

Options

Summary and key points

This document aims to provide a guide to the consideration of options, including alternatives to regulations, in impact assessments (IAs). Options are fundamental to assessing the impacts of regulatory proposals. Having an inappropriate range of options is highly likely to result in an IA not being fit for purpose at consultation stage.

The document first summarises existing better regulation and Treasury (Green Book and business case) guidance on options, drawing out the latter's relevance to regulatory measures. We reference Treasury guidance on constructing the 'long-list' of options (using a 'strategic options framework filter') and how to filter down to a short-list (using, for example, 'critical success factors'). The Green Book emphasises engagement with stakeholders or representative organisations from the outset of an appraisal, i.e. at long-list stage or even earlier. It also notes that the short-list should normally consist of at least four options: the preferred option, a 'Business as Usual' benchmark; a viable "do-minimum" option that meets minimum core requirements to achieve the objectives identified; and at least one viable alternative option.

The document then provides additional information on alternatives to regulation, incorporating material produced by BRE's Whitehall Engagement and Alternatives Team (WEAT). This covers categories of alternatives to regulation, such as self-regulation or co-regulation, examples of each and assessment criteria that could be applied to these options.

The document uses a review of cases submitted to the RPC and comments in the opinion on departments' consideration of options, drawing out key themes and providing new case study examples. These themes include linking the options to the problem being addressed; explaining and justifying which option is preferred and the need for a wide consideration of options, including non-regulatory options. Examples are presented from a number of departments and policy areas, including health, transport and the labour market.

Introduction

This guidance updates the December 2016 case histories guidance on the consideration of options, including alternatives to regulation, in (regulatory) impact assessments (IAs). The guidance is structured in the order of four main additions to the guidance:

- 1) **Better regulation framework interim guidance:** Existing guidance can already be found from the Better Regulation Executive;
- 2) **Treasury Green Book and business case guidance on options:** Incorporation of guidance on options from the 2018 Treasury Green Book and discussion of how the principles also generally apply to regulatory IAs;
- 3) **Additional information on alternatives to regulation:** How to assess them, including incorporating material produced previously by BRE's Whitehall Engagement and Alternatives Team (WEAT); and
- 4) **Issues raised during RPC scrutiny of departments' consideration of options:** Using a review of more recent RPC opinions and their comments on departments' consideration of options, drawing out key themes and providing new case study examples. These themes include:
 - Linking the options to the problem being addressed;
 - Explaining and justifying which option is preferred (especially where it does not have the highest NPV);
 - The need for a wide consideration of options;
 - Inclusion and assessment of non-regulatory options;
 - Measures that are part of a strategic policy and addressing interactions with other relevant interventions; and
 - Where wider options have been considered, ensuring this is made clear and summarised sufficiently in the IA and demonstrating the use of consultation evidence.

There are also some more specific areas covered, including assumptions around uptake of voluntary options and use of international evidence.

Finally, in the annex we provide historical cases where there was a good analysis of non-regulatory options.

1) **Better regulation framework interim guidance**

The Better regulation framework interim guidance (March 2020) refers to appraisal of the options to deliver the Government's policy intention being the second stage (after identifying the rationale for government intervention) of policy development. The guidance states (page 10): "*An options appraisal should consider a range of policy options. These should include alternatives to statutory regulation, such as industry-led approaches, as a means of delivering the policy outcome. Ask your BRU and/or BRE for advice and guidance.*"

Insufficient consideration or assessment of options is a common reason for a consultation stage IA to not be fit-for-purpose. The guidance states (page 15): "*at pre-consultation stage a 'green opinion' is an independent view that the analysis and consideration of options is fit for purpose and sufficient to inform an effective consultation.*"

2) **Treasury Green Book guidance on options**

The 2018 Treasury Green Book includes new guidance on generating a ‘long-list’ of possible options, before narrowing down to a smaller number of options for full appraisal¹. The focus of the guidance is new public spending, but similar principles apply for interventions without a business case, for example **regulatory options** or policy options that lead to changes in the use of existing resources. The approach to long-list analysis should be proportionate to an intervention’s likely costs, benefits and risks to society and the public sector.

The Green Book emphasises that it is useful to consult or engage with stakeholders or representative organisations from the outset of an appraisal. This includes at the long-list stage, where the structured approach recommended by the Green Book can support engagement with stakeholders. The Treasury notes that use of workshops can add vital information at this stage and that it may be necessary or appropriate to engage experts in certain fields.

In this Section, we summarise:

- constructing the long-list;
- appraising the long-list options and filtering down to a short-list; and
- concluding a preferred solution.

Constructing the long-list

The Green Book states that when constructing the long-list, options should be built up by considering the choices summarised in the box below.

¹ Summarised in Chapter 4 ‘Generating Options and Long list Appraisal’, with a more detailed ‘options framework’ set out at annex 1 to the Green Book.

2018 Treasury Green Book: Constructing the long-list options: choices in the 'strategic options framework filter'

Scope: what is to be delivered and where, including geographical coverage, recipient population, service quality, time limits and any other relevant factors.

Solution: how the outcome is to be delivered, considering available technologies and best practice, and including:

- The creation of new markets;
- The introduction of new or revised **regulatory arrangements**;
- Use of “nudge techniques” based on insights from behavioural psychology and economics;
- Grants and subsidies;
- Public information initiatives; and
- New or changed service provision.

Delivery: explores which organisation(s) is best placed to deliver, for example:

- Direct public sector provision;
- Public Private Partnerships (PPP);
- Not-for-profit private providers; and
- Private sector providers.

Implementation: explores when the proposal is to be delivered, for example:

- Will it be an initial pilot, a phased implementation or a big bang approach?
- Is it a roll out dependent on factors such as geography, age, expiry of existing arrangements, or some other factor?
- Should a range of options for roll-out be considered and tested?

Funding:

- What is an indicative cost and how will it be funded? This may interact with the delivery option.

Source: HMT Green Book, pages 15-16.

Many of the points above are simply common sense principles that will apply to regulatory IAs. More specifically, and as seen in the box above, regulation is one possible 'solution', but alternatives to regulation should be considered (such as the 'nudge' techniques or public information initiatives referred to). 'Scope' is also important for regulation, in particular whether small and micro-businesses are covered. 'Funding' is mainly about the cost of the proposal to the public sector and exploration of alternative funding models, including various forms of partnership. These should be considered alongside 'delivery' options. For regulatory IAs, one could see this in terms of regulatory costs on business.

Treasury business case guidance for programmes (and projects) includes further and more detailed guidance on the process of arriving at a long-list of options. Much of this

is potentially useful for regulatory options. For example, 'Action 7' (pages 26-34) ² includes the following:

When identifying options for the programme, consider:

- *researching existing reports and consulting widely with practitioners and experts to gather the set of data and information relevant to the objectives and scope of the problem;*
- *analysing the data to understand significant dependencies, priorities, incentives and other drivers;*
- *identifying from the research, best practice solutions, including international examples, if appropriate;*
- *the full range of issues likely to affect the spending objectives;*
- *the full range of policy instruments or projects that may be used to meet the programme's objectives; this may span different sorts or scales of intervention; regulatory (or deregulatory) solutions may be compared with self-regulatory, spending or tax options;*
- *radical options. These may not become part of the formal appraisal but can be helpful to test the parameters of feasible solutions. Well-run brainstorming sessions can help to generate such ideas;*
- *undertaking a feasibility study, and*
- *use of the Options Framework (see box above) in accordance with the HM Treasury Green Book.*

It recommends that options should be generated through facilitated workshops comprising of senior managers and stakeholders (business input), customers (user input) and specialists (technical input) amongst other interested parties (as required).

It is often important that the 'long-list' includes a consideration of what other countries are doing in the relevant policy area, including whether any approaches by these countries might be options for the UK and whether there are international standards with which the UK might wish to consider aligning or not aligning.

Appraising the long-list options and filtering down to a short-list

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749085/Programme_Business_Case_2018.pdf. There is very similar guidance for projects at the same HMT webpage.

The Green Book states that a long-list of options should be constructed and assessed to develop a short-list. The Green Book states that *Critical Success Factors* and *constraints and dependencies* should be used to appraise long-list options and filter down to a short-list, as summarised below.

Critical Success Factors (CSFs)

- **Strategic fit** – how well does the option meet agreed objectives and fit with wider organisational or public-sector objectives?
- **Potential value for money** – is the option likely to deliver social value in terms of costs, benefits and risks?
- **Supplier capacity or capability** – if procurement is required, are there suppliers available to deliver the required services?
- **Potential affordability** – how will an option be financed and is it affordable within existing budgets?
- **Potential achievability** – how likely is it that an option can be delivered given organisational capability and skills available?

Constraints and dependencies

Other factors that may be relevant to assess the long-list and affect which options are feasible:

- **Constraints** such as legality and ethics;
- **Dependencies** such as infrastructure;
- **Unmonetisable and unquantifiable factors** which should be considered and it may be necessary to use a structured technique such as *Multi-Criteria Decision Analysis*; and
- **Collateral effects and unintended consequences** which may occur should be considered and potentially fed into the short-list analysis stage.

Source: HMT Green Book, page 18.

Concluding a preferred option

The Green Book notes that the **short-list** should include **the preferred option, a ‘Business as Usual’ benchmark; a viable “do-minimum” option that meets minimum core requirements to achieve the objectives identified; and at least one viable alternative option.**

Chapter 5 of the Green Book provides guidance on how to undertake short-list options appraisal. (This is mainly about undertaking assessment of the costs and benefits of each option and is outside the scope of this case histories guidance document).

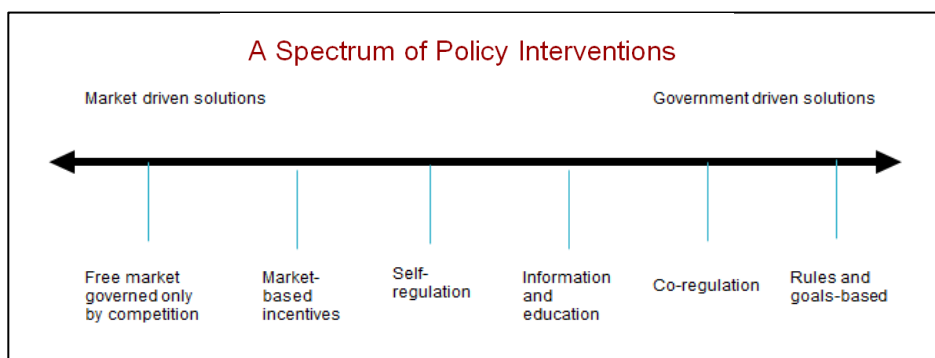
3) Assessment of non-regulatory alternatives to regulation

The Government’s Principles of Regulation state that “*in many instances alternatives to regulation are more effective, such as simplifying existing regulation, giving clearer information to consumers or developing voluntary codes of practice*”. There is an

expectation, therefore, (which is made clear in the IA template) that departments consider non-regulatory options (also commonly known as “alternatives to regulation”) and analyse their viability and likely cost effectiveness.

The figure below shows a range of interventions on a scale between market and government driven solutions, while describes the extent of the role for government.

Figure 1: A spectrum of policy interventions



Source: Better Regulation Executive.

This illustration is consistent with the Green Book guidance on ‘solutions’ outlined above. The table below provides some categories and examples of alternatives to regulation.

Table 1: Categories and examples of alternatives to regulation

Type of alternative	Description	Examples
Self-regulation	Industry sets own standards; unilateral codes of conduct	<ul style="list-style-type: none"> British Egg Council Industry Council ‘lion’ mark Retailers adopting a returns policy that is more generous than the statutory minimum.
Co-regulation	Government may set top level regulatory requirements and leave the market to define how these general principles should be met	<ul style="list-style-type: none"> Approved Codes of Practice, such as the HSE’s code on Commercial diving projects offshore Trade association codes (approved by the Office of Fair Trading), for example the car repair and servicing industry Standards and accreditation such as the international standard (ISO 14001) that specifies a process for controlling and improving an organisation’s environmental performance.
Information & Guidance	Information and guidance can be used to empower consumers to make their own decisions	<ul style="list-style-type: none"> Government food hygiene rating stickers on restaurant doors.
Market Based Instruments	Economic incentives can be used to encourage business and citizens to change their behaviour	<ul style="list-style-type: none"> 5p plastic bag charge

BRE’s Whitehall Engagement and Alternatives Team (WEAT) are also available to provide advice. The following table on assessment criteria, drawn from previous WEAT work on an ‘alternative to regulation tool’, might be particularly helpful.

It should be noted that there can be different forms of intervention within these categories, for example co-regulation might not involve any new government regulation and be more about engagement, such as monitoring. Information and guidance are not just about empowering consumers but can also, for example, be about government brokerage of information.

Table 2: Assessment criteria for alternatives to regulation

Step 1: Feasibility	Relevant enabling factors include:
<ul style="list-style-type: none"> • Does industry have a collective interest to solve the problem? • Would the likely industry solution correspond to the best interests of citizens and consumers? 	<ul style="list-style-type: none"> • Economic benefits to industry • Reputation sensitivity of industry • Convergence public/ private interests • Extent to which industry culture supports policy objectives
Step 2: Suitability/Practicality	Relevant enabling factors include:
<ul style="list-style-type: none"> • Does the industry have the capacity to solve the problem? • Can the industry structure support an alternative solution? 	<ul style="list-style-type: none"> • Impact of regulatory failure • Ability of industry to assume regulatory tasks • Intensity of intervention required to solve problem • Market fragmentation
Step 3: Effectiveness	Relevant enabling factors include:
<ul style="list-style-type: none"> • Are there incentives for businesses to not participate in the scheme? • Are there incentives for businesses to free-ride or cheat on the scheme? • Are there appropriate mechanisms to ensure scheme compliance? 	<ul style="list-style-type: none"> • System for monitoring and sanctions • Intervention capacity of government actors • Degree of competition • Market fragmentation

4) Issues raised during RPC scrutiny of departments' consideration of options

At consultation stage, departments should explain the process of how they have arrived at their options and present a wide range of options in the IA. At final stage, the IA should explain the rationale for the preferred option and why the other options (not just the do nothing) have been rejected, especially if the RPC did not see an IA at consultation stage.

In this section, we highlight the following issues that have been raised during RPC reviews of options:

- Linking the options to the problem being addressed;
- Explaining and justifying which option is preferred;
- The need for a wide consideration of options;
- Inclusion and assessment of non-regulatory options;
- Uptake of voluntary options;
- Measures that are part of a strategic policy and interactions with other relevant interventions;
- Where wider options have been considered, ensuring this is made clear and summarised sufficiently in the IA and demonstrate use of consultation evidence;

- Change of option preference following consultation; and
- Non-regulatory options: Use of international evidence.

Linking the options to the problem being addressed

Once departments have explained their rationale for intervention (covered in separate case histories guidance), the next step will be to set out an appropriate range of options, informed by the Green Book and BRE guidance outlined above. This should explain whether and how each of the options presented will provide a partial or complete solution to the problem(s) identified. This should involve discussing and comparing the twin priorities of achieving the objectives of the intervention, providing a solution to the problem, but also doing so in a way, where possible, that minimises unnecessary burdens on business and on voluntary and community bodies. The RPC is looking for departments to explain clearly how the proposed intervention will address the problem identified. In the example below, how the proposed intervention would address the policy objective was clarified following initial RPC scrutiny.

Gender pay gap (Consultation Stage) (RPC15-GEO-2384)

The proposal was to consult on ways of introducing a requirement for businesses with more than 250 employees to report on their 'gender pay gap'. The Department, in its initial submission, explained that the gender pay gap can be explained by a variety of factors, has reduced over time and is zero/negative for people below the age of 39. The initial submission did not explain sufficiently why introducing a requirement to report on pay by gender could lead to an increase in the speed of the reduction of any pay gap. In a later submission, the Department explained that the intrinsic aim of the policy was to make businesses reflect on internal factors that might contribute towards a pay gap. The reporting requirement was mainly a tool to ensure that businesses are actually undergoing such a review of their internal practices.

Explaining and justifying which option is preferred

The RPC does not comment on minister's policy choices, but will assess the quality of the evidence and analysis underpinning this choice. The RPC looks for a clear statement and justification in the IA on which of the options discussed are being taken forward and/or preferred. In most instances, the preferred option is likely to be the one with the highest net present value (NPV), i.e. the one estimated to be the most net beneficial, or least net costly, to society. The RPC also recognises that there will be cases where departments can justify recommending a policy option that does not necessarily have the highest monetised NPV. For example, this could be the case when the existence and likely scale of non-monetised benefits can be clearly demonstrated.

There might be rare instances where a preferred option is not the option with the highest net benefit, even when non-monetised impacts are taken into account, because Ministers might prefer an option, for example, on the grounds that it meets a perceived ‘need for action’ by the public³. The reasons for an option being preferred should always be presented transparently in an IA. In the example below, the Department helpfully directly addressed why an option that did not have the highest NPV was preferred.

Mandating Calorie Labelling of Food and Drink in Out-of- Home Settings (consultation stage IA; DHSC)

The Department’s preferred option at consultation stage was to mandate that a calorie labelling scheme is adopted by businesses but exempting small, micro and medium businesses. The Department helpfully acknowledges that their preferred option yields a lower NPV than other options considered, but states that it has chosen this option in order to minimise costs incurred by businesses, as well as to ensure the burden of introducing calorie labelling does not disproportionately affect small, micro and medium businesses.

Small Fishing Vessel Code 2020 (consultation stage IA; DfT-4429)

The preferred option is to introduce a mandatory set of safety standards for small fishing vessels. This option had a significantly negative NPV, with costs estimated to exceed benefits by a ratio of around 3.5:1. Following RPC comments around the potential use of the HSE’s tolerability of risk framework, the revised IA included a justification for the preferred option based upon achieving a tolerable level of risk for those at sea.

The need for a wide consideration of options

At consultation stage, the focus of the impact assessment should be to present a suitable set of options, including non-regulatory alternatives, and to identify and explain costs and benefits of all options in a comparable way. At final stage, the focus should be on proportionately monetising the impacts, to support any recommendation for a regulatory approach. Where non-regulatory approaches are currently in place and expected to continue, their effects should be fully assessed as part of the ‘do nothing’ option.

Downstream Oil Supply Resilience Bill (final stage IA; BEIS-3792)

³ Since regulation does not usually involve the direct use of public money, there is no equivalent to the spending decision ‘ministerial direction’, whereby ministers effectively instruct officials to implement an option that is not assessed as best value for money.

The proposal aimed to improve the resilience of the downstream fuel supply market, for example by requesting additional information from the downstream oil sector and being able to direct individual companies in extreme circumstances.

The IA helpfully set out alternative options considered, including a voluntary approach, and why they have been rejected. The RPC opinion commented that the IA would be strengthened by discussing further potential options to ensure security of supply. These options could include: maintaining an emergency reserve (for example, as coal-based power stations are required to); rationing; buying ahead (with forward market prices being an indicator of potential supply shortages) and improving the supply routes (so that markets can react more quickly to potential shortages).

Inclusion and assessment of non-regulatory options

Where a Department is proposing to regulate, the RPC will look for a good explanation, supported by proportionate analysis, outlining why alternatives to regulation are not viable or will not be effective in achieving the policy objective. Where proportionate, this should include impact quantification.

When a decision has been made not to take forward an option, the IA needs to explain why. This does not mean that full monetisation of costs and benefits should be undertaken for options when it becomes apparent early on in the process that they are not feasible, or that they will have a significantly lower net societal benefit than other options. An IA needs to contain sufficient analysis of each option to explain why it is not being taken forward for further assessment.

In the example below there was a good assessment of alternatives to regulation. [Annex 1](#) presents cases from previous case histories where there was also a good analysis of non-regulatory options.

Alternative Dispute Resolution (final stage IA; BEIS-4389)

Alternative dispute resolution (ADR) refers to schemes that are available to help complainants resolve their disputes out of court, such as mediation. The proposal is for a package of measures, legislative and voluntary, aimed at making ADR more accessible. The main legislative measures included making participation in ADR mandatory in specified sectors with a high volume of high value consumer problems, namely home improvement and motoring. The IA includes a useful discussion of alternative options to regulation. The IA would be strengthened by further discussion around voluntary action not making a difference in sectors of high levels of consumer detriment. This section would also benefit from demonstrating why it is not worth waiting to collect sufficient data to validate the efficiency of the model developed by *Resolver*.

RPC scrutiny of the following two cases indicated that the IA would benefit significantly from further discussion and proportionate assessment of non-regulatory options.

Restricting volume promotions for high fat, sugar, and salt (HFSS) products (final stage IA; DHSC-4332)

The Department's IA set out a range of regulatory options and discussed why voluntary commitments have been disregarded as a solution. The RPC suggested wider consideration of non-regulatory options in the IA, for example healthy eating campaigns, other voluntary industry measures and education at school, and whether regulatory measures would be more effective alongside such initiatives.

Restricting checkout, end-of-aisle, and store entrance sales of food and drinks high in fat, salt, and sugar (HFSS) fat, sugar, and salt (HFSS) products (final stage IA; DHSC-4333)

The RPC opinion made similar points to the above and noted that the IA referred to voluntary approaches by retailers but suggested that the IA would benefit from more discussion on these approaches.

It is worth noting that there was also another related IA: "*Introducing a 2100-0530 watershed on TV advertising of HFSS (food and drink that are high in Fat, Salt and Sugar) products and similar protection for children viewing advert*" (consultation stage IA; DHSC).

Consistent municipal recycling collections in England (consultation stage IA; DEFRA)

The IA would benefit from providing some additional information on non-regulatory options (and/or providing an explanation for why any such options have been dropped prior to consulting). For example, assessing the role of education, including whether the problem of confusion or putting the wrong materials in collection bins could be addressed this way. The IA could also address further evidence gathering relating to a non-regulatory option of increasing landfill tax rates.

Consultation on the minimum age for playing National Lottery games (consultation stage IA; DCMS)

From the IA, it appeared that the Department was consulting on two regulatory options which differed only in their scope, and that, therefore, a more extensive range of options could be addressed explicitly in the IA at this early stage of policy

development, including non-regulatory approaches. The IA would also benefit from setting out the evidence supporting the assertion that voluntary and industry-led approaches have been tried.

Uptake of voluntary options

Departments should avoid assuming that non-regulatory options produce lower uptake than regulation and that they, therefore, lead to smaller costs to business while delivering a smaller net benefit to society. While this might be true in many instances, it should be grounded in evidence rather than just asserted. Departments should also explain why the delivery of a smaller part of the policy objective at the benefit of a reduced cost to business is not acceptable.

Small Fishing Vessel Code 2020 (consultation stage IA; DfT-4429)

The preferred option is to introduce a mandatory set of safety standards for small fishing vessels. The original IA had almost identical costs for options 1 (mandatory code) and 2 (voluntary code) but did not identify any benefits of option 2. The revised IA addressed this, with an assumed low compliance with a voluntary code, reflected in both the cost and benefit estimates. The Department would be seeking evidence during to consultation on the likely impact of a voluntary code.

Measures that are part of a strategic policy and interactions with other relevant interventions

The RPC opinions on the HFSS cases above also noted that the Department should discuss whether the measures were part of the childhood obesity strategy. There is a more general point of how to assess the impact of measures that are expected to act in combination with other measures (not necessarily regulatory) to achieve an overarching policy objective. This could also apply to areas such as reducing carbon emissions and reducing use of plastic. The impact of each individual measure could be dependent upon other measures. The IA for each measure should explain how it fits into an overall policy package and how overall impacts will be assessed, providing reassurance that this will address any double counting or impacts 'falling between the cracks'.

Improving the energy performance of privately-rented homes in England and Wales (consultation stage IA; BEIS)

The IA provides a discussion of how related policies are being addressed in the analysis but could be strengthened by providing more detail in some areas, such as the *TrustMark* requirements in the recent proposed energy company obligation (consumer protection) amendment regulations, and how the present proposal relates to the mortgage lenders proposal in relation to buy-to-let landlords. More generally,

the IA could benefit from an annex outlining the full package of measures in this area and addressing explicitly how the whole package of related measures in this area will be evaluated.

Extending the Single Use Carrier Bag charge to all retailers and reviewing the current 5p charge to 10p (final stage IA; DEFRA-4325)

The Department has now made set out its research more clearly and has explained why a ban was not considered alongside the other options. Opinion commented that the Department did not consider further the impact of combining a public health campaign with its preferred measure in their analysis. The IA would benefit from a more overarching view in this area, with the inclusion of these potential interactions in the considered options.

Where wider options have been considered, ensuring this is made clear and summarised sufficiently in the IA and demonstrate use of consultation evidence

There are cases where it is clear that consideration has been given to other options but it is not apparent, from what is presented in the IA, that this has been undertaken sufficiently.

ECO3: improving consumer protection (final stage IA; BEIS-4379)

Following RPC comments, the Department included additional information on alternatives to regulation. This would be strengthened by further discussion on why these alternative options were not taken forward.

Coronial investigations of stillbirths (consultation stage IA; MoJ with DHSC)

The IA referred to other options which have been considered but the IA would be strengthened by including proportionate evidence and analysis to show that these options have been considered in sufficient depth.

Change of option preference following consultation

One reason why it is important to consult on a wide range of options is that information from the consultation could result in a change of option preference. As noted above, a final stage IA should explain the rationale for the preferred option and why the other options (not just the do nothing) have been rejected, especially if the RPC did not see an IA at consultation stage.

Restricting the use of tyres on the front axles of heavy vehicles (final stage IA; DfT-4386)

The Department proposed a ban on tyres aged ten years or older on: a) the front steered axles of heavy goods vehicles (HGVs), buses and coaches; and b) all

minibus axles where tyres are in single configuration. The ban will apply equally to first life and re-treaded tyres, with the age of re-treaded tyres being calculated from the date of re-treading.

The Department used consultation responses to reappraise the options and the cost of the previously increased from an equivalent annual net direct cost to business of £0.6 million to £5.0 million, resulting in a switch of preference to an alternative option.

Use of international evidence

It can be particularly important to consider international examples, at least in the long list of options. A key element of the Better Regulation Executive's international regulatory co-operation and international trade and investment assessment work is making sure that international comparators and norms are considered. Identifying in the long list (or short list) whether other countries are doing 'x or y' is an appropriate part of options consideration, and can be a key aspect in identifying any potential impacts if the UK were to adopt a different approach. Where there are no relevant international comparators or options, it is good practice to state this and, as necessary, explain this in the IA.

Heat Networks Future Market Framework (consultation stage IA, BEIS)

Heat networks are a system of insulated pipes that connect multiple buildings (District heating) or a single multi-tenanted building (Communal heating) to a heat source. The proposal sets out a number of recommendations for the regulation of heat networks.

The Department explains why continuing with voluntary standards and limited regulation might not be suitable for the UK, drawing upon international comparisons. This section could be strengthened, especially as the comparison of housing tenure across countries is mixed (for example, Finland appears to have a slightly higher proportion of home ownership than the Netherlands). Existing voluntary standards are in the baseline for the IA. The IA would benefit from further discussion of how far the effectiveness of the current arrangements could be increased without further regulation, drawing on experience in other countries that have had some success with self-regulation systems.

It should also be noted that there may be evidence available from the different nations *within* the UK, for example where devolved powers have resulted in some nations already having implemented measures being considered (e.g. minimum pricing of alcohol).

Historical cases where there was a good analysis of non-regulatory options

Employers in Great Britain, with at least 250 employees, to publish mean and median 'gender pay gap' figures, mean and median gender bonus gap figures and a table with the breakdown of the number of males and females by salary quartiles (RPC-GEO-3023(4))

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

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

Material Recovery Facilities (RPC12-DEFRA-1625)

The proposal requires Material Recovery Facilities to sample the quality of their input and output material streams in a standardised way and make information on this transparent and public.

The IA does not provide an assessment of a non-regulatory approach as such, but explains clearly the pre-regulatory environment. It provides good theoretical analysis, which is backed up by consultation responses from the industry, on why existing voluntary approaches cannot address the issue at hand.

The IA explains that competitive pressure on operating costs is very high in this sector. In addition, asymmetric information in this market means that buyers of recycled material cannot verify the quality at the point of purchase. The pressure on costs means that businesses properly assessing the quality of their produce are often at a competitive disadvantage due to increased costs, while the buyers' inability to verify quality means that any quality signal cannot be seen as credible in the absence of mandatory, standardised sampling and reporting requirements.

Community right to buy into renewable electricity developments (RPC14-DECC-2027)

This final stage IA is, in general, very detailed and provides a lot of evidence. It assesses the cost and benefits of the primary legislation enabling government to introduce a legal framework in which individuals in the community are guaranteed the opportunity to purchase a stake in a renewable electricity development.

The Department explains how it has worked closely with industry to develop a voluntary framework to facilitate shared ownership. It explains that the government intends to stay with the voluntary approach, but wants to be ready to intervene if a review shows that progress under the voluntary scheme is insufficient. The IA assesses the incremental costs and benefits associated with taking up these powers against three scenarios for the voluntary uptake. While it could be argued that the threat of legislation undermines how “voluntary” the current approach is, the Department, by providing different scenarios, made a case for the overall benefits of legislation outweighing those derived under the voluntary framework.

Tackling avoidance of the ban on exclusivity clauses in zero hours contracts (RPC14-BIS-2236)

This consultation stage IA investigates possible responses to tackle the avoidance of the ban of the use of exclusivity clauses in employment contracts which guarantee no hours (zero hour contracts). The IA presents legislative options as well as the introduction of non-statutory codes of practice. The IA takes all options to consultation and does not state any preference at this stage.

All options are considered in similar detail, although the Department explains that it has only been able to estimate familiarisation costs associated with the non-statutory code. It explains that it would assume that ongoing benefits to businesses taking up the voluntary code must outweigh ongoing costs.

The Department expects the non-statutory code to deliver a smaller proportion of the benefits associated with the policy at a lower cost to business. The evidence presented makes clear that this assertion is appropriate in this case.

Smoke alarms in private rented properties (RPC14-CLG-2266)

The proposal makes the installation of smoke alarms on each floor of private rented properties mandatory. The final stage IA sets out the long history of non-regulatory approaches over the last decades. It shows that non-regulatory approaches have been successful in achieving close to 90% coverage. The Department provides evidence and argues, given the long history of non-regulatory approaches, that a small percentage of landlords will never respond to these approaches. It further explains that these landlords often own high-risk properties.

The IA shows that increasing coverage to (almost) full coverage will result in overall benefits to society as the reduction of domestic fires comes with large benefits. In its assessment of the policy option, the Department assumes a reasonable growth in uptake in the counterfactual. By doing this, the Department shows awareness of the effects of existing non-regulatory approaches and their effect on the costs and benefits associated with the regulatory proposal. In effect, it provides a full cost-benefit analysis of the regulatory approach compared to the counterfactual of solely continuing with existing non-regulatory approaches.