Regulatory Policy Committee

RPC advice on deregulation and implementation of the SBEE Act 2015 – summary of evidence

Executive Summary: RPC advice on deregulation and implementation of the Small Business, Enterprise and Employment Act 2015

1. Introduction

The Small Business, Enterprise and Employment (SBEE) Act 2015 requires the Government to set the scope, rules and level for the business impact target within the first year of a new parliament. The newly-elected government have already committed to achieve at least £10 billion of savings to business by reducing burdensome regulation over the next five years.

The Regulatory Policy Committee (RPC) has the experience, confidence and respect of Whitehall departments and business necessary to play a key role in supporting the delivery of this challenge. We were the independent body charged with validating the costs and savings to business under the One-in, One-out (OIOO) and One-in, Two-out (OITO) rules in the previous parliament.[1]

This paper summarises the analysis that the RPC has undertaken over recent months. It provides a review of some key aspects of the previous better regulation framework in order to help the government set the scope and rules for the business impact target. The paper also sets out some ideas on how the RPC could help the government achieve its deregulation goals more easily and the implications for its current remit.

A summary of key findings and suggestions for a way forward is presented below.

2. Scope of the regulatory framework

Widening the scope of the regulatory framework would deliver two fundamental benefits.[2] First, a framework based on the broadest possible inclusion of costs to business could provide departments with the greatest incentive to reduce the burden of regulation on business and to find more efficient, effective and innovative ways to deregulate. Second, a wider scope would enhance the credibility of the system to external stakeholders, including business and civil society organisations, as it would provide a more complete picture of the full impact of regulation on business.

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[1] Since 2009 RPC has scrutinised over 1,200 distinct proposals for regulation and has improved the accuracy of departmental estimates of the costs and benefits of these proposals by at least £585 million per year.

[2] Certain measures have been out of scope of OITO and, therefore, were not captured in the OITO account, although they still required clearance from the Reducing Regulation sub-Committee (RRC). The most prominent of these were EU-derived regulation, regulation as a result of international agreements, measures addressing financial systemic risk and changes to the levels of fees and charges.

Widening the scope of the business impact target compared with the One-in, Two-out rule in the last parliament will provide the largest possible incentive to departments to deregulate across their policy domain and will help ensure that the system is credible and reflects the true impacts of regulation on business and civil society organisations.

The Government have already acted to widen the scope by confirming that actions of independent regulators will be brought within scope of the business impact target through the first-session Enterprise Bill in this parliament.

Certain types of measures, such as tax administration and temporary measures, are already excluded from the scope, as outlined in the SBEE Act. If the Government choose to exclude any additional measures from the business impact target, it should provide a clear rationale for doing so. For such measures, the evidence base and the assessment of costs and benefits should remain subject to independent scrutiny, even if resulting changes do not contribute to the burden reduction target.

In the last parliament, many measures that were out of scope of the framework had substantial impacts on business. RPC analysis shows that out of scope measures generally increase the burden of regulation on business. For example, two of the largest measures that were out of scope on both EU and financial system risk grounds[3] imposed a combined total of £1.6 billion per year in net costs on business.

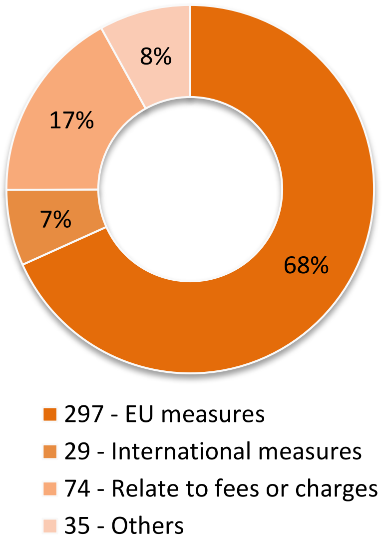
RPC analysis shows that **nearly half of the approximately 1,000 laws enacted during the previous parliament were outside the scope** of the Government's One-in, One-out and One-in, Two-out rules.[4][5] Nearly 70% of these were of EU origin. The impact of these measures is illustrated below.

[3] The Alternative Investment Fund Managers Directive and the Bank and Recovery Resolution Directive.

[4] Note that the RPC has scrutinised 1,223 distinct regulatory proposals affecting business and civil society organisations. However, of those, 272 measures did not progress to a final stage impact assessment and hence did not become law.

[5] The above analysis excludes measures introduced by independent regulators, because RPC does not have the data needed for a meaningful analysis.

Figure i. Out of scope measures by type and volume



Source: RPC Analysis

Table i. Total net value of out of scope measures (per year) by type[6]

Validated figures	EU (2013/14)	£730m
	EU financial systemic risk	£1,601m
Figures based on RPC analysis	EU (2011/12)	£137m
	Fees and charges	£118m
	International agreements	£181m
	Others	£31m

Source: RPC Annual Report March 2015

The Government should consider a 'de minimis' rule, to recognise potential pressures on the system from widening the scope, particularly to cover the action of independent regulators, in order to support efficiency and ensure proportionality.

This is supported by RPC analysis, which shows that some **70% of the in-scope proposals in the last parliament led to costs or savings to business of less than £1 million per year**. In total, these accounted for less than 1% of the total value of the Government's regulatory account. Without a 'de minimis' rule, a large volume of low-impact proposals could divert public resources away from the assessment of larger, more complex regulatory proposals. However, there should remain some form of a scrutiny gateway for low-impact measures.

3. Better and more transparent use of evidence

The evidence shows that the One-in, One-out and One-in, Two-out rules have created incentives for departments to reduce regulation. However, there is a risk that the focus of those rules on direct impacts on business could reduce the emphasis on other important elements of better regulation. In particular, during the last parliament, the RPC observed that Whitehall departments did not always consider regulation as a last resort – they properly assessed non-regulatory options in only a relatively small number of cases. Furthermore, departments considered the impacts of regulation on wider society in less than half the measures scrutinised by RPC in 2014.

[6] Excludes measures with an impact on business of less than £1million per year for all categories except EU (2013/14).

The RPC could help the Government achieve its deregulation goals more easily if it had a wider remit to scrutinise regulatory proposals. In particular, the RPC could more strongly alert ministers to proposals that have not clearly justified regulation, properly considered non-regulatory options, or adequately examined the wider impacts of the regulation on consumers and civil society.

A decision to go ahead with a proposal based solely on a “ministerial preference” rather than a sound economic rationale, supported by robust evidence of the problem, should never be considered sufficient to justify such a policy choice.

The case for regulation

In the last parliament, the RPC found that the assessment of viable non-regulatory options by Whitehall departments was relatively weak. The RPC’s analysis shows that, in 2014, although about half of the cases discussed non-regulatory options, **only 12% of all cases provided a full assessment**. Non-regulatory options may not always be feasible or sensible. However, in line with the principles of better regulation, departments should systematically identify and assess non-legislative options before discounting them, as they currently do with the ‘do nothing’ option. Where such options are viable, departments should examine their costs and benefits more often. This would strengthen understanding of such options and improve their application.

Assessments of impacts beyond business

Business is an important stakeholder and social mechanism, but not the only domain affected by, and able to help implement, government intervention. Government policies should be underpinned by robust appraisal to ensure that interventions provide the greatest possible benefits to society at large. RPC analysis shows that **departments did not assess any impacts of regulation beyond business in a significant number of cases**. This means that ministers are making decisions on new regulation without a sufficient understanding of their full impacts. It also means that we currently have no rigorous and consistent way to ensure that only those regulatory proposals that combine the greatest possible benefits to society with the lowest costs to business are taken forward.

While some legislative proposals may have no wider (monetisable) societal and / or economic impacts, overall **only around a third of cases examined by RPC quantified wider impacts beyond business.** Departmental performance is also variable; some are much more capable of identifying and assessing wider impacts. In 2014, for example, the Department for Transport identified wider costs and benefits in more than 60% of its impact assessments, while other departments did not estimate any wider impacts.

One way to overcome this problem would be to report more transparently the impacts of the Government's regulatory reform programme on the welfare of consumers and wider society.

The societal net present value[7] of a policy could be reported alongside the business impact. This could help to improve incentives for departments to prioritise analytical resources, encourage further research and development of analytical methods to help monetise better wider impacts of regulation and emphasise the inclusive benefits of better regulation.

Better use of consultation

Good communication and consultation with business and other key stakeholders are essential to effective policy making and to better regulation that eliminates unnecessary business and civil society burden. Departments should thoroughly review all evidence submitted by stakeholders during the consultation process. Often, businesses and other directly-affected parties are best placed to comment and advise on the likely impacts of proposed legislative changes.

RPC experience in the last parliament identified situations where consultation evidence was not fully reflected in impact assessments.

Departments should make better use of consultation evidence to assess the impacts of regulation more accurately.

4. Understanding the impacts on small business

The Government in the last parliament made some progress in considering the effects of their policies on small businesses and providing exemptions or mitigations where feasible. However, there is more to do. An RPC review of the 83 cases requiring a small and micro-business assessment (SaMBA) in 2014 showed that the Government could do more to strengthen the evidence base and analysis underpinning decisions on the exemption of small business from new regulation.

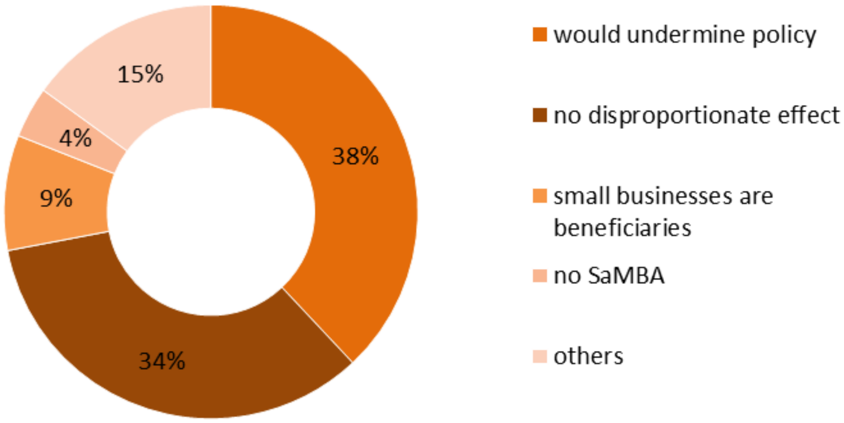
The RPC analysis shows that fewer than **one third of these cases exempted small businesses or mitigated the impact** of the proposal on them. Full exemption, the last government's default policy, was applied in only three cases.

The main challenge to date has been the patchy evidence informing a decision as to whether to exempt small businesses. The RPC recognises that there will be many circumstances where full exemption may not be feasible or appropriate. For example,

[7] The net present value (NPV) is the discounted value of a stream of either future costs or benefits. The term is used to describe the difference between the present value of a stream of costs and a stream of benefits.

when the evidence shows that small businesses are not affected disproportionately by the proposal or could in fact benefit from it. Despite this, departments often argue, without providing much supporting evidence, that exempting small business will undermine the underlying policy objective. The main reasons given by departments for not using exemption or mitigation are illustrated in Figure ii below.

Figure ii. Reasons for not using exemptions or mitigation



Source: RPC analysis covering unique domestic, regulatory, full route IAs in 2014.

The RPC can help the Government achieve a proportionate regulatory regime for small business by raising the bar on expectations for the underlying evidence base. In particular, the RPC would like to see departments doing more to compare:

- ***policy 'cost' of exempting small and micro-business***. Departments should provide an analysis of how much of the policy objective would be compromised by applying full exemption to small businesses.

- ***impacts of not exempting small and micro-business***. Departments should provide an indication of how much of the overall costs to business they expect to fall on small businesses.

A summary of options to strengthen the framework underpinning the business impact target

Issue	Conclusions
Scope	1. *Widening the scope of the business impact target, compared with the One-in, Two-out rule in the last parliament, will provide the largest possible incentive to departments to deregulate across their policy domain and will help ensure that the system is credible and reflects the true impacts of regulation on business and civil society organisations.* 2. *The Government should consider a 'de minimis' rule to recognise potential pressures on the system from widening the scope, in order to support efficiency and ensure proportionality.*
Evidence-based case for regulation	3. *The RPC could help the Government achieve its deregulation goals more easily if it had a wider remit to scrutinise regulatory proposals. In particular, the RPC could more strongly alert ministers to proposals that have not:* *(a) clearly justified regulation;* *(b) properly considered non-regulatory options; or* *(c) adequately examined the wider impacts of regulation on consumers and civil society.* 4. *The net present value of a policy could be reported alongside the business impact to explain better the benefits to society of regulation.* 5. *Departments should make better use of consultation evidence to assess the impacts of regulation more accurately.*
Small business assessment	6. *The RPC can help the Government achieve a proportionate regulatory regime for small business by raising the bar on expectations for the underlying evidence base. In particular, the RPC would like to see departments doing more to compare:* (a) *policy 'cost' of exempting small and micro-business. Departments should provide an analysis of how much of the policy objective would be compromised by applying full exemption to small businesses.* (b) *impacts of not exempting small and micro-business. Departments should provide an indication of how much of the overall costs to business they expect to fall on small businesses.*