Regulatory Policy Committee

REGULATORY OVERVIEW

June 2017 – June 2018

CONTENTS

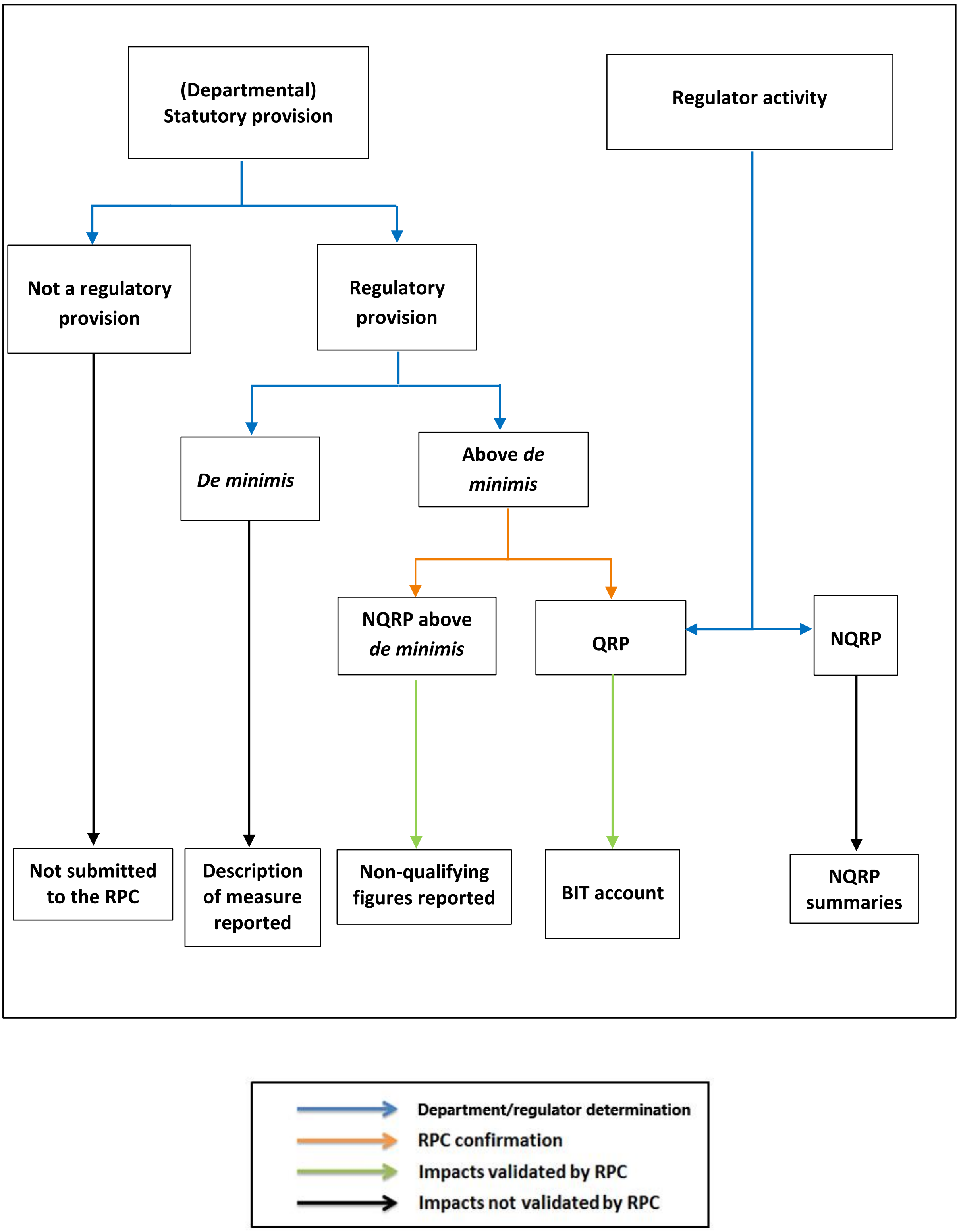
THE REGULATORY LANDSCAPE

1. Within the first year of a new parliament, the Secretary of State for Business, Energy and Industrial Strategy has a statutory duty to publish a business impact target (BIT) and to set the metric to measure the BIT. This Parliament, the BIT metric is the estimated equivalent annual net direct cost to business (EANDCB) of qualifying regulatory provisions (QRPs) implemented during the parliament.

2. The Regulatory Policy Committee (RPC) has been appointed as the independent verification body (IVB) for the BIT for the 2017-2022 parliament. 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. First, after government has determined a measure to be a regulatory provision, the RPC confirms departments' assessments of regulatory provisions as either qualifying or non-qualifying in relation to the BIT. Secondly, the RPC will validate of the EANDCB of qualifying regulatory provisions. Outside the statutory functions, the RPC aims to improve the quality of impact assessments by scrutinising departments' consideration of wider societal impacts and options, including non-regulatory options.

3. An important function outside the statutory duties is validating the EANDCB figures of significant (over +/-£5 million) departmental non-qualifying regulatory provisions. Ministers and the RPC recognise that this enhances the credibility of the business impact target report and government regulatory decisions. This function applies only to non-qualifying measures implemented by government departments. Regulators provide the RPC with summaries of their non-qualifying regulatory provisions. The RPC's non-statutory role is to highlight if any measures might, in fact, qualify for the BIT. The RPC does not validate the EANDCB of regulators' non-qualifying measures, as regulators are not required to provide this information.

Chart 1 The scope of RPC scrutiny in BIT reporting



PART 1: REGULATORY IMPACT IN THE 2017-18 BIT REPORTING PERIOD

MAJOR CHANGES IN SCOPE OF THE BUSINESS IMPACT TARGET

DE MINIMIS

4. In the current parliament, one of the major changes to the scope of the BIT, compared to the 2015-17 parliament, is the introduction of a *de minimis* threshold. Under the *de minimis* threshold, regulatory provisions that have been certified by departments or regulators as having an EANDCB of less than +/- £5 million are non-qualifying and are not required to be submitted to the RPC. In the last parliament, there were 321 qualifying regulatory provisions (QRPs) with a neutral impact (zero EANDCB), accounting for around 61 per cent of the total number of QRPs. *De minimis*, therefore, significantly reduces the number of cases scrutinised by the RPC and hence the population size for this analytical report.

CHANGES TO THE NATIONAL MINIMUM WAGE

5. For the current parliament, the Government have removed from the BIT exclusions changes to the national minimum wage (NMW) and the national living wage in line with the Low Pay Commission's recommendations. The regulations are now a QRP and count towards the BIT score.

6. Periodic changes to the NMW have been some of the largest regulatory provisions in terms of EANDCB value. This change in exclusions from the BIT means that around £252 million will now be scored against the BIT from the 2018 changes. The BIT scores now reflect the impact of these regulatory changes.

VOLUME OF MEASURES

7. The RPC validated the estimated impacts of 24 measures that came into force during the 2017-18 BIT reporting period (9 June 2017 to 20 June 2018) of which 16 were departmental measures and 8 were regulator measures. These have been reported, along with their net quantified impacts, in *Better Regulation: Government's Annual Report, 2017-18*[1] published on 19 July 2018.

[1] Report can be found at https://www.gov.uk/government/publications/better-regulation-annual-report-2017-to-2018

Table 1 The number of regulatory provisions that came into force

	Number of measures	
	Departmental measures	Regulator measures
Regulatory provisions that have come into force (above *de minimis*)	17	9
IAs/BIT assessments validated by the RPC	16[2]	16[3]
Qualifying regulatory provisions	8	9
Non-qualifying regulatory provisions	9 including: - 8 measures of EU or international origin[4]; - 1 pro-competition measure	

8. The terms of the business impact target were set out in a written ministerial statement.[5] Measures have a BIT score equal to the equivalent annual net direct cost to business (EANDCB) of the measure multiplied by five to reflect the length of a fixed-term parliament, or by the number of years the measure will be in force if fewer than five.

[2] One measure, *extension of the permission in principle consent regime: introduction of applications process*, had not been submitted to the RPC by the time of publication of the better regulation report.
[3] The Financial Conduct Authority separated one regulatory provision (*markets in financial instruments directive (MiFID) II*) into ten BIT assessments, bringing the total number of BIT assessments to 18. Two BIT assessments were not validated by the time of publication of the better regulation report. They will be included in the 2018-19 report.
[4] Two measures include elements that are considered to be both qualifying, and non-qualifying, regulatory provisions.
[5] Written ministerial statement can be found at: https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-06-20/HCWS776/

9. During the BIT reporting period, departments implemented a greater volume of significant measures that brought a net direct cost to business, than those that brought net direct benefits to business. There were five measures that brought net direct benefits to business, while there were 11 measures bringing net direct costs to business.

Chart 2 Distribution of departmental regulatory provisions above *de minimis* level

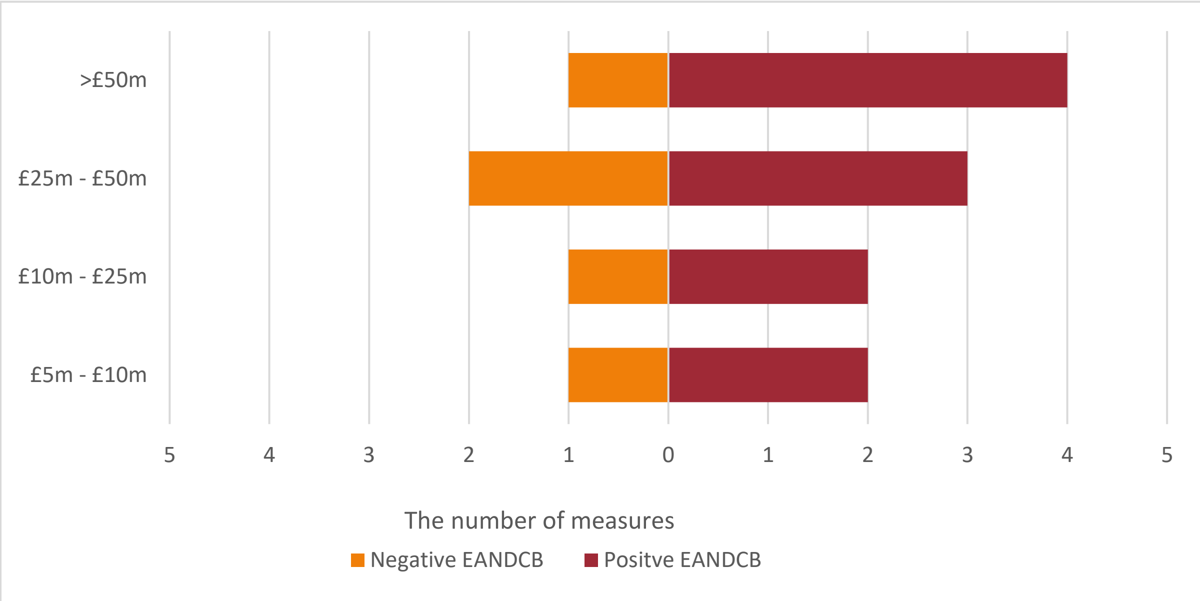
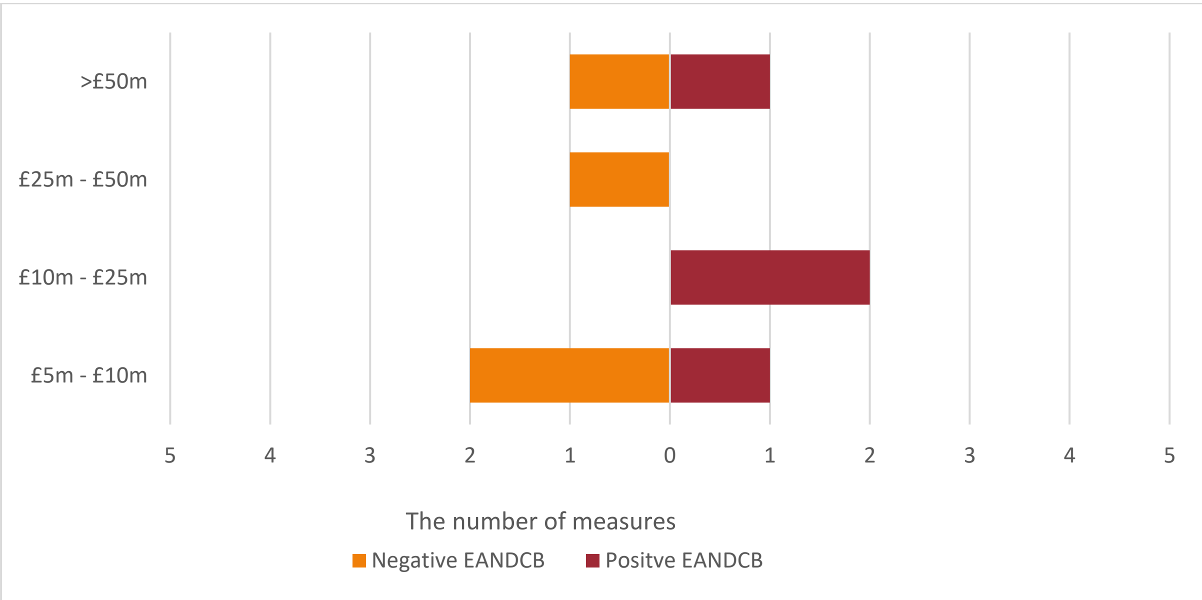


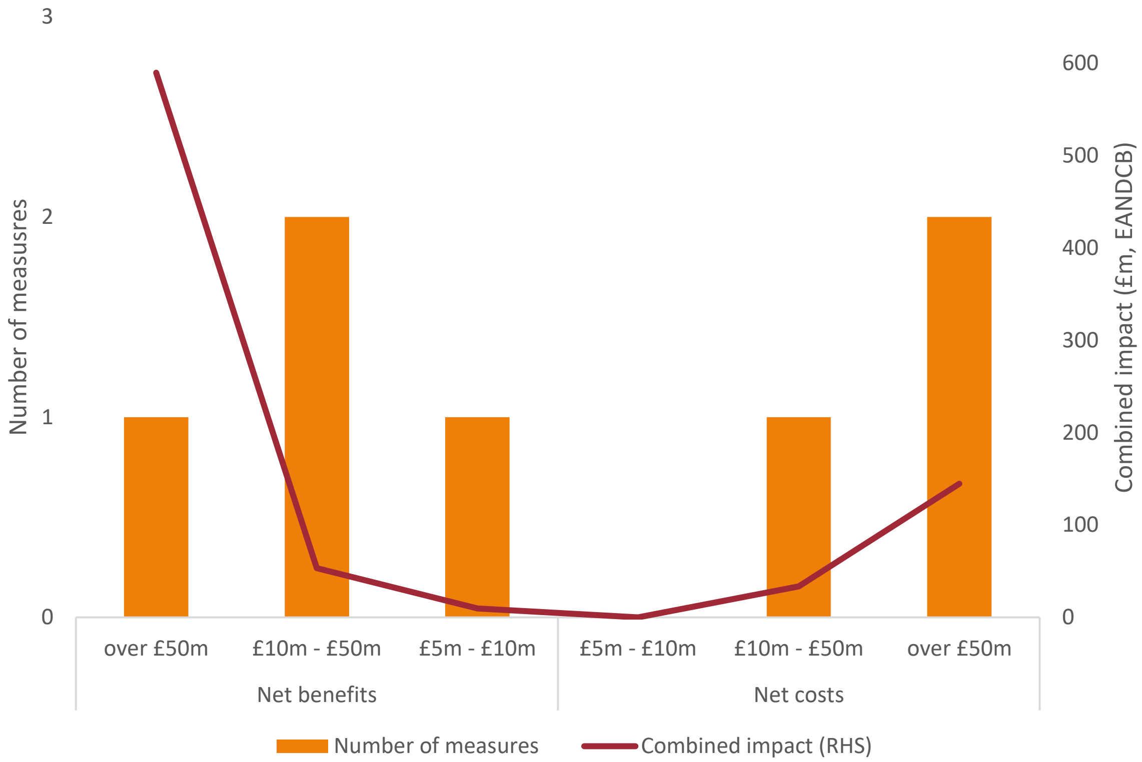
Chart 3 Distribution of regulator regulatory provisions above *de minimis* level



10. During the 2017-18 BIT reporting period, a total of eight regulator QRPs' EANDCBs were validated by the RPC. Four were net beneficial and four were net costly to business.

DISTRIBUTION OF IMPACT

Chart 4 Distribution of the impact of departmental qualifying regulatory provisions across measures



11. In the 2017-18 BIT reporting period, nearly three-quarters of the value of gross BIT scores contributed by all departments come from a single measure, *Amending the UK definition of investment advice*. A large proportion of the BIT score is still contributed by a small number of measures although measures below +/- £5 million are exempt from the BIT score.

DEPARTMENTAL QUALIFYING REGULATORY PROVISIONS

Table 2 Five largest departmental QRPs[6]

Largest departmental QRPs implemented in BIT reporting period	Department	EANDCB (£m)	BIT score (£m)
Amending the UK definition of investment advice	HM Treasury	-589.5	-2,947.3
Cash ratio deposit scheme	HM Treasury	60.4	302.0
National Minimum Wage (Amendment) Regulations 2018: increases in the national minimum wage and national living wage rates	BEIS	84.1	252.3[7]
Universal service obligation	DCMS	33.5	167.4
Simplification and expansion of the Primary Authority scheme	BEIS	-28.3	-141.6

12. The RPC confirms that the figures reported by government have all been verified by the RPC. The RPC highlights some noteworthy cases in this report. For example, as noted above, the *Amending the UK definition of investment advice* measure accounts for around three-quarters of the value of gross BIT scores contributed by all departments.

[6] Figures are different from those in the RPC opinions b ecause of rebasing to 2016 prices and 2017 base year for discounting.

[7] For the uplifting of NMW, the BIT score is EANDCB*3.

Case study 1 Significant departmental QRP

Amending the UK definition of investment advice (RPC-3656-HMT)

One of the recommendations in the Financial Advice Market Review (FAMR) was that Government should consult on amending the definition of regulated advice in the existing regulated activities order so that regulated advice is based upon a personal recommendation, in line with the EU definition set out in the markets in financial instruments directive.

FAMR recommended that this measure would give firms the confidence to provide guidance to their customers without fear of inadvertently crossing the boundary into regulated advice, and would improve consumer understanding and engagement. This measure came into effect in January 2018.

13. Another large qualifying regulatory provision was *National Minimum Wage (Amendment) Regulations 2018: increases in the national minimum wage and national living wage rates*. The regulations increased NMW rates in line with the recommendation of the Low Pay Commission (LPC). In the 2015-17 parliament, the impact of changes to NMW rates, in line with LPC recommendations, was an NQRP and was not counted towards the BIT. In the current parliament, the measure is no longer exempt from the BIT. This results in over £250 million of costs to business being scored against the BIT that would not have been under the BIT rules for the 2015-17 parliament.

Table 3 Impacts of departmental QRPs[6]

Qualifying regulatory provisions	Number of measures	EANDCB	BIT score
Net beneficial measures	4	-£652.3 million	-£3,261.3 million
Net costly measures	3	£178.0 million	£721.7 million
Not yet validated by the RPC	1	–	–
Totals	8	-£474.3 million (net impact) £830.3 million (gross impact)	-£2,539.6 million (net impact) £3,983.0 million (gross impact)

REGULATOR QUALIFYING REGULATORY PROVISIONS

Table 4 Five largest regulator QRPs[6]

Largest QRPs implemented in BIT reporting period	Regulator	BIT score (£m)
PS18/2: client money and unbreakable deposits	FCA	-516.8
Vulnerable safeguard tariff	Ofgem	191.2[8]
Retirement interest-only mortgages	FCA	-161.9
The revised payment services directive II	FCA	65.7
The markets in financial instructments directive (MiFID) II	FCA	57.0

14. Of the 18 BIT assessments submitted to the RPC, 15 came from the Financial Conduct Authority (FCA). Two other measures came from Ofgem and one measure came from the Care Quality Commission.

15. Of the 18 BIT assessments, 10 are for measures relating to the same policy: *markets in financial instruments directive (MiFID) II*.

16. The FCA measure, *PS18/2: client money and unbreakable deposits*, accounts for around half of the impacts in terms of the absolute BIT score for regulator measures.

8 For *vulnerable safeguard tariff*, BIT score is EANDCB*2

Case study 2 Significant regulator QRP

PS18/2: client money and unbreakable deposits (RPC-4254-FCA)

A rule contained in the Client Assets Sourcebook (CASS) prevented regulated firms from placing client money in bank accounts with unbreakable terms longer than 30 days. This was introduced so that firms are able to react to risks by withdrawing and relocating client money if necessary and so that client money is readily available for distribution to clients in the event of the failure of a firm. The rule now allows a firm to deposit client money in client bank accounts with unbreakable terms of between 31 and 95 days (31-95-day unbreakable deposits (UDs)) if the firm complies with certain conditions. These include requiring firms to produce a written policy setting out the risks and maximum proportion of client money held in a 31-95-day UD, managing risks, informing clients of the risks and reporting to the client money asset return.

The main benefit to business of the policy is the interest earned on client money – pre-consultation feedback indicates that the interest rate for a 30-day UD is typically zero due to the liquidity requirements on banks associated with 30-day money and that this could increase by between 25 and 35 basis points for 31-95-day UDs. The FCA, in its original analysis, assumed that firms would place 50 per cent of client money in 31-95-day UDs. After industry consultation this was changed to between 10 and 50 per cent. Based on the assumption of between 25 and 35 basis points interest on all client money held in 31-95-day UDs it estimates that the benefits to business will be between £29,733,300 and £208,133,100 per annum. For the business impact target, the FCA takes a mid-range value of £118,953,000 per annum. This change came into effect in January 2018, and the regulator has tested these estimates against actual benefits for the last six months. It finds that the benefits are broadly consistent with the estimates.

NON-QUALIFYING REGULATORY PROVISIONS

17. For departmental measures above the *de minimis* threshold, the RPC confirms which are non-qualifying and validates the costs and benefits of significant non-qualifying regulatory provisions, although the latter is not a requirement of the Small Business, Enterprise and Employment Act. As these measures do not qualify for the BIT, their impacts are validated and presented only in EANDCB terms, not BIT scores.

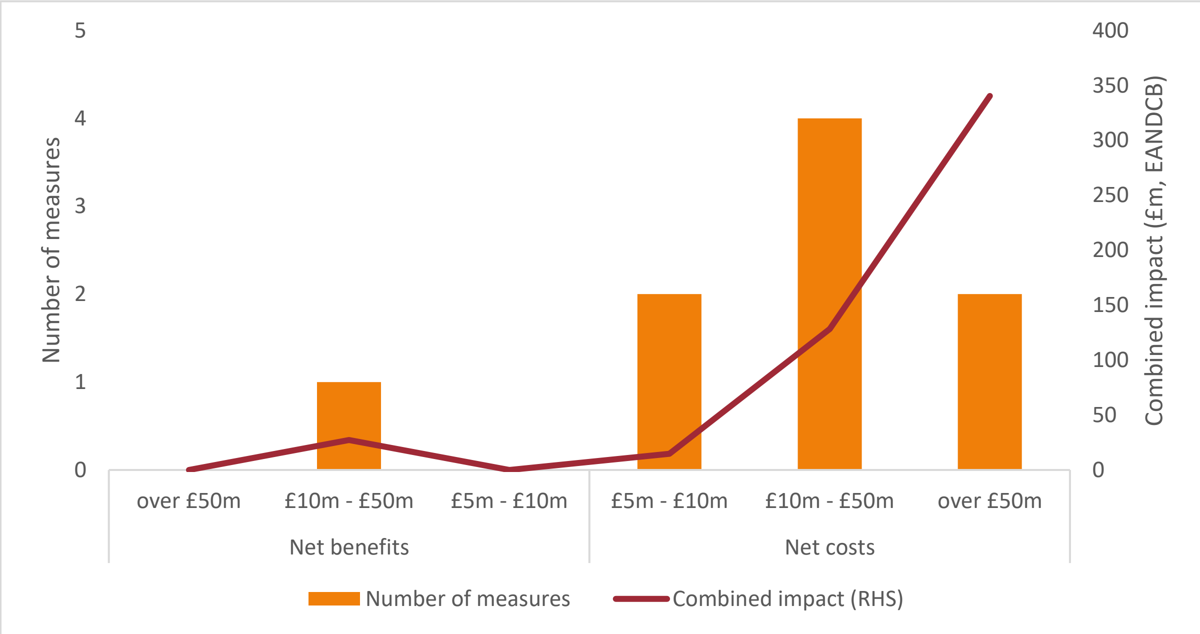
18. For regulators' activities, the RPC offers to provide assurance regarding summaries of non-qualifying regulatory provisions. This provides oversight of the high volume of regulatory provisions conducted by regulators and transparency. For departmental measures, through a scrutiny process, the RPC can identify any regulatory provisions that might have been incorrectly classified as not qualifying for the BIT, thus ensuring that any necessary BIT assessment is submitted for validation. The following tables and discussion report government departments' non-qualifying regulatory provisions above the *de minimis* threshold.

Table 5 NQRPs scrutinised by the RPC

Business impact target exclusion	Number of measures	Combined EANDCB
EU	8	£416.8 million
Pro-competition	1	£39.7 million
Total	9	£456.5 million

19. In the 2017-18 BIT reporting period, the RPC scrutinised nine IAs for NQRP measures. As seen in Table 5, the NQRPs are largely comprised of EU measures.

Chart 5 Distribution of the impact of NQRPs across measures above *de minimis*



20. Out of the nine NQRPs, around two-thirds of the gross annual impacts come from two measures, *MiFID II* and *payment services directive II*.

Table 6 Five largest non-qualifying regulatory provisions

Largest NQRP implemented in 2017-18 reporting period	**Department**	**EANDCB (£m)**
Payment services directive II	HM Treasury	177.4
Markets in financial instruments directive II	HM Treasury	163.1
Article 30 of the fourth directive to address money laundering	BEIS	42.8
Buses Bill – franchising and partnership improvements – secondary legislation	DfT	39.7
Water quality and agriculture: basic measures	DEFRA	-27.3

Case study 3 Significant NQRP

The Payment Services Regulations 2017 (RPC-3464-HMT)

The regulations transposed the requirements of the revised payment services directive (PSDII). The revised directive retains a significant proportion of the original directive (PSDI). It aims to streamline and further integrate payment services across the EU, creating a more coherent single market for payment services, enhancing competition, and improving consumer protections where the EU perceives gaps in the provisions of the original directive. The assessment focuses on the modifications from PSDI, as the remaining provisions duplicate existing regulatory provisions.

One of the significant changes is that the revised directive bans retailers from imposing any surcharges for the use of the majority of consumer debit and credit cards. This is a significant change from the prior situation (PSDI was silent on surcharges, and the Consumer Rights (Payment Surcharges) Regulations 2012 capped the cost of surcharges at the cost the merchant faced for processing the transaction); the payment services regulations use flexibility available under PSDII to extend the ban on surcharges to all consumer electronic payment methods. This represents gold plating of the minimum EU requirement (although under £5 million EANDCB and, therefore, *de minimis* and non-qualifying).

The government continue to exempt credit unions from the requirements of the directive in line with the transposition of PSDI.

The main beneficiaries of the regulations are consumers who receive increased protections and some new entrants to the payment services market. Compliance costs are likely to be incurred mainly by these new entrants, while existing payment services operators may face indirect loss of profits due to enhanced competition. Retailers will incur significant direct loss of revenues as a result of the banning of surcharges on all payment instruments, which the department argues are likely to be outweighed by indirect benefits from reduced transaction charges as a result of competition in the payment services market – in particular, a shift from relatively expensive credit and debit card payments to cheaper alternative options for online transactions as open banking comes online.

PART 2: QUALITY OF IMPACT ASSESSMENTS IN THE 2017-18 BIT REPORTING PERIOD

GOING BEYOND THE BUSINESS IMPACT TARGET TO EXAMINE THE QUALITY OF GOVERNMENT APPRAISALS DURING THE 2017-18 BIT REPORTING PERIOD

21. The second part of this report focuses on the quality of government impact assessments during the 2017-18 BIT reporting period. It draws on the RPC's scrutiny of IAs for departmental qualifying regulatory provisions implemented during the 2017-18 reporting period. It contains analysis of the quality of these IAs in relation to:
    - the impacts on wider society;
    - the impacts on small and micro businesses; and
    - the range of regulatory options and the consideration of alternative options to regulation.

22. This part of the report also covers the quality of post-implementation reviews submitted to the RPC during the reporting period.

23. The focus is on measures implemented by departments because regulators' assessments are designed purely for validating the equivalent annual net direct cost to business (EANDCB). Regulators' submissions are not expected to include societal net present values, a small and micro business assessment or consideration of alternative options.

24. The introduction of the *de minimis* threshold has reduced the quantity of impact assessments the RPC has scrutinised during the reporting period compared to the reporting periods in the last parliament. Measures that have an EANDCB less than +/- £5 million are no longer required to be submitted to the RPC for scrutiny. The RPC is, however, happy to scrutinise measures below the *de minimis* threshold submitted voluntarily by departments, and particularly encourages departments to submit these where, for example, the measures have significant wider impacts on society. Proportionate evidence gathering and analysis is still required for smaller measures to inform policy decision making.

WIDER IMPACT OF REGULATION

25. Wider impacts of new regulation in impact assessments include impacts on wider society and indirect business impacts. The RPC continues to stress the importance of quantifying the impacts of proposals on wider society and encourages government to continue improving in this area.

26. The RPC is of the view that the analysis of wider impacts, whether 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 impact assessments. The RPC acknowledges that wider impacts can be difficult or disproportionate to monetise. Under these circumstances, a qualitative discussion of the expected wider impacts may be sufficient to inform decision making.

27. The RPC understands that departments may not be able to accurately analyse certain impacts – for instance, where evidence is not available, or cannot be captured using standard appraisal methods. The RPC rating of final stage impact assessments is dependent on the analysis and evidence supporting the EANDCB and small and micro business assessment. Despite stakeholder interest in the wider impacts of government proposals, the RPC is unable to require more robust quantification of these effects through red-rating IAs on this issue. An ability to do so would be likely to drive up the standards of departmental assessment of wider impacts.

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 new version of the Treasury's Green Book, uses the term "net present social value".

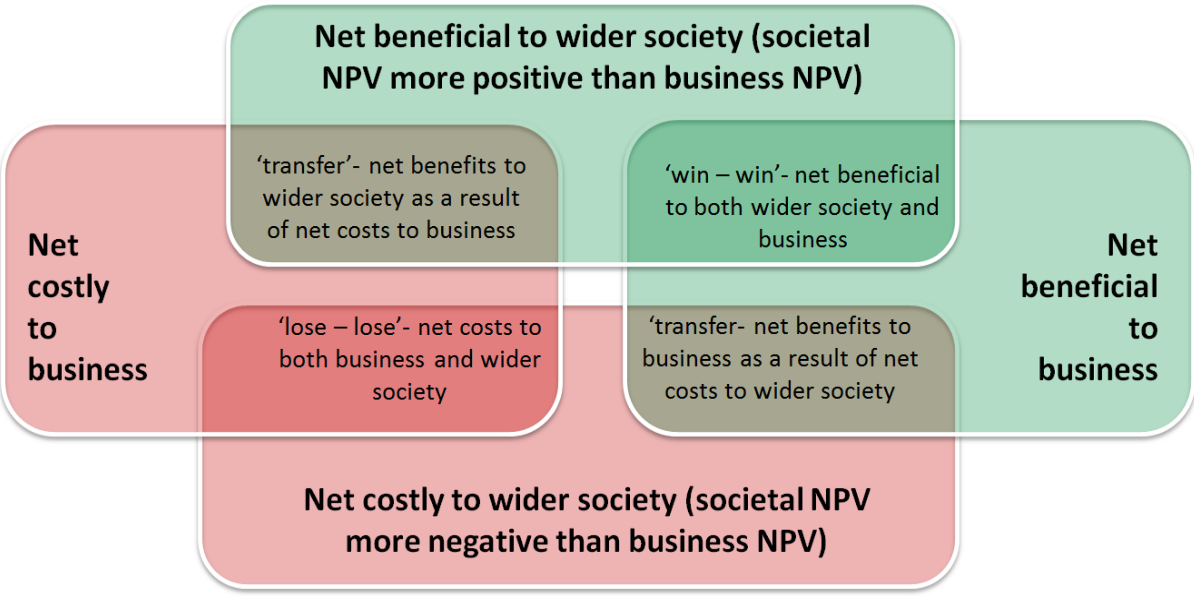
Business NPV: this can include indirect impacts on business but this has typically been applied in IAs as the present value of direct benefits to business less the present value of direct costs to business, over the entire appraisal period.

Equivalent annual net direct cost to business (EANDCB): the annualised value of the present value of net direct costs to business.

MEASURES INCLUDING A QUANTIFICATION OF WIDER IMPACTS

28. Measures that include a quantified assessment of wider effects typically fall into four broad categories, based on the comparison between business and societal impacts:

Chart 6 The relationship between societal, and business, NPV



29. During the 2017-18 reporting period, one of seven measures quantified an indirect benefit to business and four measures quantified a wider social benefit. If a measure is assessed as having net benefits to business and other wider net benefits, then society and business are both 'winners'. One measure in this reporting period is classified as 'win-win' (where net beneficial to both business and non-business).

30. 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.

31. Two measures assessed quantified indirect costs to business – an overview of one of the cases is provided in case study 4 below.

Case study 4 Monetised indirect impacts to business

Amendment to the National Minimum Wage Regulations 2018 (RPC-4201-BEIS)

The proposal increased the national living wage (for those aged 25 and over), and all of the national minimum wage rates (ages 21-24, 18-20, 16-17 and the apprentice rate) in line with recommendations of the Low Pay Commission. The department explained that some businesses are likely to also raise wages for employees earning above the new minimum wage rates to maintain wage differentials. Since this was not a requirement of the regulations, this was an indirect cost to business and was estimated to be more than £300 million over the appraisal period. As with the direct increase in pay for workers being paid below the incoming minimum wage rates, the department explained this a transfer from employers, predominately to workers, with a neutral net impact.

It is worth noting that the transfers cancel out so that there was only a very small negative societal NPV, reflecting familiarisation costs to business. The monetised NPV does not take account of the possible long-term benefits, such as improved productivity, as referred to in the IA.

32. In cases where a measure is reported as having a negative societal NPV, this could mean that:
    a. a complete analysis is not being used to inform ministerial decision-making;
    b. there are significant difficulties for departments in monetising the wider benefits of their proposals;
    c. there are measures that will result in significant impacts that cannot be quantified; and/or
    d. the Government are prioritising benefits to certain parts of society, even if this could result in measures that are net costly to society overall.

33. Where negative NPVs might be at least 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 an evidence-based approach to prioritisation between different ways of achieving those objectives.

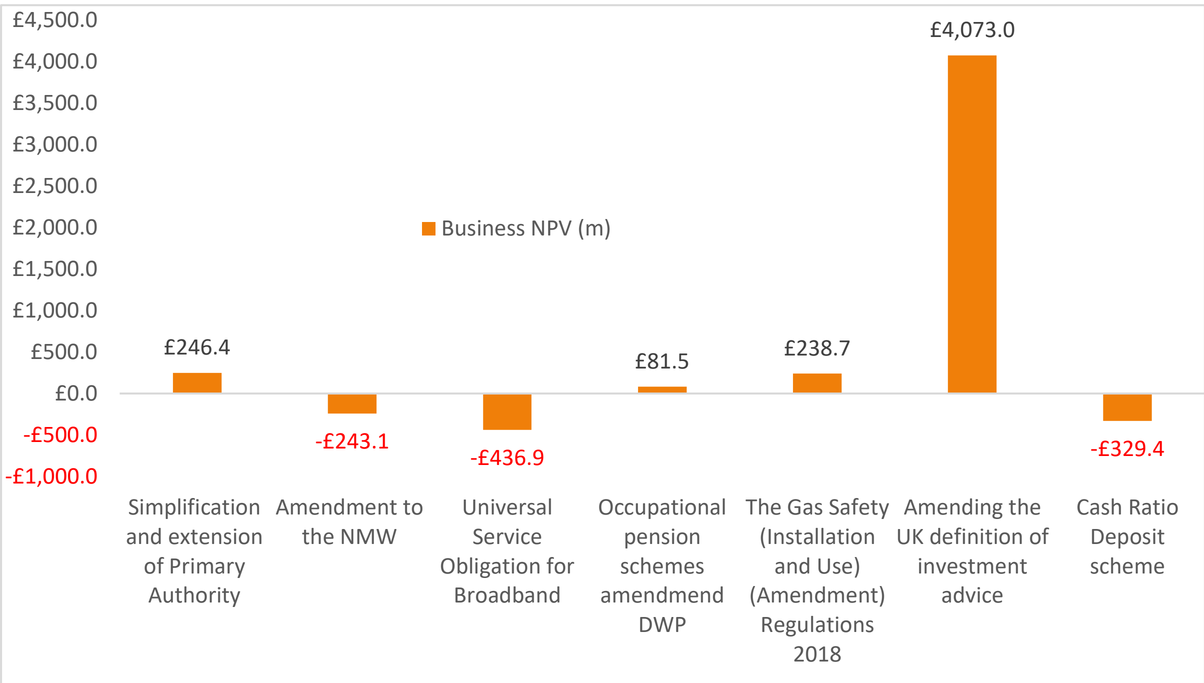
MEASURES WITHOUT A QUANTIFICATION OF WIDER IMPACTS

34. Where some measures have not quantified wider societal impacts, this does not necessarily mean the measure will not have an impact on wider society, or that those impacts have not been assessed at some level. All IAs scrutinised during the 2017-18 reporting period included qualitative descriptions to help inform potential wider impacts. The RPC finds a qualitative description of these impacts perfectly acceptable where it is truly disproportionate to monetise the impacts.

35. The RPC recognises the need for government to use analytical resources effectively. The RPC will generally, therefore, expect monetisation of wider impacts to be focussed on the more-significant measures. The RPC recognises that monetisation might still be challenging for some of these measures.

36. The RPC strongly believes that transparent presentation of the costs and benefits to society of regulatory proposals should play an important part in explaining the expected benefits and costs of the Government's regulatory programme and the rationale for intervention. Robust assessment of wider impacts helps ensure that IAs provide a better evidence base to support decision making. For such evidence to be as credible as possible, the estimates or analysis would benefit from independent scrutiny, ideally with the RPC able to include the robustness of the assessment of wider impacts in the factors influencing its rating of IAs.

<u>Chart 7 Assessment of measures by size of business NPV (2017-18)</u>



37. With the introduction of *de minimis*, the RPC expects to scrutinise IAs of measures that have relatively large business NPVs. Chart 7 shows the seven validated departmental QRPs in the 2017-18 BIT reporting period, with three measures having large negative business NPVs and four measures with business NPV of over £80 million. The RPC understands that larger measures could generate impacts that are more difficult to capture quantitatively – for instance, where they affect large parts of society. Nevertheless, departments should aim to quantify wider impacts and, where they consider it is not proportionate to do so, the demonstration of this should take account of the expected scale of the impact of the measure. At least a qualitative assessment of the wider impacts will generally be expected for all measures submitted to the RPC.

SMALL AND MICRO BUSINESS ASSESSMENTS

38. The small and micro business assessment (SaMBA) is intended to assess the impact of proposals on small and micro businesses, with a view to informing decisions on whether to exempt them from the measure, or whether and how to mitigate burdens on them if an exemption is not applied. A key element of the SaMBA is to address whether costs fall disproportionately on small or micro businesses. This could be sectors where, for example, they comprise a relatively high proportion of business affected and/or where they might have to buy in external assistance to ensure compliance when larger businesses can do this in-house. If small businesses are not excluded from the scope of the regulation, the IA must explain why this is the case and there should be consideration of mitigation measures, including partial mitigation if full mitigation is not appropriate.

SAMBA EXEMPTIONS AND DEREGULATORY MEASURES

39. Of the seven departmental QRP IAs, none exempted small businesses specifically.[9] The majority of these measures, however, did not impose any costs on small

[9] A SaMBA is not required for IAs on EU measures. This section, therefore, focuses on QRP.

businesses by virtue of their scope, or were deregulatory and, therefore, expected to be beneficial to business. Three of the measures were aimed specifically at assisting small businesses rather than imposing new costs on them. Even where a SaMBA is not required, it is good practice to undertake a proportionate assessment of the impacts on small businesses, for example to illustrate the benefits to small businesses as well as the costs.

BEST PRACTICE

40. The *buses franchising* NQRP IA from DfT presents a good example of a SaMBA, including valuable additional analysis. The IA explains clearly that small businesses running transport services could not be exempt, as an exemption would not allow the policy to achieve its objective for bus consumers. The preferred option is, however, explicit in requiring local authorities to consider, and then explain, how they will include small businesses in the bidding process for local bus franchises.

POST-IMPLEMENTATION REVIEW (PIR)

41. The RPC received 22 PIRs within the 2017-18 reporting period.

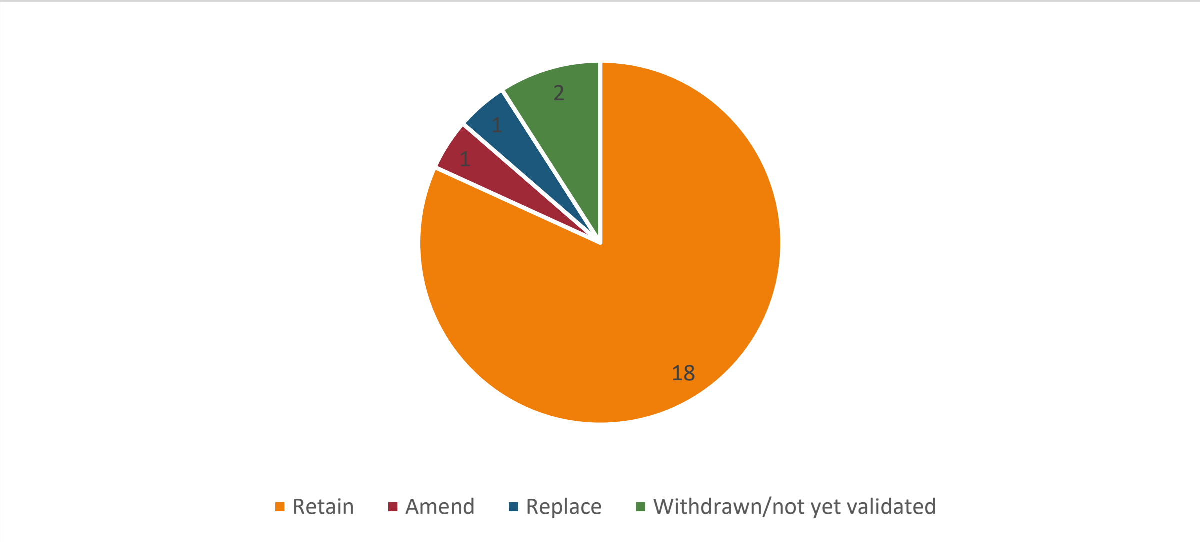
42. Of the 22 PIRs received by the RPC, 19 received a fit-for-purpose rating on first submission for RPC scrutiny; one received a fit-for-purpose rating on submission of a revised IA; one was withdrawn by the department; and an opinion has not yet been issued on the remaining case.

43. Seven PIRs were from DfT; five from BEIS; and three from DIT. All of the PIRs from DIT related to export control. The remaining PIRs are from a range of departments such as Cabinet Office, DEFRA and DWP.

44. PIRs offer an excellent opportunity to improve the quality of regulation, and the appropriate analysis used to inform regulatory decision-making. For reviews to be most effective, however, review plans need to be developed in advance of the implementation of a proposal. The RPC will increasingly look to see greater evidence of pro-active planning for evaluation and reviews in impact assessments.

45. The RPC considers that an impact assessment's fitness for purpose should depend on all key aspects of the analysis set out in the assessment, and this could include 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. The RPC will consider requesting the right to rate monitoring and evaluation plans explicitly once this experience has been developed.

Chart 8 Distribution of PIR recommendations



46. Of the 20 PIRs that the RPC has validated, 18 recommended retention of the regulations. Only 2 PIRs recommended amending or replacing the regulations.

Case study 5 A significant PIR

Post-implementation review of the Merchant Shipping (Passenger Ships on Domestic Voyages Regulations) 2000 (RPC-4156-DfT)

(recommendation: replace legislation)

The PIR evaluates the Merchant Shipping (Passenger Ships on Domestic Voyages Regulations) 2000. The policy transposed an EU directive, introducing uniform safety standards to reduce the risk of serious incidents occurring.

In the PIR, the department discovered that there have been unintended consequences in respect of applicable passenger ships in two UK areas: the Isles of Scilly and the Western Isles of Scotland. In both cases, the configuration of islands provides a sheltered area of water where the wave heights are normally considerably less than those within the directive's definition. Yet, because of the distance from land necessarily involved with these voyages, the directive requires these ships to carry amounts, and types, of safety equipment that are not matched by the risks normally encountered in these sheltered areas.

The PIR led the department to propose amendment of the legislation. During negotiations on an impending new version of the directive (expected to be adopted in 2018), the UK argued consistently for the unnecessary and significant wave height criteria to be removed from EU sea area definitions, but without success. As a result of these discussions, however, Greece, with its many ships undertaking voyages between islands, has been permitted to designate "sea routes" rather than "sea areas". Although this does not benefit the UK at this time, it may provide an opening for further discussion at some future stage.

ALTERNATIVE OPTIONS

47. The case for government intervention in a given policy area, when made, does not automatically translate into a case for formal regulatory intervention. Even when government action is justified, it doesn't necessarily require regulation through legislation. There may be non-regulatory options that would have less impact on business, while delivering many of the wider societal benefits.

48. It is important that departments do not choose, or appear to choose, formal regulation without considering non-regulatory alternative options. It is also important that this consideration and decision making is explained in IAs. This demonstrates that a process of considering and evaluating options has been followed.

49. Among the IAs for seven departmental QRP measures validated, four suggest formal regulation without explicit demonstration of considering non-regulatory interventions. The RPC, however, acknowledges that non-regulatory options are not relevant for some proposals. In the case of *Primary Authority simplification*, the policy aims to simplify some of the eligibility criteria for the Primary Authority scheme. This is effectively a deregulatory measure, for which non-regulatory options are not particularly relevant. Although in none of the seven IAs are non-regulatory options quantified or analysed in the same way as different regulatory options, the explanations for differing types of intervention are clearly spelt out.

USE OF NPV AND OPTIONS

50. Two of the IAs compare different levels of regulatory options with different NPVs and business NPVs. The IA on the *universal service obligation* presents a number of costed regulatory options, relating to different levels of broadband, degrees of speed and download guarantees. In addition, two non-regulatory options were considered and the reasons for rejecting them explained. The IA recommends the option with the third-highest monetised NPV, partly because the higher two were considered to have disproportionate costs to business. In another case, DfT presents four possible levels of intervention for its *bus franchising* IA, which range from lighter franchising aspects to a preferred option of a more-legislative framework. The IA recommended the option with the highest NPV.

BEST PRACTICE

51. In the *cash ratio deposit scheme* IA regarding the funding of the Bank of England’s regulatory activities, there was a succinct, but clear, reference to other central banks’ funding schemes and a fee-based model is 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

52. The Government appointed the RPC as the independent verification body for the business impact target for the parliament commencing in June 2017. The RPC will continue to help ensure that ministerial decisions on regulation are made on the best possible, proportionate evidence base with regards to their impacts – intended or otherwise. In addition, the RPC will continue to highlight the value of independent scrutiny to encourage departments to submit IAs voluntarily for scrutiny.

PROPORTIONALITY GUIDANCE

53. Better regulation framework guidance is that departments should ensure the resource invested in undertaking an IA is proportionate. The RPC strives to undertake continuous improvement, including, but not limited to, feedback from stakeholders. The RPC recognises the need to prioritise analytical resources to focus on the most important and impactful measures at times of high demand and limited resources. For this reason, the RPC publishes proportionality guidance for departments to indicate the level of analysis expected.

54. Since the RPC published its guidance on proportionality in March 2017, there have been some significant changes. In particular, the introduction of *de minimis* now means that any measures with an equivalent annual net direct cost to business below a threshold of +/- £5 million do not need to be submitted to the RPC for scrutiny. The proportionality guidance needs to reflect changes to the framework. The RPC will also take account of feedback from departments and review its guidance against the structure and the content of the recently-published revised HM Treasury's Green Book[10]. The RPC is working co-operatively with the Better Regulation Executive (BRE) and other stakeholders to update its proportionality guidance.

[10] The Green Book can be found at https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-governent

SCRUTINY AND ACCOUNTING OF EU EXIT-RELATED REGULATORY CHANGE

55. The RPC looks forward to playing a role in scrutinising analysis of the impacts associated with the UK's exit from the EU, aligning with the Department for Exiting the European Union (DExEU) guidance. The RPC anticipates significantly-increased casework related to significant EU exit measures above the *de minimis* threshold. The RPC has been working with DExEU and BRE on creating a framework for scrutiny of measures related to EU exit. The aim of the framework is to 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.

56. The RPC aims to ensure that businesses, civil society organisations, parliamentarians and the public have confidence in the quality of evidence and analysis underpinning significant regulation, including that relating to EU exit.