

Extension of the business impact target

Department for Business, Innovation & Skills

RPC rating: fit for purpose

Description of proposal

The Small Business, Enterprise and Employment Act 2015 requires government to measure and report on the economic impacts on business of legislation. These impacts are used to measure the success of government in achieving the business impact target (BIT). The proposal will extend the requirement to measure and report to include some of the activities of national regulators.

Impacts of proposal

The impact assessment (IA) relates to primary legislation to create a regulation-making power, which could be used by the Secretary of State to define the regulators and activities that will be included in the BIT. The Department has assessed the impacts of the proposal as zero at this stage as it would not affect business until the related secondary legislation is implemented. However, the Department has provided initial estimates of a range of possible impacts based on current expectations of the bodies and activities likely to be included in any extension. Further regulation, and a further impact assessment, will be required before this can take place. The Department will provide a more accurate assessment of the costs to business at that time.

The Department estimates that, on the basis of current expectations of the regulators likely to be included, the proposal could increase costs to business by up to £0.6 million each year. Taking into consideration current uncertainty regarding the assumptions used, sensitivity analysis in the IA suggests a range of business costs of £0.3 to £2.4 million each year, representing industry-funded costs to regulators. Although adequate at this stage of policy development, the RPC has some concerns relating to the approach taken. These are discussed in more detail below.

Quality of submission

As a final stage IA, the RPC is asked to confirm that the Department's estimated equivalent annual net cost to business (EANCB) figure is robust. The RPC is content that the proposal will have zero cost at this stage, and that subsequent costs will be associated with specific secondary legislation. However, a number of concerns with the IA, set out below, should be resolved in the impact assessment supporting the secondary legislation.

Consultation with regulators – the IA states that:

“There is no quantitative information relating to the number or scale of the assessments regulators would be expected [to make]... Some informal contact was made with a number of the larger regulators to provide some initial estimates of the likely scale of activity that they expected they would need to undertake under an expanded BIT, but at this early stage no credible data has been provided.”

The IA does not provide information on the regulators contacted, or why robust data could not be collected. The approach taken in the IA for estimating likely case volumes would be considered appropriate if there was no way of collecting information from regulators – but the IA fails to show why that information has not been, or cannot be, collected at this stage. While this failure does not prevent validation of zero cost at this stage, the lack of systematic consultation with the affected bodies is not best practice and should have been explained further in the IA. The majority of the concerns discussed below arise, at least in part, from this lack of effective consultation.

Assumptions and estimated volumes – the IA uses a single approach to estimate the likely number of changes to regulators’ policies or practices that will need to be assessed and scrutinised. This approach is based on apportioning the contribution regulators are expected to make to the Government’s £10 billion BIT, and implicitly assumes that regulators’ actions will be intended to help the achievement of the target. If this approach is taken when assessing the impact of the secondary legislation, the Department will need to provide a clear justification for the assumption that the target is the main driver for regulatory policy and practice and to address the following specific concerns.

- The approach does not take account of the existing work of regulators, e.g. through an assessment of their existing plans, work programmes and statutory duties. This means that the estimated number of changes brought into scope of the BIT is significantly uncertain, because it does not take account of evidence that regulators could have provided. The IA should also explain why publicly-available information on regulators’ planned or historic changes was not used, even illustratively, to describe the likely volume and nature of submissions.
- The approach further implies that many of the assumptions used in the current IA are unlikely to be sufficiently robust to enable validation of the impacts, including of the secondary legislation. Some of these assumptions, such as the number and complexity of assessments, the likely scale of regulators’ contributions to the BIT and regulators’ ability to deliver net deregulation individually and overall, significantly affect the potential costs.
- The IA does not differentiate between primary and secondary legislation in the last parliament or discuss whether using the volume of secondary legislation might have provided a better proxy for the future volume of regulators’ activity requiring assessment and scrutiny. It is also unclear why, given the volume of cases raised

under the Accountability for Regulator Impact (ARI) scheme (13 submissions in 18 months), it is reasonable to assume those activities of regulators falling within the scope of secondary legislation under this proposal will comprise a sufficient volume of significant changes to contribute at least 33% of the deregulatory target.

Differences among regulators – the IA does not provide any assessment of the likely differences among regulators or the effect that having some regulators remaining outside the scope might have on the requirements placed on regulators that are in scope. Differences among the regulators will be a significant factor in the proposal, for example the extent to which statutorily independent bodies will be bound to contribute, or whether regulators deemed in scope are those with the most significant impact on business. The IA should explain what is included in the ‘exceptional reasons’ that will result in some regulators being out of scope.

Interaction with independence – it is not clear whether the rationale for intervention and the objective of the proposal is to require regulators to just report transparently and comparably on their actions, or if the proposal is intended to change regulators’ behaviour in order to help deliver the Government’s deregulatory target. If the intention is to change regulatory behaviours (and not just to drive improved reporting) this would mean a potentially significant change in approach by regulators in order to meet a government imposed objective additional to their existing duties. The IA should discuss both the potential total scale of these changes (not just the costs of having to account for them) and how the proposed changes would interact with regulators’ primary statutory duties and other requirements. The justification for rejecting the non-regulatory option (i.e. altering the existing ARI requirements) is that there would be limited compliance by regulators without statutory underpinning. This clearly implies that the introduction of legislation is expected to change behaviours, even for independent regulators. The IA does not, however, provide any discussion of the expected method of enforcing compliance within independent regulators and the costs of varying the function and role of such regulators.

Definition of regulatory activity – the IA does not define clearly what is included within the term ‘regulator activity’. It appears that the lack of clarity regarding this aspect of the proposal has, in turn, made it difficult to provide a robust assessment of the expected volume of ‘regulator activity’ within regulators. A clear definition might have enabled more effective feedback from regulators. The Department will need to provide further information on the risk that some ‘regulator activity’ will have resulted from legislative changes accounted for in previous IAs, and how such potential double counting will affect contributions to the BIT and potential volumes of activity.

Impact on independent verification body – the IA does not discuss the potential costs to the independent verification body (IVB) as a result of the increased case volume. While costs to the IVB will not affect the EANCB, they will need to be discussed in the IA for the secondary legislation.

Small and micro-business assessment

The IA states that the proposal will affect all businesses as a result of the costs of some regulators being recovered from business. The IA states: “...we assume that the distribution of costs among businesses (including small and micro-businesses) will reflect the structure of existing fees and charges, and so should not produce a disproportionate burden on small or micro businesses”. It is not clear whether any increased costs to regulators would be passed on to business as a flat charge per business or would be related to business size/turnover. The subsequent IA will need to provide more explanation of the likely way in which costs would be passed on.

The IA states that exempting small and micro-businesses would require changes to the fee structures of regulators and that requiring such changes would be disproportionate for a measure of this size. It is, however, unclear as to whether such changes could be reflected in any routine changes to fees. This is something that further IAs would benefit from discussing in more detail.

Initial departmental assessment

Classification	IN
Equivalent annual net cost to business (EANCB)	£0.0 million (zero at this stage)
Business net present value	£0.0 million
Societal net present value	£0.0 million

RPC assessment

Classification	IN
EANCB – RPC validated	£0.0 million (zero at this stage)
Small and micro business assessment	Sufficient (at this stage)



Michael Gibbons CBE, Chairman