 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Amendment to the Trade Union and Labour Relations (Consolidation) Act 1992: trade unions' registers of members	
Lead Department/Agency	Department for Business, Innovation and Skills	
Stage	Final	
IA number	BIS LM001	
Origin	Domestic	
Expected date of implementation (and SNR number)	6 April 2015 (SNR9)	
Date submitted to RPC	2/9/2013	
RPC opinion date and reference	22/10/2013	RPC13-BIS-1883
Overall assessment	RED	
<p>RPC comments</p> <p>The IA is not fit for purpose. The assessment is not sufficiently robust to justify validation of the equivalent annual net cost to business (EANCB) figure.</p> <p>The IA needs to provide a more detailed assessment of all likely costs to trade unions, including all familiarisation costs and recurring costs to small unions. These assessments of costs should be supported by further evidence that was gathered from consultation with stakeholders, in particular quality assurers.</p> <p>It is unclear how accurate and up-to-date a membership register will have to be for a union to be considered 'compliant' with the proposed new requirements; or what process of investigation would be undertaken by an independent qualified assurer, or how rigorous that process would be. Thus, the accuracy of a union's register, the time costs of the assurance process, and the fee payable to the assurer, all remain highly uncertain.</p> <p>Given the advanced stage of policy development, it is surprising that such details are yet to be confirmed. The Committee notes the very short consultation period and the failure to follow appropriate better regulation framework processes put in place by the Government, both factors which may contribute to the lack of a sound evidence base. Had the RPC seen this at an earlier stage, it could have provided advice on how the IA could have been improved.</p>		
<p>Background (extracted from IA)</p> <p>What is the problem under consideration? Why is government intervention necessary?</p> <p>It is considered that the current statutory obligations for trade unions to maintain a register of their members' names and addresses do not provide an adequate mechanism for all the parties involved to obtain assurance that the register is accurate and up-to-date. The proposed changes would provide information to trade union members, the general public and employers to assure them that membership lists are accurate.</p>		

What are the policy objectives and the intended effects?

The policy objective is to give greater assurance that unions comply with the existing duty to maintain a register of members' names and addresses, but in a way that is not prescriptive and that minimises the burden on unions in providing this assurance. The intended effect of the policy is to ensure that trade union members, the general public and employers are confident that voting papers and other communications reach trade union members so they have the opportunity to participate in union activity - as far as is reasonably practicable - even if they choose not to exercise it.

Proposals

To provide a level of transparency and consistency (not achieved by current legislation) through a statutory duty on trade unions to provide to the certification officer (CO), an annual membership audit certificate that provides an opinion on the maintenance of the register. Also, powers for the CO to: appoint inspectors to investigate and to make orders requiring a trade union or person to co-operate with an inspector's investigation; issue declarations and enforcement orders for non-compliance with duties relating to the register.

Comments on the robustness of the OITO assessment

The IA says that it is a regulatory proposal that would impose a net cost to trade unions – civil society organisations - (an IN) with an equivalent annual net cost to business (EANCB) of £0.37million. Based on the information provided, this represents a reasonable assessment of the direction of the likely impacts. However, for the reasons outlined below, the assessment is not sufficiently robust to justify validation of the EANCB figure.

Assurance processes

The IA explains that it focuses “...*exclusively on the costs and benefits related to the independent assurance of trade union processes and controls regarding membership lists*” (paragraph 31) which are additional to existing requirements for unions to maintain a register of their members' names and addresses that is “*accurate and up-to-date*”.

However, it is unclear how the assurer will determine whether a union is compliant with these existing requirements as they must be followed “...*so far as it is reasonably practicable...*” (page 1). In addition, the IA says that, according to a few stakeholders, “...*the final cost to the union, in regards to assisting the assurer, would be dependent on the final guidance produced by BIS – illustrating what the minimum requirements were for a membership audit certificate – and the size of a union's operation*” (paragraph 52). In addition, the IA says that “*All stakeholders agreed that the potential fee would vary depending on the size of the trade union and (guidance pending) the sample size used to check whether processes were robust*” (paragraph 46).

It is therefore unclear how accurate and up-to-date a membership register will have to be for a union to be considered 'compliant' with the proposed new requirements.

It is also unclear what process of investigation would be undertaken by an independent qualified assurer, or how rigorous that process would be. Thus, the accuracy requirements of a union's register, the time costs of the assurance process, and the fee payable to the assurer, all remain highly uncertain. On this basis, the estimated costs to trade unions cannot be considered robust.

Familiarisation costs

The IA assesses familiarisation costs on the basis of one stakeholder, experienced with trade union operations, believing that, conditional on the size of a union, it would take one or two days for a union official to become familiar with the new legislation. The IA says that this would involve learning how the legislation would impact on the union's operations by analysing the changes and producing a report. The IA makes an assumption about the level of union staff involved in this activity but no consideration appears to have been given to the impact of putting in place processes or facilities to meet the new requirements, or of the likelihood of the involvement of senior union officials. All familiarisation costs must be included in the EANCB calculation.

Time costs of complying with the assurance process

As the nature of the assurance process remains unclear, it is also difficult to assess the likely recurring costs for trade unions. It appears from the IA that the only resource implications for unions will be that between one and ten members of staff will have to engage in 30-minute telephone interviews with the quality assurer. However, the IA does not appear to present the full range of time costs that could be imposed on unions by the assurance process. For example, the Certification Officer would have powers to "*...require documents to be produced where he thinks there is good reason to do so;*" (paragraph 23) and presumably unions officials would need to engage with, and meet, the assurer as well as enabling him to access their IT systems and membership database. The IA needs to provide a more detailed assessment of the likely time costs to unions of complying with the assurance process. This should include further evidence from consultation that has taken place with stakeholders, in particular quality assurers, in addition to the views of one stakeholder (paragraph 53).

The Department states in the IA that there will be some recurring costs for small unions to self-certify their membership audit certificates. It is not clear that a full assessment of the size of these costs has been made in the IA.

Costs to compliant unions from inspections and appeals

The IA says that the Certification Officer will have the power to "*...appoint an inspector to investigate where it appears there are circumstances suggesting the union has failed to comply with its duties...*" (paragraph 23). Should the unions ultimately be found to be compliant, either by the inspector or following an appeal, these processes would have additional costs which would be in scope of One-in, Two-out. The IA needs to assess the likelihood of these costs falling on compliant trade unions and their possible scale.

Evidence base

A number of assumptions have been made throughout the IA in order to assess the costs of the proposals to unions. However, in most cases, these assumptions appear to be supported by a very limited evidence base. These include the estimated time costs of familiarising (paragraphs 34 - 35), and complying (paragraph 53), with the new assurance processes. The Committee notes the very short consultation (in August) and the failure fully to follow appropriate better regulation framework processes, both factors which may contribute to the lack of a sound evidence base.

Best estimate of the EANCB

The IA provides a “best estimate” EANCB figure of £0.37million, based on the time and fee cost of unions obtaining an annual audit certificate for their membership register. However, the IA says that this is based on an assumed wage cost which *“It must be stressed... is an overestimated value”* (paragraph 55) and that *“The EANCB to trade unions is estimated to be less than £0.37m”* (paragraph 84). The Department’s overestimated value cannot be considered as robust.

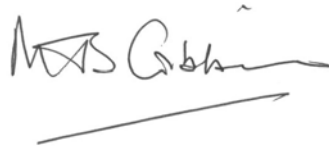
While respecting proportionality of the resource required to identifying the best estimate of the EANCB, the Committee wishes to give equal treatment to both over and under estimates of EANCB figures for both INs and OUTs. The Committee considers that, in this case, more effort should have been committed to identifying the best estimate of the EANCB.

Comments on the robustness of the small & micro-business assessment (SMBA)

The proposals regulate civil society organisations and are intended to come into force after 31 March 2014 and therefore a SaMBA is applicable.

The IA does not include a SaMBA but it does include sufficient details of how the impact of the proposals has been minimised for small unions (e.g. the facility to self-certify their membership audit certificates), which is supported with proportionate analysis.

Signed



Michael Gibbons, Chairman