

Network Information Security Directive

Department for Digital, Culture, Media and Sport

RPC rating: fit for purpose

Description of proposal

The RPC rated the final stage impact assessment (IA) of this proposal as fit for purpose in an opinion issued on 11 January 2018. That opinion is attached as an annex and provides a detailed description of the measure, its impacts and the RPC's assessment of the quality of the Department's IA. The proposal relates to the domestic implementation of the Directive on security of network and information systems (the NIS Directive), which was adopted by the European Parliament on 6 July 2016. The Directive aims to address the potential market failures caused by two key characteristics of networks information systems: externalities and imperfect information. The Directive covers digital service providers and essential service providers such as electricity and water suppliers.

Since seeing the final stage IA, the Department has informed the RPC that it has decided not to establish a new regulator, but instead to use existing regulators to deliver regulatory oversight of the Network Information Security Directive. Those regulators, such as Ofgem, Ofcom and the Information Commissioner's Office, work on a full cost recovery basis. Therefore, there is a significant transfer of costs from government to business.

Impacts of proposal

As a result of this change in policy, the estimated Equivalent Annual Net Direct Cost to Business (EANDCB) has increased from £15.8m to £20.4m. The main cause of this increase is the estimated £4.1m cost of additional staff required for the regulators to carry out their relevant competent authority functions. Most of this figure was calculated using the Department's own salary bands and the expected number of additional full time equivalent employees (FTE) for each regulator; one devolved administration supplied their own salary bands, and one department and one devolved administration provided an estimated total cost rather than estimated additional FTE.

The remainder of the increased estimated EANDCB is due to £0.5m for 4.5 FTEs at the Civil Aviation Authority, which will pass these costs to business via their charging regime.

Quality of submission

The RPC considers the present estimate of the EANDCB of £20.4 million to be robust. The Department has engaged well with the changes necessary following write-round, and as a result has clarified the transfer of costs from government to business with sufficient additional information. We note that the ‘competent authority costs’ section in the IA has been moved from ‘costs to government’ to ‘costs to business’ and expanded to include 1) the rationale for using existing regulators as the competent authorities and 2) an explanation of how and why the competent authorities will recoup their costs from businesses. In addition, the Department has now clarified that the proposal does not go beyond the minimum requirements of the Network Information Security Directive.

In addition, the RPC welcomes the Department’s response to the points for improvement identified in our final stage opinion. There were nine points in total and the Department has provided an explanation for most of them in a specific section of the enactment IA, significantly improving the quality of the IA.

Departmental assessment

Classification	Qualifying regulatory provision
Equivalent annual net cost to business (EANCB)	£20.4 million
Business net present value	-£202.54 million
Overall net present value	-£402.59 million

RPC assessment

Classification	To be determined once the framework rules for the current parliament are set
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Anthony Browne, Chairman