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|  Regulatory Policy Committee | Opinion | |
| Impact Assessment (IA) | The Appointment of Small Businesses Appeals Champions | |
| Lead Department/Agency | Department for Business, Innovation and Skills | |
| Stage | Consultation | |
| IA Number | Not provided | |
| Origin | Domestic | |
| Expected date of implementation (and SNR number) | October 2014 (SNR8) | |
| Date submitted to RPC | 11/02/2014 | |
| RPC Opinion date and reference | 26/02/2014 | RPC14-BIS-2021 |
| Overall Assessment | AMBER | |
| <p>RPC comments</p> <p>The IA is fit for purpose. It identifies the key elements of the cost to business arising from the requirement for non-economic regulators to appoint a Small Business Appeals Champion.</p> <p>The assessment of the one-in, two-out direction (an 'IN') is correct. However, the assessment incorrectly excludes a significant cost from the estimated annual net cost to business (EANCB), namely any cost that is recovered from business to fund this additional requirement of regulators. The final stage IA will need to include this in the EANCB calculation.</p> <p>Prior to publication, the Department should strengthen the IA in relation to assumptions about cost recovery, Champions' time and support staff costs, and the assessment of alternative options.</p> | | |
| <p>Background (extracts from IA)</p> <p>What is the problem under consideration? Why is government intervention necessary?</p> <p><i>Evidence from the Government's Focus on Enforcement reviews and supplementary research has shown widespread inadequacy in the provision of appeals and complaints mechanisms by national non-economic regulators – including an absence of transparent, effective procedures and poor explanation and signposting. Intervention is necessary to correct this failure and reduce the risk that poor enforcement decisions are left standing because of businesses' – and particularly small businesses' – inability to challenge them effectively.</i></p> <p>What are the policy objectives and the intended effects?</p> <p><i>The overall aim is to drive greater efficiency, accountability and transparency in the interaction between regulators and those they regulate. The key objective of this specific measure is to provide assurance to business and Government that regulators are delivering against the goals relating to appeals and complaints set out in the new</i></p> | | |

statutory Regulators Code.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- *Option 1. Do nothing, relying on the new Code, but making no provision for assurance of compliance.*
- *Option 2. Legislate to appoint an independent Small Business Appeals Champion within each non-economic regulator, responsible for delivering that assurance. (Preferred option)*
- *Option 3. Appoint such an officer by agreement with each non-economic regulator, without any legislative basis.*
- *Option 4. Create a single stand-alone body to deliver assurance in respect of all non-economic regulators.*

Identification of costs and benefits, and the impacts on business, civil society organisations, the public sector and individuals, and reflection of these in the choice of options

The IA provides a good evidence base (page 6 and especially Annex A) to support the rationale for government intervention. The IA includes a range of options, monetises the key costs and provides a reasonable discussion of the benefits. There are, however, a number of areas where the IA should be strengthened prior to publication.

The IA claims that the measures being proposed for the appointment of Small Business Appeal Champions will also adequately deal with the need for appeals mechanisms suitable for larger businesses. This assumption needs to be tested at consultation.

Funding arrangements for non-economic regulators and cost recovery assumptions

The IA estimates the proportion of costs that are recovered from businesses by using evidence from the 2012 Regulator Questionnaire on existing cost recovery practices. From this, it estimates that 32% of the costs of the proposal will be recovered from businesses.

It is not clear that this evidence, which relates to the costs of enforcement, is necessarily appropriate for this proposal. A more appropriate basis for estimating costs to business would seem to be the proportion of the cost base of the non-economic regulators that is currently recovered from businesses. The IA should provide information on the current funding arrangements for non-economic regulators, with a view to using this to inform assumptions about cost recovery for this proposal. If this is not possible, the IA should provide justification for the existing assumption. As part of this, the Department will need to demonstrate in the final stage IA that any assumption of cost recovery rates remaining constant is realistic, given the Government's policy of moving to full cost recovery. A scenario or sensitivity analysis, including what the costs to business would be under full cost recovery, would be useful.

Costs to support the Champion

It is assumed that the Champion is employed for three days per month; this assumption should be tested in the consultation. The IA also calculates the cost of a Champion's support staff on the basis that the number of staff days is the same as that for the Champions, namely three days per month (Table 2, page 12). The IA should provide a stronger justification for the support staff time assumptions used. We were not clear how the assumed time commitment and the estimated level of support staff time would enable the Appeals Champions to carry out their responsibilities, as outlined in the IA (paragraph 35). Champions will have to scrutinise a regulator's appeals and complaints processes, engage with business representatives, and report publicly their findings. The estimates included in the 'key assumptions' table on page 5 might be closer to the real resource costs in terms of support staff. These estimates are different to those used in the calculations.

Comparison of Options 2 and 3

The IA explains satisfactorily why option 4 is not being carried forward (paragraphs 64 – 66), principally because of the perceived negative impact on regulators' independence.

The two remaining "do something" options only differ in their legislative basis. Option 2 has a legislative requirement for Small Business Appeals Champions, whereas Option 3 relies upon voluntary agreements. The IA explains that Option 2 is preferred because it gives "*greater certainty that the appointments will be made*" (paragraphs 46-47).

However, the analysis suggests that the costs of both options are similar, and in doing so, that the non-legislative option is as effective as the legislative one. Option 3 could only have the same cost if all non-economic regulators agreed to appoint a Small Business Appeals Champion.

The IA should be clearer on how Options 2 and 3 compare, and address more directly the benefits and risks of each option.

More Specific Comments

The IA could provide more information on:

- whether or not the monetised costs include the cost to the regulator of the duty to engage with the Champion to provide information for the Champion's report (page 22);
- the Annual Survey of Hours and Earnings hourly pay rates used, e.g. the occupational group (page 11); and
- the source for the 30% (of pay) assumption for Travel and Subsistence costs (page 11).

Comments on the robustness of the Small & Micro Business Assessment (SaMBA)

The proposal is intended to come into force after 31 March 2014. While this proposal does not regulate business in itself, it will affect small and micro businesses. The IA

therefore includes a SaMBA (paragraph 70).

The SaMBA is fit for purpose at this stage. However, in the final stage IA, the SaMBA should take account of how non-economic regulators currently recover costs from businesses (as noted above) and how this affects small businesses in particular.

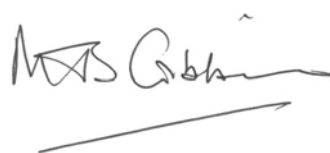
Comments on the robustness of the OITO assessment.

The Department has presented this proposal as an IN with an EANCB of £0.03 million.

This figure consists solely of familiarisation costs to business. The IA states at paragraph 42 that *“although this measure does not require any action of businesses, we assume that a small proportion will choose to familiarise themselves with its provisions. We would expect only those businesses that believe they will gain from familiarising themselves with the Champion’s role would do so.”* The IA should provide a clearer explanation of why this familiarisation is entirely voluntary. If the final stage IA does this satisfactorily, excluding these costs from the EANCB calculation would be more appropriate, in line with the guidance on permissive changes in the Better Regulation Framework Manual (paragraph 1.9.21).

On the other hand, the Department excludes from the EANCB the costs that are recovered from businesses to fund this additional requirement of regulators. The Department considers these costs to be out of scope of OITO under ‘fees and charges’. However, as an entirely new activity, for which at least some of the costs will be recovered from businesses, this clearly represents an expansion of regulatory activity. The RPC therefore considers that those costs that are recovered from business to fund this activity are in scope of OITO, as set out in the BRFM (paragraph 1.9.8 vii). The final stage IA should include these costs in the EANCB.

Signed

A handwritten signature in black ink, appearing to read 'Michael Gibbons', with a long horizontal line underneath it.

Michael Gibbons, Chairman