



Regulatory Overview: The Regulatory Landscape

May 2015 to May 2016

REGULATORY OVERVIEW:
THE REGULATORY LANDSCAPE
MAY 2015 TO MAY 2016

FOREWORD



This is an important and challenging, period for the Regulatory Policy Committee (RPC). For the first time, independent scrutiny and transparent reporting of the effects of regulation on businesses and voluntary and community bodies, including as a consequence of the actions of regulators, will cover the whole of a parliament.

The members of the committee and secretariat have undertaken significant work during the year to deliver the high quality scrutiny that is necessary to enable the business impact target (BIT) reporting requirements to be met. This has been done against the backdrop of the evolving framework and the challenges involved in understanding and communicating those changes to organisations across government and beyond. As the scope of the activities and organisations captured by the framework expands, we expect to continue to play a key role in supporting government to build the capability required to deliver high quality evidence based assessments.

A significant focus will be the impacts included in the business impact target, but this information will be given more context and meaning through our scrutiny and transparent reporting of proposals not caught by the target.

As welcome as these extensions are, the increased scope of our scrutiny also brings challenges. In future, the business impact target assessment and reporting requirements will apply to nearly all national regulators. This will mean the overall figures reported by the government should more closely reflect business experience. This will mean developing new capability and capacity within the RPC and system. We would like this opportunity to be taken to encourage more consideration given to the effects of significant proposals on smaller businesses and wider society, and for post-implementation reviews to provide robust assessments over the lifetime of significant policies.

Michael Gibbons, CBE
Chair, Regulatory Policy Committee

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THE REGULATORY LANDSCAPE

1. The Regulatory Policy Committee (RPC) is the independent scrutiny body tasked with examining the evidence underpinning all new regulatory and deregulatory proposals that have an impact on business and voluntary and community bodies.
2. The RPC's role in scrutinising such proposals is broadly the same as in the previous parliament. For all legislative measures, the RPC confirms or rejects: the government's estimated costs and benefits to business of the final policy proposal; or assessment that the proposal will not count towards the government's deregulatory target and is likely to have a limited impact. For legislative measures with a significant impact on business, the RPC also assesses the quality of the evidence supporting the proposal before consultation.
3. During this parliament, the RPC will also have a new role in the validation of the costs and benefits of changes made by regulators.
4. As departments and regulators work towards meeting the government's business impact target, only those costs and benefits validated by the RPC can be counted towards the target.
5. The Department for Business, Innovation and Skills published the Business Impact Target: First Annual Report in June 2016. This stated that the Government has delivered £885 million of net savings in 'business impact target score'¹ terms towards its £10 billion deregulation target during the first year of the current parliament. The figures in this report focus on the validated annual impacts, not the business impact target scores.
6. Many of the proposals in the current government's new regulatory programme have not yet come into force. New measures take time to legislate and implement and so the first year of the account contains several measures agreed in the previous parliament but only implemented in the current parliament.² The balance between measures coming into force that were legislated for during the previous parliament and the current parliament will be smaller in subsequent years.

¹ The government has set out that the achievement of the business impact target (BIT) will be judged on the basis of the 'BIT score' for measures, which is the annual impacts validated by the RPC, multiplied by five to reflect the length of a fixed term parliament, or by the number of years the measure is in force if fewer than five.

² The detailed analysis and data in the report are based on the same measures that have been reported in the government's business impact target report for 2015/16. However, where the RPC has scrutinised a proposal, and the details of that proposal have been announced by government, we have included references and commentary where the proposal is relevant to the discussion.

7. As the body that provides transparent advice directly to ministers on the quality of evidence informing new regulatory measures, in advance of decisions to proceed with legislative proposals, the RPC has a unique insight into the impacts of measures that have been implemented by the government, and that are likely to come into force in the immediate future. We also see measures that do not qualify for the business impact target. This report uses those insights to go beyond the business impact target and examines in more detail other key parts of the regulatory landscape, including the use of alternatives to regulation, the impact of measures that do not qualify for the business impact target and the assessment of wider societal impacts.

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EXECUTIVE SUMMARY

Our key observations on the government's regulatory programme over the course of the first year of the current parliament, and themes that we expect to continue to be significant, relate to:

- ◇ the make-up of the Government's regulatory programme;
- ◇ the review of existing regulations;
- ◇ the wider impacts of regulatory changes;
- ◇ small and micro business assessments; and
- ◇ incentives in the better regulation framework.

MAKE UP OF THE GOVERNMENT'S REGULATORY PROGRAMME

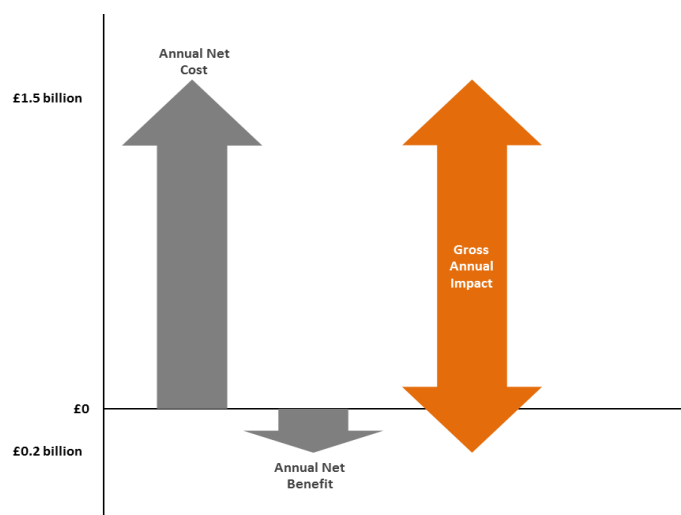
- ◆ During the business impact target reporting year³, 149 different regulatory provisions have come into force. The RPC has validated the impacts of 129 of these measures,⁴ including 95 proposals that will count towards the business impact target. The RPC has confirmed 38 measures as non-qualifying regulatory provisions. The figures include four measures that had both qualifying and non-qualifying elements. There were 20 measures that were not validated by the RPC by the end of the reporting period, but we are satisfied at this stage that they are unlikely to materially affect the account, or are deregulatory.
- ◆ **The overall costs and benefits to business of new regulation continue to be dominated by a relatively small volume of measures.**
- ◆ **For measures that have come into force during the reporting year, the national living wage, the national minimum wage and the plastic carrier bags charge account for around three-quarters of the total effect of regulation.** These three measures have a combined gross annual impact of £1.7 billion,⁵ with annual impacts on business from all measures totalling £2.15 billion.

³ 8 May 2015 to 26 May 2016

⁴ <https://www.gov.uk/government/publications/costs-and-benefits-of-new-regulation-regulatory-policy-committee-opinions-since-may-2015/costs-and-benefits-of-new-regulation>

⁵ £1.5 billion annual net cost from the national living wage and the national minimum wage, £0.2 billion annual net benefit from the plastic carrier bag charge.

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- ◆ Conversely, there were 82 measures (64% of the total volume of measures) with an annual net impact of less than £1 million, which combined have contributed just £15 million⁶ gross annual impacts (0.7% of the total).
- ◆ **The three most significant measures validated so far will not be included in the business impact target account.**⁷ Of these three, only the net costly measures, the first stage of the national living wage (£821 million) and the minimum wage uplift (£626 million), came into force during the reporting year. The net beneficial measure, the uprating of tuition fees (£1.1 billion), is expected to come into force later in the parliament.
- ◆ A significant proportion of the qualifying regulatory provisions that have come into force in this parliament were legislated for during the previous parliament – at least £240 million of the £334 million

The most significant measures

The first stage of the national living wage has a validated net direct cost to business of £821 million in the first year. The business impact target exclusions specify the national living wage is a non-qualifying regulatory provision

The uprating of tuition fees has been validated as having benefits to business of £1.1 billion each year by allowing top-rated universities to raise fees in line with inflation. While universities are considered businesses in the government framework, this was considered a non-regulatory provision as it relates to the adjustment of an existing price control (tuition fees).

⁶ £6.4 million from net beneficial measures and £8.5 million from net costly measures

⁷ They have been confirmed as meeting one of the criteria for non-qualifying regulatory provisions (including the specific exclusions in relation to the national living wage or national minimum wage uplifts in line with the Low Pay Commission recommendations). The national minimum wage uplift also included an element that was validated as a qualifying regulatory provision, in relation to apprenticeship uplifts which went beyond the Low Pay Commission recommendation. The impacts of the tuition fee uplift have been validated by the RPC, but have not yet come into force and, as such, are not reflected in the analysis of the business impact target.

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annual benefits, and £61 million of the £166 million annual costs of qualifying regulatory provisions come from four large measures from the previous parliament.

REVIEWING EXISTING REGULATIONS

- ◆ Despite the work of programmes such as the Cutting Red Tape reviews **the RPC has not yet seen many reviews for regulatory reforms from the previous parliament.** To date, 13 of the 52 statutory post-implementation reviews that are due during 2016 have so far been submitted to the RPC.⁸
- ◆ While departments have published plans for their post-implementation reviews, many of these do not include some of the most significant cases previously scrutinised by the RPC. Of the ten most significant regulatory and deregulatory measures from the previous parliament, two changes (the Scrap Metal Dealers Act 2013 and audit exemptions for medium sized firms) are included in departmental plans as post-implementation reviews to be sent to the RPC, a further two evaluations of measures that we understand will be sent to the RPC are also included in the plans.⁹ This means that there is unlikely to be sufficient independent oversight of the evidence used in the review and evaluation of the most significant measures from the previous parliament.

WIDER IMPACTS OF REGULATORY CHANGES

- ◆ **More could be done by departments to quantify the wider effects on society of government proposals.** The RPC has previously highlighted concerns regarding the rigour with which societal impacts are appraised in impact assessments. In our previous advice¹⁰, we highlighted that, during 2014, only one-third of proposals provided a quantified assessment of the effects on society. This means government is not stating the full effects of the proposals it brings forward.
- ◆ For measures that have come into force in this parliament, that proportion has increased to around 60% (24 out of the 41 measures requiring full impact assessments). We believe that more could be done to provide assurance that these estimates are robust, and that estimates should be provided in more cases.

⁸ Of the thirteen post-implementation reviews scrutinised to date; two relate to measures that were in scope of the previous government's 'One-in, One-out' target, and a further two relate to measures that were scrutinised by the RPC but were not within scope of the government's target. The others related to small EU measures that were not in scope of RPC scrutiny at the time of the original proposal.

⁹ One further measure is scheduled for an evaluation but is not scheduled to be subject to RPC scrutiny.

¹⁰ Analytical advice on deregulation and implementation of the Small Business, Enterprise and Employment Act 2015, Regulatory Policy Committee, <https://www.gov.uk/government/publications/regulatory-policy-committee-analytical-advice-on-deregulation-and-implementation-of-the-small-business-enterprise-and-employment-act-2015>

- ◆ Furthermore, of the 24 measures that did include quantified wider effects, eight were assessed by the department as having a net cost to society, which would suggest that society as a whole is worse off as a result of the government intervention.
- ◆ The better regulation framework currently provides weak incentives for departments to assess the wider effects of regulation on society,¹¹ and the RPC is unable to reflect concerns in fitness for purpose ratings of such impact assessments.

SMALL AND MICRO BUSINESS ASSESSMENTS

- ◆ **As was the case in the last parliament, but with some notable exceptions, only a small proportion of proposals exempt small businesses or mitigate the impacts on small businesses. Of the 39 measures within scope of the small and micro business assessment requirements that have come into force, three exempted small and micro businesses. There was a further measure with no impact on smaller businesses because the regulations only apply to a sector containing larger businesses.**
- ◆ With many sectors comprised of a significant number of small businesses, departments often argue that policy objectives would be undermined by exemptions, thereby limiting the effectiveness of the small and micro business assessment in its current form.
- ◆ The RPC has previously observed¹² that more could be done to provide assessments of:
 - ◇ the proportion of costs associated with proposals that fall on smaller businesses and how these would be affected by exemptions or mitigating actions; and
 - ◇ the proportion of regulatory objectives that could still be achieved if such businesses were exempted.
- ◆ **Even where a measure is deregulatory, if the net effects include disproportionate gross costs for smaller businesses, departments should be required to provide an assessment of those costs and consider whether they could be mitigated.** Deregulatory measures, in some cases, may have the potential to have significant impacts on smaller businesses, for example where they have significant re-distributional effects between

¹¹ The Government's guidance on appraisal, the HM Treasury Green Book, states that "*The NPV is the primary criterion for deciding whether government action can be justified*" (page 26) but this is not a requirement of the better regulation framework. <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

¹² Analytical advice on deregulation and implementation of the Small Business, Enterprise and Employment Act 2015, Regulatory Policy Committee, <https://www.gov.uk/government/publications/regulatory-policy-committee-analytical-advice-on-deregulation-and-implementation-of-the-small-business-enterprise-and-employment-act-2015>

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different businesses or markets. However, deregulatory measures are currently exempt from the small and micro business assessment requirements, and this could result in significant effects not receiving sufficient scrutiny.

FRAMEWORK AND METHODOLOGY ISSUES

- ◆ **The expansion of the scope of the framework, to include regulators, clearly enhances the comprehensiveness of the system. It also, however, creates new methodology challenges and boundary issues.**
- ◆ **To reflect what government believes to be the appropriate treatment for regulators, the list of exclusions for types of measure or activity that will not score has increased. However, other activities, such as some types of guidance, have been brought into the scope of the target.** These issues will be key challenges for the accurate assessment and appraisal of measures. Ensuring a complete and credible account within this wider remit will lead to a number of new questions for the system and framework.
- ◆ Understanding and ‘policing’ the boundary between the measures that will count toward the business impact target (qualifying regulatory provisions) and those that will not (non-qualifying regulatory provisions) will continue to be a key area of discussion between the RPC and government departments and regulators.
- ◆ **Changes to the framework, and the effects of ‘scoring’ measures with elements falling both sides of the election, limits the robustness of any comparisons between the deregulatory achievements in this and the previous parliaments.** In particular, it will not be possible to sum the balances from the two parliaments.
- ◆ More could be done to incentivise departments to provide transparent accounts of consultation responses, and how these have been reflected in the final stage analysis and estimates.

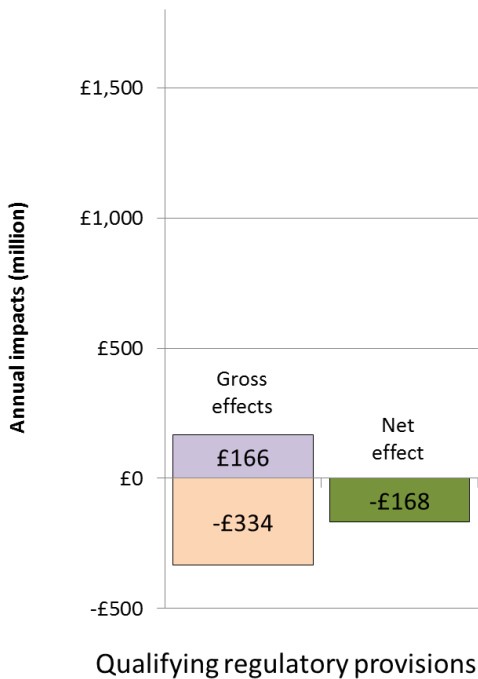
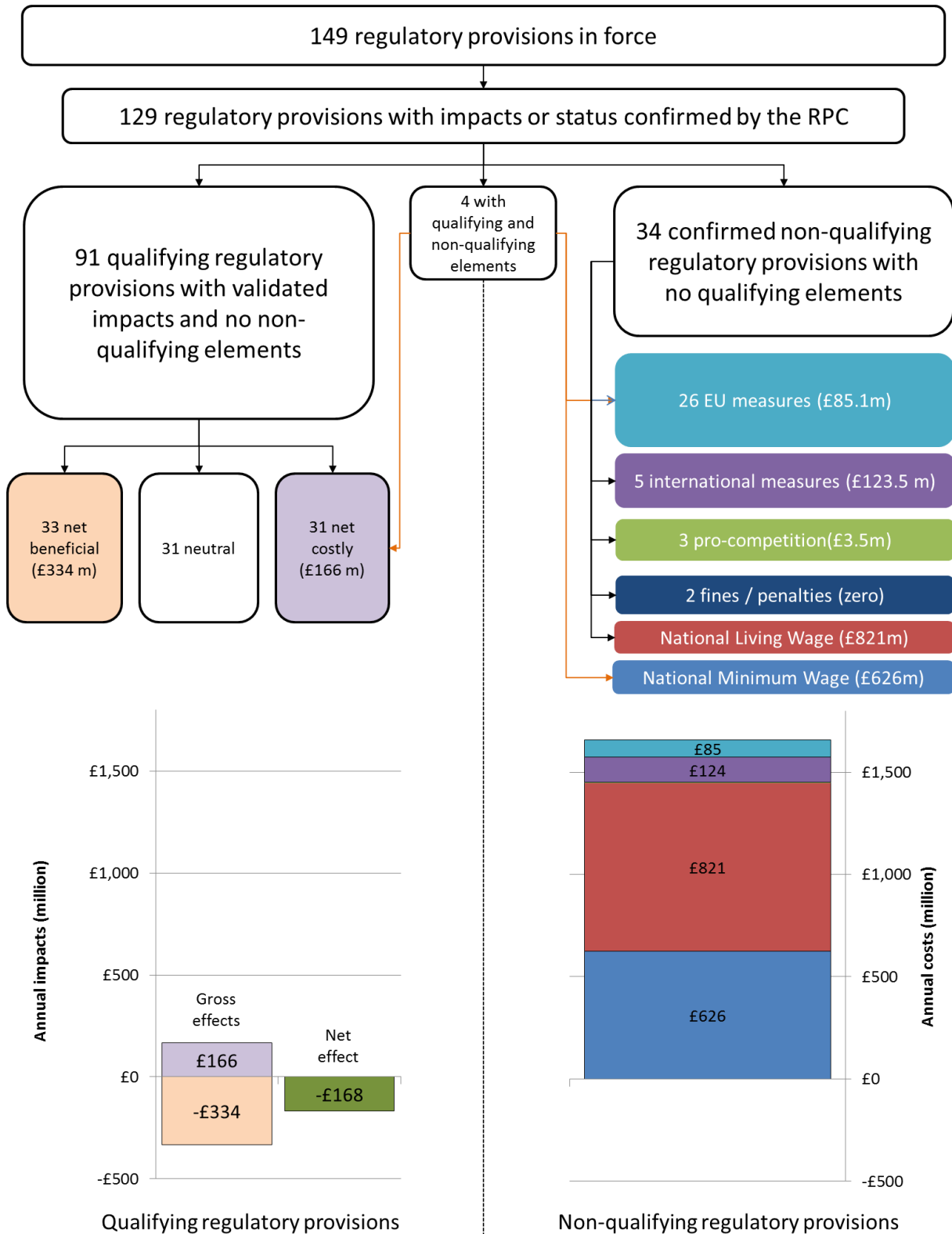
RECOMMENDATIONS

The government should:

- ◆ continue the early progress made in terms of **enabling the framework to focus on the more significant measures**, for example through emphasising proportionality for smaller measures and to strengthen the requirements for reporting the effects of consultation responses in impact assessments supporting final stage proposals.
- ◆ **prioritise undertaking, and submitting for independent scrutiny, the post-implementation reviews that relate to significant measures and those measures where there is greater scope for change or learning. The RPC should be given a role in assessing monitoring plans as part of the scrutiny of impact assessments.**
- ◆ **require a robust assessment of societal impacts for regulatory proposals as a condition for the impact assessment to be considered fit for purpose.** This could help incentivise a clearer appraisal of the benefits to society of the government's regulatory programme, as well as helping benchmark the comparative societal benefits of different burdens placed on business.
- ◆ **consider reviewing the design or emphasis of the small and micro business assessment** to require more quantification of the foregone policy benefits of exempting smaller businesses.

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SUMMARY OF MEASURES – MAY 2015 TO MAY 2016



SCOPE OF THE BUSINESS IMPACT TARGET

8. The Small Business, Enterprise and Employment Act 2015¹³ sets out the requirement for the validation and reporting of the impact of new regulation on business, voluntary and community bodies. The RPC, acting as the independent verification body,¹⁴ plays a key role in the validation of the estimated impacts, and the government's assessment of whether a measure will score toward the business impact target.
9. Enshrining this process in law will have significant benefits in terms of the transparency of the system, and extending the requirements to the activities of regulators will help the reported figures to more closely reflect how businesses experience regulation.
10. In designing the better regulation framework, the government has sought to create a system that provides the right incentives for government and regulators to reduce the burdens placed on business. The definition and scope of the business impact target are ways in which the government has tried to do this. As an example of this improved transparency, the Better Regulation Executive has provided information on the exclusions from the business impact target, and the justifications for these exclusions, in the first BIT report.¹⁵

QUALIFYING REGULATORY PROVISIONS AND NON-QUALIFYING REGULATORY PROVISIONS

11. The role of the RPC and the benefits of independent scrutiny are not limited to the statutory functions of the independent verification body. However, in relation to the exercise of the statutory functions, the RPC has two key roles. These are the confirmation of government's assessment of a measure as either a qualifying or non-qualifying regulatory provision, and the validation of the estimated equivalent annual net direct cost to business (EANDCB) of qualifying regulatory provisions.
12. An important function, that is not part of the statutory duties, is the validation of the EANDCBs of significant non-qualifying regulatory provisions. Ministers and the RPC

¹³ The Enterprise Act 2016. Small Business, Enterprise and Employment Act 2015 <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted/data.htm> and, as amended by, the Enterprise Act 2016, <http://www.legislation.gov.uk/ukpga/2016/12/contents/enacted>

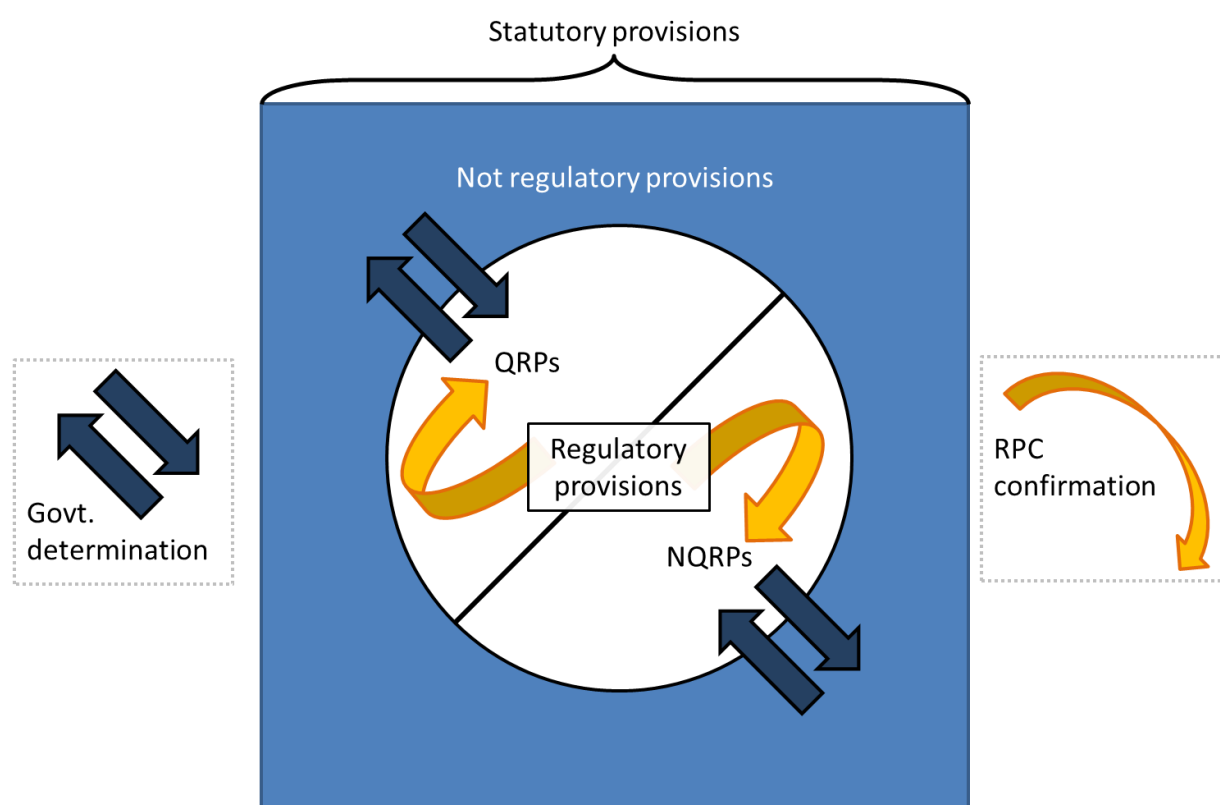
¹⁴ RPC appointed as independent verification body, <https://www.gov.uk/government/news/regulatory-policy-committee-appointed-as-the-independent-body-verifying-the-costs-and-savings-of-changes-in-law>

¹⁵ Business Impact Target: First Annual Report, Better Regulation Executive https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/530683/bis-16-182-bit-annual-report.pdf

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recognise that the validation of the impacts of significant non-qualifying regulatory provisions is crucial to the context and credibility of the business impact target.

13. On the basis of the legal definitions, for each measure the government must determine whether it is considered a statutory provision, and subsequently whether it should be considered a regulatory provision. The Small Business, Enterprise and Employment Act 2015 includes some specific examples of types of statutory provisions that cannot be considered as regulatory provisions, such as tax changes or measures that will be in force for less than 12 months.¹⁶



Scope of the business impact target and the RPC's functions

14. Government has stated that the business impact target scope is not intended to include all actions that affect business, or society.¹⁷ However, as with the previous parliament, the emphasis on the scoring of impacts that are within the scope of the target appears to have some distortionary effects, including reducing the quality of

¹⁶ Section 22, Small Business, Enterprise and Employment Act 2015.

<http://www.legislation.gov.uk/ukpga/2015/26/part/2/crossheading/business-impact-target/enacted>

¹⁷ Annex A, Business Impact Target: First Annual Report, Better Regulation Executive

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/530683/bis-16-182-bit-annual-report.pdf

assessment of wider impacts, and potential challenges for stakeholders in reconciling how businesses experience government intervention and the reported figures, for example as a result of tax administration being subject to different levels of scrutiny and/or reporting of burdens. These factors were highlighted in the recent National Audit Office (NAO) report *The Business Impact Target: cutting the cost of regulation*¹⁸.

15. Our previous report¹⁹ provided further background on the most significant, in terms of costs, non-qualifying regulatory provisions that have come into force this year (such as the national living wage and national minimum wage uplifts).
16. Since then we have also scrutinised the uprating of university tuition fees, which is expected to have a net benefit to business of £1.1 billion each year, and was classified as a non-qualifying regulatory provision as an amendment to an existing price control. Under the previous framework, this would have been likely to have scored in the government's account as a deregulatory benefit to business. It is still too early in the parliament to establish whether this represents a shift from the previous framework where the exclusions from the account mainly resulted in costs not scoring.

EFFECTS OF THE PREVIOUS PARLIAMENT

17. As the first year of a new parliament, there have been a number of measures that have come into force as a result of the previous government's actions. As with the time lag for the new government's proposals to complete parliamentary processes, this is a normal effect of the parliamentary process and timetables. Allowing time between the passing of legislation and the provisions coming into force also reflects good regulatory practice, enabling those who will be subject to the requirements of regulation sufficient time to prepare for implementation.
18. The business impact target captures measures coming into, or ceasing to be in, force over the course of parliament, rather than the actions of the current government. This has given rise to some interesting effects on the scoring of proposals for the target. In particular, we have noted that:
 - ◆ To date there have not been many significant deregulatory measures that have come from activity in this parliament. The majority of the significant

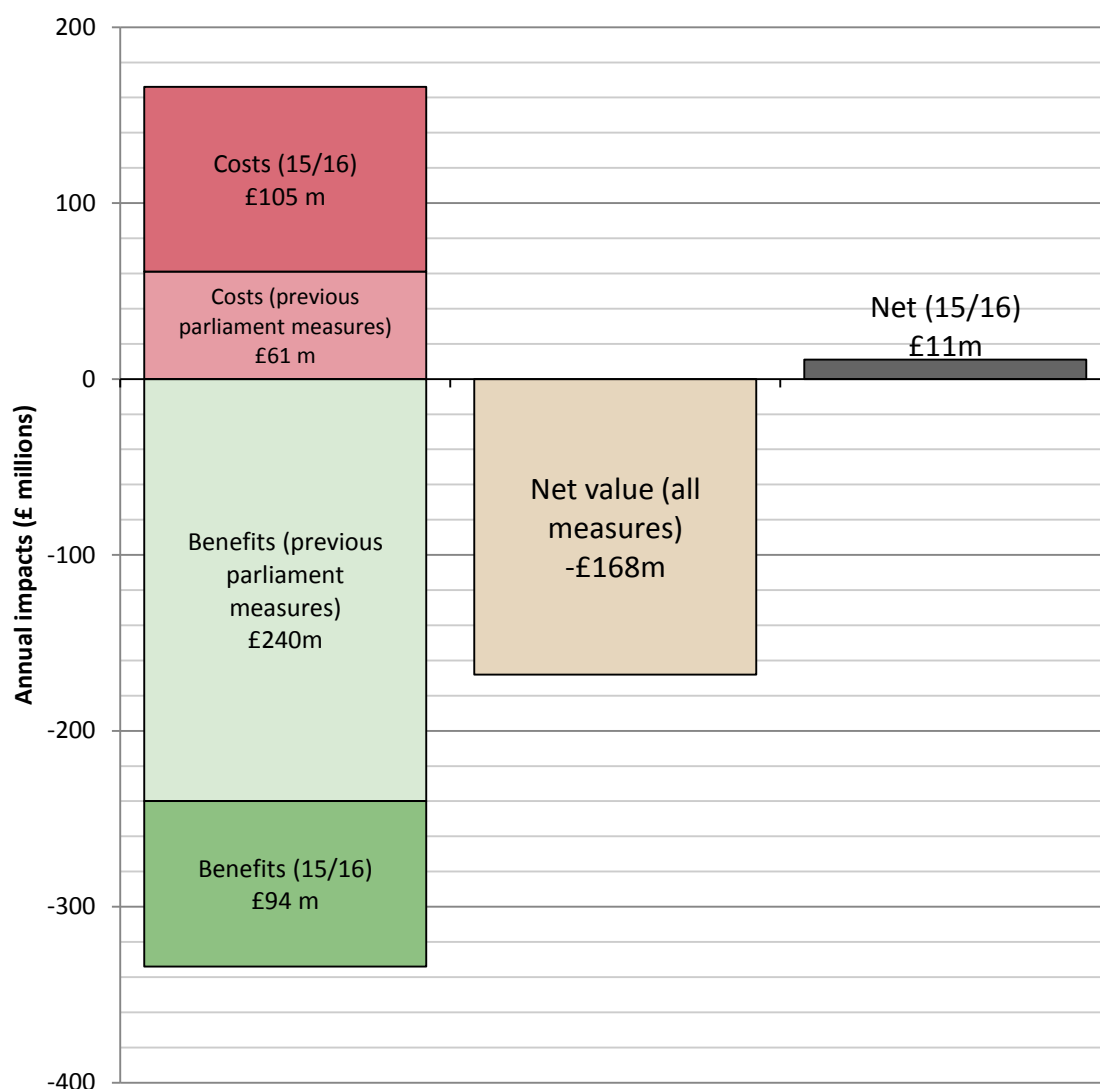
¹⁸ National Audit Office, <https://www.nao.org.uk/wp-content/uploads/2016/06/The-Business-Impact-Target-cutting-the-cost-of-regulation.pdf>

¹⁹ <https://www.gov.uk/government/publications/cost-and-benefits-of-regulatory-proposals-may-2015-to-february-2016>

measures are from the previous parliament, or are non-qualifying regulatory provisions. The coming years will give a clearer picture of this government's actions.

- ◆ Of the eight most significant qualifying regulatory measures coming into force this year, four were legislated for during the last parliament.²⁰ These have contributed 60% of the reported impacts of regulation - two net costly measures imposing around £61 million a year of the total £166 million costs, and two beneficial measures contributing around £240 million each year of a total of £334 million benefits.

Effect of significant measures from the previous parliament



²⁰ The four measures legislated for in the previous parliament are the plastic carrier bags charge, standardised packaging of tobacco products, continuity of essential supplies for insolvent businesses, and the abolition of short service refunds.

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- ◆ Some significant measures result from corrections to poor quality regulation in the previous parliament, for example in relation to pension's contributions equivalent premiums (see below).

The Pensions Act (Contributions Equivalent Premium)

In the past, some employees in defined benefit occupational pension schemes were 'contracted out' of their state pension, allowing them to pay less national insurance. When members leave the schemes with less than two years' pensionable service, the managers of the scheme have to pay a 'contributions equivalent premium' (CEP) to Government, to effectively cover the lost national insurance payments.

In the last parliament, the government legislated to abolish contracting out. The government now believes that, due to the drafting of the legislation, the law requires managers to pay the government a CEP for every employee that in a contracted-out salary-related pension scheme with less than two years of pensionable service at the point of abolition, even if they are remaining in the scheme.

During this parliament, the government legislated to remove the requirement to pay CEPs for employees that remain in their pension schemes, in order to avoid this unintended cost to business. The overall effect of this change is a net benefit to business of £35.3 million each year for two years. The initial costs of the inadvertent inclusion of members that remain in scheme will, however, not feature in the regulatory account for this or the previous parliament.

- ◆ The timing of decisions, and when changes come into force, has also resulted in some measures only scoring partially in this parliament, such as the decision to expand the scope of Care Quality Commission inspections, which took place last parliament, and the related fees increases to cover the increased costs of the changes, which have come into force this parliament. The timing difference means only the fee changes relating to a small element of the expansion of the scope will be counted towards the business impact target. This means only £3 million of the £33 million additional annual fees charged to business are included in the business impact target.

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- ◆ These factors have resulted in an annual difference of £68 million net costs²¹ not being reflected in either the business impact target or the previous parliament account.

19. These factors mean that taking the total of the government account in the previous parliament and the business impact target in this parliament will not provide an accurate picture of the total effect of regulation across the two parliaments.

EFFECTS OF THE METHODOLOGICAL CHANGES

20. There have been some effects on how the regulatory landscape is reported as a result of changes to the methodology. In addition to the scope points (above) changes such as enabling beneficial new regulation to score have had an impact.

21. The most significant effect to date relates to the regulation requiring larger retailers to charge for single use plastic carrier bags. The measure has the largest direct benefit for business of £203 million each year, which would not have scored under the previous framework.

Under the previous framework, **beneficial new regulation** with a direct benefit to business scored as a zero. This was intended to provide an incentive to reduce the volume of new regulation. However, this resulted in a difference between how figures were reported, and how businesses experienced changes.

The **plastic carrier bags charge**, is new regulation with a £203 million direct annual benefit to business. Under this proposal, the Government introduced a requirement for large retailers to charge for single use plastic carrier bags. The proposal, whilst regulatory, resulted in a net benefit for businesses because they could use the revenue to recover the costs of plastic bags, in addition to savings from having to purchase and stock fewer plastic bags. These benefits are the expected direct impacts – most of the additional revenue from the charge will be passed through to charities, but this is not a requirement of the regulation so cannot be considered a direct effect. Moreover, the extent to which this reduces the benefit to retail business will be entirely offset by a corresponding benefit to charities, so will be a redistribution between the business and the community and voluntary sectors.

²¹ £30 million annual cost from Care Quality Commission fees changes, £38 million from pensions contributions equivalent premiums – although the benefits of the pensions measure are time limited and only included in the business impact target for two years.

BEYOND THE BUSINESS IMPACT TARGET

22. The scope of the business impact target does not represent the total effect of regulation nor does it define the limit of RPC scrutiny. The RPC also has a role in relation to the scrutiny of post-implementation reviews and measures outside the business impact target, such as those of EU origin. RPC scrutiny also considers issues such as the small and micro business assessment and consideration of alternatives to regulation, which are discussed later in this report.

POST-IMPLEMENTATION REVIEWS

The post-implementation reviews submitted to the RPC so far do not seem to reflect adequately the regulatory landscape of the previous parliament. Of the five most significant regulatory and five most significant deregulatory measures seen by the RPC during the last parliament, in four cases the departments are intending to send the review or evaluation to the RPC. No significant reviews have yet been scrutinised by the RPC.²²

- ◆ The RPC expects to see post-implementation reviews on all of the most significant measures from the previous parliament. These have either not yet been done, or have not been subject to independent scrutiny. To date, of the 52 statutory reviews due during 2016, 13 have been submitted to the RPC, eleven of which cover relatively low-impact measures of EU origin. These types of measures would appear to have limited scope for the government to amend or improve the regulatory requirements, which limits the purpose of a post-implementation review. While these reviews may provide useful opportunities to inform improvements in analytical approaches, it is not clear why they should be developed as a priority compared to more significant measures with more scope for improvement.
- ◆ It is unclear whether the current lack of post-implementation reviews on significant measures is a result of the better regulation framework not prioritising such cases – for example by focusing on only those measures with statutory review clauses, or whether departments are not applying the framework requirements correctly. The RPC would welcome a clear indication from government regarding the review plans, especially for the most significant measures from the previous parliament, and a commitment to these being submitted to the RPC for independent scrutiny.

²² Departmental review plans for suggest one further significant measure has been subject to annual reviews, but these have not been subject to independent scrutiny

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- ◆ Post implementation reviews offer an excellent opportunity to improve the quality of regulation, and the evidence or approaches used to inform regulatory decision making. However, for reviews to be most effective, review plans need to be in place in advance of the implementation of a proposal. As such, we will increasingly look to see greater evidence of proactive planning for evaluation and reviews in impact assessments.

EUROPE

There has been a reduction in the volume of measures of EU origin that have come into force during the reporting year in comparison to the previous parliament. So far, in this parliament 26 measures (18% of the total) have been of an EU origin, compared to 31% during the previous parliament.

- ◆ There may be a number of reasons driving the apparent low level of new measures of EU origin. There may be domestic factors that have reduced the volume of transposition measures, for example the timing of the UK parliamentary cycle. There are also likely to be some factors at the EU level, such as the tailing off of legislative proposals at the end of the term of the previous European Commission, and reduction in major new legislative proposals in the Work Programmes of the new Commission.

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VOLUME OF MEASURES AND COSTS AND BENEFITS

VOLUME OF MEASURES

23. The RPC has validated the estimated impacts for 129 measures that have come into force this parliament. These have been reported in the Better Regulation Executive's Business Impact Target: First Annual Report,²³ published 24 June 2016. The details of all the values of the individual measures, and links to the relevant RPC opinions, are available through the [RPC website](#).²⁴

	Number of measures
Regulatory provisions that have come into force during the 2015/16 business impact target reporting period	149
Regulatory provisions with impacts validated by the RPC	129 ²⁵
Qualifying regulatory provisions	95
Non-qualifying regulatory provisions	38 including: ²⁶ <ul style="list-style-type: none"> ◆ 31 measures of EU or international origin; ◆ 3 pro-competition measures ◆ 2 relating to fines or penalties; ◆ The introduction of the national living wage; and ◆ The uprating of the national minimum wage in line with the low-pay commission's recommendations.

²³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/530683/bis-16-182-bit-annual-report.pdf

²⁴ <https://www.gov.uk/government/publications/costs-and-benefits-of-new-regulation-regulatory-policy-committee-opinions-since-may-2015/costs-and-benefits-of-new-regulation>

²⁵ This includes seven measures confirmed as non-qualifying regulatory provisions expected to have gross costs under £1 million in the most expensive year. For these measures, the RPC is not required to validate an equivalent annual net direct cost to business. For the purposes of the analysis in this report these measures are assumed to have a net cost of zero.

²⁶ Four measures include elements that are considered qualifying regulatory provisions, and elements that are considered non-qualifying regulatory provisions. These are reflected in both lines of the table. These measures are the National Minimum Wage, the Tobacco Products Directive, the Control of Major Accident Hazard Regulations and the Offshore Safety Directive.

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IMPACT OF MEASURES

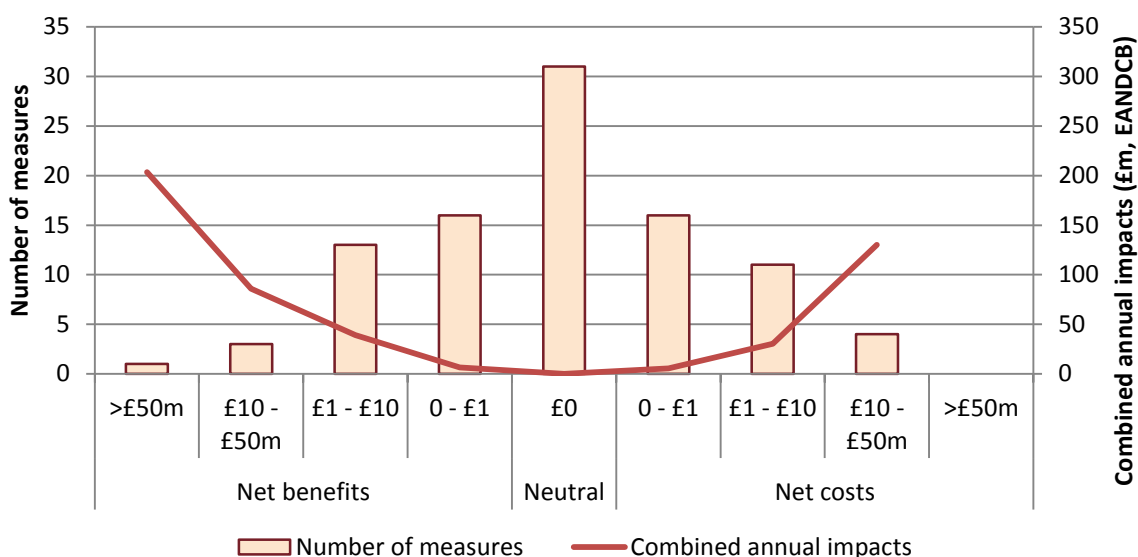
24. The business impact target reports on the net effect of qualifying regulatory provisions. The terms of the business impact target are set out in a written ministerial statement from March 2016.²⁷ Measures have a 'BIT score', which is the equivalent annual net direct cost (EANDCB) of the measure multiplied by five to reflect the length of a fixed term parliament, or by the number of years the measure will be in force if that is fewer than five. The RPC does not have any responsibility for the design of the scoring mechanism, but only figures validated by the RPC, acting as the independent verification body for the purposes of the Small Business, Enterprise and Employment Act 2015, can be included in the business impact target.
25. The business impact target report for 2015/16 reported that the net effect of qualifying regulatory provisions that came into force during the year was a 'BIT score' benefit to business of £0.885 billion. This figure includes net beneficial measures with an aggregate business impact target score of £1.56 billion, and net costly measures worth nearly £0.68 billion.

Qualifying regulatory provisions	Number of measures	Impact (equivalent annual net direct cost to business)	Impact (business impact target score)
Net beneficial measures	33	£334 million	£1,561 million
Net costly measures	31	£166 million	£676 million
Net neutral ²⁸	31	Zero	Zero
Totals	95	£168 million (net) £500 million (gross impacts)	£885 million (net) £2,237 million (gross impacts)

²⁷ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-03/HCWS574/>

²⁸ The RPC validates the net annual cost to business to the nearest £100,000. As such, a number of measures are reported as net neutral or zeros where the costs round to zero.

Distribution of Qualifying regulatory provisions



26. As in the last parliament, a significant volume of measures contribute relatively little to the overall government account. Nearly 80% of the validated net annual impacts (£390 million) within the business impact target come from the six largest measures. Over two-thirds (63 of the 95) measures have an annual impact of less than +/- £1 million. These small measures contribute £6.4 million annual benefits and £5.6 million annual costs – fewer than 3% of the total impacts validated impacts of qualifying regulatory provisions this year.

27. The RPC also validates the estimated costs and benefits of non-qualifying regulatory provisions. This is not a requirement of the Small Business, Enterprise and Employment Act, but we see it a vital role in terms of the robustness of the business impact target for two key reasons:

- it ensures that there is confidence that measures that are qualifying regulatory provisions are not inappropriately excluded from the account because the RPC has a role in confirming that a measure is a non-qualifying regulatory provision; and
- it provides some context for the scale of benefits that are included in the business impact target.

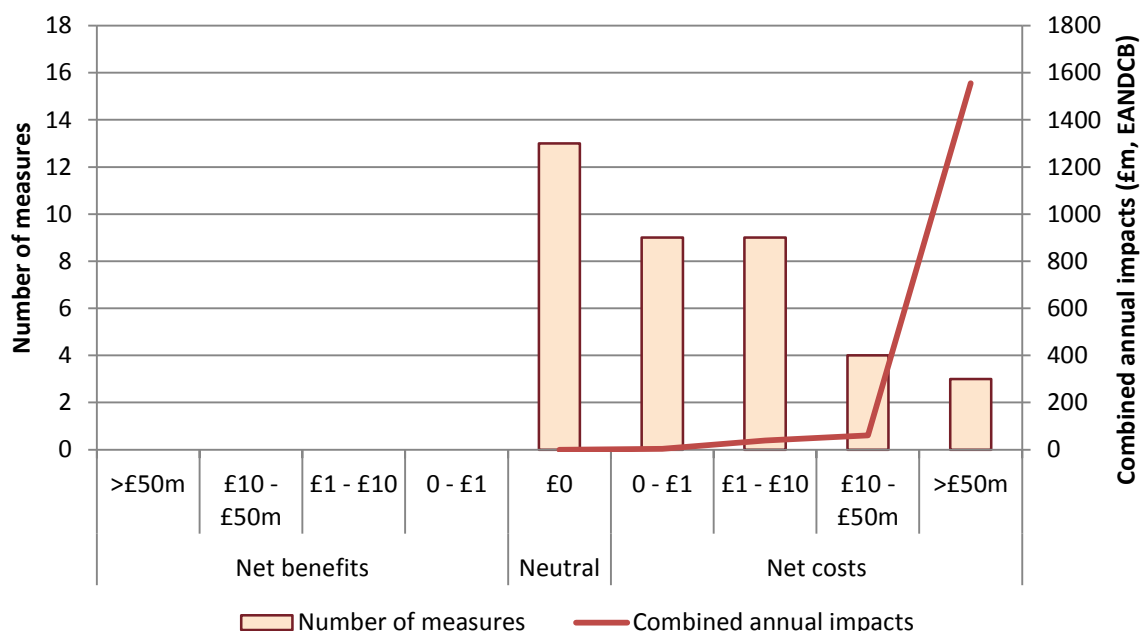
28. As these measures do not score for the business impact target, their impacts are presented only in equivalent annual net cost terms.

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Non-qualifying regulatory provisions	Number of measures	Impact (equivalent annual net direct cost to business)
Net beneficial measures	Zero	Zero
Net costly measures	25	£1,658 million
Neutral / zero for reporting purposes	13 (including 7 low-cost non-qualifying regulatory provisions ²⁹)	Zero
Totals	38	£1,658 million (net and gross)

Business impact target exclusion	Impact (equivalent annual net direct cost to business terms) [number of measures]
EU origin	£85.1 million [26]
International origin	£123.5 million [5]
Pro-competition	£3.5 million [3]
Fines or penalties	Zero [2]
National Living Wage	£821 million [1]
Uplifts to national minimum wage	£626 million [1]

Distribution of non-qualifying regulatory provisions

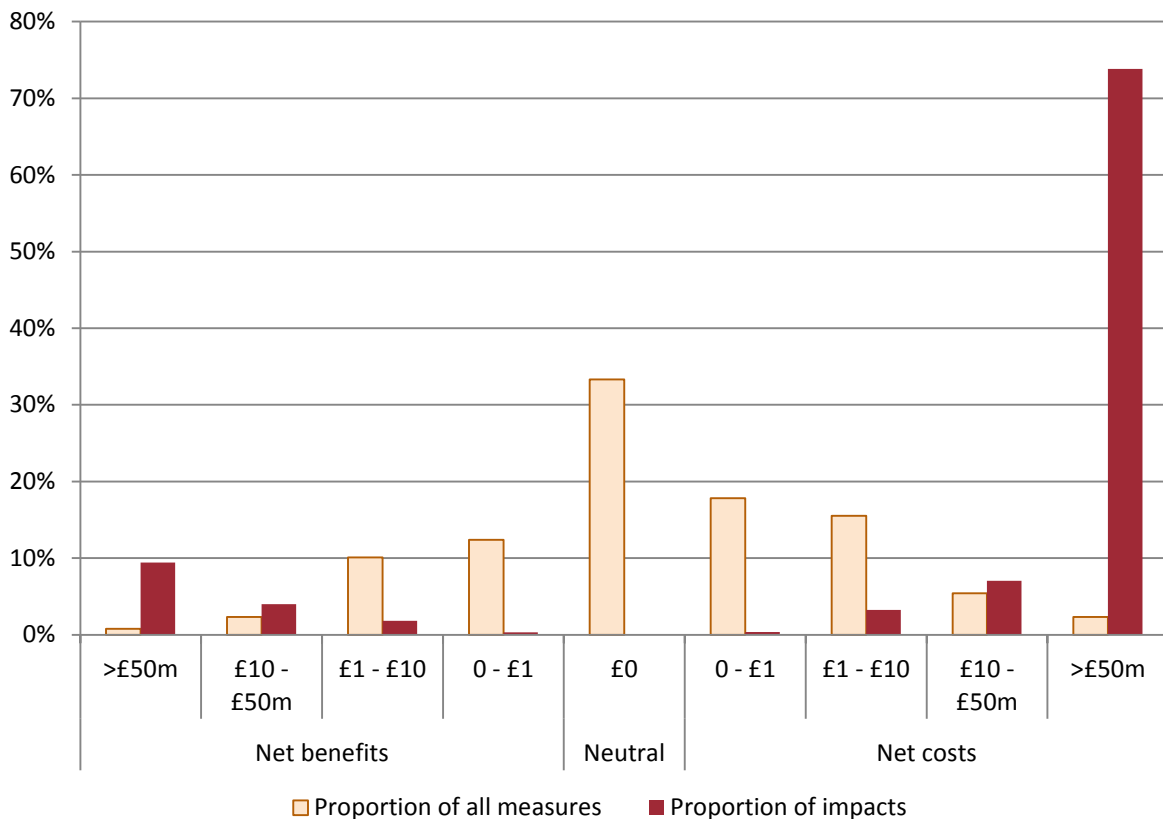


²⁹ The measures have been confirmed as being expected to have gross costs of under £1 million in the most expensive year. For the purposes of the analysis in this report it is assumed that the average costs, especially when rounded to the nearest £100,000, will tend towards zero in equivalent annual net cost to business terms.

29. As with the qualifying regulatory provisions, the gross impacts of the non-qualifying measures are dominated by a small volume of significant measures. The two measures relating to minimum wages (the first stage of the National Living Wage, and the National Minimum Wage uplift) account for nearly 90% of the gross non-qualifying regulatory provision impacts.

30. The previous graphs present the volumes and impacts of qualifying and non-qualifying regulatory provisions separately, with values in absolute terms. The following graph combines both qualifying and non-qualifying, and combines the same data, but presents the figures as proportions of the total volume and impacts. This shows that 64% of qualifying and non-qualifying regulatory provisions (82 measures with a net impact of between -£1 million and £1 million in EANDCB terms) contribute 0.7% of the total validated impacts.

Proportion of measures and contribution to total validated impacts



31. Two of the changes to the methodology highlighted earlier in this report have already had a considerable effect on the composition of the business impact target. In particular, enabling beneficial new regulation to 'score' has resulted in the £203 million annual benefits from the single use plastic carrier bags charge being included,

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while the new exclusion for the National Living Wage has resulted in a £821 million cost not being scored. However, the exclusion in relation to price controls will result in the uprating of university tuition fees, once it comes into force, not being scored as a qualifying regulator provision, with the £1.1 billion benefits to business being excluded from the business impact target. There are also likely to be a number of other measures, not yet validated by the RPC, that will be affected by the changes to the framework.

NPV AND BUSINESS NPV

32. **The wider impacts on society of new regulation are not quantified robustly in at least 41% of impact assessments.** This means:

- ◆ the government is not assessing the benefits to society of the proposals it brings forward; and
- ◆ it is harder to compare the effects on society of different regulations, and it is difficult to provide any expectations around a 'fair' level of burden being imposed on business to justify the corresponding costs or benefits to wider society.

33. **Based on 'societal net present values', one-third of measures are assessed as being net costly to society as a whole.** There could a number of reasons for this. It could mean that the analysis is not being used to inform decisions; or that there are significant difficulties for departments appraising wider impacts; or that government is bringing forward a significant volume of measures that are net detrimental to society as a result of the prioritisation of benefits to business or sections of society.

Societal net present value (NPV): monetisation of the total expected impacts of a policy on the whole of society. These are standardised in 2015 prices to allow for a direct comparison of the impacts of various policies.

Business NPV: monetisation of the expected total direct impacts of a policy on businesses. These are standardised in 2015 prices to allow for a direct comparison of the impacts of various policies.

34. Of 41 regulatory policy proposals³⁰ seen by the RPC that required a full impact assessment, 17 were assessed by departments as having the same societal net present value (NPV) and business NPV, or do not include a quantified NPV. As the better regulation framework is primarily focused on the direct effect of regulation on business, in the absence of incentives to quantify effectively, it appears that departments feel it is either unnecessary and/or disproportionate to quantify the effects on the wider society. In cases where the NPV and business NPV are assessed as being equal this is unlikely to be robust in a significant proportion of cases, as that would effectively mean that the regulation has no effect beyond the direct effects on business.

³⁰ Only those measures that are not eligible for the fast track are required to provide full impact assessments that should include an appraisal of the costs and benefits beyond business. The analysis in relation to the wider impacts excludes measures of an EU origin, as the assessment of domestic societal benefits are less inherent to the decision making process for those proposals.

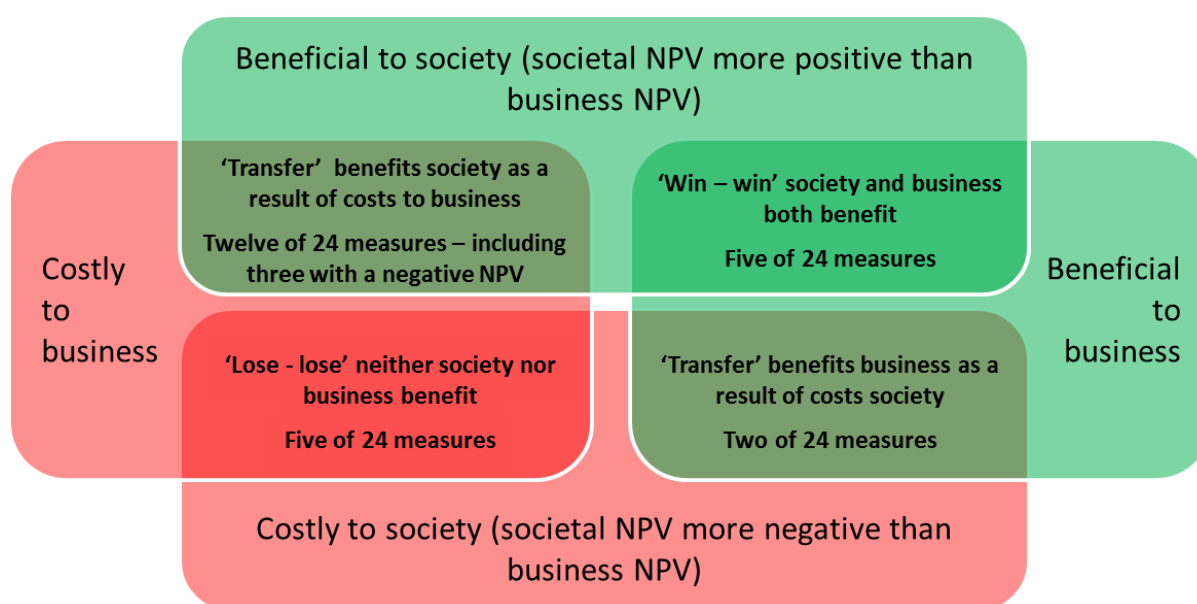
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35. We note, however, that this is a significant improvement on the proportion of measures scrutinised by the RPC during 2014 and which included an assessment of societal impacts. As flagged in our analytical advice,³¹ during 2014 only one-third of measures included an assessment of societal impacts. For the business impact target reporting year, 24 of 41 measures (58%) included an assessment of societal impacts.

36. Encouraging a robust appraisal of the wider effects of regulation is important, both to enable the government to explain better the benefits of its regulator programme and to help inform decisions about priorities and trade-offs. Better information on trade-offs could help prioritise areas for deregulation, or inform decisions on a 'fair' rate of burden to impose on business to realise a benefit for society.

MEASURES INCLUDING AN ASSESSMENT OF WIDER IMPACTS

37. On the basis of the quantified wider effects included in impact assessments³², compared to the quantified effects on business, measures fall into four broad categories.



³¹ Analytical advice on deregulation and implementation of the Small Business, Enterprise and Employment Act 2015, Regulatory Policy Committee, <https://www.gov.uk/government/publications/regulatory-policy-committee-analytical-advice-on-deregulation-and-implementation-of-the-small-business-enterprise-and-employment-act-2015>

³² Of the 41 measures that should have assessed societal effects, 13 measures had an NPV that was assessed as the same as the business NPV, and 4 did not provide a quantified NPV (including one measure with a quantified business NPV and a non-quantified societal NPV)

38. Only five out of the 24 measures, were assessed as having both benefits to business, and other wider benefits³³. The majority of the remaining measures were either assessed as having business benefits that were at least partially offset by societal costs, or benefits to society through the imposition of costs on business.
39. More robust quantification of the societal benefits would enable better informed decisions on the trade-offs and rationales for such proposals. Where transfers between different groups take place they can result in overall net costs, for example if the gross benefits to society are less than the gross costs to business.
40. In five measures, the department's assessment of its own proposal was that it would impose costs on business and society. In a further three measures, the department's assessment was that the wider benefits did not fully offset the costs to business. This means that, for eight of the 24 measures where the department has assessed the wider effects, the impact assessment suggests society is worse off than if the government had not intervened. For these measures it is crucial that, within the impact assessment, government provides a clear rationale for pursuing the policy given the assessed societal impacts.
41. While there are reasons why robust quantification of impacts is not always possible, if taken in isolation the impact assessments for these measures would suggest that government intervention was not supported by the evidence. While this may be explained by policies that are intended to have a re-distributional effect in line with government priorities, robust assessments of the wider gross impacts would support a more evidence based approach to prioritisation between different ways of achieving those objectives.

MEASURES WITHOUT AN ASSESSMENT OF WIDER IMPACTS

42. A greater proportion of impact assessments monetised benefits to society beyond the business impacts than in 2014. However, while RPC opinions may comment on the wider analysis, the RPC is unable to rate the fitness for purpose of an impact assessment on the robustness of the assessment of wider impacts.
43. There may be some cases where it is extremely difficult and disproportionate to quantify the expected societal impacts of a policy. In these cases, it is reasonable for departments not to include quantification provided that the reasons are explained in the impact assessment.

³³ Includes one measure that was assessed as net neutral for business with benefits to society.

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44. However, for more significant measures arguments around proportionality are less credible. There are a number of measures that have relatively significant costs to business, but for which the societal benefits have not been assessed robustly. One-third of measures with costs to business of over £10 million did not quantify any other effects on society.

Size of business NPV ³⁴	Number of measures	Number with no monetised impacts beyond the business NPV (% of measures in that bracket)
Under -£50 million	8	2 (25%)
-£10 million to -£50 million	7	3 (43%)
Zero to -£10 million	11	4 (36%)
Zero	2	1 (50%)
Zero to £10 million	1	1 (100%)
£10 million to £50 million	6	2 (33%)
Over £50 million	3	1 (33%)

MEASURES IMPOSING COSTS ON SOCIETY

45. Looking at measures that have quantified wider impacts and those that have not undertaken any quantification beyond business effects, the impact assessments for 16 (39%) of 41 measures assess the proposal as having a negative net effect on society. This would mean that society overall could be expected to be worse off than if the government had not intervened.

³⁴ Three measures did not provide a quantified business NPV

Regulatory overview – May 2015 to May 2016



46. The RPC recognises the need for government to use analytical resources effectively. It would, however, appear that the government could do more to assess the expected wider impacts of regulatory proposals. In a number of cases a significant proportion of the relevant analysis has been completed and presented in the impact assessment, but may require some additional work to ensure the estimates are sufficiently robust. Given that some departments already undertake such wider analysis in a number of cases, it is not clear why this approach could not be applied more systematically.
47. The transparent presentation of the costs and benefits to society of regulatory proposals is an important driver for explaining the expected benefits of the government's regulatory programme and the rationale for different interventions. The robust assessment of wider effects will help ensure impact assessments are better placed to provide the evidence needed to support decision making. The RPC believe that, for such evidence to be considered credible, the estimates would benefit from being subject to independent scrutiny, with the RPC able to 'red-rate' impact assessments where the assessment of the overall impact on society is not fit for purpose.

SMALL AND MICRO BUSINESS ASSESSMENTS

48. A small and micro business assessment is required for all domestic measures that regulate business, and have costs over £1 million in any year. The requirement is designed to encourage departments to provide more detailed consideration and analysis of the impacts on small businesses.
49. Based on the measures reviewed, the small and micro business assessment does appear to have made some progress in encouraging departments to provide further consideration and analysis of the impacts on small businesses.
50. However, the requirement to assess impacts on smaller businesses has not resulted in a significant increase in the number of cases that exempt smaller businesses. There are some notable exceptions, namely gender pay gap reporting and charging for plastic carrier bags. Of the 39 measures that came into force this year and were within scope of the requirements, three included an exemption for small and micro businesses. One further measure would not affect small or micro businesses.
51. In this parliament, the RPC has been recording how the small and micro business assessment is applied in a different way, which makes comparisons with the last parliament difficult. An RPC review of the 83 cases requiring a small and micro-business assessment (SaMBA) in 2014 showed that less than one third of these cases exempted small businesses or mitigated the impact of the proposal on them. Full exemption, the last government's default policy, was applied in only three cases. The latest figures show three exemptions from 38 measures³⁵ during the first year of the current parliament.
52. The RPC, therefore, remains concerned that the purpose of the small and micro business assessment is not understood fully by departments, and that it is seen as a 'tick-box' exercise. The better regulation framework requires the default option to be the exemption of smaller businesses from costly new regulation. Where a

The small and micro business assessment has been a requirement since 2013. It applies to domestic regulatory measures that have gross costs over £1 million in the most expensive year. The intention is to encourage departments to exempt smaller business from regulation where there are disproportionate effects.

³⁵ Not including the measure that does not regulate sectors that include small businesses.

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department believes a full exemption is not viable, this assessment must be supported with appropriate analysis, and consideration must also be given to options for mitigating the burdens on smaller businesses.

53. The most common reasons provided by departments for not exempting small and micro businesses are that: exemptions would stop the policy achieving its objectives (eleven measures), smaller businesses were expected to benefit (eight measures), or small business would not face disproportionate burdens (nine measures).

Reasons for not exempting, or mitigating the impacts on, small and micro businesses	Number of measures
Small and micro businesses would not be affected by the proposal	1
Small and micro businesses are beneficiaries of the proposal	8
The measure would not have a disproportionate impact on small and micro businesses	9
The exemption of small and micro businesses would stop the policy achieving its objectives	11
Other/reason not provided	7

54. For measures that affect markets which are predominantly comprised of smaller businesses, we believe that departments could still do more to quantify the effects of excluding smaller businesses. For example, too few assessments currently quantify the potential foregone policy objective or the benefits to smaller businesses. This concern is magnified for significant deregulatory measures that involve transfers between businesses as the framework exempts these measures from the requirements of the small and micro business assessment. We believe that, even where a measure is deregulatory, if the net effects include disproportionate gross costs for smaller businesses, departments should still be required to provide an assessment of those costs and consider whether they could be mitigated. The RPC has recommended to ministers that consideration is given to amending the small and micro business test so that it applies to such cases.

55. There also does not appear to have been an increase in the use of mitigating actions, such as different implementation times or targeted support, for smaller businesses. This may be due to the number of markets predominantly composed of smaller businesses meaning the use of mitigating actions may be felt to have too significant an effect on the policy objective. It may, however, also reflect that some decisions in relation to implementation, for example the development of targeted guidance, may take place after the development of the impact assessment.

56. There remain some different interpretations across government regarding the type or scale of effects that should be considered disproportionate. There also appears to be a perception that the approach should only be applied a very narrow way. For example, it would appear that in most cases exemptions or mitigations are only considered if there are negative effects, rather than considering whether their use could contribute to wider government objectives, for example in relation to growth.
57. In eight of the assessments reviewed, the department assessed the cost of an exemption, often in terms of the proportion of businesses that would be excluded and the effect on the policy objective. However, these tended to be in those cases where an exemption would have led to a total, or near total, failure to achieve the

Case Study: Small and micro business exemption: Plastic Carrier Bags Charge

Under this proposal, the Government was introducing a requirement for large retailers to charge a minimum of 5p for single use plastic carrier bags. The proposal, whilst regulatory, resulted in a net benefit for businesses because they could use the revenue to recover the costs of plastic bags, in addition to savings from having to purchase and stock fewer plastic bags.

Smaller businesses were excluded from the requirement to charge for single use plastic carrier bags. However, in response to the Government's Call for Evidence on the measure, several representatives of small retailers, including the Association of Convenience Stores, the National Federation of Retail Newsagents and the British Retail Consortium argued against the exemption on the grounds that it would deprive small businesses of the business benefits associated with the policy. On the other hand, responses from some small organisations and the Charity Retail Association welcomed the exemption because they believed that setting up charging schemes would put a disproportionate administrative burden on small organisations.

The impact assessment acknowledged the arguments on both sides but the Government opted to continue to exclude smaller businesses from the charge, reflecting the commitment to avoid imposing regulatory burdens on small businesses where possible. The RPC considered the assessment to be fit for purpose on the basis that the regulations did not prohibit small and micro businesses from introducing the charge, but did not require them to.

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policy objective, for example in relation to measures that are only expected to bite on smaller businesses.

58. In a further eight cases, the department specifically examined the costs and benefits to small and micro businesses from the measures. In these cases the department demonstrated an understanding of how the measure will affect smaller businesses, but stopped short of providing assessments of the extent to which those effects could be avoided while still achieving a significant proportion of the policy objective.
59. The reasons provided for not exempting smaller businesses suggests that the structure and composition of some sectors and markets may mean departments will never feel confident to exempt smaller businesses. However, this would not explain why there has not been an increase in mitigating steps such as different transition timetables and support for smaller businesses, for example through targeted guidance. In light of this the government may want to consider whether the design of the small and micro business assessment could be amended to deliver greater benefit for smaller businesses. For example, departments could be encouraged to explore more fully the extent to which the volume of new regulation imposed on smaller businesses, when taken together, represents a significant strain on relatively restricted resources available for regulatory compliance, even in the absence of disproportionate impacts from a single legislative change.

60. A further area for consideration could be whether, to support government’s wider objectives in relation to enterprise and entrepreneurship, supporting small business and reducing the burden of regulation, small and micro businesses could be exempted from some requirements even where there are not disproportionate costs. To enable government to make informed decisions on this area the RPC believes that IAs should, as routine, provide more information on the proportion of policy objectives and benefits that could be achieved without including smaller businesses – essentially providing detail on the policy cost compared to the business cost of the inclusion of smaller businesses.

Case Study: Continuity of essential supplies to insolvent businesses

Small or micro business suppliers were not exempted on the grounds that this would be detrimental to other small and micro businesses that are expected to derive greater benefits from the increased proportion of business rescues as creditors of insolvent businesses. The Department undertook an analysis of a full, temporary and partial exemption for small or micro businesses and found a possible reduction in overall benefits resulting from the exclusion of small and micro business suppliers across different sectors, with an overall range of reduction in the annual benefits of £0.7 million to £23.6 million, depending on the size and nature of the supplier. The measure, overall, was estimated to have a total benefit of £41.4 million, including £38.3 million to business, each year.

Estimates of the size of the reduction in quantified benefits from exclusion of small and micro suppliers across sectors:

Sector	IT	Telecoms	Utility
% of SME suppliers	60	46	41
% of SME suppliers that are small (4%)	2.4	1.8	1.6
Reduction in overall benefits (£41.4 million x % small suppliers)	£1.0 million	£0.8 million	£0.7 million
% of SME suppliers that are micro (95%)	57	43.7	39
Reduction in overall benefits (£41.4 million x % micro suppliers)	£23.6 million	£18.1 million	£16.2 million

CONSIDERATION OF OPTIONS AND ALTERNATIVES

61. **Departments are now including a greater level of consideration of alternative approaches in impact assessments. However, these are often still focused on different regulatory options or do not appraise the costs and benefits of non-regulatory options with an adequate degree of detail.**

62. We recognise that, as a result of how our scrutiny function has been designed by government and how we interact with the regulatory system, we will tend to see cases and proposals where the regulatory option has been assessed as being the preferred option. Where non-regulatory alternatives are taken forward, these types of cases have historically not required RPC scrutiny. However, we would still expect impact assessments to provide more information and detail on the extent to which non-regulatory options have been explored, and for more analysis and appraisal of the potential approaches to be included in assessments.

Case Study: Gender Pay Gap Reporting

In 2016, the Government legislated to require employers to publish gender pay gap figures, gender bonus gap figures and a breakdown of the number of male and female employees by pay quartile.

The regulations will require companies with more than 250 employees to publish the following figures annually: (a) mean and median gender pay gaps; (b) mean and median gender bonus gaps; and (c) the number of men and women in each quartile of the company's pay distribution.

The Government previously pursued alternatives to regulation. In particular, since 2011 the Department encouraged large employers to voluntarily publish gender pay gap information through the Think Act Report initiative. However, only 5 out of almost 280 employers who signed up to the voluntary initiative published the information. The Department explains that while the gender pay gap has slowly fallen over the last five years, decreasing from 19.85% in 2010 by 0.75% to 19.1% in 2015, the voluntary approach would be very unlikely to achieve the policy objective of accelerating the reduction in the gender pay gap over time. While the Government has continued to pursue regulation, the approach of trying and ruling out alternatives first was commendable.

63. Nearly half of the impact assessments scrutinised by the RPC included consideration of at least two or more options beyond the preferred option and the 'do nothing'. In a small number of cases departments considered four other options. In the majority of these cases the department also provided a detailed appraisal of the costs and benefits of the other options. However, this still means that of the 56 impact assessments for significant proposals submitted to the RPC, 19 measures did not consider any alternative approaches to delivering the desired policy objectives. For these measures, the impact assessment is required to provide a robust explanation of why it is not possible to consider other approaches.
64. The changes to the better regulation framework, in relation to the extension of the scope of the business impact target to include regulators and guidance, means that we expect to see much more information on alternatives to traditional regulation in future years, but that some of this may be asymmetric between what we see in relation to regulator or government department actions. This will reflect the difference between the legal provisions in the Small Business, Enterprise and Employment Act 2015 that relate to government departments and the business impact target, and the way in which the business impact target has been extended to regulators by the Enterprise Act 2016.

WHAT'S NEXT?

WORKING WITH DEPARTMENTS

Working with departments, and now regulators, to improve the quality of their assessments and appraisals is a key element of the RPC's work.

65. The scope of the business impact target, in relation to legislative proposals, is broadly consistent with the previous parliament. The previous framework, however, was not underpinned in statute. This change and the need to develop legal definitions and tailored guidance for elements of the framework have led to some challenges in the system during the transition. The RPC has sought to respond to the changes through developing new, or revising existing, guidance for departments on methodological issues and interpretations. The RPC's established case histories approach for legislative changes continues to provide guidance for departments faced with novel or challenging methodological issues.
66. A key tool to support regulators in applying the better regulation framework will be the expansion of the RPC guidance documents to cover the new, regulator-specific, exclusions. The wider coverage of the business impact target and the need to develop the framework rules to reflect the different nature of regulators' work means there has been a significant increase in the potential for borderline or boundary decisions on scope. Based on experience of the previous parliament decisions on scope for example in relation to restrictions on 'payday lending'³⁶, alongside some of the more technical appraisal issues in relation to direct impacts, were one of the biggest challenges for those developing assessments.
67. Our corporate report provides information on how different departments are performing in terms of the quality of their impact assessments. We will continue to work with departments and regulators to drive up quality and capability.

DEVELOPING OUR ROLE

The changes to the better regulation framework, as a result of the statutory requirements and the extension of the business impact target to regulators, are potentially very significant in relation to the transparency of the impact of regulation on businesses. These

³⁶ Amendment to the Financial Services (Banking Reform) Act - restricting charges for high-cost short-term credit, RPC opinion, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390052/2014-12-19_-_RPC13-HMT-1984_-_Amendment_to_the_Financial_Services_Banking_Reform_Act_-_restricting_charges_for_high-cost_short-term_credit.pdf

changes represent a significant opportunity for the RPC to engage with and scrutinise a wider range of regulatory changes and issues. However, we also believe that the scope of the business impact target should not be the limit of independent scrutiny, or mean that other elements of analysis and appraisal should be disregarded.

68. The evidence contained in impact assessments that are scrutinised by the RPC can provide important elements in explaining the benefits and objectives of government proposals. Developing the strength of analysis of societal benefits could help provide insight for government on where to focus business regulation, or the trade-offs in terms of societal benefit and business benefit. These wider considerations could also inform better regulation policy design, for example in relation to small business assessments and exemptions. However, the quality of the wider evidence and analysis is not yet sufficiently robust to enable a systemic approach. The RPC would like to see greater emphasis placed on the appraisal of societal benefits by departments and in the better regulation framework. This is an issue that was also highlighted in the National Audit Office (NAO) report *The Business Impact Target: cutting the cost of regulation*³⁷.

69. The RPC has highlighted previously³⁸ the role that good quality consultation evidence should play in the appraisal of the costs and benefits of regulation. Feedback from some stakeholders suggests that, in some cases, final stage impact assessments are still not reflecting sufficiently the comments and evidence provided by stakeholders. While government departments and regulators will clearly need to balance a range of different responses, that may provide conflicting or contradictory evidence, we would like to see more good practice examples of departments explaining how the evidence seen has been reflected in subsequent appraisals, or why it was not considered appropriate.

70. The RPC has always undertaken a number of functions that go beyond the activities defined in relation to the independent verification body. The contents of this report are informed by elements of this wider scrutiny. Our intention is to continue to explore further ways in which the information and insight gathered through our statutory and administrative scrutiny functions can be analysed and reported to help drive further improvements in the quality of analysis underpinning regulation. The

³⁷ National Audit Office, <https://www.nao.org.uk/wp-content/uploads/2016/06/The-Business-Impact-Target-cutting-the-cost-of-regulation.pdf>

³⁸ Analytical advice on deregulation and implementation of the Small Business, Enterprise and Employment Act 2015, Regulatory Policy Committee, <https://www.gov.uk/government/publications/regulatory-policy-committee-analytical-advice-on-deregulation-and-implementation-of-the-small-business-enterprise-and-employment-act-2015>

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expansion of the scope of the better regulation framework will potentially provide an interesting range of new case studies and analytical insights.

