple/regulatory-decision-making/general-principles>

## Key findings

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### *IA quality: September - December 2010*

2.12. While the Opinions we issued between September and December were not systematically categorised according to the new Red, Amber and Green ratings discussed in Chapter 1, we can report that 44% of the 189 Opinions we produced raised concerns with us regarding the quality of analysis and evidence provided. Before discussing these findings in more detail we have to place them in context.

### *Our Initial Findings: December 2009 – May 2010*

2.13. The output from our previous work (between December 2009 and May 2010) was summarised in our first report where we distilled our findings into six main recommendations. These were principally aimed at those involved in the IA making process (both specialists and policymakers), and were intended to be compliant with central Government guidance on appraisal and evaluation with respect to regulatory proposals and other policy proposals more generally. We also hoped that they would be of interest to a wider audience and encourage and facilitate discussion with respect to the estimated impacts of regulatory proposals.

#### ***Box 2.1: Recommendations from our first report 'Reviewing Regulation'***

**Recommendation 1. Don't presume regulation is the answer**

**Recommendation 2. Take time and effort to consider all the options**

**Recommendation 3. Make sure you have substantive evidence**

**Recommendation 4. Produce reliable estimates of costs and benefits**

**Recommendation 5. Assess non-monetary impacts thoroughly**

**Recommendation 6. Explain and present results clearly**

2.14. The six recommendations we produced are summarised in Box 2.1. They reflect areas of analysis and evidence that we felt were particularly weak from the IAs we scrutinised in the first phase of our work, and which we thought would benefit from greater care and effort in the future.

2.15. Our first report grouped the IAs, on which we produced an Opinion, in terms of where they failed to match what our recommendations would have expected to find, using examples from our published Opinions as case studies. The nature of our work now means that we are unable to refer to IAs explicitly by name in this report. However, we are able to give some information and examples of our findings in more general terms.



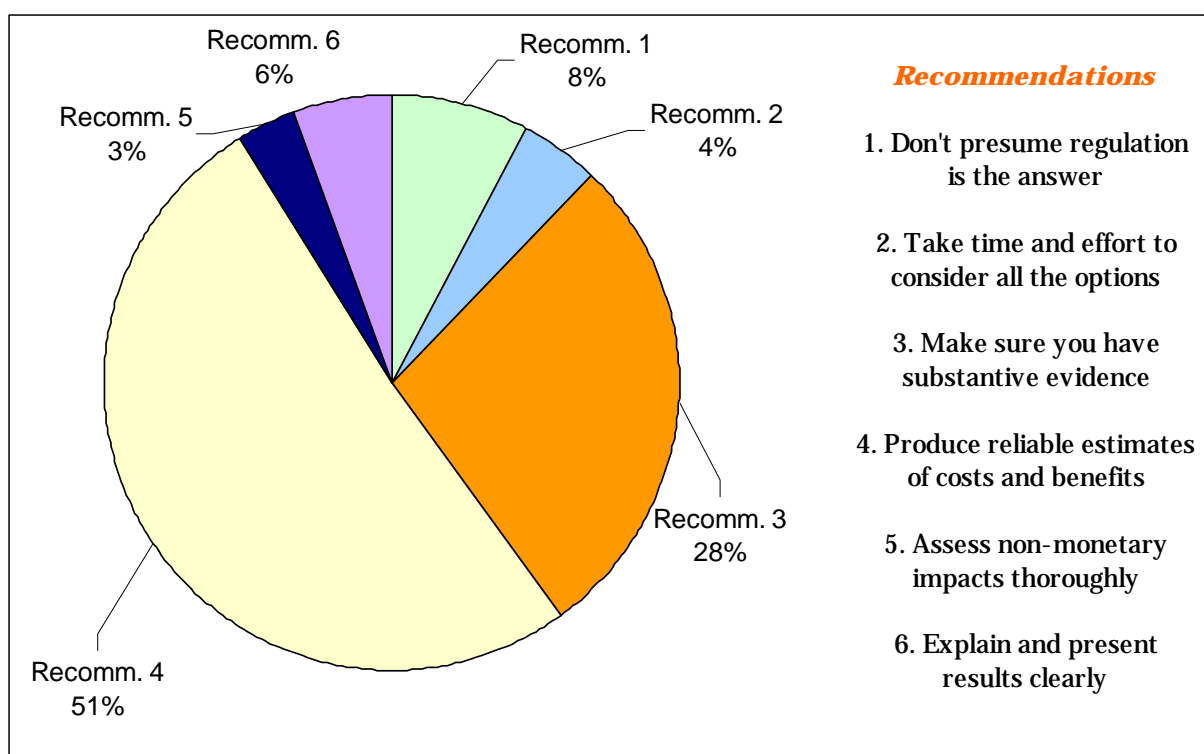
## ***Our Latest Findings: September – December 2010***

**2.16.** As noted above, 44 % of the IAs we scrutinised were, in our opinion, inadequate in some sense in terms of fully assessing the potential impacts of the regulatory proposal the IA was produced in support of. The quality of IAs we saw varied widely and those where we thought there were significant issues with the quality were spread across a range of Departments and their Agencies. These included both large and complex regulatory proposals as well as those that were small and relatively straightforward.

**2.17.** When scrutinising the IAs we received we paid close attention to the recommendations we made in our first report, not only to provide as much consistency across our Opinions as we could, but also to determine if our recommendations were being considered in the production of IAs.

**2.18.** Figure 2.1 shows the main area of concern we had with the 83 IAs we thought were inadequate in one way or another in relation to our six recommendations.

***Figure 2.1: Main weakness of IA in terms of the six recommendations***



**2.19.** Figure 2.1 shows what we thought the areas of greatest deficiency or weakness in the IAs we scrutinised were in terms of:

- the failure to produce reliable estimates of costs and benefits; (Our Recommendation 4 – which was the main reason for our 'negative opinion' in 42 of the IAs we scrutinised.);
- the failure to ensure substantive evidence was provided to support estimates made and conclusions reached; (Our Recommendation 3 – which was the main reason for our 'negative opinion' in 23 of the IAs we scrutinised).

**2.20.** Interestingly, these were the two main concerns that we raised in our first report (Reviewing Regulation, page 17, Table 2.2). Below we provide more detail in relation to these two concerns.

***Box 2.2: How our findings compare with the National Audit Office and the European Commission***

Though it is not always straightforward or strictly correct to compare the output of different organisations this Box presents our findings in relation to some of the findings of others who have looked at Impact Assessments (IAs).

Our initial report (August 2010) showed that we thought some 21% of the IAs we scrutinised were sufficiently deficient, or weak, to merit us raising concerns.

The National Audit Office (NAO) produces an annual report which provides an assessment of the IAs they sample and then scrutinise. The NAO's 2010 Report showed that they thought 18 per cent of their sampled IAs were “..Red’.. because the IA may not provide sufficient evidence to convince the reader that the best regulatory option had been chosen.” The NAO also reported that “..only 28 per cent fully met the (their) quality tests.” (NAO, Page 5). Our current results suggest that we thought some 44% of the IAs we scrutinised between September 2010 –December 2010 were in some way sufficiently weak to merit us raising concerns.

The European Commission has an Impact Assessment Board (IAB) which “... provides independent quality control and quality support for Commission impact assessments”. The IAB's 2010 Report (January 2011) shows that it requested re-submission, following first submission, of 42% of the IA's it scrutinised. The IAB's Report says that “the Board requests resubmission of a draft IA report when it has serious quality concerns that it believes can and should be resolved.” (IAB Report, Page 4)

**Reliable estimates of costs and benefits**

**2.21.** The production of reliable estimates involves a range of elements and a good level of skill and judgement. We particularly look to see that all material costs and benefits have been presented, and all important uncertainties and risks have been taken into account. Box 2.3 provides some examples for why we thought a number of IAs did not sufficiently reflect Recommendation 4 from our previous report.

***Box 2.3: Some reasons why we could not consider the costs and benefits presented as being reliable***

**Basis for forecasted impacts not clear.** A number of IAs provide estimates of future costs and benefits of regulatory proposals which are based on ‘illustrative profiles’ or ‘expert views’. If insufficient detail is provided with respect to the basis, and methodology used, for such forecasts it is difficult to conclude that cost and benefit estimates based on such forecasts are reliable.

**Basis for ‘Best’ estimate not clear.** A number of IAs present a ‘best’ estimate for costs and benefits without it being obvious why this estimate was chosen from the range of costs and benefits given. Without such information it is difficult to determine if the ‘best’ estimate is the most likely or most robust estimate for the expected outcome.

**Behavioural effects, unintended consequences and distributional impacts.** A number of IAs assume that the proposed regulation will impact on those to be affected in an apparently straightforward and certain way. However, when a regulation is introduced, this can result in behaviour changing in unexpected ways, and this in turn can lead to unintended or unexpected consequences which mean that the impacts of the proposed regulation, and how it impacts on different groups, may be significantly different to what is expected.

**‘Missing’ costs and benefits.** Some IAs provide estimates of potential costs and benefits for a number of impacts, but stop short of providing estimates for the full range of potential costs and benefits. Sometimes this is because the cost or benefit has simply not been considered. Other times it is because it is claimed that it is either disproportionate or not possible to provide quantification, or because it is just assumed there will be no impact. While we acknowledge it is not always straightforward to provide estimates of all potential impacts, where a particular impact is either missing or not valued for a convincing reason it is difficult to conclude that the estimates given are reliable or robust.

**Baseline/counterfactual against which proposal is being compared.** The estimation of an appropriate baseline (or counterfactual or alternative state of the world) against which to compare the impacts of a regulatory proposal is not always straightforward. However, such estimation needs to be undertaken with care to gauge the potential additional impacts of the proposal. Some IAs we have seen have used a baseline or counterfactual based on an existing regulation not existing because it could have been removed, or is currently not fully operational. Additional benefits from introducing a regulation are then claimed as if the existing regulation did not exist. This results in inappropriately optimistic levels of additional benefits being claimed from a regulatory proposal.

## **Substantive evidence**

**2.22.** Over a quarter of the IAs we judged to have significant weaknesses related to the evidence base produced to support the estimates of costs and benefits. Box 2.4 presents some examples of weaknesses in this area.

***Box 2.4 Some reasons why we thought why the evidence presented was not substantive.***

**Sources of Evidence.** A number of IAs provided no sourced evidence for their estimates or just a single source. Where estimates are not supported by a range of evidence (which, for example could include research undertaken by a Department - and not necessarily the Department producing the IA - Parliament, or academic research) it is not always possible to conclude that these estimates are robust.

**Use of the results of public consultation.** A number of IAs provided little or no reference to the results of public consultation with respect to the potential impacts of regulatory proposals. Some just say that there were no responses, or appear to take one response as representative of all responses. Some IAs made no reference to consultation at all. Where an IA explains clearly the impact consultation has had on the estimates it presents, this provides some reassurance that the estimates have been 'road-tested' taking the views of others into account.

**'Break-even' assessments.** Some IAs produced estimates of expected costs and then say that if there were benefits of 'X' this would equal the costs. The IAs then go on to say that 'X' would result if only a relatively small beneficial change resulted from the regulation, and so the regulation should be considered to produce benefits at least equal to its costs. Such assessments should not replace analysis, supported by evidence, of how the proposed regulation will lead to a more beneficial outcome than the situation without the regulation.

**2.23.** With respect to the other four recommendations from our previous report, these are areas which, though not faultless, show signs of less deficiency. Two features we think worth noting in respect of these recommendations are: first, it appears that the more effort is being taken to assess all the options taken to appraisal in a more systematic manner; and secondly, that the qualitative assessment of the impacts of regulatory proposals is also being given more effort.

**2.24.** In terms of the explanation and presentation of the results of IAs this could be said to be deteriorating relatively, but we would not necessarily draw a significant conclusion from our latest findings. There have recently been changes made to the IA template and guidance which means that there will be a process of 'bedding in' of new presentational requirements which may initially lead to somewhat less clear presentation. We would expect this to be only a temporary phenomenon and for the presentation of IAs to improve and be more consistent in the future, as the new guidance and template become more firmly established and understood.

**2.25.** With respect to our Recommendation 1 ('Don't presume regulation is the answer') there may be initial signs that departments and agencies are thinking more widely before turning to regulation as the solution to an issue.

# Annex A

## *189\* Impact Assessments reviewed by the Regulatory Policy Committee, September-December 2010*

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BIS <sup>10</sup>	Postal Services Bill 2010
BIS	Implementing the Revised EU Electronic Communications Framework
BIS	Setting a limit on the value of claims to be heard in the Patents County Court (s288(1) Copyright, Designs and Patents Act)
BIS	New legislation on protection of CE marking
BIS	Impact assessment of proposal for new legislation on the Market Surveillance of products
BIS	Amending the Measuring Instruments Directive
BIS	Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2011
BIS	Amendment of National Minimum Wage regulations to cover changes in accommodation offset rules
BIS	Amending legislative skills entitlements
BIS	Impact Assessment of proposals to address problems in relation to the use of Bills of Sale for consumer lending
BIS	Raising the default retirement age
BIS	Flexible Working
BIS	Repeal of the Property Misdescriptions Act 1991
BIS	Registration of Charges
BIS	Higher Education Reforms - Interim IA
BIS	Options for reform to regulatory framework for consumer credit
BIS	Proposals to Revise the Toys (Safety) Regulations 1995
BIS	Patents Act to provide for online patent document inspection
BIS	Resolving Workplace Dispute
BIS	Shared Parental Leave
BIS	Annual Leave Carry Over Arrangements
BIS	The Registrar of Companies (Fees) (Limited Partnership) (Amendment) Regulations 2011, The Registrar of Companies (Fees) (European Economic Interest Grouping) (Amendment) Regulations 2011 and The Registrar of Companies (Fees) (Companies, Overseas Companies)
CLG <sup>11</sup>	Planning for Schools Development
CLG	Implementing the Mobile Homes Act 1983 on local authority Gypsy and Traveller sites
CLG	Charging for Section 78 Planning Appeals and Advertisement Consent Appeals
CLG	Proposal to consolidate and amend the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended)
CLG	Localism Bill - Summary Impact Assessment
CLG	The abolition of the Standards Board Regime, clarification of the law on predetermination and the requirements to register and declare interests

<sup>10</sup> Department for Business, Innovation & Skills

<sup>11</sup> Department for Communities and Local Government



CLG	Creating a single housing Ombudsman - Localism Bill
CLG	Giving councils greater freedom over their governance arrangements - Localism Bill
CLG	Local referendums - Localism Bill
CLG	General power of competence for local authorities - Localism Bill
CLG	General powers for fire and rescue authorities - Localism Bill
CLG	Community Right to Challenge - Localism Bill
CLG	Community Right to Buy - Localism Bill
CLG	Business Rate Supplement - Requirements for a Ballot for all Business Rate Supplement Proposals - Localism Bill
CLG	Discretionary Business Rate - Localism Bill
CLG	Small Business Rate Relief (SBRR) automation - Localism Bill
CLG	Cancellation of Certain Backdated Non Domestic Rates Liabilities - Localism Bill
CLG	Provision for referendums to veto excessive council tax increases - Localism Bill
CLG	Abolition of the regional planning tier and introduction of the Duty to cooperate - Localism Bill
CLG	Major Infrastructure Projects - Localism Bill
CLG	Community Infrastructure Levy - Localism Bill
CLG	Local Plan Reform - Localism Bill
CLG	Compulsory Pre-application Consultation between prospective developers and local communities - Localism Bill
CLG	Enforcement package - Localism Bill
CLG	Neighbourhood plans and Community Right to Build - Localism Bill
CLG	Payment of European Union Infraction fines by local and public authorities - Localism Bill
CLG	Repeal of Home Information Packs (HIPs) - Localism Bill
CLG	Reform of social housing regulations - Localism Bill
CLG	A Fairer Future for Social Housing - Localism Bill
CLG	Devolution Package: Provision of housing and regeneration powers to the GLA, Transfer of LDA powers and functions to GLA, Enabling powers for the Mayor to designate Mayoral Development Corporations (MDCs) - Localism Bill
CLG	Local Government Senior Officer Pay accountability - Localism Bill
CLG	Reforming the annual housing revenue account subsidy system - Localism Bill
CLG	Localism Bill - Creating executive mayors in the 12 largest English cities
CO	Public Bodies Bill
DCMS <sup>12</sup>	Gambling Act 2005: Category B3 Gaming Machines
DCMS	Digital Legal Deposit - Non print Offline Content (DCMS004) Regulation for the legal deposit of UK online publications (DCMS006)
DCMS	Digital Legal Deposit - Non-print offline publications (DCMS004) Regulation for the legal deposit of UK online publications (DCMS006)
DCMS	Media Ownership (Radio and Cross-Media) Order
DCMS	Amendments to the London Olympic Games and Paralympic Games Act 2006 Advertising and Street Trading Powers
DECC <sup>13</sup>	Opt-in of nitrous oxide emission from nitric acid reduction into the EU ETS

<sup>12</sup> Department for Culture, Media and Sport

<sup>13</sup> Department of Energy and Climate Change

DECC	Impact Assessment for Nuclear Waste Handling Regulations 2010
DECC	Impact assessment for collective license modification
DECC	Citiworks
DECC	Introduction of a Special Administration Regime for Electricity and Gas Supply Companies
DECC	Supplementary powers for the Coal Authority to sell its expertise on subsidence and treatment of contaminated water regarding non-mining situations
DECC	To clarify the intention in the Coal Mining Subsidence Act 1991 to provide remedies in relation to subsidence arising as a direct consequence of the withdrawal of support in connection with lawful coal mining activities rather than as a consequence of inadequate opencast restoration
DECC	Making better use of energy performance data
DECC	Obliging Ofgem to assess future electricity capacity requirements
DECC	Gas Supply Emergency Arrangements
DECC	Amendment to the Energy Act 2008 Powers to Implement and Direct the Rollout of Smart Meters
DECC	Amendments to S46 Energy Act 2008
DECC	Energy Efficiency Scheme (Amendment Order) 2011
DECC	Reform of the regime for resolving disputes over third party access to and for compulsory modifications of upstream petroleum infrastructure (Energy Bill 2010)
DECC	Implementing the Third Party Access Requirements of the CCS Directive
DECC	Green Deal Elements of the Energy & Climate Change Bill
DECC	Home Energy Conservation Act
DECC	Proposed legislation to implement the amended Paris and Brussels Conventions on nuclear 3rd party liability
DECC	The Storage of Carbon Dioxide (Termination of Licences) Regulations 2011
DECC	Third Package: Articles concerning the National Regulatory Authority
DECC	Third Package: Articles concerning customers right to switch provider within 3 weeks and receive final account closure within 6 weeks of switching
DECC	Third Package: Articles concerning provision of consumer information
DECC	Electricity market reform: Options for ensuring electricity security of supply
DECC	Electricity Market Reform : Options for promoting investment in low carbon generation
DECC	Electricity Market Reform options: coherence and implementation
DECC	Third Package: Transmission and Distribution Networks
DECC	Proposals for implementation of licence modification appeals under the EU Third Package
DECC	Third Package: Gas Storage and LNG Facility impacts
DECC	Provision of third party access to licence exempt electricity and gas networks
DECC	Cost recovery for approving offshore (oil and gas) decommissioning programmes
DECC	Consultation on raising the threshold for energy supplier participation in social and environmental programmes
DEFRA <sup>14</sup>	IA of cost sharing options available to the market surveillance authority under the energy using products and energy labelling regulations IA of the proposed penalty regime for the energy using products and energy labelling regulations

<sup>14</sup> Department for Environment, Food and Rural Affairs



DEFRA	Proposal to introduce packaging recovery and recycling targets for 2011 and 2012 IA of proposed transparency improvements and technical changes to the Producer Responsibility Obligations (Packaging Waste) Regulations 2007
DEFRA	Introducing a system of Fixed Administrative Penalties for Domestic Fisheries Offences in England.
DEFRA	Regulation on the Provision for special water and sewerage infrastructure projects in England
DEFRA	Review of Schedule 2 of the Controlled Waste Regulations 1992
DEFRA	Poultrymeat Regulations 2010
DEFRA	Poultrymeat Regulations 2010
DEFRA	Measures setting out those fisheries to be included in Environment Agency licensing schemes
DEFRA	Implementation of Council Regulation 708/2007 concerning the use of alien and locally absent species in aquaculture
DEFRA	FCERM national strategy for England
DEFRA	FWMA 2010 Sustainable Development Duty and Guidance
DEFRA	Guidance under s7(6) of the FWMA 2010
DEFRA	Fruit Juices and Fruit Nectars (England) (Amendment) Regulations 2010
DEFRA	Cost Recovery for Marine and Coastal Access Act 2009 Environmental Licensing
DEFRA	Simplification of contaminated land statutory guidance
DEFRA	Reducing and phasing out the horticultural use of peat in England
DEFRA	Consultation on the registration of new town or village greens
DEFRA	Orders under sections 38(8) and 39(12) of the Flood and Water Management Act (incidental flooding and erosion)
DEFRA	FWMA 2010 RFCC Implementation (sections 17, 22-26 and parts of Schedule 2) including s24 regs and s74 LGFA 1988 regs, as well as technical consequential changes
DEFRA	Review of Schedules 5 & 8 of the Wildlife and Countryside Act 1981
DEFRA	Impact Assessment of the Transposition of the Revised Waste Framework Directive (Directive 2008/98/EC)
DEFRA	Marine Licensing Impact Assessment
DEFRA	Increasing Dangerous Dogs Index Fee
DfE <sup>15</sup>	The Education (Provision of Information by Independent Schools) (England) Regulations 2010
DfE	Overarching Impact Assessment for the Education Bill 2011
DfT <sup>16</sup>	European Commission's proposal for a Regulation on the rights of passengers when travelling by sea and inland waterway
DfT	Compensation Arrangements - Driving Instruction Suspension and Exemption Scheme
DfT	Street Works Lane Rental
DfT	M1 Junctions 6A-10 controlled motorway; Impact Assessment of M1 Junctions 25 to 28

<sup>15</sup> Department for Education

<sup>16</sup> Department for Transport



DfT	Driving license standards: European Proposals to amend Driving Licence Standards for Vision of Annex III of Directive 91/439/EEC European Proposals to amend Driving Licence Standards for Diabetes of Annex III of Directive 91/439/EEC European Proposals to
DfT	Continuous Insurance Enforcement
DfT	Single European Sky
DfT	Shipowner Liability
DfT	Merchant Shipping (Maritime Labour Convention) (Medical Care) Regulations 20XX
DfT	Directive on Promotion of Clean and Energy Efficient Road Transport Vehicles
DfT	Application of Part 3 (services and public functions) of the Equality Act 2010 in relation to transporting people by, or a service provided on, a ship or hovercraft
DfT	Merchant Shipping and Fishing Vessels Regulations 2010 Asbestos
DfT	Merchant Shipping and Fishing Vessels Regulations 2010 Optical Radiation
DfT	Wreck Removal Convention Bill
DfT	Driver Training Vehicles Operator Licensing Exemption
DfT	VOSA Powers to stop commercial vehicles for inspection
DfT	Removal of Exemptions from HGV roadworthiness testing
DfT	M25 Junctions 2 to 3 Variable Speed Limits and Enforcement
DfT	Enforcement regime for air fare transparency provisions of the EC Air Services Regulation
DfT	Air Traffic Services (Exemption) Order
DfT	Drink-drive rehabilitation scheme
DfT	The EC's Three Regulations on International Road Transport
DfT	Reforms to the aviation security regulatory framework
DfT	Reforming the framework for the economic regulation of airports in Great Britain
DfT	Transfer of certain day to day aviation security regulation and compliance functions to the Civil Aviation Authority (CAA)
DfT	Reforms to the CAA's regulatory framework
DfT	Traffic Signs (amendment) Regulations and General Directions 2010
DfT	Major Sporting Event Bill - Olympic transport provisions
DfT	Fuel Quality Directive
DfT	Amendments to the Renewable Transport Fuels Obligation for compliance with the Renewable Energy Directive - (1) Minimum Sustainability Criteria
DfT	Amendments to the Renewable Transport Fuels Obligation for compliance with the Renewable Energy Directive - (2) Reporting and Verification
DfT	Amendments to the Renewable Transport Fuel Obligation for compliance with the Renewable Energy Directive - (3) Non-Road Mobile Machinery
DfT	Amendments to the Renewable Transport Fuels Obligation for compliance with the Renewable Energy Directive - (4) Minimum Obligation Threshold
DfT	Amendments to the Renewable Transport Fuels Obligation for compliance with the Renewable Energy Directive - (5) Double Certification of Waste-Derived Biofuels
DfT	Amendments to the Renewable Transport Fuels Obligation for compliance with the Renewable Energy Directive - (6) Buy-out Recycling
DfT	Amendments to the Renewable Transport Fuels Obligation for compliance with the Renewable Energy Directive - (7) Partially Renewable Fuels
DfT	Airport Charges Directive (ACD)
DfT	The Community Drivers' Hours (Volunteer Reserve Forces) Regulations 2010
DfT	Blue Badge Reform Programme



DfT	Impact Assessment of extending the Blue Badge Scheme to children between the ages of 2-3 with specific medical conditions
DfT	The Road Vehicles (Construction and Use) (Amendment) (No.x) Regulations 2011
DH <sup>17</sup>	The Genetically Modified Organisms (Contained Use) (Amendment) Regulations 2010
DH	COP on the prevention and control of infections and related guidance
DWP <sup>18</sup>	Pensions Bill - Workplace pension reform legislation
DWP	Pension Protection Measures for the Pensions Bill
DWP	Impact of the move to CPI for Occupational Pensions
FCO <sup>19</sup>	Continental Shelf (Energy Bill)
GEO <sup>20</sup>	Dual Discrimination
GEO	Legislative measures to promote equal pay
GEO	Ending age discrimination in the provision of goods, facilities, services and public functions
GEO	Equality Act 2010: Review of Familiarisation Costs and Simplification benefits in the April Impact Assessment
GEO	Creating a single set of specific equality duties to underpin the new integrated public sector Equality Duty
HMT <sup>21</sup>	Impact Assessment of CRD2 regulations
HMT	Insolvency and Special Administration Rules for Building Societies Amendments to Insolvency and administration rules for banks (Two IAs - One opinion)
HMT	Impact Assessment for Somalia (Asset Freezing) Regulations
HMT	E-Money Regulations
HMT	Impact Assessment on draft E-Money Regulations
HMT	Consultation on the Transposition of the Recast Undertakings for Collective Investments in Transferable Securities (UCITS IV) Directive 2009
HMT	Electronic Communications in the Mutual Sector
HMT	Financial Services Authority regulation of administering a regulated mortgage contract
HMT	Financial Services Authority regulation of the second charge mortgage market
HMT	Exemption from Financial Services Authority regulation for Registered Housing Associations in Northern Ireland
HMT	Financial Services Authority regulation of the sale and rent back market
HO <sup>22</sup>	Alcohol Measures in the consultation
HO	Amendments to Schedule 5 of Anti-Terrorism, Crime and Security Act 2001
HO	Policing and Crime Commissioners
HO	Migration Permanent Limits
HO	Re-introduction of charges for controlled drug and precursor chemical licences
HO	Consultation on the Reform of the Student Immigration System
HSE <sup>23</sup>	Plant Protection Products: Enforcement Regulations and Fees Regulations

<sup>17</sup> Department of Health

<sup>18</sup> Department for Work and Pensions

<sup>19</sup> Foreign & Commonwealth Office

<sup>20</sup> Government Equalities Office

<sup>21</sup> Her Majesty's Treasury

<sup>22</sup> Home Office

<sup>23</sup> Health and Safety Executive

MOD <sup>24</sup>	Impact Assessment of the transposition of the EU Defence and Security Directive into UK Regulations
MOJ <sup>25</sup>	Trusts (Capital and Income) Bill

\* Some items appear more than once – this is because the RPC has reviewed impact assessments (IAs) on these more than once due different stages of policy development (e.g. consultation and final stage) or as a result of amended IAs being re-submitted to the RPC.

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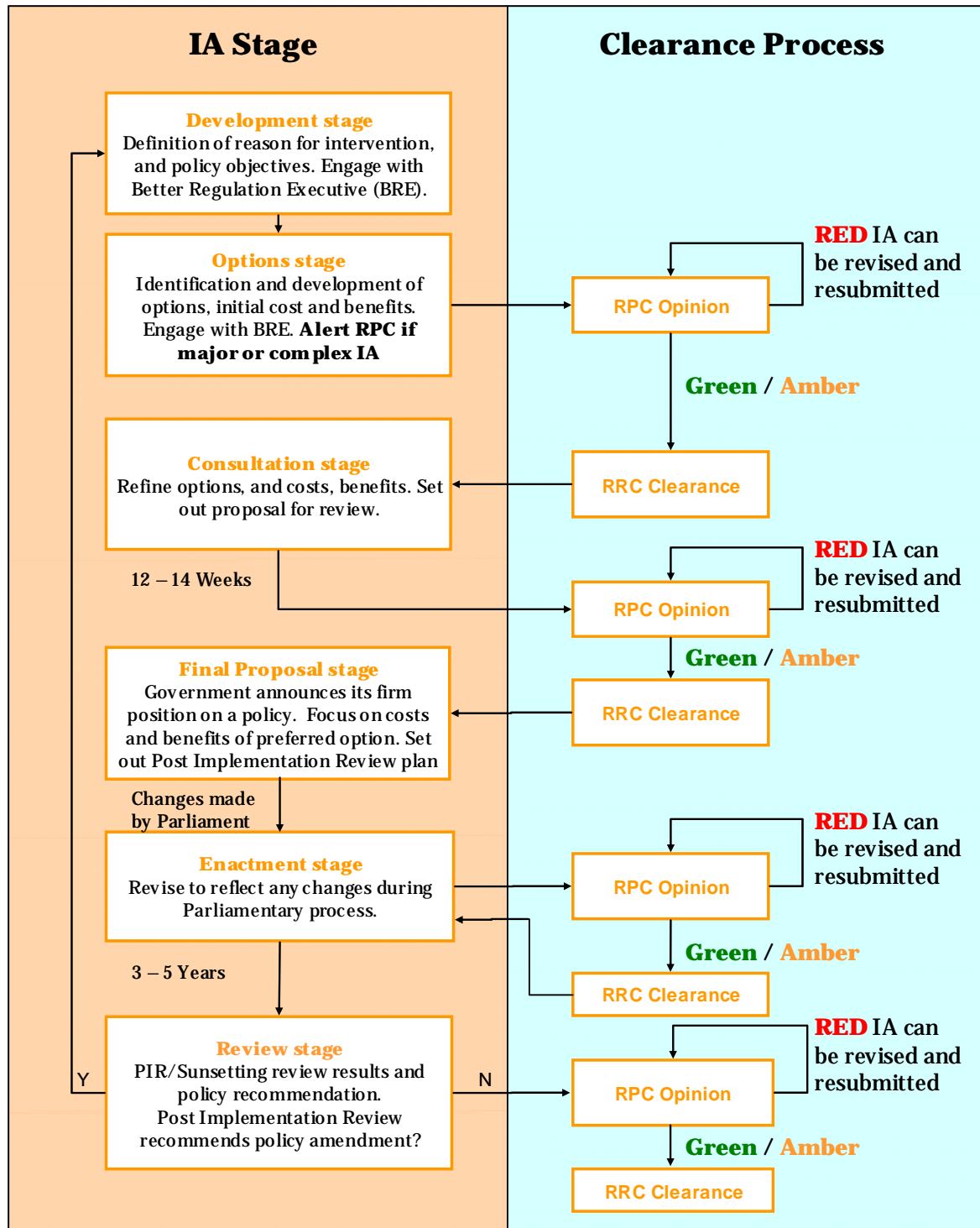
<sup>24</sup> Ministry of Defence

<sup>25</sup> Ministry of Justice



# Annex B

## Policy development flowchart – adapted from the Better Regulation Executive’s IA Guidance <sup>26</sup>




<sup>26</sup> Adapted policy clearance flowchart: <http://www.bis.gov.uk/ia-guidance>



# Annex C

## *Opinion template*

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 <b>Regulatory Policy Committee</b>	<b>OPINION</b>		
Impact Assessment (IA)	[IA TITLE]		
Lead Department/Agency	[DEPARTMENT]		
Stage	Consultation / Final / Enactment		
Origin	Domestic / European / International		
Date submitted to RPC	DD/MM/YYYY		
RPC Opinion date and reference	DD/MM/YYYY	RPCYY-DEPT-XXXX	
<b>Overall Assessment</b>	<b>RED</b>	<b>AMBER</b>	<b>GREEN</b>
<p>The IA is (not) fit for purpose.</p>			
<p><b>Identification of costs and benefits, and the impacts on small firms, public and third sector organisations, individuals and community groups and reflection of these in the choice of options</b></p>			
<p><b>Have the necessary burden reductions required by One-in, One-out been identified and are they robust?</b></p>			
<b>Signed</b>	[SIGNATURE ]		[SIGNATORY]





# Annex D

## *Members of the Regulatory Policy Committee*

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### **Michael J. S. Gibbons OBE (Chair)**

- Formerly Director of Powergen (MD of Powergen's gas business).
- In 2007 he completed a Review (the Gibbons Review) of Employment Dispute Resolution for the DTI.
- Appointed by European Commission to the High Level Advisory Group on Administrative burdens in February 2008 (Stoiber Group).
- Member of the EU Strategic Business Advisory Group and Ministerial Challenge Panel to BIS.
- Chairman of UK National Committee of World Energy Council.
- Director of Powerfuel Power Ltd and the Carbon Capture and Storage Association.
- He sits on the Advisory Board of Ocean Power Technologies Inc.
- Michael was awarded an OBE for services to regulatory reform in the New Year Honours List 2008.



### **Sarah Veale CBE**

- Sarah Veale is Head of the Equality and Employment Rights Department at the TUC, where she has worked since 1985.
- Prior to this Sarah was Senior Employment Rights Officer, in which role she was responsible for the development of TUC policy on employment law.
- Sarah is a member of the ACAS Council, the Women's National Commission and the Employment Tribunals System Steering Board.
- She was awarded the CBE for services to diversity in the Queen's Birthday Honours List in June 2006.



### **Mark Boleat**



- In 1999, Mark established Boleat Consulting, a consultancy business specialising in trade association strategy and management, regulation, consumer policy and housing finance.
- Prior to that he was Director General of the Association of British Insurers.
- He has also been Director General of the Building Societies Association and the Council of Mortgage Lenders.
- Chairman of the Jersey Competition Regulatory Authority.
- He is also Deputy Chairman of the Policy and Resources Committee of the City of London.

### **Philip Cullum**



- Deputy Chief Executive of Consumer Focus, the independent statutory champion for consumers.
- Philip was previously Deputy Chief Executive of the National Consumer Council.
- He has also worked with Accenture, Opinion Leader Research and Which?
- He was until recently chair of the Food Standards Agency's advisory committee for consumer engagement.

### **David Parker**



- Emeritus Economics Professor of Cranfield School of Management having been Dean of the Faculty of Management from November 2007 to September 2009.
- Associate of Public Administration International and consultant on competition and regulation internationally
- Member of the UK Competition Commission between 1999 and 2007.
- Areas of expertise: privatisation, regulation and competition issues.

## **Ian Peters**



- Chief Executive of the Chartered Institute of Internal Auditors since June 2009.
- He was previously Director of External Affairs at the Engineering Employers Federation (EEF) from 2001.
- Prior to that he was Deputy Director General of the British Chambers of Commerce with specific responsibility for policy, lobbying and communications.
- He has worked for the CBI and in public relations for the international PR agency Burson-Marsteller.

## ***Secretariat***

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The Regulatory Policy Committee is supported by a small civil service secretariat of economists and policy officials. During the period covered by this report, the following civil servants were members of the secretariat;

Tony Pedrotti  
Irene Ball  
Daniel Cartridge  
Benjamin Copley  
Swarajit Das  
Sumit Dey-Chowdhury  
Giles Hall  
Trevor Reid  
Bagrat Tunyan



# Annex E

## *Contacting the Regulatory Policy Committee*

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Members of the RPC and its secretariat can be contacted at:

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For further information on the RPC, please visit our web site:

[www.independent.gov.uk/regulatorypolicycommittee](http://www.independent.gov.uk/regulatorypolicycommittee)

