Regulatory Policy Committee

REGULATORY OVERVIEW:

RPC SCRUTINY DURING THE 2015-17 PARLIAMENT

May 2018

FOREWORD

This report reflects on a period of major change for the UK and for better regulation. In particular, the UK's decision to leave the EU, the changes created by the Enterprise Act 2016, such as the inclusion of regulators in business impact target accounting, and the consequences of the tragic fire at Grenfell Tower, have meant that our role as the independent body responsible for scrutiny and verification of the business impact target has become all the more challenging.

These events have moved the better regulation agenda into a different context, with growing public debate about the role of regulation in our society, in particular its impacts beyond those on business. In this context, it is concerning that only 43% of the impact assessments we have scrutinised during the 2015-17 parliament monetised the impacts on wider society. Nor can it be right that we remain unable to rate an impact assessment as unfit for purpose when its assessment of the wider impacts of regulation is inadequate. The RPC is keen to apply its experience and expertise to help to improve the Government's framework, and especially to widen the focus of impact assessments, and its scrutiny, to cover the evidence base for impacts on society as a whole.

As in previous years, the Government's overall regulatory account is dominated by a handful of very large measures, but we have also scrutinised the impact assessments of hundreds of smaller measures. As we move towards a more proportionate system of scrutiny, we urge the Government to consider the impacts of regulatory churn on business and civil society organisations, citizens and public sector organisations.

We also note that the unintended impacts of corrections and temporary measures on the account have been rather significant – three of the five largest measures are of this type.

During the 2015-17 parliament, we began to scrutinise post-implementation reviews of regulation; we are pleased to note that 19% of these reviews recommended improvements to the policy, showing the value of learning from experience in developing regulation. However, we remain disappointed that so few of the most significant measures in the 2010-15 parliament have been reviewed and call for a great improvement in the Government's performance in this respect. An alternative approach would be for an independent body to ensure that these reviews are completed.

We look forward to the challenges posed by scrutiny of the regulatory consequences of leaving the EU. We take the view that robust independent scrutiny of the evidence base for regulatory change is more important in this context than it has ever been.

We are especially glad that, throughout the period covered by this report, business and civil society organisations have continued to support us and that our opinions provide them with confidence in the quality of appraisal presented by departments.

Finally, we would like to thank members of the secretariat for their extremely hard work in delivering and maintaining high-quality scrutiny during a period of the highest workload the RPC has ever faced. We firmly believe that, within the current framework, the work of the RPC has contributed to a better evidence base for policy making, which is our fundamental purpose.

REGULATORY POLICY COMMITTEE

REGULATORY OVERVIEW: RPC SCRUTINY DURING THE 2015-17 PARLIAMENT

Table of Contents

THE REGULATORY LANDSCAPE

1. The Regulatory Policy Committee (RPC) is the independent scrutiny body appointed by the Government to examine the evidence underpinning all new regulatory and deregulatory proposals that have an impact on business.

2. The RPC's role in scrutinising such proposals for the 2015-17 parliament remained broadly the same as in the 2010-15 parliament, with the added role of the independent verification body for the Government's business impact target. The RPC's scrutiny continued to assure ministers and other stakeholders that government's assessments of regulatory impacts were robust. For legislative proposals that imposed a net cost on business, the RPC assessed the quality of evidence, the rationale for government intervention and the range of options being considered before government consultation on them. For all legislative measures, the RPC confirmed either government's estimate of the final policy proposals' costs and benefits to business; or government's assessment that the proposal does not count towards the Government's business impact target and is likely to have limited impacts.

3. The metric used to monetise the expected impact of each policy proposal is the estimated equivalent annual net direct cost to business (EANDCB). For regulatory provisions that qualified for the business impact target (BIT), this is then converted to a 'BIT score' by being multiplied by five (or by the number of years that the measure will be in force if that is fewer than five) to reflect the length of a fixed-term parliament. The aggregate of each BIT score is intended to measure the Government's performance against the target.

4. During the 2015-17 parliament, the RPC adopted a new role – validation of the costs and benefits of regulatory activity by regulators.

5. Only costs and benefits validated by the RPC can be counted for business impact target purposes.

6. The Department for Business, Energy and Industrial Strategy has recently published the *Business impact target (BIT): report 2015 to 2017*. This stated that the Government has delivered £6.6 billion of net savings towards the £10 billion

business impact target set for the parliament commencing in 2015 – exceeding its interim target.

7. The RPC has significant insight into the measures that have been implemented by the Government and those that are likely to come into force in the near future. These include measures that do not qualify for the business impact target. This report also includes the impacts of measures that are not accounted for under the business impact target.

EXECUTIVE SUMMARY

8. Our key observations in relation to the Government's regulatory programme over the course of the 2015-17 parliament, and themes that we expect to be significant in the following parliament, relate to:

- the composition of the Government's regulatory programme and the exclusions from the business impact target;
- incentives in the better regulation framework;
- the assessment of EU exit-related impact assessments;
- the wider impacts of regulatory changes;
- the impact of regulatory changes on small and micro businesses; and
- reviewing existing regulation.

COMPOSITION OF THE GOVERNMENT'S REGULATORY PROGRAMME

- During the 2015-17 parliament, 672 different regulatory provisions came into force[1]. The RPC has validated the expected impacts of all 672 of these measures, including 534 that are accounted for under the business impact target (BIT). The RPC confirmed departmental assessments of 88 measures, and 63 summary lists from regulators as non-qualifying regulatory provisions. There are 13 measures that had both qualifying and non-qualifying elements and have been included in both categories.

- **The overall costs and benefits to business of new regulation continue to be dominated by a relatively small number of very large measures.**

- **The five biggest qualifying regulatory provisions are all expected to result in a net benefit to business.** However, of these five measures:

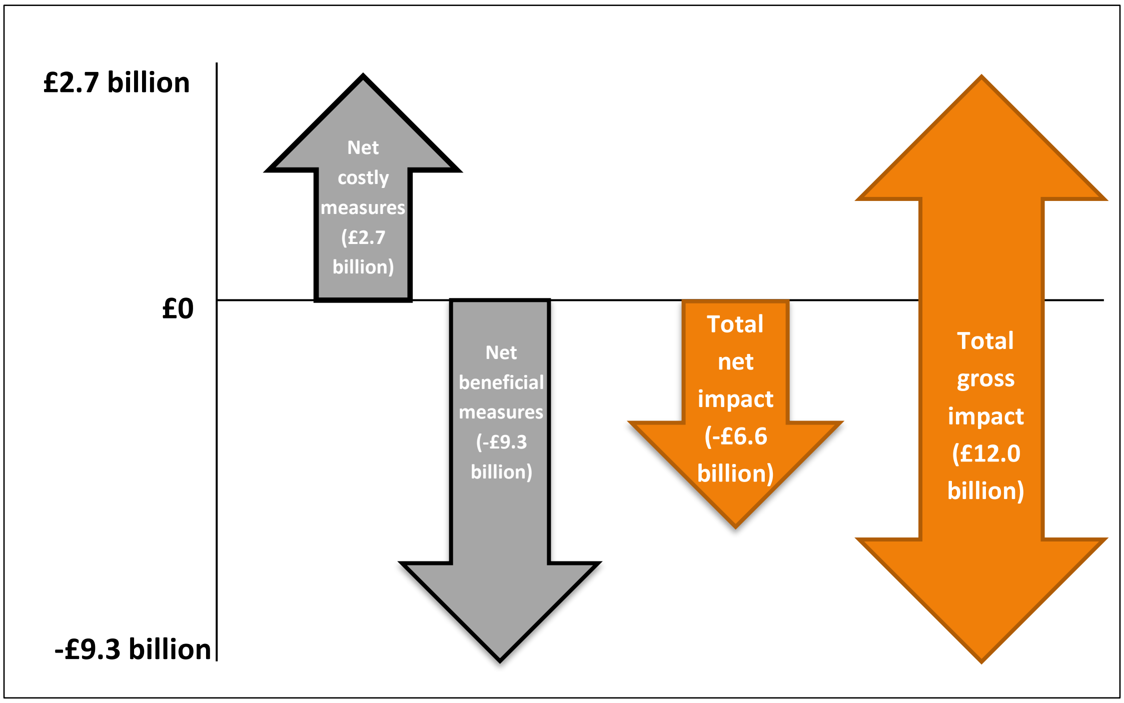
  - two were transitional (the planned ending of the, then-current, phase of the **energy company obligation** and implementation of

[1] This does not include non-qualifying regulatory provisions implemented by regulators. The RPC verifies a summary list of these, as opposed to scrutinising and keeping record of each measure.

the 18-month transitional phase [£3.9 billion benefit in BIT terms], and the change in the implementation date of the **minimum automatic enrolment pension contribution** [£1 billion benefit in BIT terms]), where future changes, unavoidably linked to both measures, are expected to result in significant costs to business;

◊ two were validated during the 2010-15 parliament (**plastic bags** [£1 billion benefit in BIT terms] and **cheque imaging** [£0.5 billion benefit in BIT terms]) but came into force during the 2015-17 parliament, and;

◊ one rectified an unintended policy effect (**heat networks** [£0.5 billion benefit in BIT terms]).



- There were 443 qualifying regulatory provisions (83.0% of the total volume of qualifying regulatory provisions), each with an annual net impact of less than £1 million (gross) that, combined, have contributed just £35.6 million[2] in gross annual impacts to the BIT account (1.1% of the total). The proportion of measures implemented by regulators that fall into this category was 91%.

[2] £18.1 million from net beneficial measures and £17.5 million from net costly measures. Note that these are in equivalent annual net direct cost to business (EANDCB) terms and not BIT scores.

This is even greater than the proportion of measures implemented by departments that fall into this category (67%).

- **The RPC has validated impacts worth £943 million in gross terms relating to measures that did not qualify for the 2015-17 BIT[3]. These account for 23% of all validated impacts for measures implemented or removed during the 2015-17 parliament. These impacts were mainly comprised of measures that were of EU origin and measures that related to the national minimum/living wage. As the vast majority of measures that did not qualify for the 2015-17 BIT imposed a net cost on business, the non-qualifying account contains £932 million of annual impacts on business in net terms[4].**

> **The most significant measure**
>
> The energy company obligation (ECO) places obligations on larger energy suppliers to deliver energy efficiency measures to domestic premises in the UK. The previous scheme expired on 31 March 2017 and a less-burdensome transition scheme was implemented in the 2015-17 parliament. The expiry of the previous ECO scheme scored as a net benefit (£3.9 billion BIT score) and the introduction of an 18-months transitional scheme scores as a (smaller) net cost (£816 million BIT score). The Government expect to implement a further scheme, which will run to 2022. This is likely to score as a substantial net cost, once it is implemented.

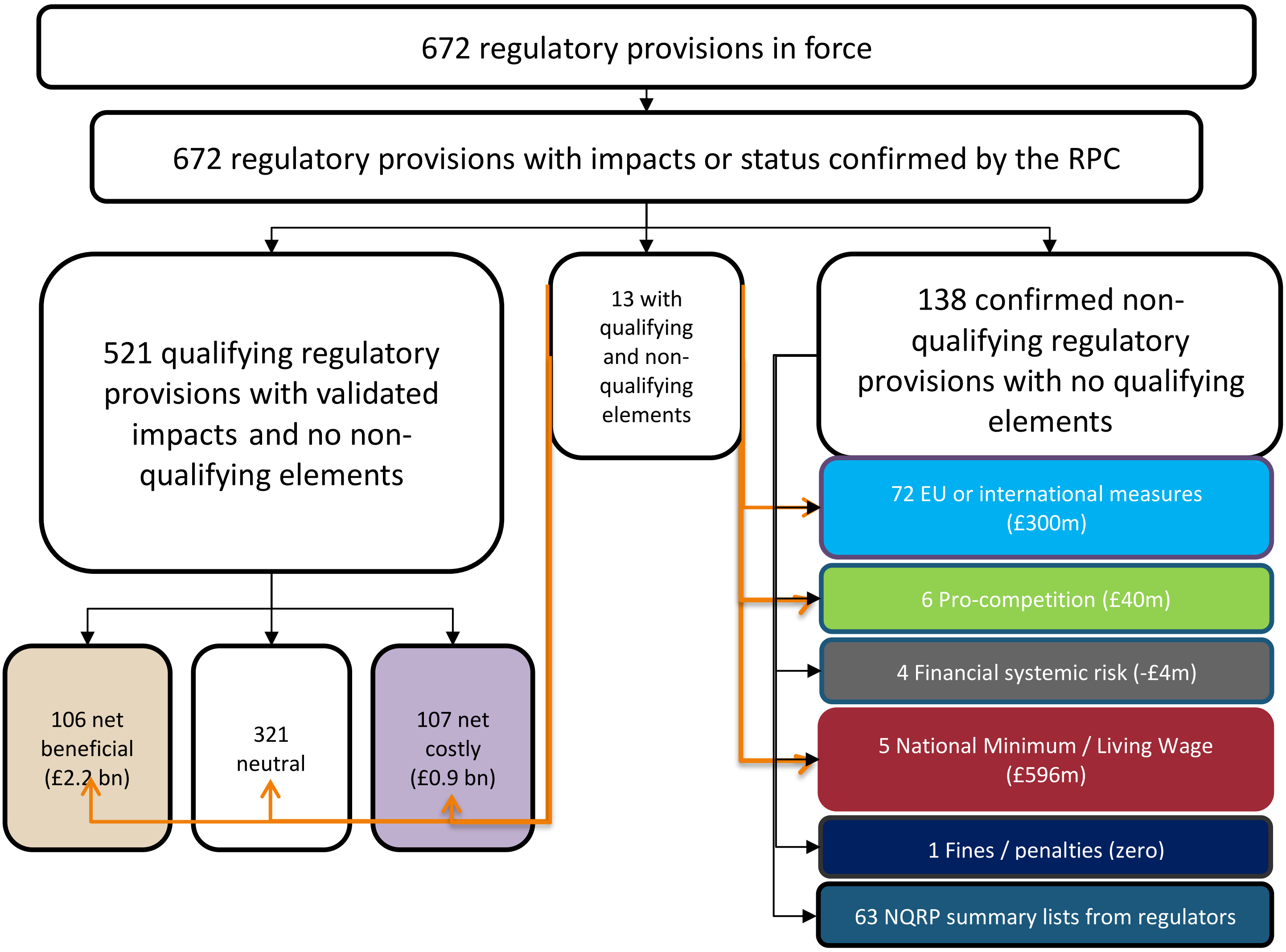
- **Had the Teaching Excellence Framework (validated as reported previously with benefits of £1.1 billion per annum) come into force during the 2015-17 parliament as expected, the non-qualifying account would have looked very different – it would have been net beneficial to business. The Teaching Excellence Framework would also have been the measure with the largest annual impact on business, despite affecting a small proportion of businesses (universities).**

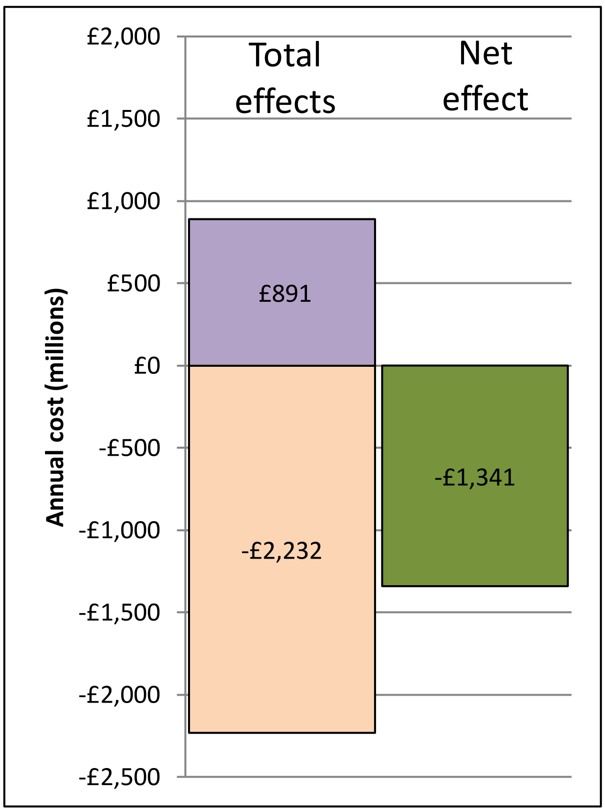
[3] More detail on non-qualifying regulatory provisions and the grounds on which they are excluded from the BIT can be found in the "Scope of the business impact target" section.

[4] If the impacts of these measures had been accounted for under the BIT, the BIT multiplier (equal to five or the number of years that the measure is in force, if fewer than five) would need to be applied to the net impact of each measure, in order to account for these impacts in BIT terms. As such, the difference in the BIT account would have been greater than £932 million.

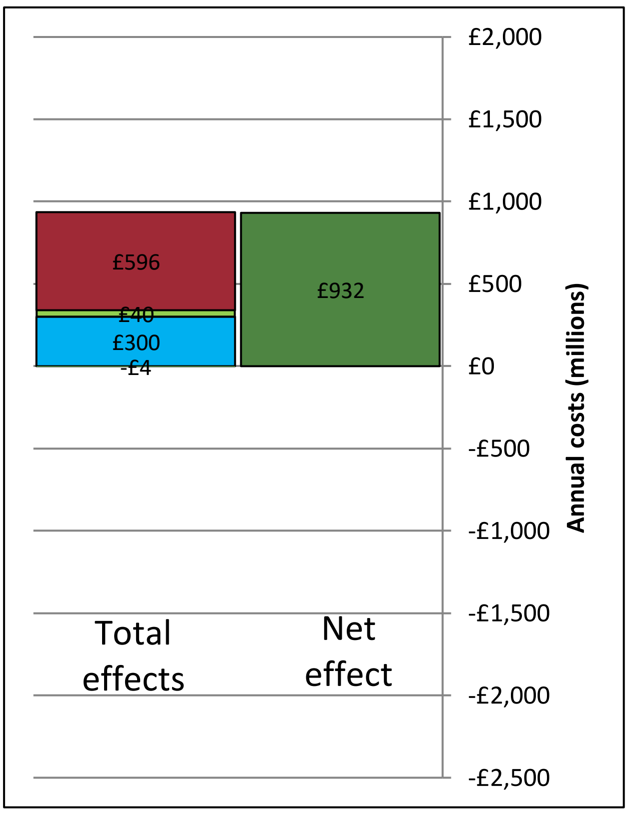
- **Despite accounting for 66% (353 out of 534) of the qualifying regulatory provisions validated for the BIT, measures implemented by regulators formed only 15% of the BIT account in gross terms (£1.8 billion) and only 6% in net terms (-£0.4 billion).**

Summary of measures – May 2015 to June 2017





Qualifying regulatory provisions



Non-qualifying regulatory provisions

FRAMEWORK AND METHODOLOGY ISSUES

- Expansion of the scope of the framework to include regulators clearly makes the system more comprehensive. It has, however, raised new methodological challenges and boundary issues. To reflect what government believes to be the appropriate treatment for regulators, the list of exclusions from the BIT has lengthened. At the same time, other activities such as some types of guidance have been brought within scope of the target.

- Bringing regulators into scope of the framework has significantly increased the proportion of small measures that have little impact on the business impact target account. The framework may need to be adjusted in future to ensure that adequate resources can be allocated to the assessment and scrutiny of measures with larger impacts.

- With the process of leaving the EU under way, the RPC wants to ensure that the full regulatory impacts of leaving the EU are captured within relevant IAs and are subject to scrutiny by the RPC. The RPC looks forward to working with the Department for Exiting the EU in ensuring that business and civil society can have confidence in the evidence that underpins these decisions.

- 31 departmental impact assessments that relate to measures implemented during the 2015-17 parliament have received an opinion only once the measure was already in force. This is around 5% of the total, and a striking increase over the 12 measures submitted in this way over the 2010-2015 parliament. The RPC is concerned that, in these instances, more emphasis seems to have been placed on the rules for accounting under the BIT than on informing ministerial decision making.

WIDER IMPACTS OF REGULATORY CHANGES

- **Departments are doing more to quantify the wider effects on society of government proposals than in the 2010-15 parliament.** During the 2016-17 reporting year, 53% of full impact assessments (IAs) quantified the impacts of new regulation on society, compared with 36% in 2015-16. This shows continuous improvement from the 2010-15 parliament, where around a third of full IAs monetised the impacts on society, and throughout the 2015-17 parliament. Though there has been improvement, the lack of analysis of wider impacts means that ministerial and parliamentary decision-making is often not supported by a monetary representation of the effects on society. The RPC believes that more must be done to demonstrate the completeness and robustness of societal impact assessments and that quantified estimates should be provided in more cases.

- **A number of government proposals are being brought forward despite wider impact analysis indicating that they are net costly to society.** For 22 of 54 measures scrutinised during the 2015-17 parliament, that included quantification of wider effects, the societal net present value, if taken at face value, suggests that society will be worse off than if government had not intervened. Examples of these measures include the '*duty for the FCA to cap early-exit charges on pension schemes',* details of which are summarised in Case Study 11. In these instances, it is highly unlikely that the societal net present value is robust; however, the RPC acknowledges that it is not always possible, or proportionate, to monetise every impact.

- The RPC regrets that it remains unable to red-rate IAs that do not cover wider societal impacts appropriately. The better regulation framework encourages departments to focus on the direct effects of new regulation on business, and there is no mechanism by which the RPC can require more robust assessment of the wider effects on society. This could lead to an unintentional discounting of wider societal impacts compared to business impacts when ministerial and parliamentary decisions are made.

SMALL AND MICRO BUSINESS ASSESSMENTS

- **We are pleased to see that departments have been including small and micro business assessments (SaMBA) in their IAs even when not specifically required to do so**. Over the 2015-17 parliament, 89 IAs included a SaMBA that was not mandatory. As a result **over half (58%) of all departmental measures considered the differential impact of measures on small and micro businesses.**

- **The quality of SaMBAs could, however, still be improved.** Many IAs offer only a cursory overview of how small businesses would be affected.

- **Departments should also consider more carefully the scope for offering small business exemptions or mitigations –** During the 2015-17 parliament, only 18% of measures that were identified as having a disproportionate impact on small or micro included some kind of exemption or mitigation. Other SaMBAs concluded that mitigations or exemptions were unnecessary or would conflict with policy objectives.

REVIEWING EXISTING REGULATIONS

- **The number of post-implementation reviews (PIRs) has been well below the RPC's expectations.** Of 80 expected in the period 2015-17 parliament, the RPC has received only 43. Furthermore, those that have been received by the RPC have tended to be measures will smaller business impacts.

- PIRs on the most significant measures (over +/- £10 million annual impact on business) submitted in the 2015-17 parliament included:
    - The Control of Asbestos Regulations 2012;
    - The Undertakings for Collective Investment in Transferable Securities Regulations 2011;
    - The Vehicle Drivers (Certificates of Professional Competence) Regulations 2007.
- The RPC notes that **19% of PIRs received led to material changes to policies**. This contributes to the broadly agreed consensus that PIRs are useful learning instruments that help improve the quality of government regulation.

RECOMMENDATIONS

9. The Government should:
    - ensure that IAs on all significant measures are submitted for RPC scrutiny prior to ministerial decision making;
    - agree that the RPC can rate IAs based on societal, as well as business, impacts;
    - consider how the accounting methodology, with regards to some of the larger measures in the 2015-17 parliament, may have distanced the business impact target from real business experience of regulation and work towards closer alignment for the next business impact target.
    - ensure that post-implementation reviews of the largest measures are carried out and submitted to the RPC for independent scrutiny. An alternative approach would be to ensure that an independent body is enabled to carry them out;
    - continue to seek the right balance between a fully transparent account of regulatory impacts and a more proportionate approach that allows resources to be focused on assessment and scrutiny of measures with the greatest impacts, with appropriate safeguards;

- create a requirement for a more robust small and micro business assessment, including stronger justification in cases where no exemption or mitigation is planned; and
- ensure that a robust framework is in place for accounting for regulatory change associated with EU-exit.

INTRODUCTION

10. During the 2015-17 parliament the RPC had two roles: to continue rating the fitness for purpose of government impact assessments, to inform ministerial decision making on the quality of the evidence used; and, to validate the business impact of every measure that qualifies for the Government's business impact target. This report offers an overview of the RPC's experience in both these roles.

11. Part 1 examines the Government's achievement against their business impact target for the 2015-17 parliament. This part explains the scope of the business impact target, provides analysis of the measures that are accounted for under it and those that have been excluded from it, and explains the difference that RPC scrutiny has made to the account. It also discusses possible discrepancies between the target and business' experience of regulation.

12. The second part of the report switches focus from the impact of regulatory change during the 2015-17 parliament, to the quality of government impact assessment during the same period. This section analyses government's appraisal of wider societal impacts, its application of the small and micro business assessment, its review of existing regulation and its consideration of regulatory options and alternatives to regulation.

13. Part 3 offers an insight into the way in which the RPC might be equipped to add greater value to government impact assessment and business impact target accounting in the future.

PART 1: REGULATORY IMPACT IN THE 2015-17 PARLIAMENT

COMPOSITION OF THE 2015-17 BUSINESS IMPACT TARGET AND EXCLUSIONS FROM THE ACCOUNT

SCOPE OF THE BUSINESS IMPACT TARGET

14. The Small Business, Enterprise and Employment Act 2015[5] sets out requirements for validation and reporting of the impact of new regulation on business and civil society organisations. The RPC, acting as the independent verification body[6], plays a key role in validating the estimated impacts and government's assessment of whether a measure should be accounted for under the business impact target (BIT).

15. Enshrining the business impact target in law has had significant benefits in terms of transparency of the system. Extending the requirements to regulators' activities has also helped the reported figures to reflect businesses' experience of regulation more accurately.

16. The Department for Business, Energy and Industrial Strategy has provided information on exclusions from the BIT and justifications for this in the first business impact target report.[7]

QUALIFYING REGULATORY PROVISIONS AND NON-QUALIFYING REGULATORY PROVISIONS

17. The role of the RPC and the benefits of independent scrutiny are not limited to the statutory functions of the independent verification body. The RPC has, however, two key roles in relation to the exercise of statutory functions. These are confirmation of departments' or regulators' assessments of regulatory provisions as either qualifying or non-qualifying in relation to the BIT; and validation of the estimated equivalent annual net direct cost to business (EANDCB) of qualifying regulatory provisions.

18. An important function outside the statutory duties is validating the EANDCB figures of significant departmental non-qualifying regulatory provisions. Ministers and the RPC recognise that this is crucial to the credibility of the business impact target. For the 2015-17 BIT, however, this function has been limited to non-qualifying measures implemented by government departments and not those implemented by regulators. The RPC has instead been provided with summary lists of the names and descriptions of each regulator's non-qualifying regulatory provisions. The RPC's role

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

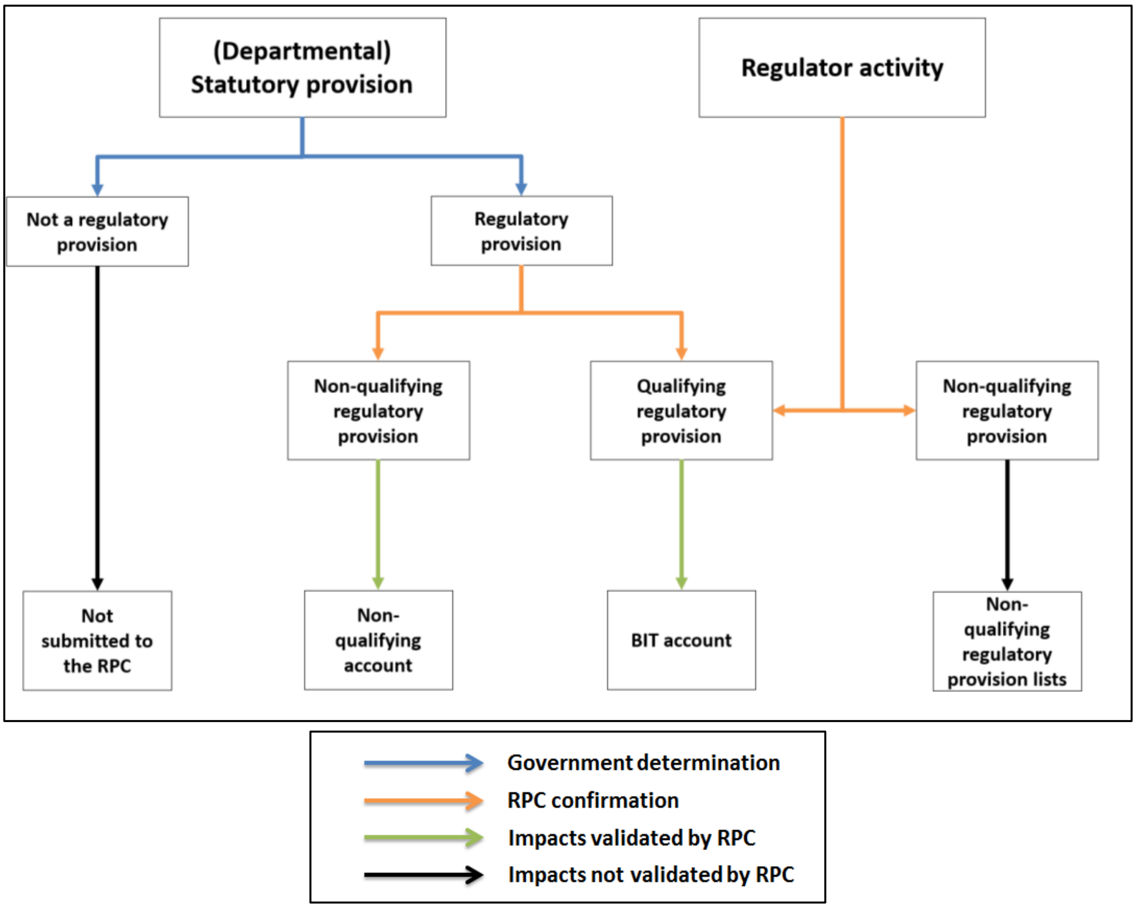
[6] RPC appointed as independent verification body, https://www.gov.uk/government/news/regulatory-policy-committee-appointed-as-the-independent-body-verifying-the-costs-and-savings-of-changes-in-law

[7] 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

is to confirm that these measures are in fact non-qualifying for the BIT but it is unable to validate the size of these measures, as regulators are not required to provide this information.

19. On the basis of legal definitions, government must determine whether each measure is considered to be a statutory provision and, if so, whether it should be considered a regulatory provision. The Small Business, Enterprise and Employment Act 2015 includes some specific examples of types of statutory exclusions, such as tax changes or measures that will be in force for less than 12 months[8], that cannot be considered to be regulatory provisions.

Figure 1 – The scope of the business impact target and the RPC's function



20. Government has stated that the business impact target scope is not intended to include all actions that affect business or society[9]. However, as with the 2010-15

[8] Section 22, Small Business, Enterprise and Employment Act 2015. http://www.legislation.gov.uk/ukpga/2015/26/part/2/crossheading/business-impact-target/enacted

[9] 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

parliament, the emphasis on accounting for only the impacts within scope of the target appears to have some distortionary effects. These include reducing the quality of assessment of wider impacts and potential challenges for stakeholders seeking to reconcile business experience of government intervention with the reported figures, for example because tax administration is not within the scope of the BIT. A specific example is the apprenticeship levy. The levy was implemented during the 2015-17 parliament and will affect businesses across all industries, however, Government has determined that the measure is exempt from BIT reporting under the statutory exclusion for taxes and is, therefore, not considered to be a regulatory provision. As such, no IA relating to the apprenticeship levy has been submitted for RPC scrutiny and, though its impact on businesses is expected to be significant, it cannot be included in either the BIT or non-qualifying accounts.

BUSINESS IMPACT TARGET: 2015-17 PARLIAMENT

VOLUME OF MEASURES

21. The RPC has validated the estimated impacts for 672 measures that have come into force during the 2015-17 parliament, of which 256 were departmental measures and 416 were regulator measures. These have been reported in the Better Regulation Executive's (BRE) *Business impact target (BIT): report 2015 to 2017*, published on 22 May 2018. The BRE report also contains details of all the net quantified impacts of the individual measures.

Table 1 – Volume of measures

	Number of measures		
	Departmental measures (2015-16 reporting year)	Departmental measures (2016-17 reporting year)	Regulator measures (2015-17 parliament)
Regulatory provisions that have come into force	138	118	416
Regulatory provisions with impacts validated by the RPC[10]	138	118	416
Qualifying regulatory provisions	104	77	353
Non-qualifying regulatory provisions	39 including: - 33 measures of EU or international origin; - 3 pro-competition measures - 0 measures relating to financial systemic risk; - 3 measures relating to the National Minimum/Living Wage. - 0 measures relating to fines and penalties. - 0 measures relating to existing price controls.	49 including: - 39 measures of EU or international origin; - 3 pro-competition measures - 4 measures relating to financial systemic risk; - 2 measures relating to the National Minimum/Living Wage. - 1 measures relating to fines and penalties.	63 NQRP summary lists

[10] 13 measures include both elements that are considered qualifying regulatory provisions, and elements that are considered non-qualifying regulatory provisions. These are reflected in both of the following lines of the table.

IMPACTS OF MEASURES

QUALIFYING REGULATORY PROVISIONS

22. The Government's business impact target (BIT) accounts for the aggregate net direct effect of qualifying regulatory provisions on business. The terms of the business impact target were set out in a written ministerial statement. Measures have a BIT score equal to the equivalent annual net direct cost to business 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 fewer than five. The expectation of a five-year parliament reflects the fact that the BIT and its scoring mechanism were established prior to the announcement of the UK general election held on 8 June 2017. Following the election, there has been no decision to alter the BIT of the 2015-17 parliament to reflect its reduced length. This is because the rules set by the Small Business, Enterprise and Employment Act 2015 act do not permit changes to the methodology. 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 BIT account. The RPC does not, however, have any responsibility for the design of the accounting mechanism.

23. The BIT report for the 2015-17 parliament reported that the BIT score effect of qualifying regulatory provisions that came into force during the parliament was a £6.6 billion net benefit to business. This figure includes net beneficial measures with an aggregate BIT score of £9.3 billion, and net costly measures worth £2.7 billion.

24. The RPC finds that the figures reported by the Government are correct, based on the BIT framework and methodology set by them. The RPC, nevertheless, draws attention to the unsatisfactory way that some of the most significant measures have been accounted for under the BIT – in particular, the impact that the premature dissolution of the 2015-17 parliament has had on accounting for the "*energy company obligation (ECO)*" under the BIT. Prior to the dissolution of the 2015-17 parliament, there were expected to be three changes to ECO schemes during the parliament. These were: expiry of the second ECO scheme (ECO2) in 2017, implementation of the 18-month transition scheme between ECO2 and the third ECO scheme (ECO3) and implementation of ECO3 in 2018. The premature dissolution of the 2015-17 parliament, however, meant that the latter stage – the implementation of ECO3 – has not been captured within the 2015-17 account.

25. The combined effect of the expiry of ECO2 (£3.9 billion benefit to business in BIT terms), and implementation of the 18-month transition scheme (£0.9 billion cost to business in BIT terms), during the 2015-17 parliament has been correctly accounted

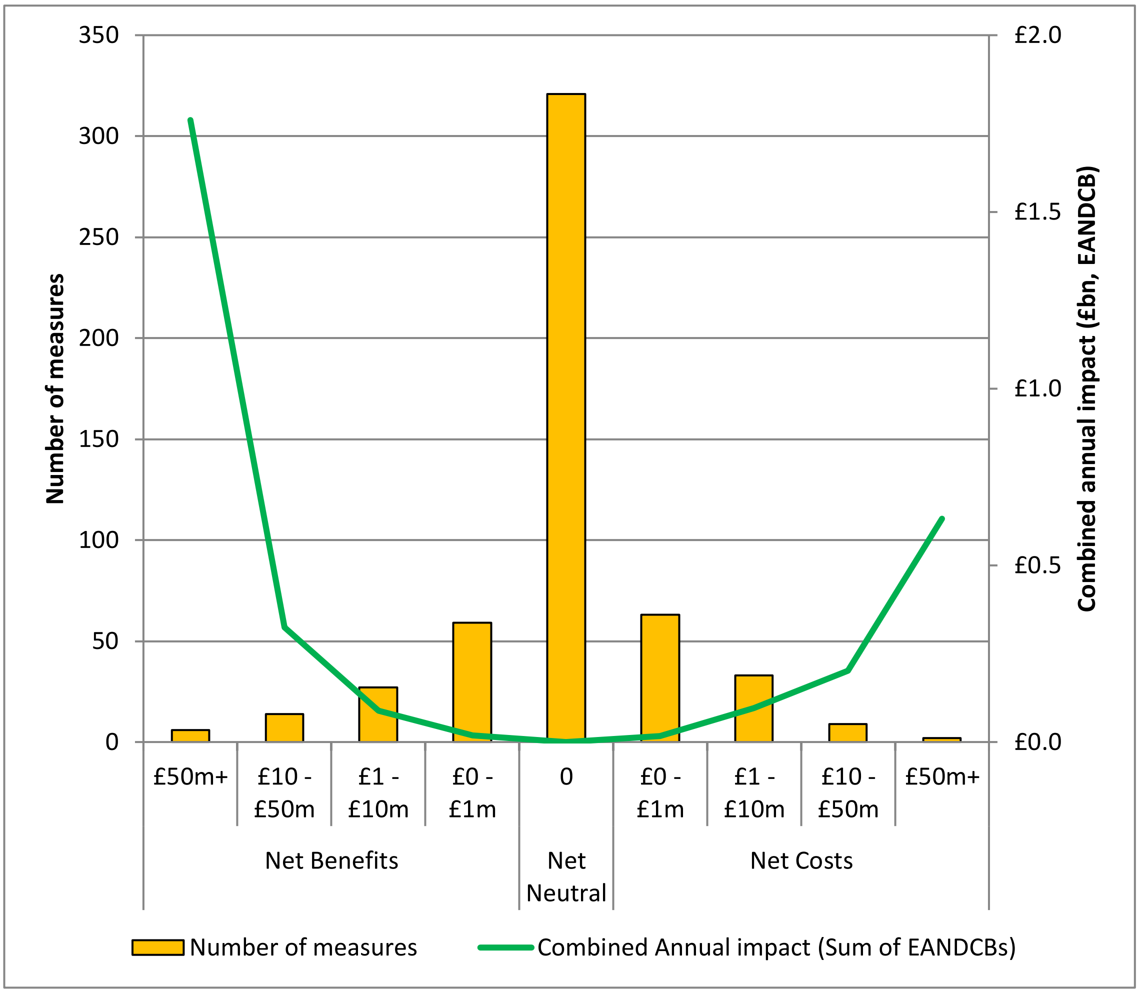
for as a net benefit to business of around £3 billion. However, had the BIT also accounted for implementation of ECO3, it would have also captured the resulting cost to business that is expected to be of a similar magnitude to the benefit to business that resulted from the expiry of ECO2. In summary, as a result of the premature dissolution of the 2015-17 parliament, the BIT has captured only one (beneficial) part of the overall ECO program and has not accounted for the other (costly) part. The result has been a distortion of the BIT account, in the form of overstated progress made toward the £10 billion target. If the forthcoming implementation of ECO3 had also been accounted for within the 2015-17 account and all else remained the same, the BIT account would have remained beneficial but the benefit is likely to have been around half the size of the figure that has been reported by government.

26. There will also, of course, be a large distortion of the 2017-22 BIT account, in the opposite direction, and occasioned by the fact that the decision to introduce ECO3, though made during the 2015-17 parliament, will be implemented during the 2017-2022 parliament. This kind of distortion makes the BIT less useful in its intended role as a tool for holding governments to account against their deregulatory ambitions.

Table 2 – Breakdown of all qualifying regulatory provisions by cost/benefit to business

Qualifying regulatory provisions (total - parliament)	Number of measures	Business impact (equivalent annual net direct cost to business)	business impact target score
Net beneficial measures	106	-£2.2 billion	-£9.3 billion
Net costly measures	107	£0.9 billion	£2.7 billion
Net neutral	321	Zero	Zero
Totals	534	-£1.2 billion (net impact) £3.1 billion (gross impact)	-£6.6 billion (net impact) £12 billion (gross impact)

Figure 2 – Distribution of the impact of qualifying regulatory provisions across measures



27. Over the 2015-17 parliament, a significant majority of measures has contributed relatively little to the overall government BIT account. Nearly 74% of the gross BIT score contributions (£8.9 billion) come from the 10 largest measures. 83% (443 of the 534) of measures each has an annual impact of £1 million or less. These small measures contribute £175 million in gross terms – around 1% of the total validated impacts accounted for under the BIT. The proportion of measures, each with an annual impact of £1 million or less, has increased significantly following inclusion of regulators' activities within scope of the BIT.

Table 3 – Five largest qualifying regulatory provisions

Largest qualifying regulatory provisions	**Department/Regulator**	**BIT score** (£m)	**EANDCB** (£m)
Energy company obligation - expiry of ECO2 scheme	Department for Business, Energy and Industrial Strategy	-£3,905	-£781
The Employers' Duties (Implementation) (Amendment) Regulations 2016	Department for Work and Pensions	-£1,025	-£513
Plastic carrier bags charge	Department for Environment, Food and Rural Affairs	-£1,017	-£203
Energy company obligation - transition year	Department for Business, Energy and Industrial Strategy	£864	£576
Cheque imaging	HM Treasury	-£519	-£104

Case study 1 – Large qualifying regulatory provision

Energy company obligation (RPC-DECC-3351):

The energy company obligation (ECO) places obligations on larger energy suppliers to deliver energy efficiency measures to domestic premises in the UK. The previous scheme (ECO2) expired on 31 March 2017 and a less-burdensome transition scheme came into force during the 2015-17 parliament.

ECO consists of a series of time-limited measures. For the purpose of accounting against the business impact target, the expiry of the previous ECO scheme scores as a net benefit and the introduction of the 18-month transitional scheme scores as a (smaller) net cost. The Government expect to implement a further scheme, which will run to 2022. This is likely to score as a substantial net cost, once it is implemented.

BIT scoring of ECO measure	EANDCB	BIT multiplier	BIT score
Expiry of existing scheme	- £781 million	5	- £3,905 million
New transitional scheme	£576 million	1.5	£864 million
Net BIT score	-	-	£3,041 million

Case study 2 – Large qualifying regulatory provision

Aligning the phased increase in minimum automatic enrolment contributions with the start of the tax year (RPC-DWP-3407):

Previous legislation required employers to pay minimum contributions amounting to 1% of qualifying earnings for eligible employees who remain automatically enrolled into a pension scheme. This was due to rise to 2% in October 2017 and 3% in October 2018. This measure aligns the timetable for increasing minimum contributions with the start of the tax year. Planned increases in October 2017 and October 2018 have been deferred until April 2018 and April 2019, respectively. As a result, employers' required contributions into workplace pensions between April 2017 and March 2019 have reduced.

28. The RPC also wishes to draw attention to the nature of another large qualifying regulatory provision, "*heat networks – scope changes*" (see Case study 6). This measure rectifies an error made by government in the implementation of the Heat Networks (Metering and Billing) Regulations 2014. Originally, the Government had not intended to capture houses with multiple occupancy in scope of the measure. However, at implementation the scope had not been defined clearly. As the consequence of the error had not been predicted prior to implementation of the policy, the cost to the owners of houses with multiple occupancy was not accounted for under any business impact target. The removal of houses with multiple occupancy from scope of the policy has, however, been accounted for as a large benefit to business of £453.5 million in the 2015-17 BIT account.

NON-QUALIFYING REGULATORY PROVISIONS

29. For departmental measures, the RPC also validates the estimated costs and benefits of significant non-qualifying regulatory provisions and confirms that each insignificant non-qualifying regulatory provision is, indeed, insignificant. This is not a requirement of the Small Business, Enterprise and Employment Act, but does ensure that qualifying regulatory provisions are not inappropriately excluded from the account, and also provides some context for the scale of impacts that are accounted for under the BIT. As these measures are not accounted for under the BIT, their impacts are validated and presented only in EANDCB terms, not BIT scores.

30. For regulators' activities, the RPC scrutinises summary lists of non-qualifying regulatory activities undertaken by regulators. Though this is less detailed than the individual confirmation requests submitted by departments, it provides proportionate oversight of the high volume of regulatory provisions conducted by regulators, while maintaining a degree of transparency. Through this scrutiny process, the RPC is able to identify any regulatory provisions that have been incorrectly labelled as not qualifying for the BIT, thus ensuring that a BIT assessment is subsequently submitted for validation. While this approach allows the RPC to identify measures that are initially incorrectly classified as non-qualifying for the BIT, the limited information prevents the RPC from keeping an account of the volume and impact of non-qualifying regulatory provisions implemented by regulators. Therefore, the following tables and discussion report only government departments' non-qualifying regulatory provisions.

Table 4 – Breakdown of departments' non-qualifying regulatory provisions by cost/benefit to business

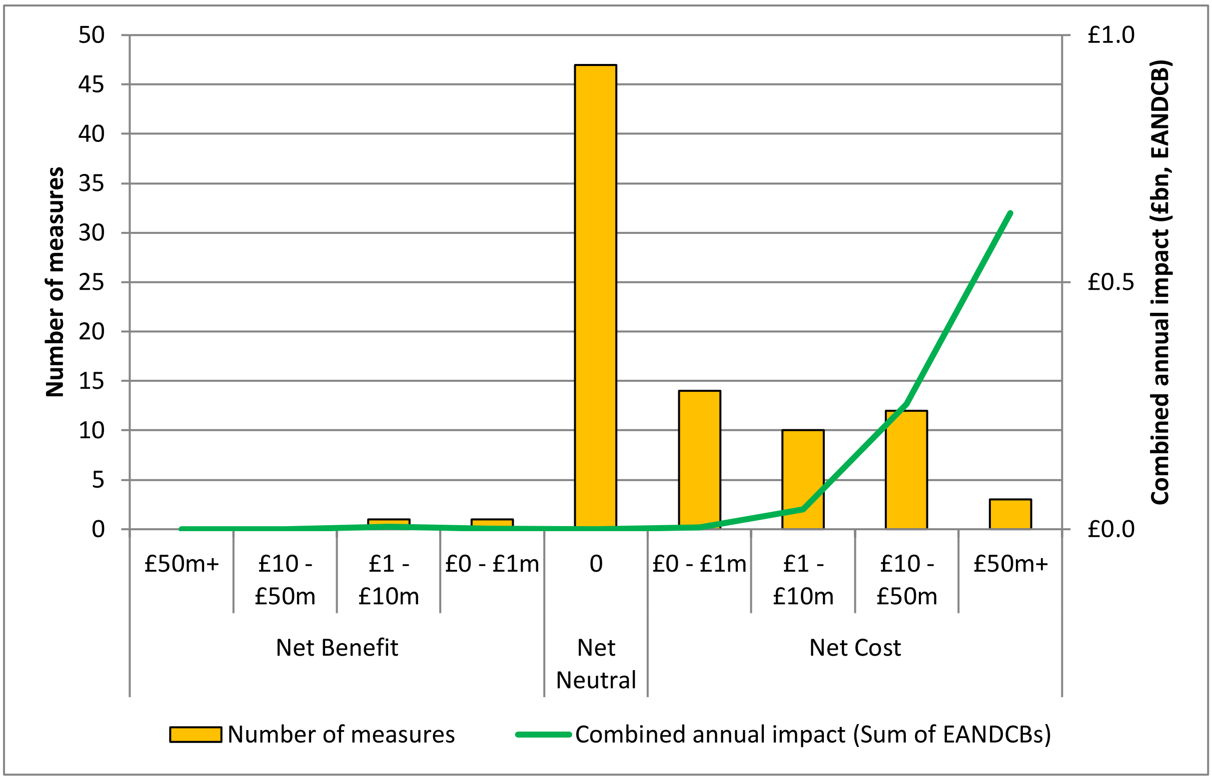
Non-qualifying regulatory provisions (total - parliament)	Number of measures	Business impact (equivalent annual net direct cost to business)
Net beneficial measures	2	-£5.5 million
Net costly measures	39	£937.1 million
Neutral / zero for reporting purposes	47 (including 32 low-cost non-qualifying regulatory provisions[11])	Zero
Totals	88	£931.6 million (net impact) £942.6 million (gross impact)

Table 5 – Breakdown of departments' non-qualifying regulatory provisions by BIT exclusion

Business impact target exclusion (total parliament)	**Business impact (equivalent annual net direct cost to business) [number of measures]**
EU/International origin	£300.3 million [72]
Pro-competition	£39.8 million [6]
Financial systemic risk	-£4.3 million [4]
National minimum/living wage	£595.8 million [5]
Fines or penalties	Zero [1]

[11] The measures have each 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.

Figure 3 – Distribution of the impact of non-qualifying regulatory provisions across measures



31. To an even greater extent than with the qualifying regulatory provisions, the gross impacts of the non-qualifying provisions are dominated by a small number of significant measures. Over the 2015-17 parliament, 88% of the gross annual impacts (£0.8 billion) within the non-qualifying account come from the 10 largest measures. 83% (62 of the 88) of measures each has an annual impact of £1 million or less. These small measures contribute only £5 million in gross terms to the non-qualifying account – around 0.5% of the account.

32. The non-qualifying account is largely made up of measures that have been excluded from the BIT due to being of EU/international origin or relating to the national minimum/living wage. It is no surprise that the exclusion relating to measures of EU/international origin forms a significant portion of the non-qualifying account, due to the relatively large number of measures that fall into this category. The national minimum/living wage exclusion, however, consists of relatively few measures yet accounts for the largest portion of the non-qualifying account. More detail on the measures excluded because they are in line with the recommendations of the Low Pay Commission (relating to the national minimum/living wage) is given in Table 6 and Case study 3.

Table 6 – Five largest non-qualifying regulatory provisions

Largest non-qualifying regulatory provisions	**Department**	**BIT exclusion**	**EANDCB** (£m)
Amendment to the National Minimum Wage Regulations 2015 - introducing a national living wage	Department for Business, Energy and Industrial Strategy	National minimum/living wage	£400
National Minimum Wage Regulations 2017 - increase in national minimum wage and national living wage rates	Department for Business, Energy and Industrial Strategy	National minimum/living wage	£132
Transparency and Trust: people with significant control register	Department for Business, Energy and Industrial Strategy	EU/International origin	£109
Increases in national minimum wage rates – 2015	Department for Business, Energy and Industrial Strategy	National minimum/living wage	£36
Changes to bus market legislation - bus franchising and partnership improvements for inclusion in the Buses Bill	Department for Transport	Pro-competition	£36

Case study 3 – Large non-qualifying regulatory provision

Amendment to the National Minimum Wage Regulations 2015 - introducing a national living wage (RPC-BIS-3140):

The proposal introduced, from April 2016, a national living wage (NLW) into the existing national minimum wage (NMW) framework. This was set at £7.20 per hour and applied to those aged over 25 years. At the time of RPC opinion, the Government had not decided the categories of non-qualifying regulatory provisions, but this was subsequently classed as a new category of non-qualifying regulatory provision.

Annual increments to the NLW that follow Low Pay Commission (LPC) recommendations are non-qualifying. Any deviation from LPC recommendations is a qualifying regulatory provision (in line with the approach to the NMW). The increases in national minimum/living wage rates in 2015 and 2017 (shown in Table 6) were in line with LPC recommendations and were, therefore, confirmed to be non-qualifying regulatory provisions.

Case study 4 – Large non-qualifying regulatory provision

Transparency and Trust: people with significant control register (RPC-BIS-1990):

This implemented a key part of a G8 agreement (known as the "Trust & Transparency" measures: the G8 agreement principles and action plan required companies to "...obtain and hold their beneficial ownership and basic information, and ensure documentation of this information is accurate". The UK's proposed implementation - to have a central registry of company beneficial ownership information - was not mentioned as a specific requirement in the G8 agreement. To demonstrate that the UK's implementation did not go beyond the minimum required by the international agreement, the RPC asked the department to provide details of:

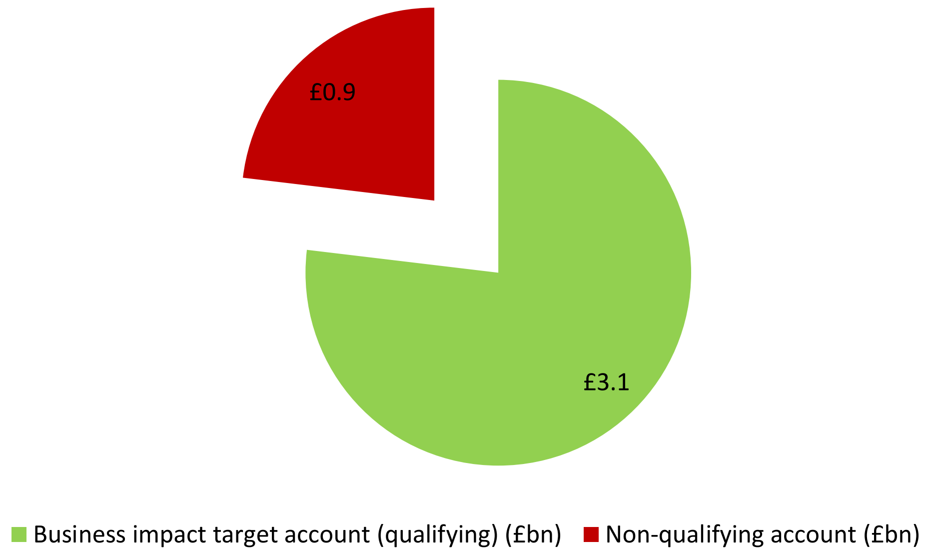
- the specific nature of the international commitment;
- what other G8 countries were doing to meet the commitment;
- how the individual policy proposals of the UK action plan corresponded to the specific commitments in the G8 agreement.

After receiving this information and taking account of the fact that the G8 agreement did not clearly specify the minimum level of compliance, the RPC accepted that the proposal was non-qualifying under the business impact target.

33. In addition to the above information on non-qualifying regulatory provisions implemented during the 2015-17 parliament, the RPC would like to draw attention to the Teaching Excellence Framework, which was expected to come into force during the 2015-17 parliament but was deferred. The proposal meant that higher-education institutions meeting defined criteria demonstrating high-quality teaching would be allowed to increase their fees beyond the current government-imposed caps in line with inflation. The proposal was estimated to benefit higher education institutions by £1.1bn each year. The proposal, being an expansion of an existing price control, was, therefore, classified as a non-qualifying regulatory provision and so would not have contributed towards the BIT. Had the policy come into force during the 2015-17 parliament, it would have been the measure with the largest annual impacts in both the non-qualifying and qualifying (BIT) accounts.

THE IMPACT OF EXCLUSIONS ON THE BUSINESS IMPACT TARGET

Figure 4 – Gross impact of all regulatory provisions, broken down by QRP/NQRP

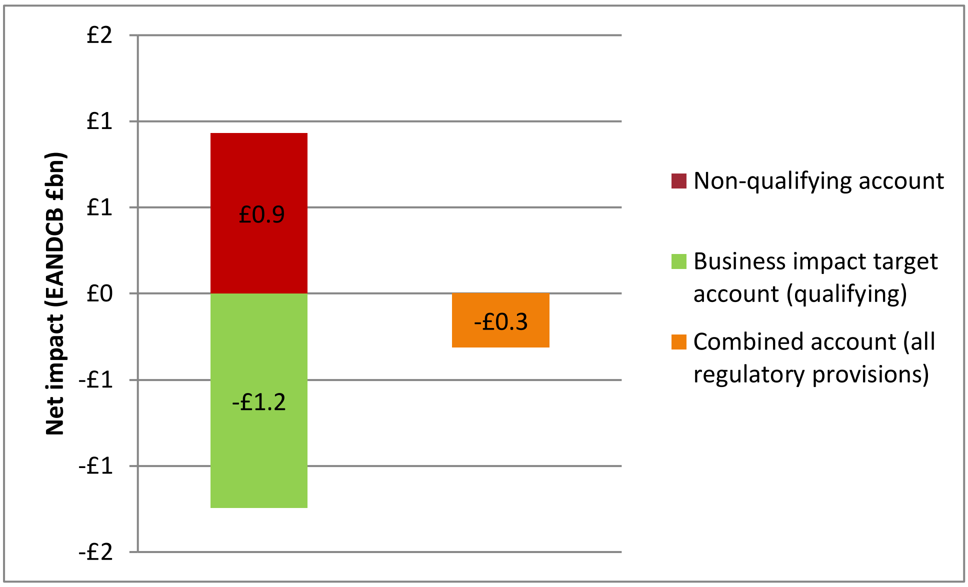


34. When comparing the combined size of measures that qualify for the BIT with those that do not[12], it is apparent that the non-qualifying account is far smaller than the BIT account itself. It is, however, worth noting that the non-qualifying account is understated due to the absence of monetised impacts for non-qualifying activity by regulators and non-qualifying departmental measures with an annual impact on business of less than £1 million.

35. Despite the comparatively smaller size of the non-qualifying account, exclusions can compromise the completeness of the BIT account and distance the BIT from real business experience of regulatory change. This point would have been amplified had the teaching excellence framework come into force during the 2015-17 parliament as expected.

[12] Impacts for qualifying-regulatory provisions been portrayed in annual terms (EANDCB), as opposed to BIT scores, to allow for direct comparison with the non-qualifying impacts.

Figure 5 – Net impact of all regulatory provisions, broken down by QRP/NQRP



36. The above graph portrays the overall (net) effect that the non-qualifying exclusions have had on the BIT account. The orange bar shows what government's progress towards meeting the BIT would have been had there been no exclusions to the account[13]. The vast majority of impacts resulting from the implementation of non-qualifying regulatory provisions during the 2015-17 parliament have been net costly to business (99%). These impacts would have reduced the size of the net beneficial business impact target account considerably.

37. Had the Teaching Excellence Framework come into force during the 2015-17 parliament as expected, its annual benefit to business of £1.1 billion (non-qualifying) would have resulted in the non-qualifying account being net beneficial to business overall.

38. The direction of the net effect of non-monetised impacts for non-qualifying activity by regulators and non-qualifying departmental measures with an annual impact on business of less than £1 million is not known, however, the net effect is likely to be small.

[13] This figure is not directly comparable to the Government's business impact target of reducing the burden on business by £10 billion over the fixed term Parliament. The graph is based on annual impacts (EANDCBs) to allow for direct comparison between qualifying and non-qualifying regulatory provisions and does not take account of the number of years that each measure will be in force.

RPC SCRUTINY OF THE BIT ACCOUNT

39. As previously mentioned, one of the RPC's roles is to validate the net impact of all qualifying regulatory provisions implemented by both government departments and regulators. If the RPC considers an IA to be not fit for purpose, the department or regulator can amend the IA and submit a revised version to the RPC in the hope of receiving a fit for purpose opinion. A common cause for a "not fit for purpose" rating is an error in the analysis of the impacts, which could result in an incorrect equivalent annual net direct cost to business (EANDCB) figure. If this is the case, the RPC expects to see the errors addressed, and the correct EANDCB included, in the revised IA. The RPC thereby ensures that the BIT account consists of the best estimate of the net impacts of each of the qualifying measures.

40. The EANDCB and consequently the BIT score can be revised in either direction following RPC scrutiny. The BIT score will increase (making the overall figure less negative/beneficial in the context of the 2015-17 BIT account) following RPC scrutiny where the RPC has identified either underestimated costs or overestimated benefits. On the other hand, the BIT score will decrease following RPC scrutiny where the RPC has identified either overestimated costs or underestimated benefits.

<u>Figure 6 – Amendments to the BIT account as a result of RPC scrutiny</u>

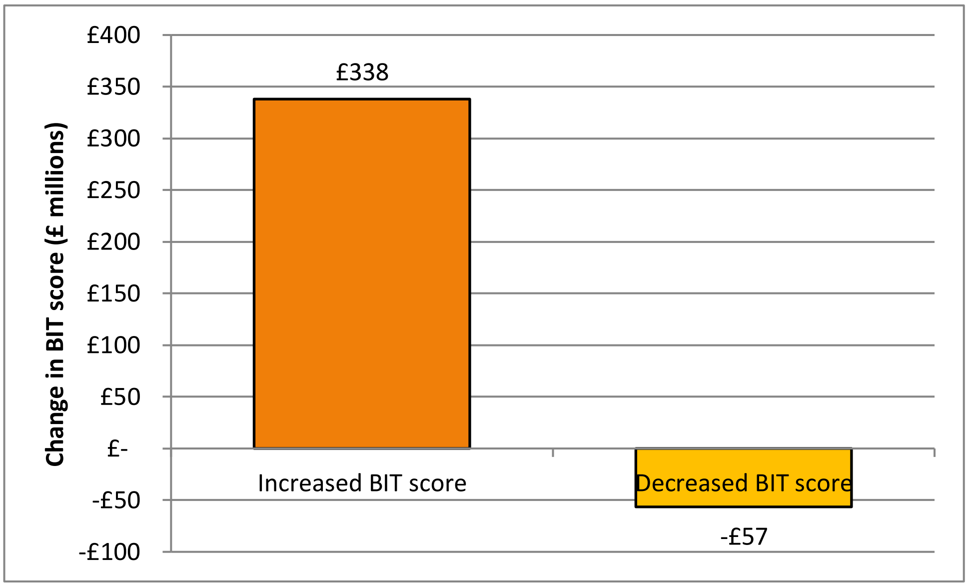
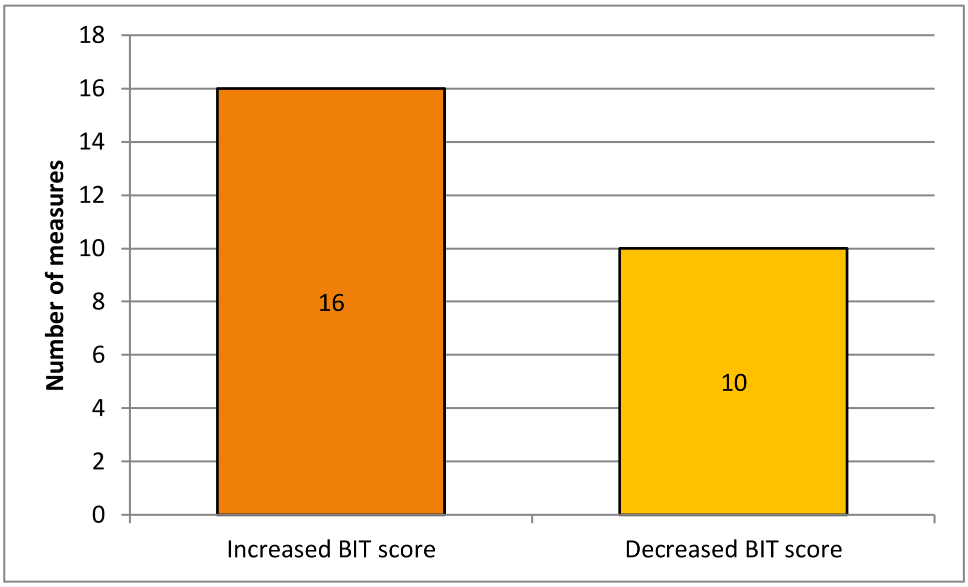


Figure 7 – Number of measures where RPC scrutiny resulted in an alteration to the BIT score



41. In total, there were 26 measures where the BIT score required an alteration before being validated by the RPC. These alterations had a combined gross size of £395 million and led to a net increase of £282 million to the BIT account. It is evident that RPC scrutiny has led to a greater amount of upwards revisions to BIT scores than it has downwards. It is even more apparent that the size of the upwards BIT score revisions were, on average, far greater than the size of the downwards revisions. Figures 9 and 10 below provide a closer examination of the largest amendments to BIT scores in the 2015-17 parliament.

Figure 8 – Five largest upward amendments to BIT scores following RPC scrutiny

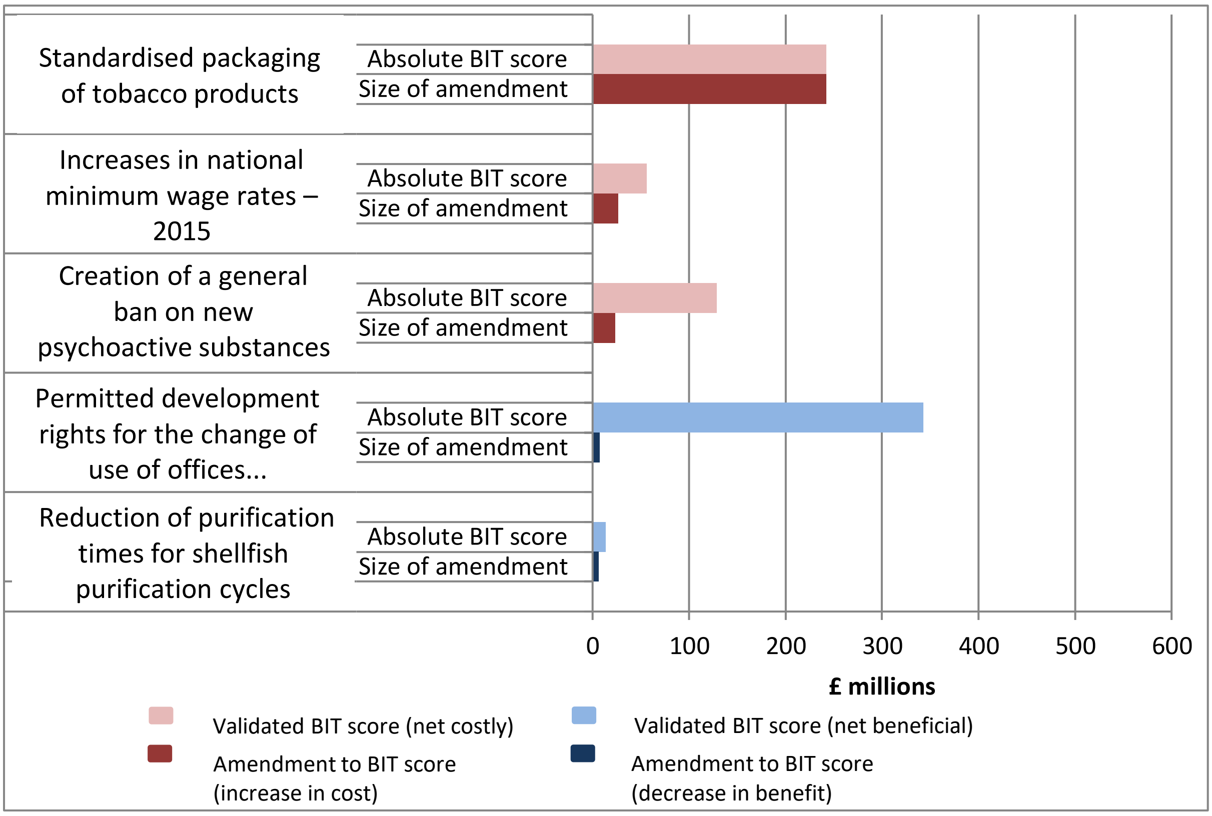
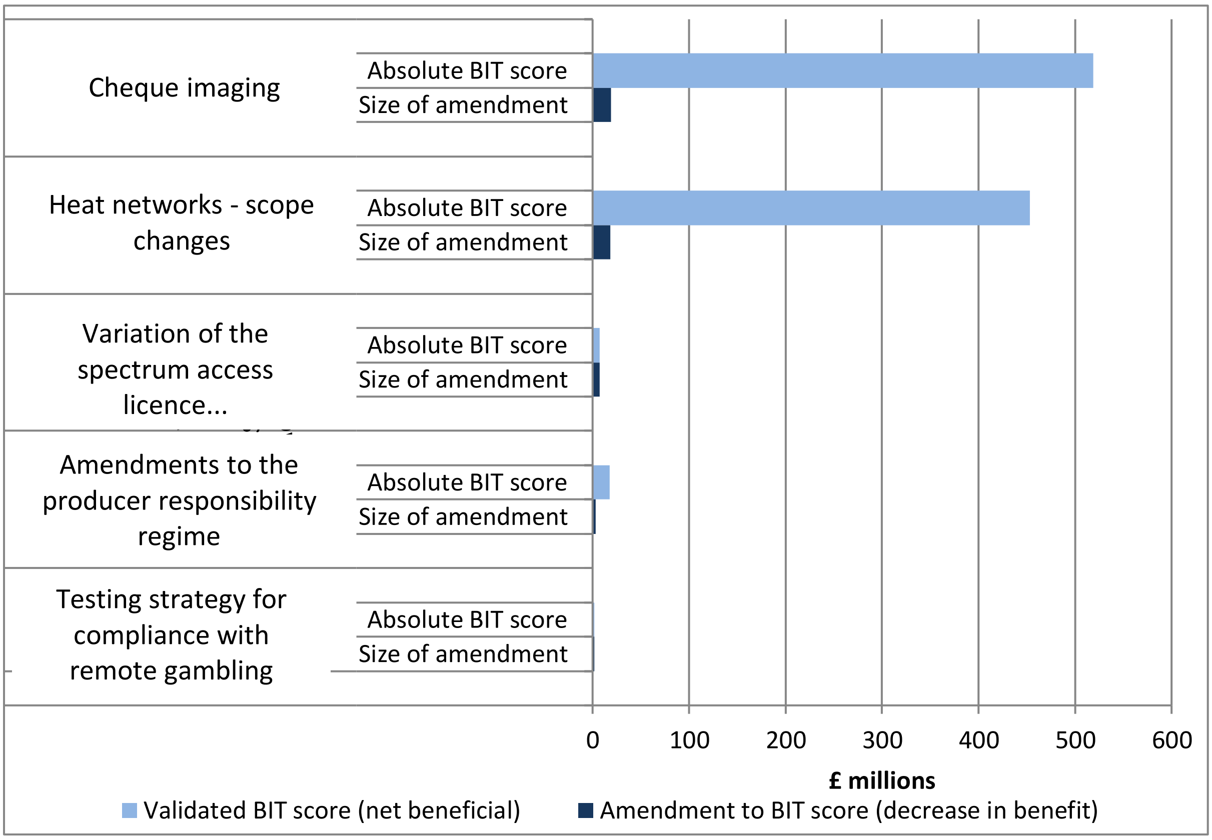


Figure 9 - Five largest downward amendments to BIT scores following RPC scrutiny



42. Figures 8 and 9 show that the significant difference between the total upwards BIT score alterations and the total downwards alterations can be explained by a single large alteration of £242 million in the IA relating to the standardised packaging of tobacco products.

Case study 5 – A significant alteration to the BIT score following RPC scrutiny

Standardised Packaging of Tobacco Products (RPC12-DH-1229):

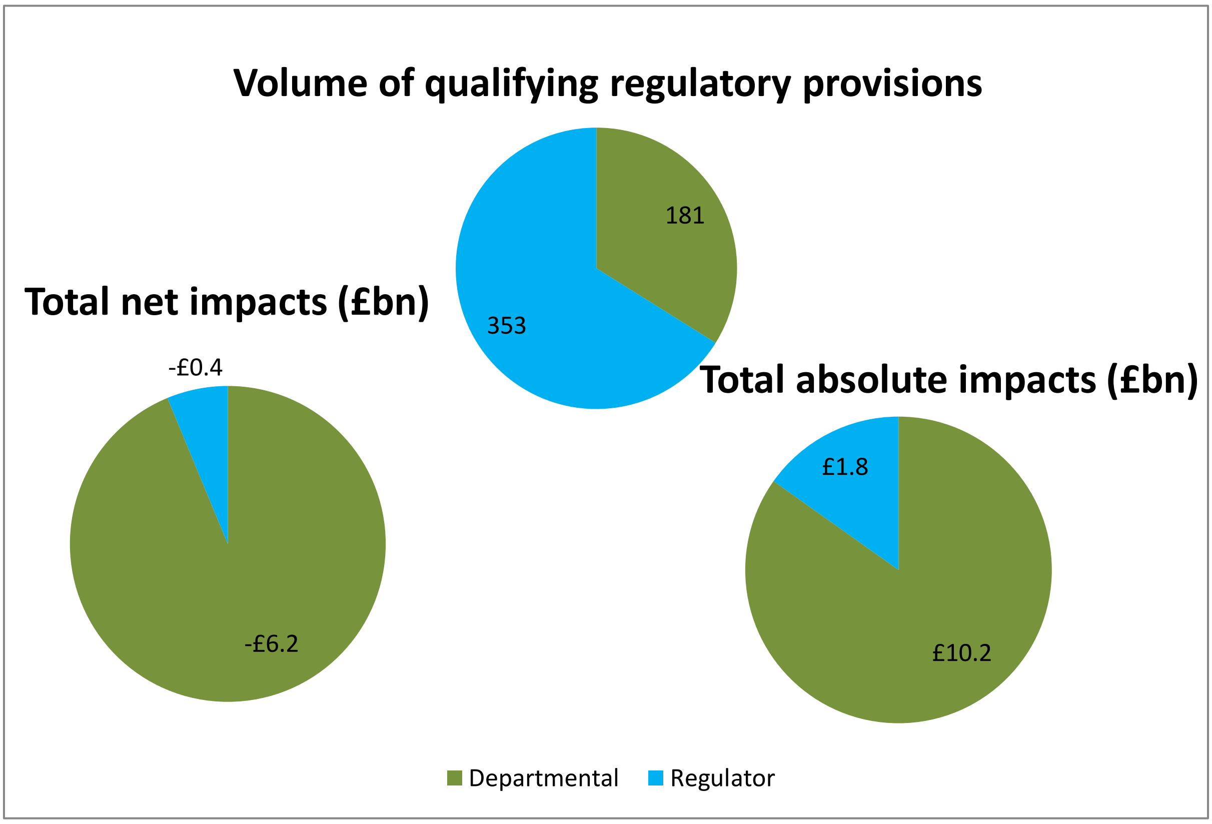
This policy aims to reduce tobacco consumption by mandating the standardisation of tobacco pack colour, shape and the removal of all branding except brand name in a standardised type face. In this case, the impact of the loss of profit to manufacturers and retailers is direct as it: restricts economic activity from use of branding, prohibits a form of promotional activity; and has a reduction in cigarette consumption of cigarettes as its primary objective. If loss of profits was considered as an indirect cost, this would score as net beneficial to tobacco companies (due to ongoing savings in the production of packaging), which would be a counter-intuitive outcome.

The impact assessment initially submitted to the RPC considered the loss of profit to manufacturers and retailers as indirect and contained a BIT score of zero. Following RPC scrutiny, the impact assessment was amended to treat these impacts as direct, this time with a BIT score of £242 million.

A CLOSER LOOK AT MEASURES IMPLEMENTED BY REGULATORS

43. The inclusion of regulators' activities in scope of the BIT was expected to result in a greater volume of regulation being accounted for; thus bringing closer alignment with real business experience. This section examines the effect of including regulators' activities in the BIT account, as well as comparing the attributes of qualifying regulatory provisions implemented by regulators against those implemented by departments over the 2015-17 parliament.

Figure 10 - A comparison of measures implemented by departments and regulators



44. Although it is the case that the number of regulatory provisions captured by the BIT increased significantly with the inclusion of regulators' activities (66% of qualifying measures were implemented by regulators), the impact of these measures was relatively small, even in aggregate. In gross terms, measures implemented by regulators formed only 15% of the account. In net terms, the proportion of the account that relates to measures implemented by regulators is even smaller, at 6%.

Figure 11 – Distribution of the impact of qualifying measures implemented by departments across measures

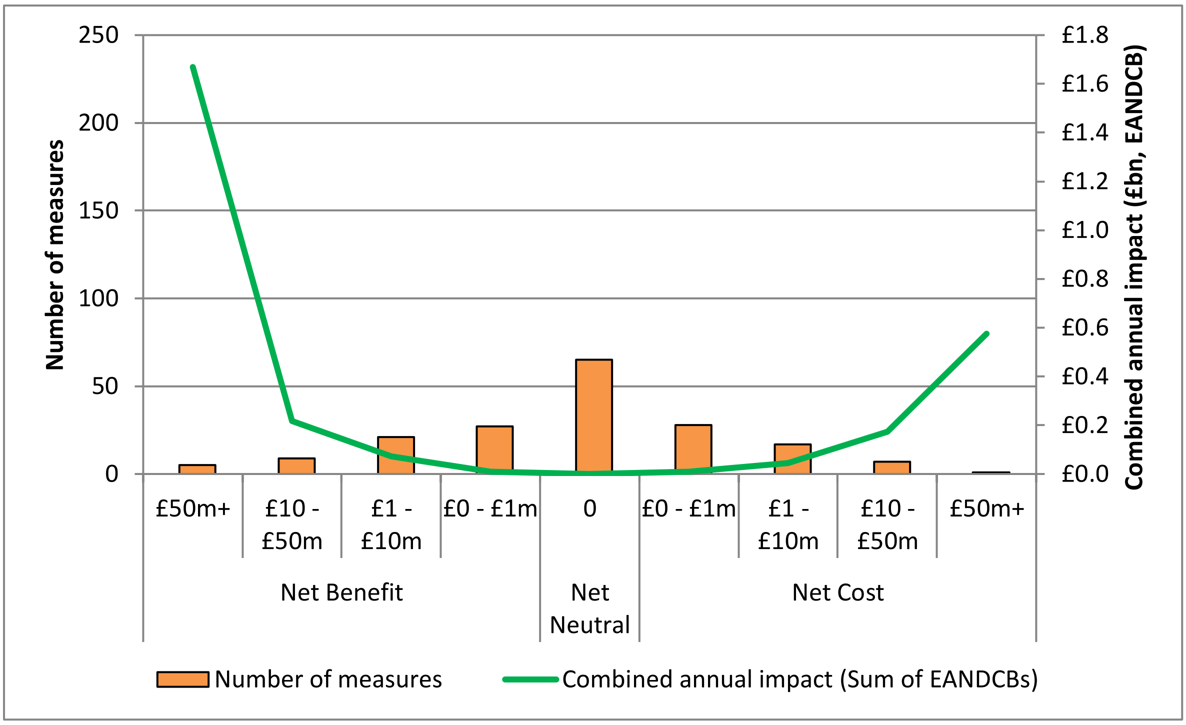
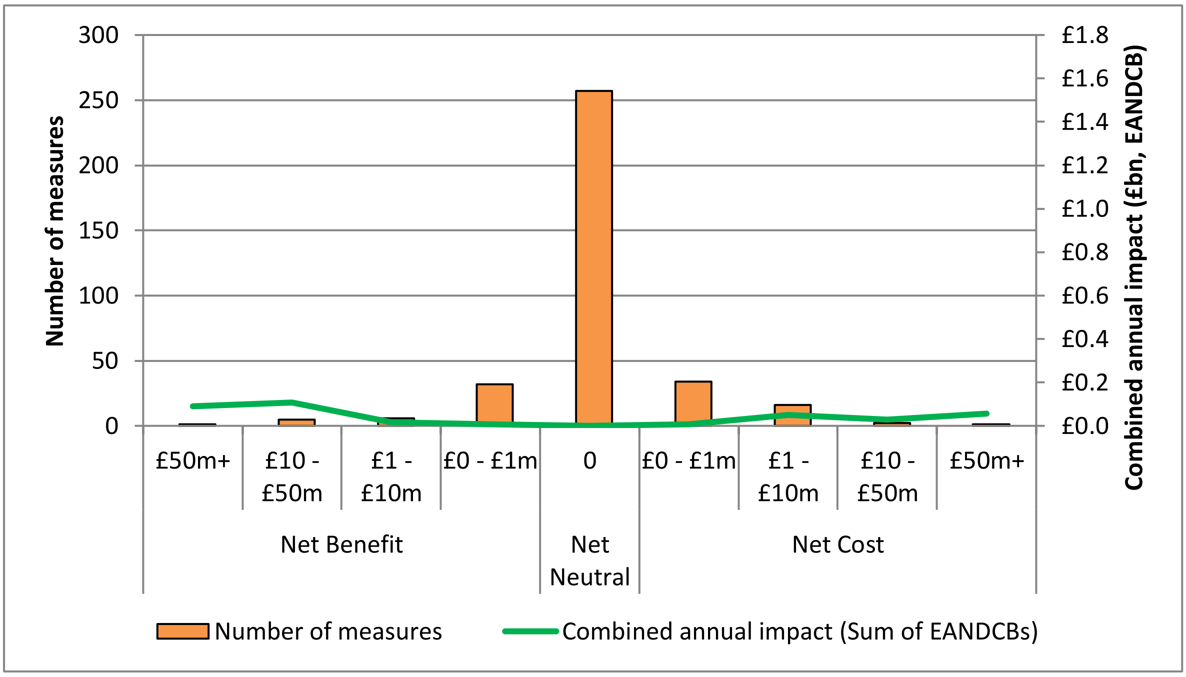


Figure 12 - Distribution of the impact of qualifying measures implemented by regulators across measures



45. Figures 11 and 12 show the distribution of impact across measures implemented by regulators, compared to those implemented by departments. As expected, there has been a greater number of smaller measures implemented by regulators and a smaller number of larger measures.

Table 7 – Five largest qualifying measures implemented by regulators

Largest measures implemented by regulators	Regulator	Business impact (equivalent annual net direct cost to business, £m)	Business impact target score (£m)
Heat networks - scope changes	Regulatory Delivery Office	-£90.7	-£453.5
Accountability regime for the banking sector	Financial Conduct Authority	£55.1	£275.5
Simplified auto-enrolment communications and guidance	The Pensions Regulator	-£31.6	-£158.0
Improving FCA complaints handling	Financial Conduct Authority	-£29.2	-£146.0
Strategic licensing for Great Crested Newts	Natural England	-£21.7	-£108.5

Case study 6 – Large measure implemented by a regulator

Heat networks – scope changes (RPC-BIS-NMRO-3408):

The Heat Networks (Metering and Billing) Regulations 2014 implemented aspects of the energy efficiency directive in the UK. In its original form, the implementation applied to any building that had a heat network (a system that distributes heating or cooling from a central source to multiple final customers). This meant that, contrary to the intention of the EU requirements, a significant number of buildings was brought into scope of the requirements, most notably houses in multiple occupation (HMOs).

The guidance implementing the requirements was amended in July 2015 to remove some forms of shared occupation building (such as HMOs) where the application of the requirements would have very limited, or no, scope to deliver energy savings, meaning that the cost of the requirements would be disproportionately expensive with very limited potential to reduce energy use.

Case study 7 – Large measure implemented by a regulator

Banking accountability (RPC-FCA-3603):

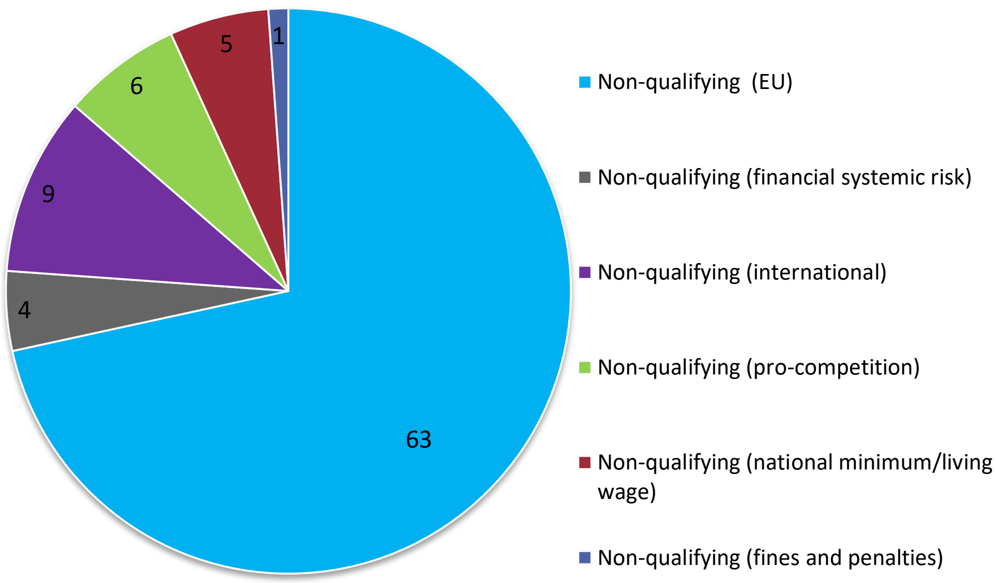
The Parliamentary Commission on Banking Standards (PCBS) considers and reports on the professional standards and culture of the UK banking sector. Its remit covers reporting on corporate governance, transparency and conflicts of interest within the sector. The PCBS concluded that public trust in banking was at an all-time low and recommended a series of measures to restore trust and improve culture in the sector. As part of these measures, the Financial Conduct Authority has made changes to the accountability regime to reflect both the PCBS recommendations and implement changes from the Financial Services (Banking Reform) Act 2013. The assessment states that the changes are considered significant and include a new senior managers' regime; a certification regime and a new set of conduct rules.

EUROPEAN REGULATION

46. **Over the course of the 2015-17 parliament, the RPC scrutinised IAs relating to 63 measures of EU origin**. During the 2016-17 reporting year, 38 measures (76 % of the total non-qualifying measures) were of EU origin, compared to 25 (65.8%) during the 2015-16 reporting year.

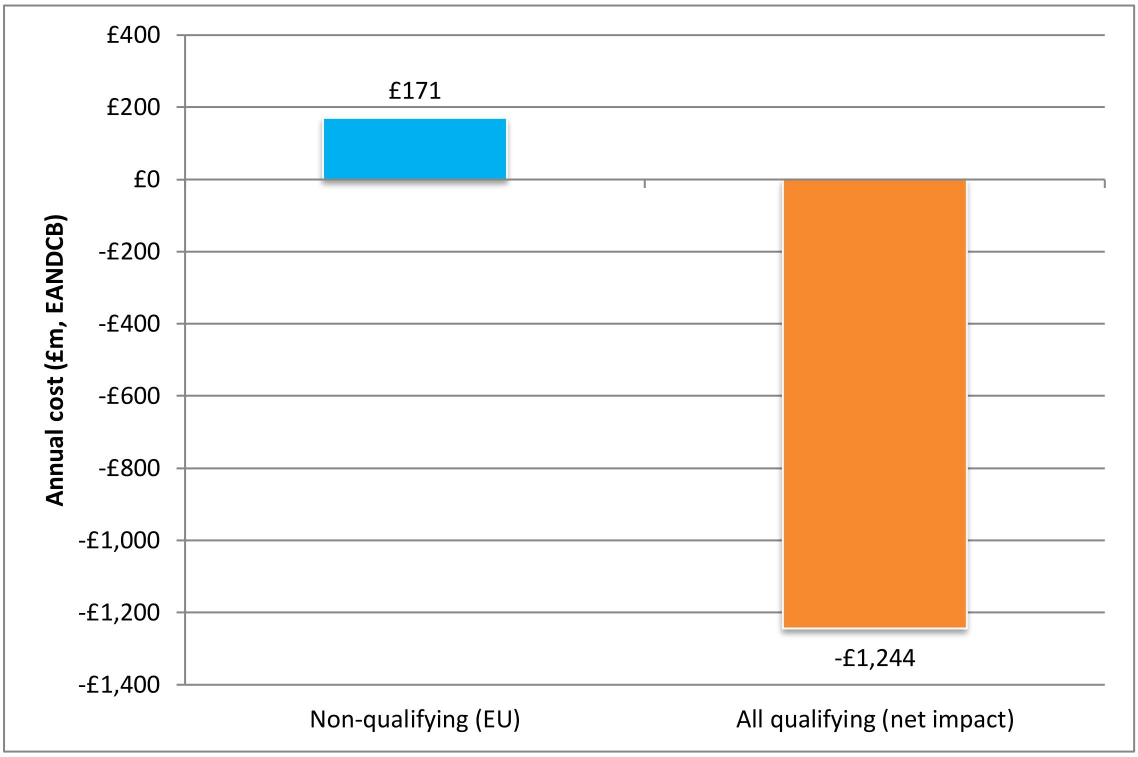
47. **The total net EANDCB of the EU measures in the 2015-2017 parliament was £171 million**. This indicates that the business impact of EU regulation is, in this period, relatively small in comparison to the impact of domestic measures. The cost of EU-derived regulation of £172 million per annum was offset by the annual benefit of only £1 million.

Figure 13 – volume of EU measures in relation to all non-qualifying measures



48. **Gold plating of measures**, the practice of implementing beyond the minimum requirements of EU measures, **had a small effect on the overall cost of regulation.** This means that the UK government only infrequently decided to implement more stringent requirements than those proposed in EU legislation. **There were only 11 measures of EU origin that included gold plating and their net cost was £0.2 million per annum.** This included two measures with a combined benefit of -£0.5 million per annum and two costly policies with a combined cost of £0.7 million. The remaining policies had a negligible effect**.**

Figure 14 – The annual net cost of EU measures compared against the annual cost of all qualifying regulatory provisions



49. **The RPC looks forward to playing a role in scrutinising the impacts associated with the UK's exit from the EU**. We anticipate a significantly increased workflow associated with evaluating EU exit-related measures. We have been working with the Department for Exiting the EU and with the Better Regulation Executive on creating a framework for scrutiny of EU exit-related measures that would ensure robust, independent scrutiny of the impacts on both business and wider society while at the same time avoiding unnecessary delays to the legislative process.

50. **The RPC will want to ensure that the full regulatory impact of leaving the EU is captured within relevant impact assessments.** This includes determining a correct counterfactual, which in the view of the RPC is the current status quo of the EU acquis, against which post-exit decisions are measured. The RPC expects impact assessments to examine fully both the costs and benefits to business of EU exit-related regulation, alongside comprehensive consideration of the wider impacts. The RPC will work with Departments to ensure appropriate scrutiny is undertaken in a way that is compatible with the Government's approach to not publishing negotiation-sensitive material.

51. The RPC will aim to ensure that businesses and civil society organisations can have confidence in the quality of government analysis relating to the regulatory consequences of the UK's withdrawal from the EU.

Case study 8 – A measure where the UK has gold-plated EU requirements

Tobacco products directive (RPC-DH-3142):

The objectives of the tobacco products directive (2014/40/EU) were to increase health protection from tobacco and other smoking products and improve the functioning of the internal market for these products. This was to be achieved by updating harmonised EU tobacco rules and introducing harmonised rules for herbal smoking products, novel tobacco products and electronic cigarettes.

The directive provided a derogation that allowed member states to introduce less onerous labelling regimes for cigars and pipe tobacco. The department decided to take advantage of this derogation but only for individually-wrapped cigars, any cigars weighing above three grams, and cigarillos. This meant that in practice the proposal went beyond the minimum requirements of the directive for pipe tobacco and other types of cigars. The cost of this gold plating was estimated to be £0.6 million per annum.

Case study 9 - A measure where the UK has gold-plated EU requirements

The transposition of the Seveso III directive into UK law through the COMAH regulations 2015 (RPC-HSE-3182)

The aim of the directive was to prevent major accidents which involve dangerous substances and limit the consequences to people and the environment of any accidents which do occur.

The IA explained that there was one specific regulatory element of the proposal, reviewing and testing of external emergency plans; which would be classified as new gold plating. The IA said that the additional requirement would impose an annual net cost to business estimated at £0.1 million.

Case study 10 - A measure where the UK has beneficially gold plated EU requirements

UK implementation of the EU damages directive (RPC-BEIS-3514)

The department made minor changes to the conditions under which a private action for damages can be brought under UK competition law, in order to ensure that these are consistent with EU competition law. These changes are intended to make bringing private actions for damages slightly easier.

The preferred option included gold plating as a result of the department's decision to apply the same legal framework to cases within scope of EU law and cases within scope of UK law only. The department estimated that this would be beneficial to business as it would increase the level of redress available to businesses that have been affected by anti-competitive behaviour. It estimated the total annual net benefit to business of £0.4 million.

PART 2: QUALITY OF IMPACT ASSESSMENT IN THE 2015-17 PARLIAMENT

GOING BEYOND THE BUSINESS IMPACT TARGET TO EXAMINE THE QUALITY OF GOVERNMENT APPRAISAL DURING THE 2015-17 PARLIAMENT

52. The second part of this report focuses on the quality of government impact assessment during the 2015-17 parliament. It analyses the impact assessments that have been scrutinised by the RPC during the 2015-17 parliament[14]; not the policies that have been implemented during the 2015-17 parliament, as in the previous part. As such, it is possible to analyse the change in the quality of government impact assessment over time. There will be some overlap between the data used in these two parts; however, as the datasets are fundamentally different, a direct comparison between the two is not possible.

53. This part of the report contains analysis of the quality of government impact assessments in relation to:
    - the impacts on wider society;
    - the impacts on small and micro businesses;
    - post-implementation reviews; and,
    - the range of regulatory options and the consideration of alternative options to regulation.

54. Furthermore, this part generally focuses on measures implemented by departments only, as regulators submitted assessments designed purely for validating the equivalent annual net direct cost to business. Regulator's submissions were not expected to contain societal net present values or a small and micro business assessment.

[14] For analytical purposes, a measure is considered to have been scrutinised by the RPC during the 2015-17 parliament where the RPC opinion was issued during this time period. However, the sub-section on post-implementation reviews (PIRs) instead focuses on PIRs submitted to the RPC during the 2015-17 parliament, rather than on the PIRs for which RPC opinions were issued during the 2015-17 parliament. This allows for a robust comparison of the number of PIRs submitted to the RPC during the 2015-17 parliament, against the number of policies for which PIRs were expected to be completed within the same period.

WIDER IMPACT OF REGULATION

55. **Wider impacts (e.g. indirect business impacts and impacts on wider society) of new regulation were quantified robustly in only 53% of full impact assessments during the 2016-17 reporting year.** 26 of 55 measures were assessed as having an equal net present value (NPV) and business NPV, or did not include a quantified NPV[15]. This may mean that:

- it is harder to compare the effects on society of different regulatory measures; or
- it is difficult to justify a burden being imposed on business in order to create a benefit to wider society, when the size of these benefits is not known.

Societal net present value (NPV): monetisation of the total expected impacts of a policy on the whole of society, over the entire appraisal period. The impacts are discounted to a 2015 present value base year.

Business NPV: the present value of direct benefits to business less the present value of direct costs to business, over the entire appraisal period. The impacts are discounted to a 2015 present value base year.

56. The RPC is of the view that the analysis of wider impacts, be it quantitative or qualitative, is an important determinant of an impact assessment's fitness for purpose. The RPC would, therefore, welcome the ability to rate impact assessments on that basis. The RPC would, however, like to be clear in saying that it does not expect wider impacts to be monetised in all impacts assessments. The RPC acknowledges that wider impacts are often too difficult or disproportionate for monetisation to be possible. Under these circumstances, a qualitative discussion of the expected wider impacts is sufficient. As the RPC is currently unable to rate an impact assessment's fitness for purpose based on its analysis of wider impacts, the RPC is not currently able to provide data on the robustness of evidence supporting the wider impacts in assessments and can provide only an analysis of how often these impacts are monetised.

57. **The proportion of measures with a monetised assessment of wider impacts increased between the two reporting years, from 36% in 2015-16 to 53% in 2016-17 and from around one third of measures in the 2010-15 parliament.** This suggests that departments have responded to the RPC's previously-expressed concerns over

[15] In these cases, departments' impact assessments have not quantified any impacts beyond the direct and indirect effects on business.

the appraisal of societal impacts and have made a greater effort to quantify the effects of their proposals on wider society. Despite the improvement between reporting years, the RPC finds that the proportion of impact assessments that assess wider societal impacts robustly is still insufficient. The RPC urges government to continue improving in this area.

58. The RPC can suggest at least two potential reasons why departments are not monetising these effects in a significant proportion of impact assessments. Firstly, departments genuinely may not be able to accurately analyse certain impacts – for instance, where they have no market value, or cannot be captured with standard appraisal methods. Secondly, due to the incentives within the better regulation system, departments' efforts are focused on the assessment of the direct impacts on business of regulation. At present, the RPC rating of final stage impact assessments is dependent on the evidence supporting the EANDCB and, despite stakeholder interest in the wider impacts of government proposals, there is no mechanism within the framework for the RPC to declare the analysis as being not fit for purpose, to require more robust quantification of these effects.

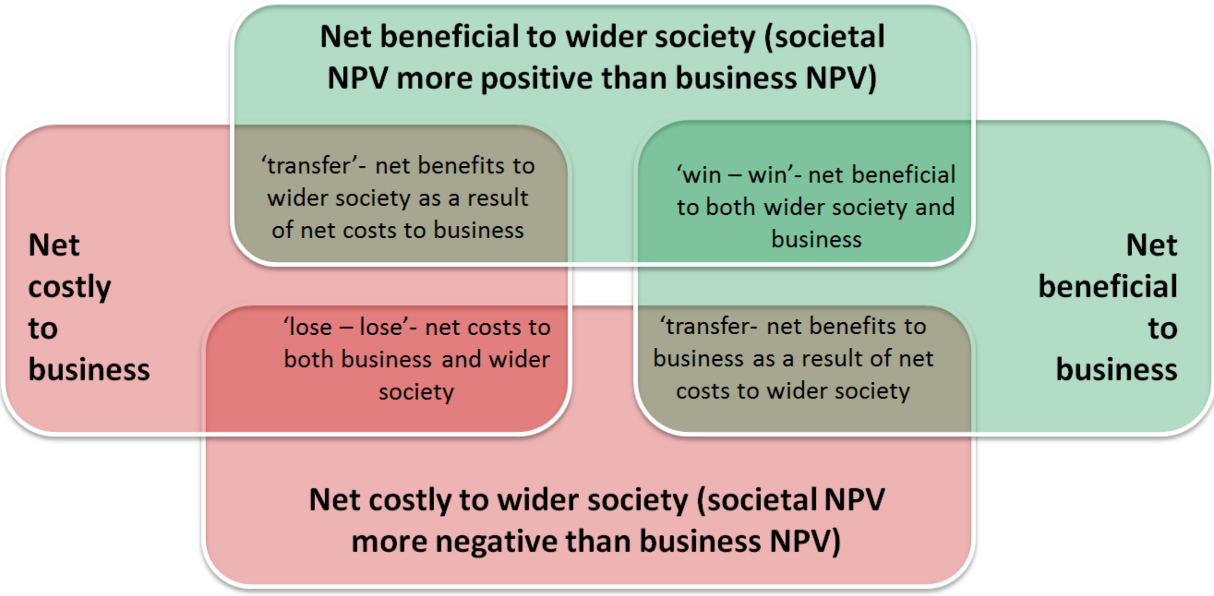
59. Encouraging more thorough appraisal of the wider effects of regulation is important, both to enable government to explain the benefits of its regulatory programme, and to help inform decisions about priorities and trade-offs. Better information on these trade-offs could help prioritise areas for intervention or inform decisions on a 'fair' rate of burden to impose on business in order to realise a benefit for society.

60. When assessing the potential wider impacts of new regulation, a key consideration for departments should be any increase in public risk that may result. For measures that could affect public safety, such as changes in road transport or food standards regulation, analysis of the risks should form a core part of the supporting impact assessment and any subsequent ministerial decision. This is particularly important in cases where government is considering voluntary codes of practice or self-regulation, for instance, as a means of achieving its policy objectives; the assessment should demonstrate that any increase in public risk as a result of pursuing non-regulatory alternatives is justified or mitigated.

MEASURES INCLUDING A QUANTIFICATION OF WIDER IMPACTS

61. Measures that included a quantified assessment of wider effects over the 2015-17 parliament fall into four broad categories, based on the comparison between business and societal impacts:

Figure 15 – The relationship between societal NPV and business NPV



62. A total of 11 out of 54 measures were assessed as having benefits to business, and other wider benefits. In these cases, society and business are both net winners. The majority of the remaining measures were assessed as either having benefits to society transferred through the imposition of costs to business (21 measures), or costs to business in addition to costs to wider society (11 measures).

63. More quantification of the societal benefits would enable better-informed decisions to be made on the trade-offs and rationale for such proposals. Where transfers between different groups take place, they can result in overall net costs, for example if the gross benefits to wider society are less than the gross costs to business.

64. For 11 of 54 measures that included quantification of wider impacts, the department's assessment of the proposal was that it would generate costs to business and additional costs to wider society. For a further 9 measures, the department's assessment was that the monetised wider benefits of the proposal would not fully offset the costs to business. This means that, for 22 of 54 measures where the department has assessed the wider effects, its analysis suggests society overall is worse off than if the Government had not intervened.

Case study 11 – Negative societal NPV – partially-monetised impacts

Introducing a duty for the FCA to cap early-exit charges on pension schemes (RPC-HMT-3257)

The proposal required relevant firms to cap early-exit charges imposed on FCA-regulated pension policies, allowing individuals to gain more flexible access to their pension savings. The department provided an assessment of the cost to business from foregone early-exit charges, and the wider benefits to individuals who would otherwise have been charged when exercising this freedom. However, despite quantifying this effect, the proposal was estimated to have a societal NPV of -£4 million. In this case, the department was able to only partially monetise the benefits to society; the impact assessment also explained that by enabling more individuals to gain earlier access to their pensions, depending on how they use this money, they may benefit from lower debt interest payments. Without being able to quantify this impact, the proposal was assessed as being net costly to society.

65. While there are reasons why robust quantification of impacts is not always possible, if taken in isolation, impact assessments for these measures would suggest that government intervention was not supported by the evidence. While this may be partly 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.

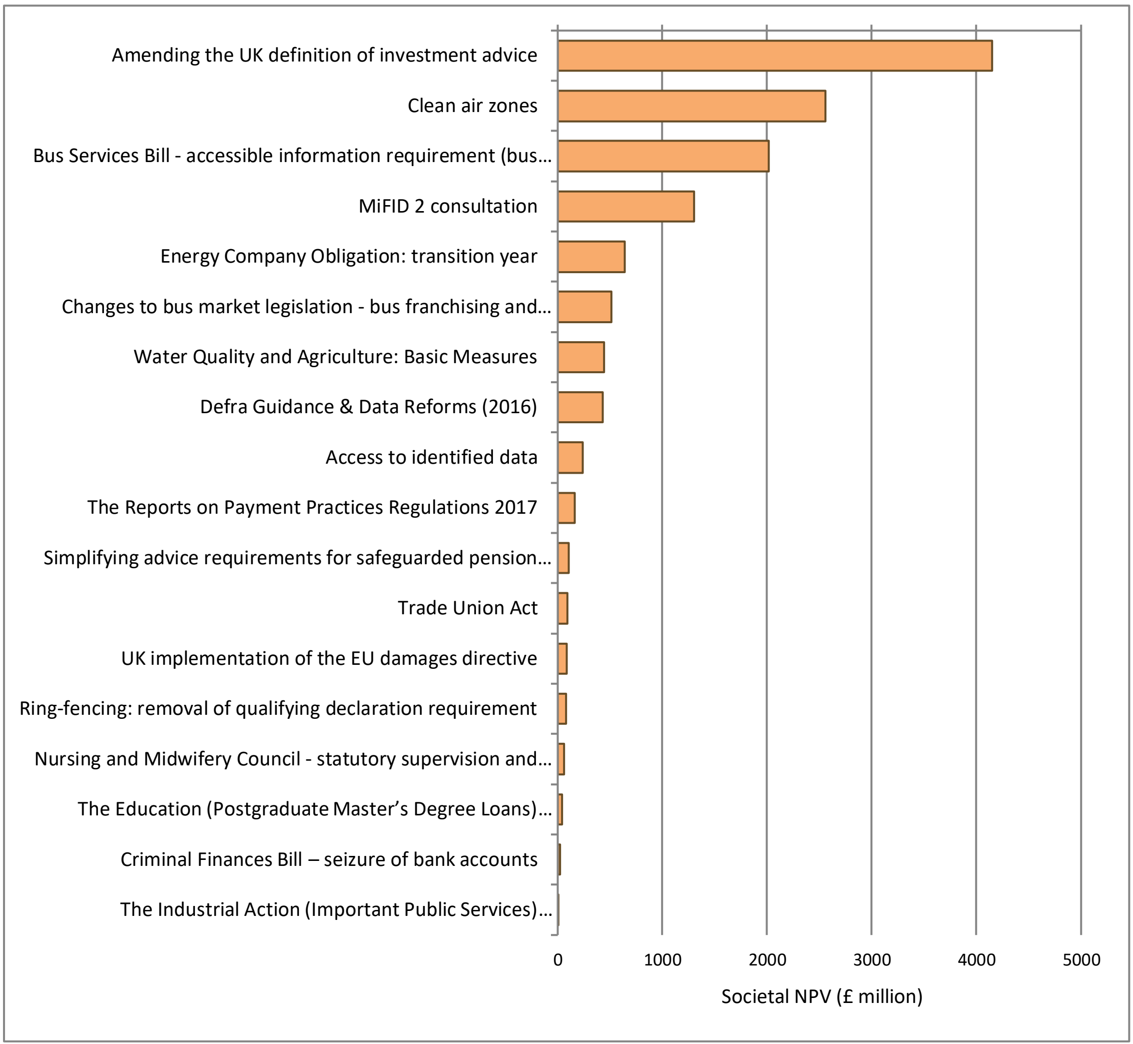
Table 8 – Breakdown of measures by the relationship between societal and business NPV[16]

	Societal NPV more positive than business NPV	Business NPV more positive than societal NPV
Net beneficial to business regulation	11 of the 54 measures. 'win-win' - wider society and business both benefit.	6 of the 54 measures. 'Transfer' - benefits to business with offsetting costs to wider society.
Net costly to business regulation	21 of the 54 measures. 'Transfer' - costs to business with offsetting benefits to wider society.	11 of the 54 measures. 'lose-lose' - wider society and business both lose.

66. Table 8 categorises the impact assessments that have provided an assessment of societal impacts, whereas, the following section analyses some of the measures that have not.

[16] The remainder of these measures were assessed as having a neutral effect on business.

Figure 16 – Measures that were recorded as beneficial to society (2016-17)[17]



[17] A list of societal NPVs for the measures scrutinised during the 2015-16 reporting period can be found in the RPC's 'Regulatory Overview' report for 2015-16.

Figure 17 – Measures that were recorded as costly to society as a whole (2016-17)

MEASURES IMPOSING A NET COST ON SOCIETY AS A WHOLE

67. **Based on societal net present values, 18 (33%) of 55 measures scrutinised during the 2016-17 reporting year were assessed as being net costly to society as a whole.** This may mean that:

    - a complete analysis is not being used to inform ministerial decision-making;
    - there are significant difficulties for departments in monetising the wider benefits of their proposals;
    - there are measures that will result in significant impacts that cannot be quantified; or
    - government is prioritising benefits to certain parts of society, resulting in a significant volume of measures that are net detrimental to society overall. This may be to ensure that all parts of society receive equal priority.

68. Of the 18 measures scrutinised over the 2016-17 reporting period that were assessed as being net costly to society, departments included a qualitative description of the expected wider benefits in 17 cases. This indicates that, for the majority of the measures in this category, government proposals are likely to be more beneficial to society than the quantitative analysis suggests. The RPC finds a qualitative description of these impacts perfectly acceptable where it is truly too difficult or disproportionate to monetise the impacts.

69. Of 22 measures implemented during the 2016-17 reporting year that imposed a net cost on business, 7 of the IAs did not provide any quantified assessment of the effects beyond business. This does not necessarily mean these measures will not benefit society but, without an assessment of the societal effects, the analysis suggests that government intervention was not supported by a robust estimate of the expected benefits to wider society.

Case study 12 – Negative societal NPV – non-monetised impacts

EU directive on non-financial reporting (RPC-BEIS-3469)

The proposal implemented the EU non-financial reporting directive, with the aim of addressing the asymmetry of non-financial information between companies and investors. The measure was expected to generate costs to business of £108 million through meeting additional reporting requirements. The impact assessment also explained that the measure would improve investors' management of their exposure to risk via more informed investment strategies, while environmental and human rights NGOs would be able to monitor company activity more effectively. The department was unable to monetise these effects, though respondents to the consultation expected these wider benefits to outweigh the costs to business. While a thorough qualitative assessment of the wider impacts was provided, the proposal was estimated to have a net present value of -£108 million.

70. The RPC recognises the need for government to use analytical resources effectively. It would appear, however, that departments could do more to assess the expected effects of regulatory proposals. In a number of cases a significant proportion of the relevant analysis has been completed and presented in the IA, but may require some additional work to ensure the estimates are sufficiently robust. Some departments already undertake wider analysis in a number of cases, and it is not clear why this approach could not be taken more systematically.

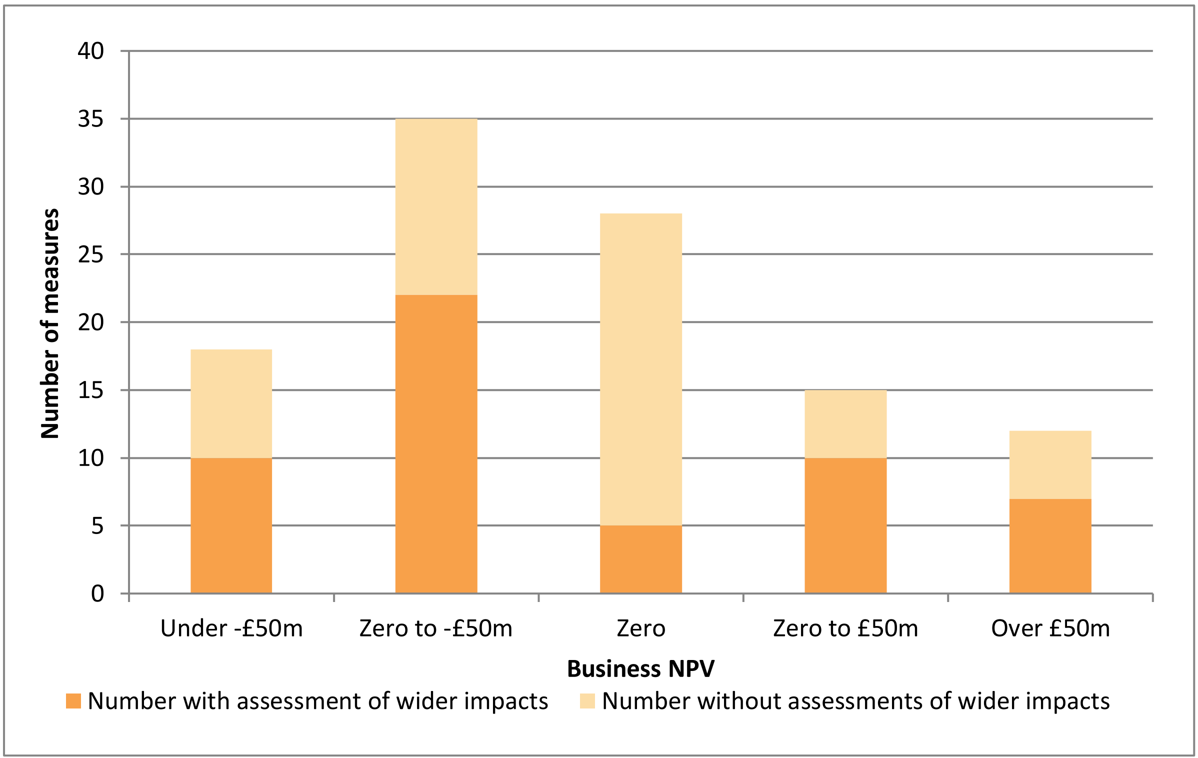
71. The transparent presentation of the costs and benefits to society of regulatory proposals should play an important part in explaining the expected benefits of the Government's regulatory programme and the rationale for different interventions. The robust assessment of wider effects will help ensure that IAs provide a better evidence base needed to support decision making. However, for such evidence to be as credible as possible, the estimates or analysis would benefit from independent scrutiny, with the RPC able to include societal net present value in the factors influencing its rating of IAs. A robust assessment of these impacts could be in the form of a qualitative discussion; with independent scrutiny of this still adding value.

MEASURES WITHOUT AN ASSESSMENT OF WIDER IMPACTS

72. A larger proportion of measures monetised benefits to society beyond the business impacts than in the 2015/16 reporting year. The RPC is, however, still not permitted to rate an IA's fitness for purpose on the robustness of the wider impacts. While RPC opinions may comment on the wider analysis, it is not possible to provide a credible view on whether the assessments of the effects are robust.

73. There may be some cases where it is extremely difficult or disproportionate to quantify the expected societal impacts of a policy. In these cases, it is reasonable for departments not to include quantification provided the reasons are explained in the impact assessment. For more significant measures, claims that it would be disproportionate to quantify societal impacts are less credible. However, the RPC recognises that difficulty may still be a problem, such as in the monetisation of the benefits of financial stability measures. There are a number of measures that have relatively significant costs to business, but for which the societal benefits have not been monetised.

Figure 18 – Assessment of wider impacts by size of business NPV (2015-17)



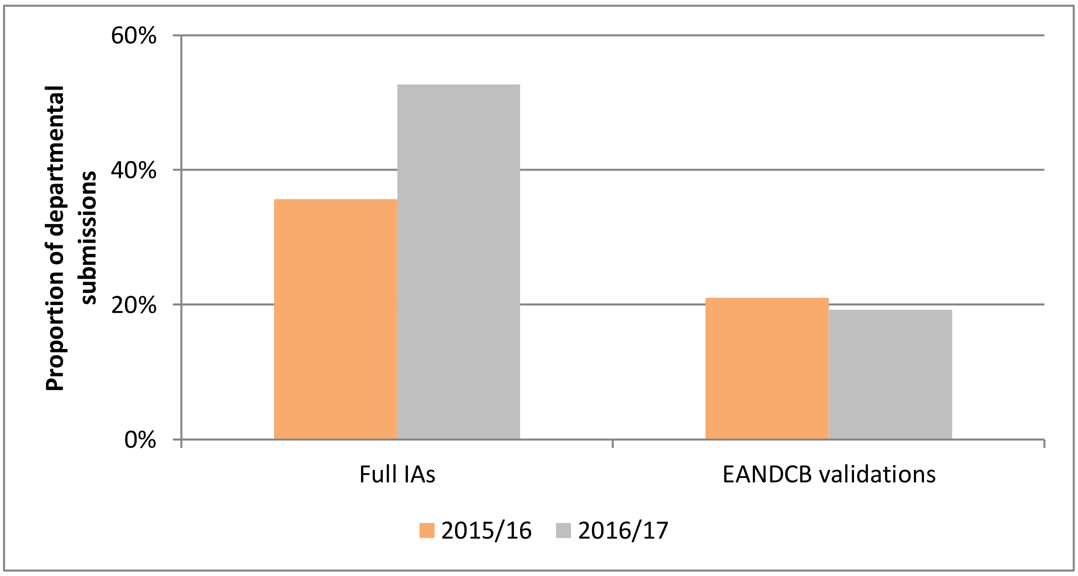
74. Across both reporting years, departments were able to monetise the wider impacts of 58% of measures with significant benefits to business (those each with a business NPV of over £50 million). For measures with large regulatory costs to business (those with a business NPV of less than -£50 million), the assessment of wider impacts was

less prevalent, provided in only 56% of IAs. These results may be because larger measures generate impacts that are more difficult to capture quantitatively – for instance, where they affect large parts of society. Despite it being less proportionate to do so, wider impact analysis was carried out to a greater degree for measures with smaller benefits to business; the impact assessments for 67% of proposals with a business NPV of between £0-50 million quantified these effects.

75. For smaller measures, departments are able to submit a fast-track impact assessment, where the RPC is required to validate only the EANDCB figure. While this section predominantly focuses on full IAs, in which departments are encouraged to provide a full analysis of societal effects, it is useful to observe whether the same themes emerge for fast-track measures. It is worth noting that all IAs submitted by regulators were fast-track assessments. The majority of these were submitted after the measures had already been implemented and, therefore, had no role in influencing the policy outcome.

76. Looking first at fast-track measures implemented by departments, in 2016/17 only 19% of fast-track IAs included a robust assessment of wider impacts, a slight reduction from 21% in 2015-16. It is to be expected that this proportion is lower than in full IAs, as these assessments are purely for business impact target accounting purposes. The system has been designed by government to reduce the burden of impact assessment in low business-impact regulatory measures or deregulatory measures. With this in mind, it is refreshing to see that a significant proportion of these impact assessments still contain some quantification of the impacts on wider society.

Figure 19 – Breakdown of measures with quantification of wider impacts by reporting year



77. While regulatory fast-track measures implemented by departments are, by definition, expected to have small impacts, 2 out of the 10 most significant measures implemented by regulators were supported by a quantification of the wider effects during the 2015-17 parliament. This is likely to be due to the different nature of regulators' submissions; the scrutiny of these assessments is not intended to affect policy decision making and, as a result, did not need to contain a societal NPV.

Figure 20 – Largest measures implemented by regulators (by business NPV)

SMALL AND MICRO BUSINESS ASSESSMENTS

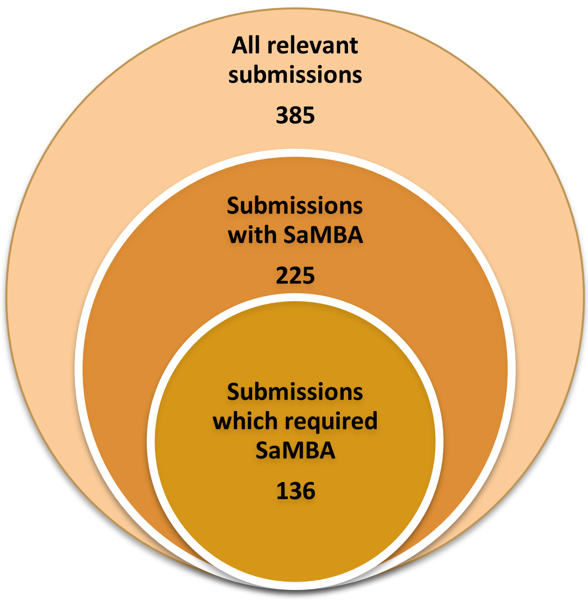
78. A small and micro business assessment (SaMBA) is required for all domestic departmental measures that regulate business and have costs over £1 million in any year. The requirement is designed to encourage departments to provide more detailed consideration and analysis of the impacts on small businesses.

79. **During the 2015-17 parliament, 58% of departmental impact assessments (IAs) submitted for RPC scrutiny included a SaMBA (225 out of 385).** The assessments from regulators have been excluded from this calculation because they do not require a SaMBA.

80. **It is worth noting that a substantial number of assessments included a SaMBA although not required.** A SaMBA was mandatory in only 35% of departmental IAs submitted during the 2015-7 parliament. This means that 89 measures (mainly non-qualifying of EU and international origin or fast-track impact assessments) discussed impacts on small businesses as a matter of good practice. The RPC welcomes this approach.

The **small and micro business assessment** has been a requirement since 2013. It applies to regulatory measures from departments 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.

Figure 21 – Visualisation of the volume of SaMBAs completed

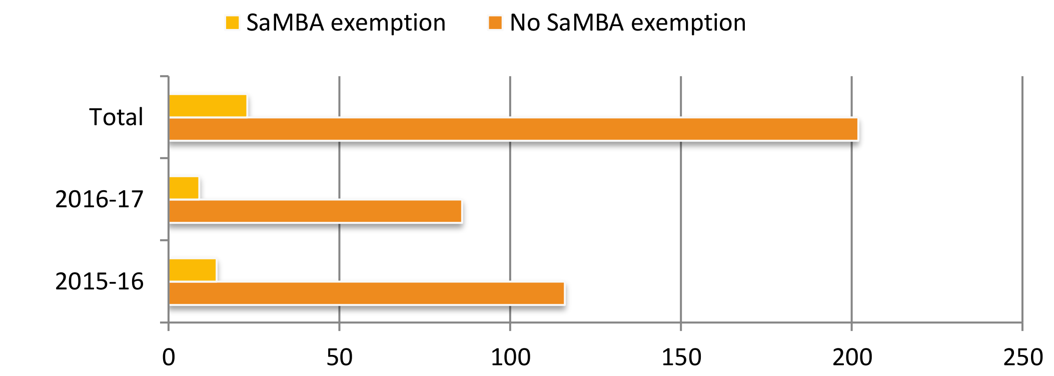


81. **The share of IAs submitted by departments that included a SaMBA fell between reporting years 2015-16 and 2016-17, decreasing by 10%.** This is in spite of the fact that the proportion of impact assessments that explicitly required a SaMBA increased by 3%.

82. **Of the 136 impact assessments in the 2015-17 parliament that required a SaMBA, only 7 (5%) were not fit for purpose**.

83. **Of the 168 impact assessments that identified a disproportionate impact on small or micro businesses, 23 (14%) included some form of small business exemption**. The majority of these (15) offered a full exemption.

Figure 22 – The proportion of measures that exempted small and micro businesses (of those that completed a SaMBA)



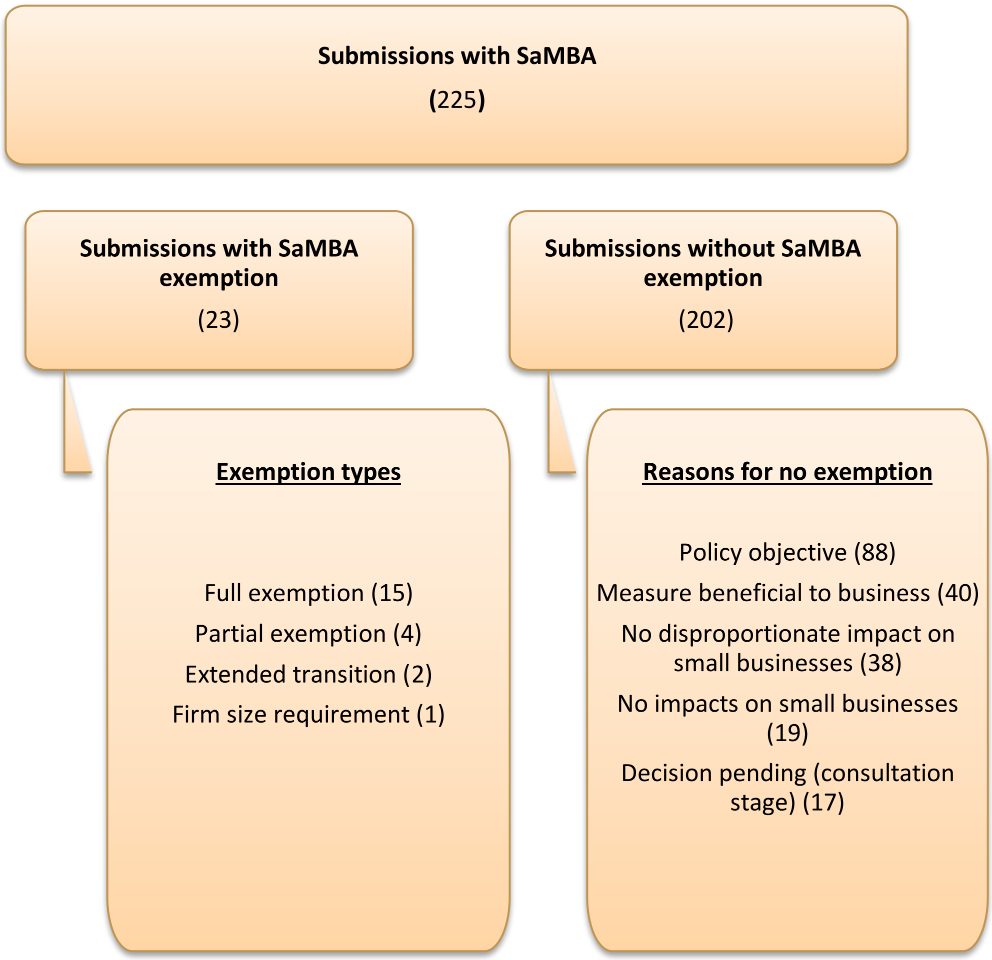
	2015-16	2016-17	Total
SaMBA exemption	14	9	23
No SaMBA exemption	116	86	202

84. **Meeting the policy objective was the most common reason for not including a small business exemption.** In 88 assessments it was stated that excluding small and micro businesses from the scope of the policy would negate its aims. In 40 IAs small businesses were expected to benefit from the proposal and, therefore, were not exempt from the policy. No disproportionate impact on small measures was quoted in 38 assessments.

85. **While it is encouraging that many assessments that do not require a small and micro business analysis now include one, the quality of SaMBAs could be improved**. While many IAs include high quality SaMBAs, it is also the case that, in many impact assessments, only a short qualitative description of impacts on small businesses is provided. Similarly, while in many cases policy aims clearly rule out a

possibility of providing exemptions and mitigation measures, too often IAs don't consider potential benefits of excluding small businesses from the scope of the policy. Also, mitigation measures other than full exemption should be more frequently considered in assessments. Such instruments as provision of financial assistance to small businesses or extended transition periods might be viable ways of protecting those companies while at the same time achieving policy goals.

Figure 23 –Breakdown of SaMBAs



Case study 13 – A measure that fully exempts small businesses

The Reports on Payment Practices Regulations 2017 (RPC-BEIS-3511):

The measure introduced a requirement for businesses to report electronically twice a year on their payment policies, practices and performance, so that potential suppliers have transparent information regarding the terms of larger businesses' contract payments and their reliability in making payments on time.

At the consultation stage, the proposal covered 310 listed small or micro businesses; the RPC's opinion suggested that, at the final stage, this should be re-evaluated. The final proposal was that only large businesses would be required to report on their payment practices; this is defined as businesses that exceed at least two of the three upper thresholds for a medium-sized business under the Companies Act 2006. These thresholds are: a total of 250 employees, an annual turnover of £36 million and a balance sheet total of £18 million.

Case study 14 – A measure which mitigates the impact on small businesses

Bus Services Bill (RPC-DfT-3483):

The policy mandates the provision of accessible information on-board local bus services, identifying the route and upcoming stops. The overall aim was to ensure that all passengers have the information they need on board to travel by bus with confidence. Specifically, the department aimed to ensure that people with a range of impairments can travel in safety and with confidence.

This policy explicitly mitigates the negative impacts on small and micro businesses. Large operators are required to provide audio-visual (AV) announcements on their services but it was proposed that SME operators are given financial support if they are mandated to provide AV announcements and will have to provide only oral announcements if government is unable to provide the necessary financial support.

Case study 15 – an impact assessment with a high-quality SaMBA

Continuity of essential supplies to insolvent businesses (RPC-BIS-3264):

The measure was introduced to prevent the use of termination clauses or charging of 'ransom' payments for essential supplies, e.g. utilities and IT services, to insolvent businesses. The proposal was expected to benefit businesses by reducing the number of liquidations of insolvent companies.

Without a detailed analysis it would have been unclear whether the net impact on small businesses was positive or negative as the new requirements were expected to be beneficial to one group (insolvent debtors) and costly to another (suppliers). The assessment provided a very detailed analysis of the impacts of the proposal on smaller businesses, including a detailed assessment of the potential costs to small and micro businesses as unsecured creditors if there were to be exemptions for small businesses as suppliers.

The department used consultation responses in conjunction with publicly-available data (BIS Business Population Estimate 2015) to determine the population of affected small businesses and the likely impact on these businesses. On that basis it estimated that small and micro businesses would be beneficiaries of the overall policy, therefore, no exemption was proposed.

In addition, to mitigate the familiarisation burden on small and micro businesses, the department pledged to provide specific guidance and information and to engage with representative bodies of suppliers affected.

Case study 16 – An impact assessment where RPC intervention led to the SaMBA being improved

Amendment to the National Minimum Wage Regulations 2015 - introducing a national living wage (RPC-BIS-3140)

The measure introduced, in April 2016, a national living wage (NLW) into the existing national minimum wage framework, initially set at £7.20 per hour for employees aged over 25 years.

The department estimated that 32.8% of workers covered by the living wage are employed by small and micro businesses and stated that any exemption would undermine the policy and cause a competitive distortion. In its initial opinion, the RPC accepted this but also pointed out that the national living wage (NLW) may affect significantly the business models of some small and micro businesses and that the IA, therefore, needed to provide a fuller discussion of the effects of the NLW on small and micro businesses and potential mitigations. As a result, the department revised and expanded the IA and recognised that small and micro businesses would be more than proportionately affected, with 16.2% of employees in micro firms and 9.7% in small firms being covered by the NLW, as compared with 5.8% in large firms. In addition, the IA included a section on how the effects on small businesses could, to an extent, be mitigated.

POST-IMPLEMENTATION REVIEWS

86. **Overall, the volume of post-implementation reviews (PIR) has not met the RPC's expectations**. Of the 80 expected during the 2015-17 parliament[18], the RPC has received 43.

87. **The bulk of PIRs submitted to the RPC arrived during the second half of the 2015-17 parliament**, increasing from 9 in the 2015-16 reporting year to 34 in the 2016-17 reporting year. This is in line with the comparatively greater number of PIRs expected in the 2016-17 reporting year.

88. **The RPC notes that 19% of PIRs within the 2015-17 parliament led to the material alteration of regulation found to be operating improperly.**

89. **Over the course of the 2015-17 parliament, there have been 8 PIRs that have led to material changes in legislation**; 6 led to the legislation being amended, 1 led to the proposed replacement of legislation and 1 proposed the removal of regulation.

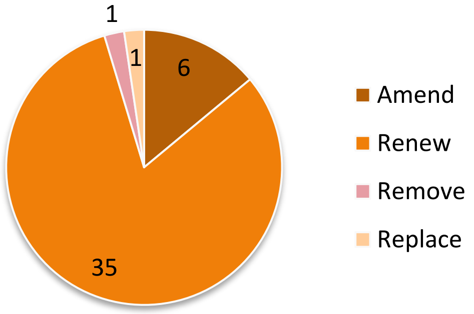
90. **Over the 2015-17 parliament 77% of PIRs were considered to be fit for purpose as first submitted.**

91. An example of a significant measure for which the RPC did not receive a PIR during the 2015-17 parliament is the "*move to CPI for Occupational Pensions*" [19]. The impact assessment for this measure estimates an expected annual benefit to business of around £3.3 billion, but there is some evidence that the uptake for this policy has been far lower than initially expected by government. The RPC notes that DWP has undertaken ongoing reviews of some aspects of this and other pensions measures, and that because the original legislation included a commitment to these reviews, it did not also include a clause requiring a PIR. Nevertheless, the Committee feels that a PIR for this, and other significant pensions measures, should have been submitted for scrutiny during the 2015-17 parliament.

92. **PIRs continue to offer an excellent learning opportunity to improve the quality of regulation and the evidence used to inform regulatory decision making.** Because of this, the RPC strongly advocates extending the use of statutory PIRs, especially for measures with the greatest expected impacts on business and society.

[18] Based on publication deadlines.
[19] Impact assessment for the "move to CPI for Occupational Pensions" can be found here: http://www.legislation.gov.uk/ukia/2011/2004/pdfs/ukia_20112004_en.pdf

Figure 24 – PIR outcomes over the 2015-17 parliament



93. If government departments continue to fail to complete post-implementation reviews of their policies, an alternative solution is for the Government to appoint an independent body that is authorised to complete PIRs for significant policies. Though this would be less satisfactory than embedding a robust process for PIRs within government, the completion of PIRs by an independent body could still add significant value to policy-making decisions and would certainly be better than a failure to complete them.

94. The RPC believes that an impact assessment's fitness for purpose may depend on all aspects of the analysis, including monitoring and evaluation plans. The RPC does, however, acknowledge that more experience will need to be developed in formulating and assessing monitoring and evaluation plans and would not seek to rate impact assessments on monitoring and evaluation grounds until this experience has been gained.

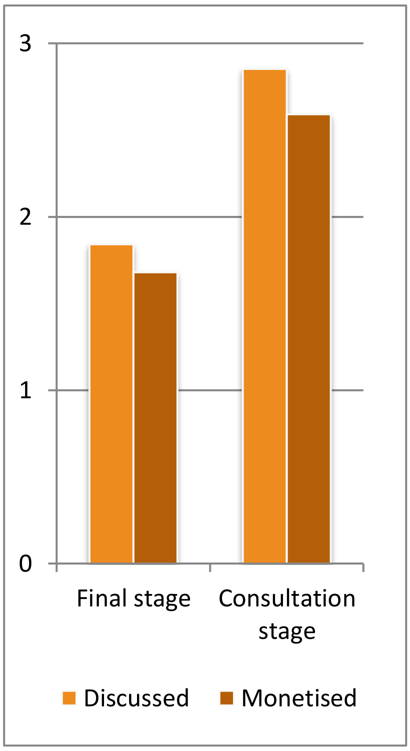
REGULATORY OPTIONS AND ALTERNATIVES TO REGULATION

95. It is crucial that IAs, especially at the consultation stage, present a number of policy options in order to allow stakeholders and ministers to have a clear understanding of choices and trade-offs involved in a particular regulatory change. It is also important for IAs to consider and discuss non-regulatory options – in some cases regulation is not the only solution to a problem. When the aim of a policy can be achieved by other means, for example by voluntary industry codes, IAs should discuss these alternatives. Most IAs submitted to the RPC over the course of the 2015-17 parliament included at least two policy options, with larger and more complex measures often offering greater choice. However, a detailed analysis of non-regulatory options is still a relatively rare occurrence.

96. **Most consultation stage IAs presented three policy options, although most did not include alternative non-regulatory options**. On average, all three options were monetised in each consultation stage impact assessment. **For final stage IAs the number of options included is slightly lower.** An average of two options is discussed and the majority of those included monetised impacts.

97. The overall quality of options presented in consultation stage IAs appears satisfactory. Based on a sample of 13 significant IAs, each with three or four options, it can be concluded that, in most cases, departments offer genuine alternative options with each having its own distinctive merits and disadvantages. Occasionally, however, IAs include options which do not offer real choice, as they don't address policy objectives sufficiently well.

Figure 25 – Average number of options in IAs



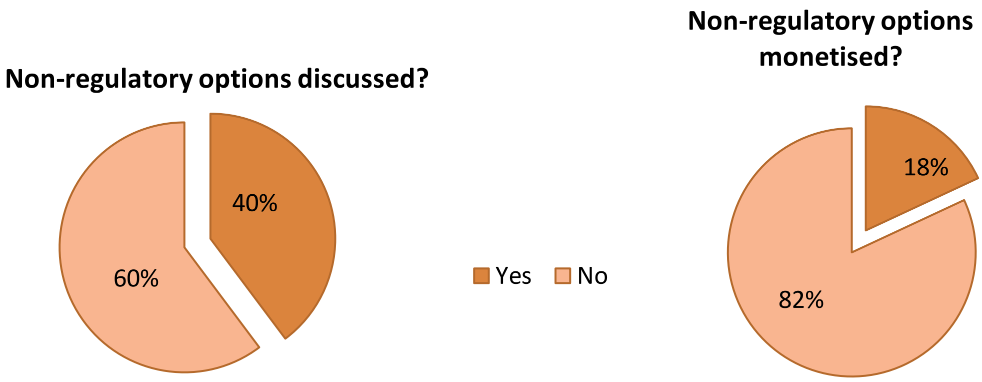
98. Out of 83 **consultation stage IAs:**
    a. 27 had two options
    b. 19 had one option
    c. 10 had three options

99. Out of **259 final stage (full and fast-track) IAs:**
    d. 112 had two options
    e. 94 had one option
    f. 32 had three options

100. Non-regulatory options were discussed in 40% of IAs and assessed as viable options in 18%. It has to be noted that when departments choose to go ahead with a non-regulatory option they do not have to send an IA to the RPC. The RPC's records relating to alternative options to regulation might, therefore, not fully reflect the extent to which non-regulatory measures are used in policy making.

101. The most common types of non-regulatory options were the introduction of voluntary codes or guidance, and information provision.

Figure 26 – Proportion of impact assessments where non-regulatory options have been discussed/appraised



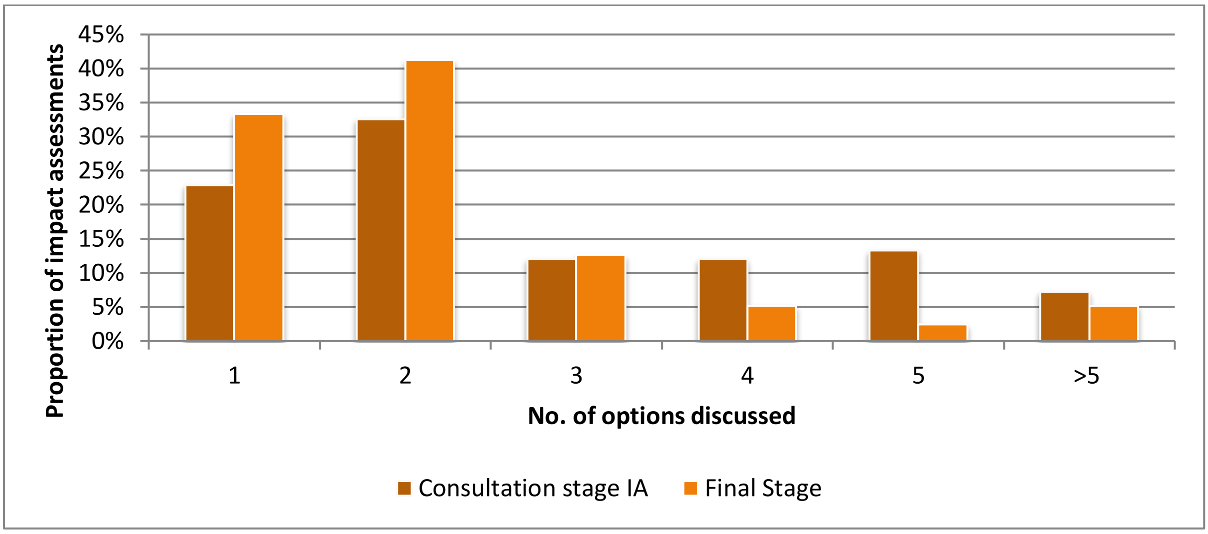
Case study 17 – An impact assessment with a large number of regulatory options

Pesticides and water quality (RPC-DEFRA-3139)

In 2015, the department submitted a consultation stage IA on a set of proposals aimed at reducing adverse effects of some pesticides on water quality.

The department presented six policy options – three each for two separate pesticide categories. These included a national product ban, a targeted product ban and a non-regulatory industry led initiative that would mean it would be for the farming and water industries to determine mechanism used to tackle water pollution. The IA presented cost and benefit estimates of each option, which allowed a clear comparison of the merits of each solution. The department chose a combination of a targeted ban of one product and an industry-led action in relation to another as its preferred policy interventions; however, this option does not necessarily represent the government position.

Figure 27 – Proportion of impact assessments by number of options discussed



PART 3: DEVELOPING THE ROLE OF THE RPC

ALLOWING THE RPC TO ADD MORE VALUE TO REGULATORY IMPACT ASSESSMENT AND ACCOUNTING

CONTINUATION OF THE INDEPENDENT VERIFICATION BODY ROLE

102. The Government appointed the RPC as the independent verification body of the business impact target for the parliament commencing in the year 2015[20]. With the dissolution of the 2015-17 parliament, the RPC awaits confirmation that it will continue to act as the independent verification body of the Government's business impact target for the parliament commencing in 2017.

RATING IMPACT ASSESSMENTS ON THE EVIDENCE SUPPORTING THE EXPECTED SOCIETAL IMPACTS

103. Irrespective of its role as the independent verification body for the business impact target, the RPC provides its opinion on the quality of government impact assessments, to assure that ministers are able to make effective decisions, based on the best available evidence. The RPC does so by rating impact assessments' fitness for purpose. The RPC would like to see the criteria, on which this rating is based, extended to include impacts beyond those on businesses.

INFORMING POLICY DECISION MAKING

104. The RPC notes that a large proportion of business impact target-related impact assessments submitted for RPC scrutiny, have been submitted after the measure is already in force. The RPC is very concerned about this, as the opinion that it provides is then unable to inform policy decision making. Of all departmental regulatory provisions that received scrutiny by the RPC for the business impact target of the 2015-17 parliament, 36% had been submitted once the measure was already in force. The RPC expects to see impact assessments submitted for RPC scrutiny before ministers make decisions. The RPC believes that greater emphasis should be placed on quality assurance of government impact assessments rather than purely keeping account of changes to regulation.

SCRUTINY OF ALL SIGNIFICANT REGULATORY CHANGE

105. The RPC values its ability to scrutinise non-qualifying regulatory provisions that are of significant impact. The best available evidence should be used to inform decision making for significant regulatory changes, regardless of their status under the

[20] https://www.gov.uk/government/news/regulatory-policy-committee-appointed-as-the-independent-body-verifying-the-costs-and-savings-of-changes-in-law

business impact target. In future, the RPC would like to see this role extended to significant non-qualifying regulatory provisions implemented by regulators.

SCRUTINY AND ACCOUNTING OF EU EXIT-RELATED REGULATORY CHANGE

106. Leaving the EU will change the regulatory landscape, bringing both challenges and opportunities. It is likely that the UK's departure from the EU will create a significant amount of regulatory churn and the RPC wishes to ensure that the principles of better regulation are applied throughout the process of leaving the EU and the regulatory change that follows. The RPC has been working with the Department for Exiting the EU and other government departments, in establishing a pragmatic and effective methodology for exit-related impact assessments. In doing so, the RPC wishes to ensure that the regulatory impacts of the decision to leave the EU, as well as the regulatory impacts of policy decisions following the UK's departure from the EU, are captured effectively.

107. In order to capture the full regulatory impact of leaving the EU, the RPC will work alongside government to determine a correct counterfactual against which post-exit decisions are measured, as well as a robust methodology for the appraisal of impacts. The RPC expects impact assessments to examine fully both the costs and benefits to business of EU exit-related regulation alongside comprehensive consideration of the wider impacts.

108. The RPC will aim to ensure that businesses and civil society organisations can have confidence in the quality of government analysis relating to the regulatory consequences of the UK's withdrawal from the EU. This confidence itself can improve the impacts of the measures taken.

GLOSSARY

Better regulation: the use of evidence and analysis including appraisal, evaluation, behavioural insights and consultation to improve regulatory decisions.

Better Regulation Executive (BRE): a directorate within the Department for Business, Energy and Industrial Strategy that leads the better regulation agenda across government.

Better regulation framework: the principles, rules and guidance used by the UK Government to improve regulatory decision-making.

Business: unless specified, this also refers to civil society organisations in the context of better regulation.

Business impact target (BIT): a target for the Government in respect of the economic impact on business activities of qualifying regulatory provisions which come into force or cease to be in force during the relevant period. In relation to this report, the relevant period is the 2015-17 parliament.

BIT multiplier: the factor by which the EANDCB is multiplied to create a BIT score. This reflects the number of years during a parliament that implementation/removal of regulation is expected to affect. As such, the BIT multiplier is five by default, to reflect the length of fixed-term parliaments; or, the number of years that the regulation will be in force if this is fewer than five.

BIT report: a report published by the Government that assesses the economic impact on business activities of the qualifying regulatory provisions which have come into force or ceased to be in force during the reporting period.

BIT reporting period: a period, usually the length of a parliament, upon which a BIT report reflects. This report acts as an overview for the Government's end of parliament BIT report for the 2015-17 parliament.

BIT score: the metric used to account for the Government's progress against the business impact target. The BIT score is equal to the EANDCB multiplied by the BIT multiplier.

Business NPV: the present value of direct benefits to business less the present value of direct costs to business.

Civil society organisations: voluntary and charitable organisations that are neither a business nor public sector. They are, however, treated as a business in the context of the business impact target and the better regulation framework.

Department: government departments and agencies

Direct impact: an impact that can be identified as resulting directly from the implementation or removal/simplification of regulation.

Domestic regulation: a measure which is neither EU-derived nor based on an international obligation

Equivalent annual net direct cost to business (EANDCB): the annualised value of the present value of net direct impact to business, calculated with reference to the counterfactual.

EU-derived regulation: UK measures that implement EU directives and EU regulations.

EU directive: EU directives lay down certain end results that must be achieved in every member state. National authorities have to adapt their laws to meet these goals, but are usually free to decide how to do so. EU directives may concern one or more member states, or all of them.

EU regulation: EU regulations have binding, directly applicable, legal force throughout every member state, on a par with national laws. National governments do not have to take action themselves to implement EU regulations, but may need to introduce legislation to implement or enforce the directly applicable obligations.

Fast track: a system of light touch assessment and scrutiny of deregulatory and low-cost regulatory measures

Fit for purpose (green) opinion: a green-rated opinion from the Regulatory Policy Committee, indicating that the analysis of the policy and calculations of the business impact meets an acceptable standard.

Gold plating: implementation of an EU directive or other international obligation earlier than required by the directive, or implementation that goes beyond the minimum requirements necessary to comply with the directive.

Impact assessment (IA): both a continuous process to help policy makers think through fully and understand the consequences for the public, private and third sectors of government interventions; and a tool to enable government to weigh and present the relevant evidence on the positive and negative effects of such interventions, including by reviewing the impact of policies after they have been implemented.

Independent verification body (IVB): an independent body appointed by the Government to verify the Government's progress against its business impact target. The IVB must also verify that all measures accounted for under the business impact target are in fact qualifying regulatory provisions that were implemented during the relevant period. The IVB for the duration of the 2015-17 parliament has been the Regulatory Policy Committee.

Measure: any primary or secondary legislation, statutory guidance, policy proposal, or activity of a regulator that alters regulatory requirements.

Methodology: a system of methods used in a particular area of study or activity. In the context of this report, normally refers to analytical approaches used to appraise or evaluate regulation.

Micro-business: a business with 10 or fewer employees.

Net present value (NPV): the net difference between the present value of a stream of costs and benefits.

Non-qualifying account: a measure of the total regulatory impact resulting from implementation, amendment, or removal of non-qualifying regulatory provisions during the relevant period.

Non-qualifying regulatory provision (NQRP): a regulatory provision that is excluded from business impact target accounting and, therefore, not accounted for under the Qualifying/BIT account. The exclusions are set by the Government; the Regulatory Policy Committee considers whether each NQRP has met the criteria for the relevant exclusion.

Non-regulatory options: ways to achieve policy outcomes without 'command and control' regulation. This includes self-regulation, co-regulation, information and education, economic instruments and better use of current regulation.

Not fit for purpose (red) opinion: a red-rated opinion or initial review notice from the Regulatory Policy Committee, indicating that the analysis of the policy and calculations of the business impact does not meet an acceptable standard.

Post-implementation review (PIR): a process to establish whether implemented regulation is having the intended effect and was implemented effectively.

Pro-competition: measures with a primary objective of promoting competition in its targeted market.

Proposal: in this context, regulatory activity that the Government plan to bring into force.

Qualifying/BIT account: an account of the combined impact of all the qualifying regulatory provisions that came into force, or ceased to be in force, during the relevant period.

Qualifying regulatory provision (QRP): regulatory provisions that the Government determine are to be accounted for under the business impact target.

Regulation: a rule or guidance with which failure to comply would result in the regulated entity or person coming into conflict with the law or being ineligible for continued funding, grants and other applied for schemes.

Regulator: a non-departmental public body that has the power to impose or enforce regulation.

Regulatory Policy Committee (RPC): an advisory committee of independent experts that provides external and independent challenge on the evidence and analysis presented in impact assessments.

Regulatory provision: statutory provision that meets the criteria set out in section 22 of the Small Business, Enterprise and Employment Act 2015. The criteria can be found here (section 22): http://www.legislation.gov.uk/ukpga/2015/26/part/2/crossheading/business-impact-target/enacted

RPC opinion: an opinion of the RPC on whether or not an impact assessment is fit for purpose. RPC opinions also validate measures' EANDCB and BIT score figures.

RPC validation: the process by which the RPC examines and agrees the EANDCB for each qualifying regulatory provision and for significant non-qualifying regulatory provisions. The RPC also confirms that each non-qualifying regulatory provision meets the criteria for the relevant exclusion.

Small business: businesses with 11-49 employees.

Small and micro business assessment (SaMBA): an approach to analysis intended to ensure that all new regulatory proposals are designed and implemented so as to mitigate disproportionate burdens on small and micro business.

Small Business, Enterprise and Employment (SBEE) Act: in this context, the act that requires the Government to define and report on a business impact target and to appoint an independent verification body[21].

Societal NPV: the net difference between the present value of a stream of all costs and benefits to the whole of society.

Society: the whole of the UK society, including businesses, civil society organisations, the public sector and the general public.

Systemic financial risk: risk that the inability of one institution to meet its obligations when due will cause other institutions to be unable to meet their obligations when due. Such a failure may cause significant liquidity or credit problems and, as a result, could threaten the stability of confidence in markets.

Total gross impact: provides a measure of the overall regulatory churn over the course of a parliament. It is defined as the sum of all the EANDCB/BIT scores of the measures brought into force during a parliament, ignoring the direction of the impact (cost or benefit). For example, the total gross impact of a measure with a BIT score of £1 million (net costly) and one with -£1 million (net beneficial) would be £2 million.

Total net impact: represents the overall effect of all the measures brought into force during a parliament, taking into account the fact that some are net beneficial and some net costly. It is defined as the sum of all the EANDCB figures/BIT scores of the measures brought into force during the parliament, taking into account the direction of the impact (cost or benefit). For example, the total net impact of a measure with a BIT score of £1 million (net costly) and one with -£1 million (net beneficial) would be £0 million.

Wider impacts: impacts of qualifying regulatory provisions beyond those accounted for under the business impact target. These include impacts on wider society and indirect impacts on business.

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

Wider society: society beyond the parties for which impacts are accounted under the business impact target (i.e. businesses and civil society organisations).