



## **Reviewing Regulation**

An independent report on the analysis  
supporting regulatory proposals,  
December 2009-May 2010

August 2010



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# Foreword

By Michael Gibbons OBE

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In these challenging economic times, the importance of properly assessing the costs and benefits of new regulation has never been greater. In the UK, government departments and their agencies are required to provide a strong rationale and evidence base for all new regulatory policies that impose costs on the private, public or third sectors in the form of an impact assessment, signed off by the responsible Minister.

This requirement was put in place to ensure that regulatory decisions are not made without the support of robust evidence and analysis. Proposed regulation should be based on a sound, publicly available appraisal of the options, risks, costs and benefits.

A series of significant improvements to the regulatory landscape has been developed in the UK over a number of years. However, I believe that the establishment of an independent body, the Regulatory Policy Committee (RPC), to review new regulatory proposals as they are being developed and challenge them publicly where there are concerns, means that the UK is a world leader in this area. No other country has such in-depth, wide-ranging and real-time independent scrutiny as is now provided by the RPC.

Our view has been that, if it is deemed important enough to take Parliamentary time and place new obligations of any size on the UK economy via new regulation, then it is also important that these proposals be subjected to independent and public scrutiny. This approach also helps to avoid the introduction of a series of relatively modest burdens which would otherwise have a cumulative effect comparable to major regulation.

Our vision is that such independent challenge will achieve real change and instil a widespread culture of robust, evidence-based decision making in government whenever regulatory proposals are developed.

This, our first report, summarises the results of our work since the formation of the RPC at the end of 2009. Between December 2009 and May 2010 we examined 107 new regulatory proposals from the then Government. We have published our challenge in the form of Opinions on 22 of these proposals.

We set out our findings in Chapter 2, along with some key recommendations arising from these conclusions in Chapter 3. In particular, we have found too many proposals which have not fully investigated the use of alternatives to regulation. Our Opinions have drawn attention to shortcomings in the evidence base, including failure to substantiate estimates of the costs and benefits of proposals and, in some cases, a lack of evidence that the regulatory proposal is likely to deliver the policy intention.

I believe we have made a good start, and there is growing evidence both that departments are responding to our recommendations and that businesses are finding it helpful to refer to our Opinions. We are keen to build on this foundation and further develop our relationships with



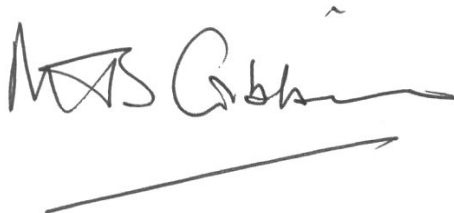
key regulatory stakeholders, including businesses, consumers and trade unions, as well as decision-makers in Whitehall and Parliament. Chapter 4 sets out our view of possible next steps and highlights issues which we may explore in the future.

I would like to thank the business, consumer and trade union stakeholders who have engaged with us so far, and alerted us to regulatory changes that affect them. We particularly appreciate those bodies who have taken the opportunity to welcome our role in the regulatory process. I would also like to thank government departments. There is not always an easy relationship between bodies such as ours and those that they challenge, but our initial sense is that UK policy-makers are responding constructively to our comments, and I hope very much that this will continue.

I believe that that the role of independent scrutiny of proposed regulation will continue to play a key role in the UK, in order to improve the quality of law making, and to increase public confidence in it.

In particular we are interested in the new Government's commitment to "One-in, One-out" in regulatory terms, not least because it is in part designed to ensure the removal of unhelpful regulation – a worthy aim which has rarely been achieved by governments across the world. I believe that strong, independent scrutiny of the associated regulatory assessments will be important in verifying the process, and thereby increasing public confidence in this innovative approach.

Finally, I would like to thank the members of the Committee and the staff of the RPC for their hard work over the past 7 months, their objectivity and their relentless passion for good legislation.



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

# Executive Summary

## *Our role*

The Regulatory Policy Committee (RPC), established in 2009, is tasked with providing for the first time in the UK, independent, wide-ranging and real-time scrutiny of proposed regulatory measures put forward by Government.

We have taken the view that if it is deemed appropriate to place new obligations of any size on the UK economy via new regulation, it is important that these proposals are subjected to independent and public external scrutiny. Our approach of reviewing all such proposals also means the cumulative impact of smaller proposals is not overlooked.

Our role is not to comment on the underlying policy objectives of government, but rather to ensure that when Ministers make decisions on proposed new regulations, they do so against the background of a robust, evidence-based policy making process.

In making decisions on new regulatory proposals, Ministers should be satisfied that the risks have been properly considered, that the different options and the associated costs and benefits have been identified and set out, and that the wider impact of the proposed legislation has been considered. Our role is to review and publicly challenge those who regulate when this is not the case.

## *Our findings*

Overall, since its establishment in December 2009, the RPC has collected and analysed information on over 400 public consultations issued by a wide range of departments and agencies, of which 222 were regulatory. Of these, 207 were within our scope and 168 had Impact Assessments (IAs). From this the RPC has scrutinised 107 regulatory proposals which had IAs, and has issued 22 Opinions (21%).

Our public Opinions aim to highlight the major issues and weaknesses we find in the analysis and evidence in support of proposed regulatory measures.

There are many IAs produced which provide well presented, detailed analysis and evidence, which appear to be part of a robust decision making process and are seen as a positive contribution to good policy and project management. However, there are a number of IAs that lack significant analytical rigour, are poorly presented, or appear to be produced as an afterthought, seemingly as a means of ‘ticking the right boxes’ to obtain the necessary approval for a proposed course of action.

## *Our recommendations*

Below are our main recommendations, which we hope will be used by policy makers and other interested parties to strengthen the quality of analysis and use of evidence in the regulatory policy making process.



### ***Recommendation 1: Don't presume regulation is the answer***

While the justification for a proposed regulatory intervention is usually explained, there are a number of cases in which the presence of a market failure is itself considered sufficient to merit intervention. This can lead to a presumption to intervene without sufficient analysis being given to: the operation of the market(s) to be affected; any existing regulatory regime; or any voluntary activities.

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

Often too much weight is given to the preferred option and insufficient analysis applied to other options, particularly the 'do nothing' or 'do minimum' option, and alternatives to regulation.

### ***Recommendation 3: Make sure you have substantive evidence***

There have been instances where no significant evidence is provided, or the evidence appears to consist of a single piece of research, or single survey or opinion, or is not clearly referenced or obviously sourced.

### ***Recommendation 4: Produce reliable estimates of costs and benefits***

It is not always clear that all material costs and benefits and all important risks and uncertainties have been assessed appropriately and presented clearly. This includes the use and testing of appropriate time periods, and the sensitivity of results to key variables.

### ***Recommendation 5: Assess non-monetary impacts thoroughly***

The qualitative analysis provided, though often well discussed, shows little use of more systematic or formal techniques. As a result, the robustness and quality of analysis is not always easy to determine.

### ***Recommendation 6: Explain and present results clearly***

It is not always obvious from a proposed regulatory intervention who bears the costs and who reaps the benefits, when, and to what extent.

## ***Next Steps***

We are already starting to see benefits from our efforts and have identified several areas which we feel would benefit from independent scrutiny. These include:

- Regulatory consultations without IAs;
- Soft law;
- Identifying and promoting good practice;



# Chapter 1. Our Role

## Introduction

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1.1. The Regulatory Policy Committee (RPC), established in 2009, is tasked with providing, for the first time in the UK, independent, in-depth, wide-ranging and real-time scrutiny of proposed regulatory measures put forward by Government.

1.2. Our role is not to comment on the underlying policy objectives of government, but rather to ensure that, when Ministers make decisions on proposed new regulations, they do so against the background of a robust, evidence-based policy-making process.

1.3. In making decisions on new regulatory proposals, Ministers should be satisfied that the risks have been properly assessed, that the different options and the associated costs and benefits have been identified and set out, and that the wider impact of the proposed legislation has been considered. Our role is to review and publicly challenge all those who regulate when this is not the case.

## Independent challenge

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1.4. Good regulation can support competition, innovation and growth and it can help to overcome problems where the market “fails” to produce the best outcome for society as a whole. However, regulation is not the answer to every problem and can be a very blunt tool for delivering change.

1.5. Poorly thought-through regulation runs the risk of delivering very little and can result in costs outweighing benefits, the distortion of markets, and a range of unintended consequences. It is therefore essential that new regulation should be introduced only if it is supported by sound and robust evidence and after alternatives to regulation have been properly considered.

1.6. The UK has a system, developed over many years, for presenting the evidence

### ***Box 1.1: RPC Terms of Reference***

The Government invites the Regulatory Policy Committee:

a) to comment on the quality of analysis supporting policy decisions on new regulations, and on whether the policy design will ensure the benefits justify the costs, including:

- the accuracy and robustness of the costs and benefits;
- whether the range of policy options assessed support minimising costs and maximising benefits; and
- the degree to which issues of public risk and the practicalities of ensuring compliance are taken into account.

b) to review, advise and comment on the performance of regulators against the Hampton principles.

and analysis to supporting regulatory proposals via impact assessments (IAs). However, the quality of IAs has been found to vary considerably<sup>1</sup>.

### **Box 1.2: The call for independent scrutiny**

*British Chambers of Commerce (2008)*: “It’s vital that there is a powerful independent voice within Whitehall to scrutinise regulation and regulatory policy.”

*Confederation of British Industry (2008)*: “...confidence in the delivery of the better regulation agenda could be boosted through greater use of independent checks and scrutiny.”

*Organisation for Economic Co-operation and Development (OECD) (2009)*: “Consideration should be given to reintroducing an independent advisory or scrutiny body (including representatives from outside the business community).”

1.7. Leading external commentators have emphasised that, to deliver really effective challenge to regulatory decision making, a strong, independent body should become a key part of the UK system (see Box 1.2 for examples).

1.8. It was for this reason that the RPC was established, with the aim of ensuring that new regulation is subjected to real-time, independent scrutiny, and to challenge Government when the case for new regulation is not made or is not supported by a sound and robust evidence base.

## **The unique role of the RPC**

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1.9. The UK has in the past used independent expertise to challenge and advise government in the area of regulatory reform. Examples of this include the Better Regulation Task Force (BRTF), the Better Regulation Commission (BRC) and the Risk and Regulation Advisory Council (RRAC).

1.10. Some scrutiny of IAs is already carried out by the National Audit Office (NAO), which reviews a sample of IAs after the final versions have been published. While the work of the NAO is valuable, they have not been tasked with addressing areas of concern *prior* to final decisions being made. We fill this gap by working within the government policy-making process. Figure 1.1 sets out how we see our independent challenge role fitting into the overall system.

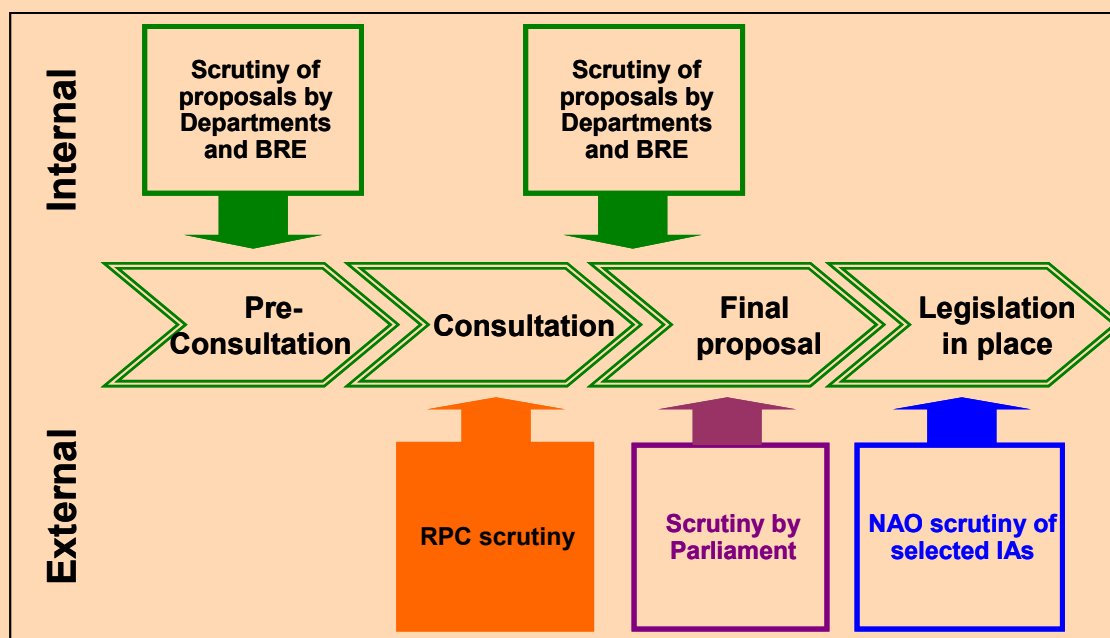
### **Unique in terms of independent, real-time scrutiny**

1.11. Our role is unique in that it provides – for the first time within the UK regulatory development process – a comprehensive, independent, real-time challenge of regulatory proposals.

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<sup>1</sup> Delivering High Quality Impact Assessments, National Audit Office, 2009.

**Figure 1.1: Stylised view of the regulatory development process and scrutiny of IAs**



*There is already internal government scrutiny of proposals before publication, parliamentary scrutiny once final legislative proposals are made and ex-post assessments of randomly selected IAs by the NAO. We fill the gap by commenting after proposals are published for consultation but before final proposals are made.*

### **Unique in terms of scope**

1.12. We are also unique in that we are not restricted to looking at administrative burden reductions, issues relating to public risk, or specific areas of legislation. Rather, we consider the full range of issues associated with regulatory design. We look at proposed regulations that affect the public sector, citizens and consumers, as well as businesses, and comment on the evidence and analysis presented.

### **Unique in terms of reviewing all new regulatory proposals**

1.13. We are the first body to examine every new regulatory proposal. We have taken the view that if it is deemed appropriate to place new obligations of any size on the UK economy via new regulation, it is important that these proposals are subjected to independent and public external scrutiny. Reviewing every proposal also means the cumulative impact of smaller proposals is not overlooked.

### **Unique in terms of publication of findings**

1.14. As an independent body, we can and do make our views public via published Opinions during the regulatory decision-making process. This ensures other interested external stakeholders are fully aware of our work and findings.

## How the RPC operates

1.15. The Committee consists of a mix of independent experts with a wide range of experience and current knowledge of business, employee and consumer issues. The Committee is supported by a secretariat of civil servants. We have developed an internal process which should ensure that new regulatory proposals are identified, and those within our scope are reviewed and scrutinised.

1.16. All key decisions, including which regulatory proposals should be subjected to in-depth RPC scrutiny, whether this should ultimately lead to a published Opinion, and on the content of the Opinions themselves, are made by the Committee members.

1.17. The secretariat reviews all new public consultations to identify regulatory proposals that fall within our scope and then scrutinises the published IA and accompanying documentation as necessary. Where we have concerns that the content of the IA may not be complying with existing guidance, or the principles of better regulation<sup>2</sup>, or generally that the evidence base is unsatisfactory, it will pass to the next stage for further detailed scrutiny (Stage 3, see Box 1.3).

### **Box 1.3: Summary of RPC scrutiny process**

**Stage 1.** Initial sweep of every new consultation that is published by the Government and its agencies, to assess whether it is regulatory in nature and within our scope.

**Stage 2.** Initial scrutiny of regulatory proposal to see if there are any areas of concern related to quality of analysis

**Stage 3.** Allocation of individual Committee member to lead on detailed scrutiny of regulatory proposal where concerns have been identified.

**Stage 4.** Detailed scrutiny of regulatory proposal, including decision on whether to proceed with full Opinion

**Stage 5.** Draft Opinion approved by full Committee

**Stage 6.** Department provides comments on the factual accuracy of draft Opinion

**Stage 7.** Final Committee sign-off before publication

1.18. From this stage onwards the lead RPC member oversees and steers the work of secretariat, agreeing the key areas of concern prior to a meeting between the relevant department and the secretariat. The findings of the meeting are then discussed with the RPC lead before deciding whether to proceed to an Opinion.

1.19. Draft Opinions are agreed by the whole Committee prior to departmental factual checking. Any revisions in light of the comments received are agreed by the full committee prior to being signed off by the RPC Chair. The final Opinion is then published.

<sup>2</sup> The principles of better regulation are that any regulation should be transparent, accountable, proportionate, consistent and targeted. For more info see <http://www.bis.gov.uk/bre>

### ***Engaging with departments during the scrutiny process***

1.20. The RPC will always seek to meet with government departments and agencies during the course of our work. These meetings play a key role in helping us investigate the issues we have identified, to understand better the policy context of the proposed new regulation or regulatory change, and to challenge, where necessary, the evidence and analysis supporting the regulatory proposal.

1.21. In addition we give the relevant department five working days to review our draft Opinion for factual inaccuracies prior to publication.

### ***Engaging stakeholders during the scrutiny process***

1.22. We are happy to receive comments from stakeholders on the evidence and analysis presented to support regulatory proposals to inform our work throughout the scrutiny process. We have established relationships with stakeholder groups, including the large business organisations, trades unions and consumer organisations, as well as smaller trade associations. Many of these organisations have commented on the important role that the RPC can play (see Box 1.4).

1.23. Every month, all the stakeholders on our database are sent a list of all the regulatory consultations that have opened and are invited to alert us if they have concerns.

### ***Final publication and follow-up***

1.24. Transparency of our Opinions has been very important to the RPC; we always publish our Opinions on our website<sup>3</sup>. This will normally happen during the relevant public consultation period. We continue to monitor all proposals that have been subject to our Opinions to see if our views have been taken into account by departments when preparing the final draft regulation. We would expect to comment again on the final IA, if the quality of analysis presented still raises concerns.

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<sup>3</sup> <http://www.independent.gov.uk/RegulatoryPolicyCommittee>

  
**Box 1.4: Stakeholder support for the RPC**

*Brendan Barber, General Secretary, Trades Union Congress (TUC):* “In tough times, it’s more important than ever for business, employees and consumers that we both welcome the benefits of good regulation and reduce the costs of the bad. The RPC’s first months’ work show how it can help improve public policy by carefully scrutinising and highlighting any flawed analysis in how the costs or benefits of new rules stack up.”

*David Frost, Director General, British Chambers of Commerce (BCC):* “It is vital that Government Departments take proper account of the burdens they place on business when designing regulation. The creation of the Regulatory Policy Committee adds independent scrutiny to the legislative process, and will highlight bad practice amongst policymakers. In the current economic climate, business needs every chance possible to create growth and jobs, and weeding out poor regulatory interventions will contribute to achieving this.”

*Mike O’Connor, Chief Executive, Consumer Focus:* “Regulation is important to consumers in making markets work properly and protecting people who are vulnerable and at a disadvantage. However it is in the consumer interest to have the right regulation, properly enforced, but no more, not least because consumers pick up the tab for unnecessary or misfiring interventions. We welcome the role of the RPC in holding new regulatory proposals up to real, independent scrutiny and drawing lessons so that there is a sustained improvement in regulatory culture.”

*Matthew Goodman, Forum of Private Business (FPB):* “Despite nearly two decades of better regulation initiatives, there is still a real need for independent scrutiny of the impact of regulation before it hits small businesses. The RPC’s ‘real time’ analysis of costs and benefits is a real step forward in checking that a watertight case has been made for new regulation. That’s what makes it so important that businesses work with them in assessing which draft regulations need further analysis. The Forum of Private Business welcomes these first signs of a practical and transparent check on bad regulation from the RPC.”

# Chapter 2. Our Findings

## Introduction

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2.1. In this Chapter we present the main results and findings of our scrutiny work to date. This is based on our review of all IAs and associated documentation published as part of public consultations by government departments and agencies between December 2009 and May 2010<sup>4</sup>.

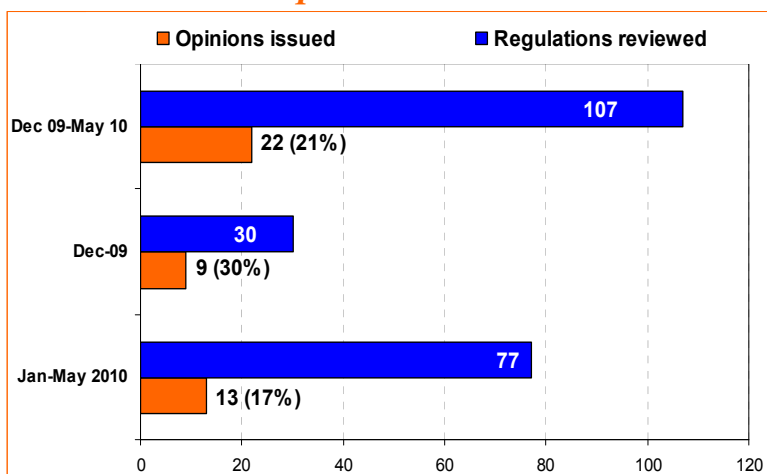
## Main results

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2.2. Since January 2010, we have been operating a “real-time” system to scrutinise public consultation documents that include regulatory proposals. The scrutiny process starts with reviewing all new public consultations, which allows us to identify regulatory proposals for further detailed scrutiny. In this respect, the RPC’s database is unique as it aims to collect information on all public consultations (both regulatory and non-regulatory) issued by a wide range of departments and agencies.

2.3. The main output from our scrutiny work is the Opinions we publish. We publish Opinions on cases where we find significant issues relating to the evidence and analysis supporting the policy. However a decision not to publish an Opinion on a regulatory proposal does not necessarily mean that we endorse or approve of the analysis and evidence presented.

**Figure 2.1: Numbers of regulations reviewed and Opinions issued**



2.4. Overall, since its establishment in December 2009, the RPC has collected and analysed information on over 400 public consultations issued by a wide range of departments and agencies, of which 222 were regulatory. Of these, 207 were within our scope (i.e. not taxation or financial services measures) and 168 had Impact Assessments (IAs). Of these, the RPC has scrutinised 107 regulatory proposals and

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<sup>4</sup> This includes all consultations that were published earlier (October-November, 2009) and were still open (live) during December, 2009.



has issued Opinions on 22 of them (21%) as shown in Table 2.1. A full list of all 107 public consultations reviewed, including the consultations on which Opinions were published, is provided in Annex A.

2.5. Our scrutiny process for regulatory consultations was slightly different before and after 14 January 2010. In the initial stage of operation (December, 2009) we focused on scrutinising relatively large items (generally those with total costs or benefits above £10m). During this stage 30 regulatory proposals were scrutinised in detail, of which 9 (30%) led to an Opinion being published.

2.6. From mid-January we introduced a more comprehensive method of scrutiny (see Box 1.3), in which we looked at all new proposals and scrutinised a further 77 regulatory consultations in detail, regardless of their size and origin. We have issued Opinions on 13 of these proposals (17%).

2.7. As part of the review process we have also found that about 19% of regulatory consultations (39 of 207) did not have accompanying IAs. In most of these cases departments have justified the absence of IAs because of “no” or “negligible” impacts on the private and third sectors, and because the cost to the public sector is estimated to be less than the £5 million threshold below which IAs are not required.

**Table 2.1: Breakdown of all live regulatory consultations and RPC Opinions by Department and Agency (December 2009–May 2010)**

Department/Agency	Regulatory consultations	Regulatory consultations in scope, with IAs	Regulatory consultations scrutinised	RPC Opinions issued
Communities and Local Government	13	10	7	2
Dept. for Business, Innovation and Skills	21	19	9	1
Dept. for Children, Schools and Families	28	12	6	2
Department for Culture, Media and Sport	10	7	2	0
Dept. for Environ., Food and Rural Affairs	30	28	18	3
Department for Transport	24	23	18	4
Department for Work and Pensions	8	4	3	1
Dept. of Energy and Climate Change	11	8	7	1
Department of Health	11	10	9	3
Environment Agency	1	1	0	0
Food Standards Agency	12	9	6	0
Foreign & Commonwealth Office	2	2	0	0
Health and Safety Executive	6	6	3	0
Highways Agency	3	3	3	0
HM Revenue & Customs	6	0	0	0
HM Treasury	10	2	2	0
Home Office	6	5	4	2
Intellectual Property Office	1	1	0	0
Maritime and Coastguard Agency	5	5	5	2
Medicines & Health. Product Reg. Agency	1	1	1	1
Ministry of Defence	1	1	0	0
Ministry of Justice	12	11	4	0
<b>TOTAL</b>	<b>222</b>	<b>168</b>	<b>107</b>	<b>22</b>

*Note: The difference between 168 and 107 i.e. 61 are those measures that were relatively small and were not scrutinised in detail in our initial work programme, prior to 14 Jan 2010. The table does not include departments and agencies which did not publicly consult on any new regulatory proposals in the stated period.*

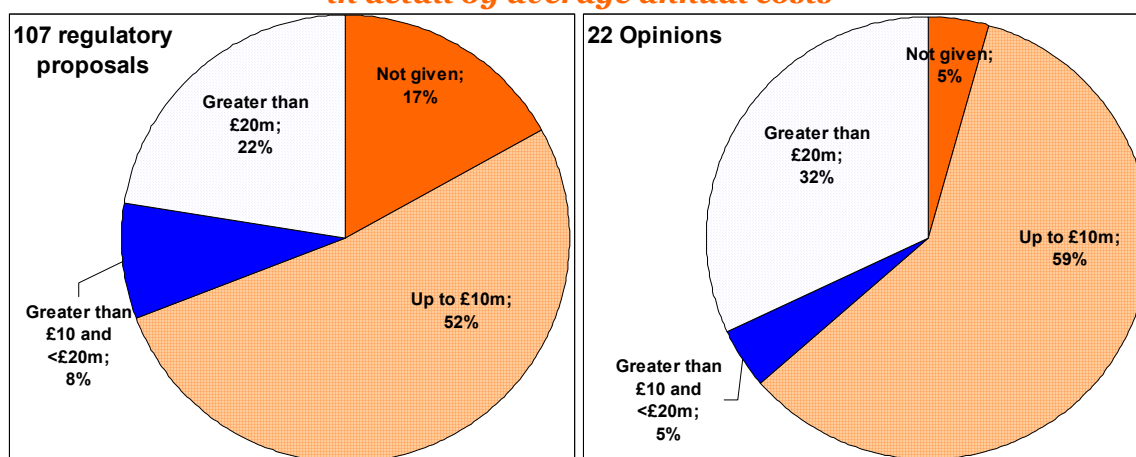


2.8. Table 2.1 provides a breakdown of all regulatory consultations and RPC Opinions by department and agency. The limited period covered and the small size of the sample mean that, at this stage, no conclusions should be drawn on the performance of individual departments and agencies.

2.9. Figure 2.2 provides information about the breakdown of the 107 regulatory proposals and 22 Opinions by annual average costs. This analysis shows that, in our scrutiny process, we have reviewed regulatory proposals covering a wide range of monetary impacts. The proportion of small, medium and large measures in the published 22 Opinions is overall similar to the proportion of the baseline of 107 regulatory proposals.

2.10. For example, we have published an Opinion on the inclusion of the aviation sector in the EU's Emission Trading System, which is one of the largest new regulatory measures on the previous government's Forward Regulatory Programme<sup>5</sup> of March, 2010. In fact, the share of large measures in the 22 published Opinions is slightly greater than in the baseline. This is largely due to the fact that in the initial phase of our work we focused our efforts on 30 relatively large proposals.

**Figure 2.2 Breakdown of 22 Opinions and 107 regulatory proposals reviewed in detail by average annual costs**



Note: Information about costs is taken from impact assessments. Where the IA provided different cost estimates for alternative options, the estimate for the preferred option has been taken. The numbers may not add up to 100% due to rounding.

2.11. Around 17% of all regulatory proposals reviewed did not monetise the costs of different options. It is more difficult to carry out an in-depth assessment of the analysis and evidence behind these proposals when little attempt is made to quantify their impacts and no information is provided regarding monetised costs of alternative options. The share of regulatory proposals with no information about costs is therefore lower in our Opinions (5%) than in the baseline (17%).

<sup>5</sup> The previous Government's Forward Regulatory Programme provides information about new regulatory changes that may be implemented between April, 2010 up to April 2011. <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/10-p96a-governments-forward-regulatory-programme.pdf>



## Key findings

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**2.12.** Our public Opinions highlight the major issues and weaknesses we found in the analysis and evidence supporting proposed regulatory measures. As we examine every regulatory intervention, irrespective of size and origin, our Opinions cover a very wide range of issues. This means that our findings can often be very specific to a particular issue or proposal.

**2.13.** Nevertheless, based on the analysis of issues raised in our Opinions, we have been able to identify some common areas of weakness. These issues can be grouped in the following main categories:

**Rationale for intervention.** Often, the reason for the proposed regulatory intervention is not clearly presented and justified. This primarily relates to the way the perceived problem is analysed and presented in the IA to justify a specific intervention, as well as the lack of explanation as to how the proposed measures will achieve their objectives.

**Range and choice of options.** In several instances we have expressed concerns about the quality of the option identification, selection and appraisal process. Departments and agencies have a tendency to commit a major effort to analyse and present the preferred option, but a full range of policy alternatives is not always presented and adequately analysed.

**Evidence base.** This is a cross-cutting issue that relates to all aspects of analysis in support of new regulatory proposals. The evidence base provided in IAs can be very limited and at times not obviously applicable to the issue under consideration.

**Cost-benefit analysis.** In many of our Opinions we have raised concerns about different aspects of the cost-benefit analysis. The analysis of the impact of different options is not always undertaken in a robust and accurate manner, particularly in the following respects:

- Monetary valuation of costs and benefits: IAs often appear to concentrate on analysing those aspects of policy impact which are less important but are more easily quantifiable (e.g. additional administrative costs for public sector bodies), and give less emphasis to other major policy impacts which are generally hard to quantify, but could be more important in terms of understanding the overall impact of the proposed regulation (e.g. policy costs which result from fulfilling regulatory requirements, such as the cost of delays that occur as a result of new regulation).
- Qualitative valuation of non-monetised costs and benefits: Where departments and agencies have found it difficult or disproportionate to produce a full monetisation of costs and benefits, the IA often still fails to provide an adequate qualitative assessment of the potential impact.

**Explanation and presentation of results.** In many cases there are weaknesses in the way the analysis and existing evidence is presented, discussed and summarised in the IA and consultation document. Relevant fields in the IA template are often not completed correctly or fully, and the decision to select a preferred option is not always clearly justified by the analysis and evidence provided. As a result, it is harder for affected groups and stakeholders

to evaluate the main proposals and understand how the proposed measures are likely to impact on them.

2.14. Table 2.2 lists the 22 Opinions and the key areas of weaknesses we have found.

**Table 2.2: Key areas of weaknesses/ issues found in 22 published Opinions**

	Major areas of weaknesses and concerns					
	Rationale for intervention	Options	Evidence base	Cost-benefit analysis		Explanation and presentation
				Monetary valuation	Qualitative valuation	
Airport Body Scanners		X	X	X	X	X
Alcoholic Drink Labelling	X	X		X		
Artificial Optical Radiation on Ships	X		X	X		
Aviation and the EU ETS			X	X		X
Bus Passenger Services	X		X	X	X	X
Eco-Driving Training	X	X		X	X	
Energy Performance Certificates	X		X	X		
Health Care Workers Duty of Co-operation	X		X			X
Housing Benefit Reform			X	X		
Licences for Drugs	X		X	X	X	
Nicotine Containing Products	X		X	X		X
Non-Packaging Farm Plastics	X		X	X		X
Pupil Behaviour: Off-site Provision	X	X	X		X	
Reservoir Flood Plans	X	X	X	X	X	
Ship-to-Ship Transfers of Oil	X	X	X	X	X	
Short Breaks for Carers		X		X	X	
Street Trading and Pedlary		X		X		
The Import of Live Fish	X		X	X		
Third EU Directive on Driving Licences		X	X	X		
Tobacco Vending Machines		X	X	X		X
Training for Door Supervisors		X	X	X	X	
Zero Carbon Homes	X			X		X

2.15. Overall, during our period of scrutiny work we have found that the quality of IAs ranges widely. This finding, along with the key recommendations from our work is discussed in more detail in the next chapter.



# Chapter 3. Our Recommendations

## Introduction

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**3.1.** This Chapter presents the main recommendations from the results and findings of our work to date, which we hope will be used by policy makers and other interested parties to strengthen the quality of analysis and use of evidence in the regulatory policy-making process.

**3.2.** We wish to highlight one over-arching theme, also noted by the National Audit Office (NAO)<sup>6</sup>, which is that the quality of IAs varies significantly across different policy areas and departments and agencies.

**3.3.** There are many IAs produced which provide well presented, detailed analysis and evidence, which appear to be part of a robust decision making process and are seen as a positive contribution to good policy and project management. However, there are a number of IAs that lack significant analytical rigour, are poorly presented or appear to be produced as an afterthought, seemingly as a means of ‘ticking the right boxes’ to obtain the necessary approval for a proposed course of action.

### ***Recommendation 1: Don’t presume regulation is the answer***

**3.4.** While the justification for a proposed regulatory intervention is usually explained, there are a number of cases in which the presence of a market failure is itself considered sufficient to merit intervention. This can lead to a presumption to intervene without sufficient analysis being given to: the operation of the market(s) to be affected; any existing regulatory regime; or any voluntary activities.

**3.5.** Governments intervene in the operation of markets for a number of reasons, typically in three categories: for reasons of efficiency; for reasons of equity (or fairness); and where people may lack the necessary information to make properly informed decisions (e.g. pensions and health insurance). These are generally thought of as “market failures” which can provide a rationale for government intervention.

**3.6.** However, the presence of a market failure does not in itself justify government intervention. Market failure is a necessary but not sufficient condition for such intervention. It needs to be demonstrated that intervention can lead to an improved outcome after taking into account compliance costs, administrative costs and the distortionary costs of intervention, and taking into account the limited information government has on how its actions will affect future behaviour.

**3.7.** In a number of the IAs we have scrutinised, the presence of a market failure alone appears to be taken as sufficient grounds for a proposed regulatory intervention. This can

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<sup>6</sup> Delivering High Quality Impact Assessments, NAO, 2009.

lead to cases where it appears that intervention is considered appropriate before detailed analysis is undertaken of the causes of the market failure.

***Box 3.1 Don't presume regulation is the answer: examples from RPC Opinions***

In our Opinion on the intervention to regulate **ship-to-ship transfers** of oil we questioned whether the recent increase in the number of these transfers was more likely a result of the hoarding of oil on ships, following from the world financial market crisis, rather than a permanent feature. If this were the case, the need for permanent new regulation would probably be inappropriate.

On the proposed regulation of **nicotine containing products** it was not clearly explained what the specific risk to public health from these products is and how the licensing of these products would lead to a reduction in this risk.

On the proposed regulations on the use of **artificial optical radiation** on ships, we had reservations over the need for further regulation in this area given existing regulation. The risk to workers on ships from exposure to artificial optical radiation appeared to be covered already, albeit in a more generalised way, under existing legislation.

In our Opinion on **health care workers' "duty of co-operation"** we raised the point that it was not made clear exactly what market failure the proposed intervention was intended to tackle and how the proposed regulation would address this.

In our Opinion on **farm plastics**, we suggested that evidence on how the market for non-packaging agricultural plastics may develop in the future would clarify the extent to which additional regulation was required.

**3.8.** In addition to this there are some instances where the market failure is not explained well, or discussed sufficiently to enable an adequate understanding to be made of the proposed regulatory intervention. Sometimes the language used is just too technical or the link between the proposed intervention and the intended outcome or objective is too vague. It is also often not clear that behavioural effects have been considered.

**3.9.** It is important that an IA should explain why a proposed course of action is necessary compared to the status quo, how and to what extent the proposed action will impact on those affected, and how the status quo will be changed for the better by the proposed intervention. However, a number of IAs do not do this and, in our view, do not provide sufficient justification for regulatory action.

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

**3.10.** Often too much weight is given to the preferred option and insufficient analysis applied to other options, particularly the ‘do nothing’ or ‘do minimum’ option, and alternatives to regulation.

**3.11.** Amongst a choice of options of ‘doing something’ there is normally a ‘do minimum’ or a ‘do nothing’ option. The use of one of these options usually provides the baseline against which the costs and benefits of ‘doing something’ are compared. Good appraisal should enable all options (including the ‘do nothing’ or ‘do minimum’ option) to be compared, assessed and considered in a systematic manner.

### ***Box 3.2 Take time and effort to consider all the options: examples from RPC Opinions***

In the case of the proposed regulatory intervention for making **eco-driving training** compulsory, the preferred regulatory option was subjected to a significant level of analysis and discussion. However, for the alternative option presented, no estimate of the costs and benefits of this option was given because it said there were a number of ways of providing information and the up-take of such information was not known. This may be true but it does not provide a reason for an option to be presented in such a way that it cannot be compared sensibly to the other options.

Our Opinions on: **Street trading and pedlary; Door supervisors**, and the **Third EU Directive on driving licences** all raised concerns about the analysis of the alternative options to the proposed regulatory option.

**3.12.** Giving insufficient weight or analysis to alternative options runs the risk of introducing legislation not based on an assessment of the full range of possible alternatives, including non-regulatory ones, and the full evidence and information available. There may be a further negative impact if insufficient analysis of an option, by giving the impression to stakeholders that an option is unlikely to be adopted, discourages debate of alternative options and so limits the scope for the gathering of further information and evidence.

**3.13.** There may also be negative impacts on creative thinking and the generation of innovative ideas if options are not considered appropriately. There may be a narrowing of the field of focus such that ideas or strategies which may not be immediately obvious are not developed by a more ‘open’ process of enquiry and investigation.

## ***Recommendation 3: Make sure you have substantive evidence***

**3.14.** There have been instances where no significant evidence is provided, or the evidence appears to consist of a single piece of research, or single survey or opinion, or is not clearly referenced or obviously sourced. This can result in relevant information not being used,

provide spurious accuracy to the numbers presented, or give the impression that the evidence presented is used merely to support the proposed course of action.

### ***Box 3.3 Make sure you have substantive evidence: examples from RPC Opinions***

In our Opinion on the proposed regulatory intervention with respect to the **importation of live fish**, it was not clear to us what the main factor driving the proposed intervention was. Also, the evidence presented consisted of one piece of research of the costs of eradication of one invasive fish species.

On the proposed regulations to require **health care workers** to share information, the benefits presented in terms of effects on quality of life appeared to be based on one piece of research. This related to the issue of negligence in the NHS generally rather than information sharing specifically.

In our Opinion on proposed changes to **housing benefit**, we noted that no evidence or research was presented to explain the cost and benefit estimates.

On the proposal to change the **bus passenger regulations** we concluded that there was insufficient evidence to demonstrate the extent of the problems identified, and considered that market forces may deliver the intended effects of regulation.

**3.15.** There were a number of cases where IAs were not presented as standalone documents as required by guidance, which means the reader must try to find the evidence in other published documentation.

**3.16.** Overall, we think that it is not always clear how a proposed course of action leads to the estimated outcomes or results presented. In these cases, the IA process can cause confusion rather than contributing to making the decision making process clearer.

## ***Recommendation 4: Produce reliable estimates of costs and benefits***

### ***Quantification of costs and benefits***

**3.17.** The level of detail to which costs and benefits from proposed interventions are calculated and presented is often a matter of judgement. Sometimes, potential impacts are either relatively small, or are so uncertain (because, for example, they are expected to occur far into the future) that they may be considered not to be material to the overall results presented. However, in a number of cases it appears that IAs emphasise what can be readily quantified, and fail to consider that which cannot be quantified so easily.



## ***Risk***

**3.18.** In several of our Opinions we have raised concerns about the lack of analysis of the perceived risk to the public or the environment from a proposed regulatory intervention not being introduced. Public risk is often seen through the prism of media commentary or distorted by powerful special interest groups. Understanding the unintended consequences of attempting to remove most or all public risk is critical to achieving a balanced approach to regulation.

**3.19.** Part of our work is to emphasise to policy makers that a distorted perception of risk can lead to unnecessary and poorly considered regulations. We intend to help stimulate discussion about the role of public risk in regulation. Where we can, we will build on the excellent work of the Risk and Regulation Advisory Council (RRAC), in particular taking into account the part played by “risk actors”, such as insurance agents, who act as intermediaries where risk-based regulation exists.

## ***Point and range estimates***

**3.20.** Estimating costs and benefits usually requires making several assumptions about the future. Such uncertainty can be handled, at least in part, by using ranges of estimates as opposed to specific point figures. However, we found that a number of IAs presented single point estimates of both benefits and costs, as if they are accurate. A further issue in this context is that potentially catastrophic events are not always dealt with appropriately in the IA process.

## ***Sensitivity analysis***

**3.21.** To reflect uncertainty, sensitivity analysis is normally undertaken on the key variables that contribute to the estimated outcomes. Often these key variables are outside of the control of the department or agency involved, for example the future price of crude oil. Sensitivity analysis is not, however, a simple adjustment of estimated costs and benefits by some arbitrary factor. The basis for the approach adopted should be justified.

## ***Time periods***

**3.22.** IA guidance<sup>7</sup> suggests that an appraisal should be made over a time period of ten years, but does point out that the most appropriate time period depends on the issue being appraised. In good appraisals, the time period over which valuation takes place should cover all material costs and benefits. However, some IAs appraise proposed interventions over a rigid ten year period with little or no reference as to whether costs and benefits are material beyond this time period.

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<sup>7</sup> <http://www.berr.gov.uk/assets/biscore/better-regulation/docs/10-898-impact-assessment-guidance.pdf>

### ***Box 3.4 Produce reliable estimates of costs and benefits: examples from RPC Opinions***

**Risk:** Our Opinion on the proposed introduction of **reservoir flood plans** questioned whether the benefits of such plans should have been focused on lives saved, when no lives have been lost from reservoir failure in the UK since the 1920s.

**Risk:** Our Opinion on **ship-to-ship transfers** of oil questioned the need for regulation against a backdrop of the largest oil spill from such transfers in recent times being of the order of only one cubic metre.

**Sensitivity analysis:** On the proposed statutory code of practice with respect to **airport body scanners**, we noted that a simple halving and doubling of the estimated valuations could not properly reflect the potential impact key variables may have on the estimated outcomes of different options, and on potential ranking.

**Time periods:** With respect to **making eco-driving training compulsory**, we questioned whether the time period presented adequately covered the period over which the intervention would have had material costs and benefits.

**Point and range estimates:** The IA on the proposal for **zero carbon homes** gave a single estimate for costs and benefits for a policy expected to have impacts some 50 years into the future. The proposed **duty of co-operation on health care workers** presented point estimates to “...avoid spurious accuracy.”

## ***Recommendation 5: Assess non-monetary impacts thoroughly***

**3.23.** The qualitative analysis provided, though often well discussed, shows little use of more systematic or formal techniques. As a result, the robustness and quality of analysis is not always easy to determine.

**3.24.** While appraisal often focuses on monetary valuations of impacts, it is generally accepted that not all outputs can be readily monetised. Indeed, the rationale for government intervention itself in terms of market failure or social objectives may mean that outputs are not particularly susceptible to monetary valuation.

### ***Box 3.5 Assess non-monetary impact thoroughly: Examples from RPC Opinions***

Our Opinions on the proposed regulatory interventions with respect to **short breaks for carers** of children, and **off-site provision of pupil behaviour** questioned whether the qualitative evidence could have been better marshalled to present a more coherent picture of what the proposals were trying to achieve.

In our Opinion on the proposed changes to the **labelling of alcoholic drinks**, we raised concerns about the extent to which costs and benefits which were difficult to quantify were used to assess the full impact of the proposed regulatory changes.

**3.25.** Significant advances have been made in producing monetary values for impacts which previously had no such values, CO<sub>2</sub> being an obvious example. However, there remain a number of areas where qualitative analysis remains the dominant and most acceptable means of valuation of outputs. Where monetary valuation is either not accessible or appropriate, other means have been developed to enable these outputs to be estimated in terms of their scale or their importance. These methods enable qualitative outputs to be appraised in a systematic manner, alongside outputs which are valued in monetary terms.

**3.26.** However, very few IAs we have seen present any level of detailed analysis of qualitative impacts, and even fewer do this in any formal framework. This framework could take the form of an appraisal summary table (AST), where all material impacts, both monetary and non-monetary are recorded. Or it could take the form of a system of more explicit scoring and weighting, or more full-scale multi-criteria decision analysis (MCDA)<sup>8</sup>.

**3.27.** The lack of a formal assessment of qualitative factors and impacts can make it more difficult to determine the merits of alternative courses of action available. It also means that it can be difficult to understand how options can be ranked in order of preference.


### ***Recommendation 6: Explain and present results clearly***

**3.28.** It is not always obvious from a proposed regulatory intervention who bears the costs and who reaps the benefits, when, and to what extent.

**3.29.** The analysis contained in an IA should include information on the causal relationship between proposed regulatory interventions and their ultimate objectives and outputs. It should also provide information on the timing of costs and benefits, their main components, and those effects which cannot easily be valued. It should also be made clear who will be affected by the proposed regulatory intervention, when this is expected, and to what extent. There should also be a description of what information will need to be collected for later evaluation or post-implementation review (PIR).

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<sup>8</sup> MCDA is more detailed than AST. It uses an explicit set of objectives and measurable criteria to establish a preference ordering of options.



**Box 3.6 Explain and present results clearly: Examples from RPC Opinions**

In the case of the proposed regulation on health care workers’ **“duty of cooperation”** the IA reported significantly higher costs than benefits. However, the text for the preferred option simply said that the net benefit was “greater than zero”.

In the case of the proposed licensing of **nicotine containing products** there was some analysis of the potential benefit but the analysis was not reported in the relevant benefit section of the IA cover sheet.

In the case of proposals to introduce certain **drug licence fees** the focus of the analysis appeared to be on the additional total revenue required by the Department rather than the impact on license holders and others who may be affected.

**3.30.** However, a number of IAs we have scrutinised applied only a cursory examination to these issues. In some cases, it appears to be just assumed that the proposed regulation will have positive impacts. In other cases, little or no analysis is applied in terms of who will bear the costs, or who will obtain benefits, when and to what extent. Rather, a ‘headline’ net present value (NPV) figure is given. However, distributional impacts (in terms of effects on individuals, consumers, different business sectors, and charities and voluntary organisations) are important and need to be explained clearly to facilitate full understanding and support for a proposed regulatory intervention.

**3.31.** The analysis and evidence should be presented so as to enable the reader to follow and understand the arguments clearly. Despite the introduction of a template and the production of extensive guidance within government to make IAs more uniform, a number of IAs we have scrutinised lack basic presentation aids, such as paragraph and/or page numbering, headings and sub-headings, and so on.

# Chapter 4. Next Steps

## Introduction

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4.1. The previous three chapters highlight the work of the RPC and our findings to date. We are already starting to see benefits from our efforts and have identified several areas which we feel would benefit from independent scrutiny in future.

*“... In the UK the Regulatory Policy Committee has made a good start with robust comments on draft IAs.”*

From “Is Regulation Really Good For Us?”  
BCC Report, April 2010.

## Future areas for scrutiny

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### ***Regulatory consultations without impact assessments***

4.2. We have seen that there are still some regulatory proposals put out to consultation by departments that are not being accompanied by an impact assessment (IA). While in many cases there may be a valid reason for this in line with guidance, we are concerned that because our current work is triggered by public consultations with accompanying IAs, we may miss important proposals that are not captured by the IA regime. In future, we aim to consider regulatory proposals, whether they are accompanied by an IA or not, and assess the quality of the analysis on the basis of such evidence as is presented.

### ***Proposals outside formal consultations and “soft law”***

4.3. There are other regulatory changes with potentially significant burdens which our screening process may not have captured, e.g. those not subjected to a normal consultation process. We are aware that burdens may be imposed by soft law, e.g. via guidance and non-statutory codes of practice, or changes in enforcement policy which can have the same effect as new regulations. We aim to review what role the RPC should have in this area.

### ***Identifying and promoting good practice***

4.4. While we have so far highlighted our concerns with the analysis and evidence underpinning certain proposals, improving the quality of analysis and evidence also requires identifying good practice. We will consider how to promote examples of good practice in the use of analysis and evidence.



## Future Relations with our Stakeholders

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### *With departments and agencies*

4.5. We have established good links with departments and agencies, and in particular with various departmental Better Regulation Units around Whitehall. We believe that these units play a crucial role in ensuring departments take the better regulation agenda seriously and we want to continue to work with them closely. We aim to produce constructive criticism from our scrutiny work and intend that our Opinions are received in that spirit. It is encouraging that some departments, such as the Department for Transport, have already drawn together lessons learned from their experiences with the RPC.

### *With Parliament and the NAO*

4.6. We have forged constructive links with the Merits of Statutory Instruments Committee and the Regulatory Reform Committee within Parliament. We aim to ensure both Committees are fully aware of the work of the RPC and the Opinions we issue, and identify areas where we can work effectively together. We also aim to continue our extremely constructive working relationship with the NAO and exchange views on best practice on the scrutiny of IAs with them.

### *With external stakeholders*

4.7. We have developed relationships with a number of business representative bodies, trade associations and organisations including the TUC, the Engineering Employers Federation (EEF) and the BCC. We share with all such organisations on our database details of all the regulatory proposals we have identified on a monthly basis, as well as alerting them when we issue new Opinions.

4.8. We will aim to widen this level of engagement to ensure that all such organisations can raise areas of concern with us in relation to regulatory proposals and “soft law”.

### *Within Europe*

4.9. The Netherlands, Germany and Sweden have their own existing independent scrutiny bodies, and the European Commission has an Impact Assessment Board chaired by the Secretariat-General. We have established links with these organisations, and will be working with them to share best practice and to seek to improve the quality of regulatory analysis at a European level. To date, we have worked jointly with the other three national bodies on a response paper to an EU consultation regarding Smarter Regulation, and collaborated on proposals to increase the level of independent regulatory scrutiny in the EU.

# Annex A

## The 107 Regulatory Proposals Scrutinised by the RPC - December 2009 – May 2010

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*Note: The RPC has made an Opinion on those in bold*

BIS <sup>9</sup>	A Consultation on the draft Market Surveillance and CE Marking (Regulation (EC) No 765/2008) Regulations
BIS	Online Infringement of Copyright (Initial Obligations) Cost-Sharing
BIS	Amendments to the Scheme for Construction Contracts (England and Wales) Regulations 1998
BIS	Civil Sanctions Pilot Programme
BIS	Consultation on taking forward the establishment of a body to monitor and enforce compliance with the groceries supply code of practice (GSCOP)
BIS	Consultation on proposals for a Next Generation Fund
BIS	Consultation on the role and powers of the Consumer Advocate
BIS	Employment Agencies: Implementation of the Agency Workers Directive: A Consultation on draft regulations
BIS	<b>Street trading and pedlary laws: A joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime</b>
CLG <sup>10</sup>	Council housing: A real future (Prospectus)
CLG	New Policy Document for Planning Obligations
CLG	Consultation paper on a new Planning Policy Statement: Planning for a Natural and Healthy Environment
CLG	Consultation on a Planning Policy Statement: Planning for a Low Carbon Future in a Changing Climate
CLG	<b>Making better use of Energy Performance Certificates and data: Consultation</b>
CLG	Sustainable New Homes: The Road to Zero Carbon: Consultation on the Code for Sustainable Homes and the Energy Efficiency standard for Zero Carbon Homes, and <b>Zero Carbon Homes: Impact Assessment</b>
CLG	Zero Carbon for New Non-domestic Buildings: Consultation on Policy Options
DCMS <sup>11</sup>	Consultation on extension of pool betting to other sports under Section 1(a) (ii) of the Horserace Totalisator and Betting Levy Boards Act 1972
DCMS	Consultation on the Regulatory Future of Remote Gambling in Great Britain
DCSF <sup>12</sup>	Consultation on Visits to Former Looked After Children in Detention (England) Regulations 2010; and related Guidance
DCSF	Consultation on Draft Regulations, and Associated Statutory Guidance regarding accommodated children in long-term residential placements visiting and support arrangements.
DCSF	<b>Consultation on introduction of Regulations, and associated Statutory Guidance, to ensure Local Authorities maintain provision of Short Breaks for Carers of Disabled Children and Young People</b>
DCSF	Duty on schools to invite and consider pupils' views on matters to be prescribed in regulations

<sup>9</sup> BIS = Department for Business, Innovation and Skills

<sup>10</sup>CLG = Department for Communities and Local Government

<sup>11</sup>DCMS = Department for Culture, Media and Sport

<sup>12</sup>DCSF = Department for Children, Schools and Families (Now the Department for Education)





DCSF	<b>Consultation on Regulations and Guidance on School Governing Bodies' Power to Refer Pupils to Off-site Provision to Receive Education or Training to Improve their Behaviour</b>
DCSF	Consultation on Draft Code of Practice on Provision of the Free Entitlement for 3 and 4 Year Olds
DECC <sup>13</sup>	Consultation on the financing arrangements for nuclear decommissioning and waste handling regulations
DECC	Second consultation on improving grid access
DECC	Consultation on the Renewable Heat Incentive (RHI)
DECC	Early review of the Renewables Obligation band for co-firing of biomass with Combined Heat and Power
DECC	Joint EU ETS Consultation: Small Emitter and Hospital Opt-Out (Phase III) and NER ring-fence review (Phase II)
DECC	Extending the Carbon Emissions Reduction Target
DECC	<b>Consultation on second stage transposition of EU Directive (2008/101/EC) to include aviation in the EU Emissions Trading System (EU ETS)</b>
DEFRA <sup>14</sup>	Proposals to implement European Parliament and Council Regulations on trade in seal products
DEFRA	Consultation on the Implementation and Enforcement of the Poultry meat (England) Regulations 2010
DEFRA	Consultation on the introduction of Civil Sanctions and Cost Sharing for the Energy Using Products and Energy Labelling Regulations
DEFRA	Consultation on proposed regulations on representations and objections under Schedule 1A to the National Parks and Access to the Countryside Act 1949 as inserted under Schedule 19 to the Marine and Coastal Access Act 2009
DEFRA	Consultation on draft updated guidance on Green Claims
DEFRA	Introduction of restrictions on the landfilling of certain wastes
DEFRA	Secondary legislation for Marine Licensing Enforcement – Monetary Penalties and Appeals Against Statutory Notice
DEFRA	Implementing the Packaging Strategy: Recovery and recycling targets, funding transparency and technical changes
DEFRA	Proposals for a new Border Rivers Order for the River Esk
DEFRA	Review of the Wildlife and Countryside Act 1981.
DEFRA	Consultation on Draft Animal Health Bill
DEFRA	Consultation on an amendment to The Mutilations Regulations (Permitted Procedures) (England) 2007
DEFRA	<b>Consultation on an amendment to the Order made under the Import of Live Fish Act 1980 (ILFA)</b>
DEFRA	<b>Consultation on Ministerial Direction for Reservoir Flood Plans</b>
DEFRA	<b>Consultation on a Producer Responsibility Scheme for the collection of Non-Packaging Agricultural Plastics (NPAP)</b>
DEFRA	Consultation on Update to the 2005 Detergents Regulations: Changes to Derogations Procedures and the Implementation of a Ban on Inorganic Phosphates in Domestic Laundry Cleaning Products
DEFRA	Consultation on the transposition of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe
DEFRA	Consultation on marine plan areas within the English Inshore and English Offshore Marine Regions
DfT <sup>15</sup>	Consultation on the Local Authorities (Transport Charges) (Amendment) (England) Regulations 2009

<sup>13</sup>DECC = Department for Energy and Climate Change

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

<sup>15</sup>DfT = Department for Transport



DfT	Consultation on draft regulations which amend the Motor Fuel Regulations 1999 to implement European Directive 2009/30/EC with respect to Fuel Quality
DfT	Roadside Facilities on the Strategic Road Network
DfT	<b>Code of practice for the acceptable use of advanced imaging technology (security scanners) in an aviation security environment.</b>
DfT	Consultation on the transposition of Directive 2008/57/EC on the interoperability of the rail system
DfT	Blue Badge Reform Programme: A Consultation Document
DfT	European regulation on new van CO2 emissions
DfT	The EC Air Services Regulation: consultation on pricing enforcement regime and leasing appeals
DfT	<b>Improving Bus Passenger Services through the Regulatory Framework</b>
DfT	Amendment to the Safety at Street Works and Road Works Code of Practice Consultation
DfT	<b>Increasing the uptake of eco-driving training for drivers of LGVs and PCVs</b>
DfT	Consultation on proposed changes to laws governing powered mobility vehicles
DfT	Consultation on the Amendment to the Charges for Unreasonably Prolonged Occupation of the Highways
DfT	The Street Works (Inspection Fees) (England) Regulations 2010 Consultation
DfT	Consultation on Heavy Goods Vehicle and Passenger Carrying Vehicle motorway speed limits
DfT	Consultation on regulation EC300/2008 - Aviation Security Derogations
DfT	<b>Implementation of the Third Driving Licence Directive</b>
DfT	Consultation on Directive 2009/33/EC on the promotion of clean and energy efficient vehicles
DH <sup>16</sup>	Consultation on The Health and Social Care Act 2008: Code of Practice for healthcare, including primary care, and adult social care on the prevention and control of infections and related guidance
DH	<b>Health Care Workers (Duty of Cooperation) Regulations 2010</b>
DH	Your choice of GP
DH	Review of access to the NHS by foreign nationals
DH	<b>Consultation on options for improving information on the labels of alcoholic drinks to support consumers to make healthier choices in the UK</b>
DH	<b>Consultation on proposed tobacco control regulations in England under the Health Bill 2009</b>
DH	NHS Constitution: a consultation on new patient rights
DH	Personal care at home: a consultation on proposals for regulations and guidance
DH	Pharmacy in England: building on strengths, delivering the future, draft regulations under the Health Act 2009: pharmaceutical needs assessments. Consultation document.
DWP <sup>17</sup>	Pension Protection Fund: Pension compensation sharing on divorce etc
DWP	Accessing Compensation – Supporting people who need to trace Employers' Liability Insurance – public consultation
DWP	<b>Supporting people into work: the next stage of Housing Benefit reform</b>
FoodSA <sup>18</sup>	Food Hygiene (England)(Amendment)(No. 2) Regulations 2010
FoodSA	The Animal Feed (England) Regulations 2010
FoodSA	Proposal to reduce the frequency of on-farm official inspection in the dairy sector
FoodSA	The Materials and Articles in Contact with Food (England) Regulations 2010
FoodSA	The Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010

<sup>16</sup>DH = Department of Health

<sup>17</sup> DWP = Department for Work and Pensions

<sup>18</sup>FoodSA = Food Standards Agency



FoodSA	Guidance for farmers on record-keeping requirements of Annexe I of the EC Feed Hygiene Regulation (183/2005) (England)
HA <sup>19</sup>	Birmingham Motorway 'Box' – Managed Motorways Phase 2 Consultation Pack
HA	M1 Junctions 6A - 10 Controlled Motorway Public Consultation
HA	M25 J7 - J10 Controlled Motorway - Public Consultation
HMT <sup>20</sup>	Public Consultation on the draft Terrorist Asset-Freezing Bill
HMT	National Minimum Wage workers: Travel and subsistence expenses schemes
HO <sup>21</sup>	<b>Consultation on charges for controlled drug licences and precursor chemical licences, registrations, and authorisations</b>
HO	<b>Top-up training for door supervisors</b>
HO	Reforming asylum support - effective support for those with protection needs (new window)
HO	Amendments to the Anti-Terrorism Crime and Security Act 2001 – a consultation
HSE <sup>22</sup>	CD231 - Proposals for amendment of the Genetically Modified Organisms (Contained Use) Regulations 2000
HSE	Implementing European pesticides legislation
HSE	CD230 - Consultation on the Legislative Reform Order to amend the Health and Safety at Work etc. Act (1974)
MCA <sup>23</sup>	<b>Artificial Optical Radiation Consultation - Merchant shipping and Fishing vessels regulations</b>
MCA	Inland Waterway Vessels
MCA	<b>Ship-to-Ship Transfer Regulations</b>
MCA	Asbestos Consultation
MCA	Consultation on Amending Boatmasters' Licences Regulations 2006
MHRA <sup>24</sup>	<b>Public consultation (MLX 364): The regulation of nicotine containing products (NCPs)</b>
MOJ <sup>25</sup>	Trusts (Capital and Income) Bill
MOJ	Reform of Coroner System
MOJ	Civil Law Reform Bill
MOJ	Civil monetary penalties - setting the maximum penalty

<sup>19</sup> HA = Highways Agency

<sup>20</sup> HMT = Her Majesty's Treasury

<sup>21</sup> HO = The Home Office

<sup>22</sup> HSE = Health and Safety Executive

<sup>23</sup> MCA = Maritime and Coastguard Agency

<sup>24</sup> MHRA = Medicines and Healthcare Products Regulatory Agency

<sup>25</sup> MOJ = Ministry of Justice

# Annex B

## Summary of Opinions Issued

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Detailed below are the summary sections of the 22 Opinions issued by the Regulatory Policy Committee. Copies of the full Opinions are available on the RPC website.

### ***Consultation on supporting people into work: the next stage of housing benefit reform***

The analysis and evidence, as presented in the current IA, appears to be incomplete in some areas. In addition, the proposals would have been more suitably presented as separate options in the IA summary, which would have better reflected their separate impacts and accounted for their different stages of development. The RPC understands that there will be future consultations on the proposals and anticipates that they will contain a fuller examination of the policy problems under consideration and the evidence to justify intervention.

### ***The Protection from Tobacco (Sales from Vending Machines) (England) Regulations 2010***

The evidence set out in the IA does not provide a specific link between the proposed measure and a reduction in smoking by under-18s. Evidence that young people are accessing cigarettes from vending machines does not in itself show that the new regulation will lead to reduced smoking, as under-18s may still access cigarettes from other sources.

### ***A joint consultation on modernising street trading and pedlar legislation and on draft guidance on the current regime***

Given the evidence available, the RPC is of the opinion that a wider range of options should have been appraised in the IA to enable a more effective comparison of possible alternative courses of action in the areas of street trading and pedlary. In addition, based on the figures presented in the IA, introducing changes solely to the existing street trading regime appears to provide better value for money than changing the street trading and pedlary regimes together (as proposed in the preferred option). Aside from this, it is not clear that the benefits and costs of proposed changes to the street trading regime are sufficiently robust at present.

### ***Top-up training for door supervisors***

The IA makes little attempt to justify its preferred option. The costs of refresher training have not been fully presented. Consequently the option that excludes refresher training (Option 2) appears to be as expensive as the option that includes it (Option 3). Therefore the IA does not adequately show all the impacts of this policy option.



### ***Consultation on implementing the Third EU Directive on driving licences (2006/126/EC)***

The RPC notes that the consultation document is comprehensive, clearly setting out all the issues and identifying what needs to be done in order to comply with the Directive. The RPC also recognises that the UK must implement the Directive and that the options for implementation of different measures available to Member States under the Directive are limited.

Nevertheless, the RPC has concerns that the final recommendation for implementation of different measures under the Directive is not supported by a robust assessment of costs and benefits.

### ***Regulations and Guidance on governing bodies' power to refer pupils to off-site provision to receive education or training to improve their behaviour (Section 154 of the Education and Skills Act 2008)***

Overall, there is only limited evidence and analysis provided in the consultation document and the IA to support the introduction of these new regulations. The consultation does not consider any alternative options for implementation, which could undermine the overall effectiveness of the options appraisal process and cost-benefit analysis. It is not clear from the analysis what the anticipated net impact of the policy will be and hence whether the benefits of this new regulation will justify the costs.

### ***Consultation: Ministerial direction for reservoir flood plans***

Given the evidence presented in the IA, the case for introducing new statutory requirements for reservoir undertakers to have on-site flood plans is not clear at this stage. Even if the case for intervention were clear, the preferred policy measure does not appear to be risk-based. Furthermore, the estimated benefits appear to be optimistic given historical data and experience. Specifically, the benefits are based on numbers of lives saved in the event of reservoir failure, despite the fact that there have been no such fatalities since reservoir safety legislation was introduced in the 1930s.

### ***Consultation on a Producer Responsibility Scheme for the collection of Non-Packaging Agricultural Plastics (NPAP)***

The RPC recognises that this is a consultation with no preferred option, which is intended to gather further information. However, even at this stage, the IA would benefit from a clearer understanding of farmer behaviour and the development of the market for collecting and recycling NPAP in recent years. In addition, the IA does not clearly outline the source and magnitude of the costs or benefits, making it difficult for the RPC to comment on the quality of analysis supporting the options presented.

### ***Regulations and guidance for Local Authorities to provide short breaks for carers of disabled children and young people***

Given the analysis and evidence presented, the RPC is of the opinion that the case for introducing new regulations with respect to the provision of short breaks for carers of

disabled children could have been better made in the IA. The IA appears to be an assessment of the impact of the overall policy, as opposed to an assessment of the costs and benefits of different options (both regulatory and non-regulatory) for achieving the policy objective. The RPC also has concerns regarding some elements of the cost-benefit analysis, particularly the way the benefits and costs are calculated and presented in the IA.

### ***An amendment to the Order made under the Import of Live Fish Act 1980 (ILFA)***

The RPC is of the opinion that the analysis and evidence presented in the IA does not make it sufficiently clear why recent relaxation of EU rules with respect to the prevention of the spread of fish diseases potentially causes large negative impacts on the UK, requiring new and additional regulatory measures in this area. In addition, the cost estimates of alternative options do not appear to be sufficiently robust. The RPC notes that the Department is using the consultation to understand better the potential costs and benefits of regulatory change.

### ***Consultation on draft Merchant Shipping (Ship-to-Ship Transfer) Regulations 2010***

The case for the prohibition of ship-to-ship oil transfers in UK territorial waters outside of harbour areas has not been made. There appears to have been little assessment of risk in drawing up this proposal, and it is not clear that the environmental benefits will be achieved. Furthermore, there is no adequate explanation for the enhanced environmental benefits of the preferred Option 3, over Option 2.

### ***Consultation on options for improving information on labels of alcoholic drinks***

The consultation document and the IA do not provide sufficient evidence and analysis to conclude that the proposed new labelling measures will successfully affect consumers' behaviour, reduce alcohol consumption and thus deliver the anticipated benefits. The case for a strengthened labelling regime delivering greater benefits than the current voluntary agreement is not made. The IA does not attempt to assess the benefits and costs of different labelling options. In addition, the transitional costs of re-labelling do not seem to be fully and consistently analysed by DH.

### ***Zero Carbon Homes: Impact Assessment***

There is much analysis presented in the IA of a good quality. However, the IA should better reflect the considerable uncertainties surrounding the costs and benefits in this area. In particular, details on the mechanism (allowable solutions) for delivering as much as half of the emissions savings from homes from 2016 are unclear at present and subject to further consultation. Range estimates would better reflect this uncertainty than the point estimates given in the IA. The estimates used would suggest that further justification is required for the higher cost on-site mechanisms. Furthermore, some of the assumptions supporting the analysis such as learning rates and the achievement of building targets could be tested more robustly, as small changes in these would have significant impacts on the estimates presented.



### ***Consultation on second stage transposition of EU Directive (2009/101/EC) to include aviation in the EU Emissions Trading System (EU ETS)***

The RPC recognises that much work has gone into the production of the IA supporting the proposal to include aviation in the EU ETS. The IA correctly emphasises the uncertainties that surround many of the estimates. The RPC notes that net benefits are estimated to range from negative to positive, but it is unclear from the IA whether one of these outcomes is more likely than the other.

### ***Consultation on making Better Use of Energy Performance Certificates***

The RPC believes that the proposals to extend the scope of EPCs and DECAs are not supported by a strong evidence base. CLG could have researched into the effectiveness of the current system of EPCs and DECAs before proposing to extend their scope further. The RPC notes that some of the proposals, if implemented, would go beyond the minimum EU requirement. The costs of the proposals appear to be underestimated as investments required for delivering the anticipated benefits in the form of energy efficiency gains are not included in the total costs. Similarly, the costs of the additional administrative burdens likely to be created under some of these proposals are not considered in the IAs.

### ***Increasing the uptake of eco-driving training for drivers of LGVs and PCVs***

The benefits presented in the impact assessment (IA) of this proposal appear optimistic with regard to fuel savings and carbon benefits, and insufficient account is taken of the central uncertainty around the effectiveness of the training. The IA only fully appraises the preferred regulatory option and does not allow it to be compared in a systematic manner alongside the non-regulatory option. It is not obvious from the evidence presented why the significant benefits from reductions in fuel use by the businesses covered by the proposed regulations are not accrued in the absence of regulation. Furthermore, it is not sufficiently clear why the costs are estimated up to 2014, while the benefits are estimated up to 2018.

### ***Health Care Workers (Duty of Cooperation)***

The barriers to sharing information presented in the IA do not explain clearly which market failures specifically are preventing the sharing of information nor the extent to which these failures warrant regulatory intervention. The geographical and occupational coverage of the proposed Regulations raise questions about the effectiveness and proportionality of the proposed Regulations. It is not clear that the estimates of monetised costs and benefits presented are particularly robust. In addition, the non-monetised benefits of the proposed regulatory route appear to be based on evidence from just one piece of research which itself is concerned with the issue of negligence in the NHS rather than the specific issue of information provision and sharing.

### ***Improving Bus Passenger Services through the Regulatory Framework***

There is insufficient evidence set out in the IAs to demonstrate the extent of the problems identified. Qualitative benefits and costs are mentioned, but are not assessed in a systematic way to justify the conclusion that net benefits will definitely be positive. Also, alternative methods of resolving the policy problems have not been presented. The RPC notes that DfT is seeking more evidence and that it intends to consult again prior to introducing regulation. A



future consultation should provide more detailed evidence to substantiate why the proposed regulatory changes are desirable, particularly where market forces may produce the intended effects of regulation.

### ***Consultation on Regulation of Nicotine Containing Products***

The RPC is of the opinion that the IA and consultation letter do not provide sufficient evidence to suggest that there is a significant risk to public health from currently unlicensed NCPs which would justify the future regulation of these products. MHRA should have made clearer what evidence is available to suggest there are safety and public health concerns about these products and considered a wider range of policy options before consulting on the introduction of a mandatory licensing requirement for all NCPs. In addition, the data and assumptions used in the IA for estimating the costs and benefits of the new regulations do not appear to be robust.

### ***Merchant shipping and Fishing Vessels regulations (Health and Safety at Work) – Artificial Optical Radiation***

The RPC has reservations over the case for further regulation in this area. The risk to workers from artificial optical radiation appears to be covered, albeit in a more generalised way, under existing legislation. Though the effect on the maritime sector appears to be minimal, the RPC has concerns that the MCA was not involved during the initial negotiation stage at EU level, meaning the specific needs of the sector may not have been addressed and the full evidence base may not have been available during negotiations. This has raised the issue of the extent to which the MCA works with colleagues from other organisations in negotiating new EU directives.

### ***Code of Practice for the Acceptable Use of Advanced Imaging Technology (Body Scanners) in an Aviation Security Environment***

The IA does not appear to reflect the consultation document as it focuses on the costs and benefits of the number of body scanners in use, rather than the costs and benefits of applying a statutory code of practice on the use of scanners. Furthermore, there is insufficient evidence presented in the IA and consultation document to support the claim that a statutory code of practice will lead to the purchase of additional scanners by airports and therefore enhanced security benefits.

### ***Consultation on introduction of charges for controlled drug and precursor chemical licences***

The RPC notes that the analysis and evidence provided to support the introduction of new fees and time-limited periods for licences for drugs and precursor chemicals appears to be weak. In particular, there is no evidence to suggest that the proposed new measures will better protect the public from the risk of diversion and illicit use of controlled drugs and precursor chemicals, and hence deliver the anticipated additional benefits (such as a reduction in health-related and crime-related harms). There are also concerns about the quality of the analysis around the costs and benefits of different options. For example, the potential impact on other sectors through regulation of precursor chemicals, as well as the impact on individual licensees, is not discussed and considered in the IA.





# Annex C

## 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.
- 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 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 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  
Swarajit Das  
Giles Hall  
James Jamieson  
Trevor Reid  
Bagrat Tunyan  
Alexis Wills



# Annex D

## 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, and to view all of our Opinions and publications, please visit our website:

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





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