 Regulatory Policy Committee		Validation of the One-in, Two-out Status and the Net Direct Impact on Business
Validation Impact Assessment (IA)		Cost Protection in Defamation Cases
Lead Department/Agency		Ministry of Justice
IA Number		
Origin		Domestic
Expected date of implementation (and SNR number)		April 2014 (SNR 7)
Date of Regulatory Triage Confirmation		09/08/2013
Date submitted to RPC		12/02/2014
Date of RPC Validation		18/03/2014
RPC reference		RPC13-FT-MOJ-1850(2)
Departmental Assessment		
One-in, Two-out status		IN
Estimate of the Equivalent Annual Net Cost to Business (EANCB)		£0.175 million
RPC assessment		VALIDATED
Background (extracts from validation document) Summary of Proposal <p><i>“The Government wishes to ensure that potential exposure to the legal costs of the other party does not prevent or unduly discourage claimants from pursuing meritorious legal action in defamation and privacy cases (called ‘defamation cases’ here) and does not prevent or unduly discourage defendants from defending themselves... The rationale for the reforms is to support the effective consideration and settlement of defamation claims.”</i></p> <p>The Department adds that the “...proposed cost protection regime for defamation is in effect a ‘narrower’ form of costs protection because wealthier parties will not get costs protection. On the other hand the scope of the proposed regime for defamation is broader as it provides costs protection for both defendants and claimants, unlike the Qualified One-way Costs Shifting Personal Injury regime which only provides claimants with costs protection.</p> <p><i>The consultation process has led to a refinement of the policy and figures used to assess the costs to business. Changes include reduced cost protection if the case does not have sufficient merits, if the claimant or defendant’s means change materially, or if either side fails unreasonably to engage with the mediation process pre-trial. These changes reduce the extent of costs protection to be provided.”</i></p>		

RPC comments

The Department is proposing two changes to the Qualified One-way Costs Shifting (QOCS) regime for covering costs for defamation cases: (i) expanding the scheme so that it covers defendants as well as claimants, and (ii) restricting payments through means-testing. The impacts of the policy are two fold:

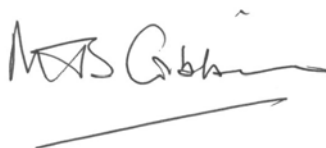
1. In cases lost by the claimant, there will be reduced claimant cost protection in comparison to QOCS. The Department estimates that claimants will benefit from cost protection in 20% of cases. This means that some defendants would gain from being able to pass all or part of their legal costs to wealthier claimants. This would result in a net benefit to business defendants of £105,000 annually.
2. In cases won by the claimant, there will be increased defendant cost protection in comparison to QOCS. The Department estimates that defendants will benefit from cost protection in 10% of these cases. This means that some claimants would lose from having to pay all or part of defendants' costs. This would result in a net cost to business claimants of £315,000 annually. The assessment of the likely costs and benefits do not take into account impacts on losing defendants, as they are considered to be non-compliant.

The combined costs and benefits result in a net cost to business of £210,000 per year. The assessment results in an Equivalent Annual Net Cost to Business (EANCB) in 2009 prices of £0.175 million.

The Committee is able to validate the EANCB now the Department has provided further information on the 'price base' and 'present value base' years used to determine the impact on business.

In calculating the EANCB, the Department could have presented the figures and main assumptions in a format easier to follow, for example by including a table of the steps setting out the estimates and assumptions leading to the total costs and benefits.

Signed



Michael Gibbons, Chairman