

## Electronic Trade Documents Bill

<b>Lead department</b>	Department for Digital, Culture, Media and Sport
<b>Summary of proposal</b>	The proposal introduces primary legislation to recognise electronic trade documents on an equal legal footing to physical trade documents. The legislation is permissive and will remove a constraint to allow use of electronic trade documents under UK law.
<b>Submission type</b>	Impact assessment (IA) – 14/06/2022
<b>Legislation type</b>	Primary legislation
<b>Implementation date</b>	2023
<b>Policy stage</b>	Final
<b>RPC reference</b>	RPC-DCMS-5203(1)
<b>Opinion type</b>	Formal
<b>Date of issue</b>	18 July 2022

## RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Fit for purpose</b>	The RPC considers that the direct impact on business is below the <i>de minimis</i> threshold and is fit for purpose. The assessment of impacts could be improved by providing some clarification around the costs of the proposal and further details on monitoring and evaluation.

## Business impact target assessment

	<b>Department assessment</b>	<b>RPC validated</b>
<b>Classification</b>	Non-qualifying regulatory provision ( <i>de minimis</i> )	Non-qualifying regulatory provision ( <i>de minimis</i> )
<b>Equivalent annual net direct cost to business (EANDCB)</b>	N/A	N/A
<b>Business impact target (BIT) score</b>	N/A	N/A
<b>Business net present value</b>	£1,137 million	
<b>Overall net present value</b>	£1,137 million	

<sup>1</sup> The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

## RPC summary

<b>Category</b>	<b>Quality<sup>2</sup></b>	<b>RPC comments</b>
EANDCB	<b>Green</b>	The RPC verifies the Department's assessment of the proposal as <i>de minimis</i> on the basis that its assessment that the impacts on business are indirect is in line with RPC guidance.
Small and micro business assessment (SaMBA)	<b>Green</b>	The IA provides a sufficient SaMBA. It explains that small and micro businesses (SMBs) are expected to be positively impacted by the proposed and justifies why exemption would not be appropriate.
Rationale and options	<b>Satisfactory</b>	The IA provides a sufficient rationale for intervention. The IA explains that the proposed reforms can only be made through primary legislation (page 8) and therefore no consideration of other options is possible.
Cost-benefit analysis	<b>Weak</b>	The IA does not separately analyse the costs and benefits of the proposal but instead assesses them as a net benefit. The IA would be strengthened significantly by presenting the proposal's costs more clearly, including a breakdown for each cost component.
Wider impacts	<b>Satisfactory</b>	The IA includes discussion across a range of wider impacts, including trade, innovation, environment, and competition. The IA would benefit from strengthening its assessment on innovation and trade.
Monitoring and evaluation plan	<b>Weak</b>	The IA explains that the impact of the proposal will be monitored by several key indicators and highlights several data collection methods. The IA would be strengthened significantly by explaining the timeframe for evaluation, the stakeholder engagement plans and proposed evaluation methods.

<sup>2</sup> The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings [here](#).

## Summary of proposal

Under current UK law in this area, electronic forms of trade documentation cannot in effect be possessed and used in the same way as their paper equivalents. The IA explains that, without intervention, trade will continue to be paper-based and, therefore, more costly, complex, and time-consuming than it otherwise could be. The proposal's objective is to provide electronic trade documents with the same legal footing as paper trade documents. The IA explains that the proposal will support the digitalisation of international trade documents, which is expected to reduce trade costs, increase administrative efficiency and increase access to trade finance.

The preferred option is to introduce primary legislation to recognise electronic trade documents on an equal legal footing to physical trade documents. The IA explains that the Bill is permissive and will not mandate the use of electronic trade documents and that paper documents could still be used. The IA explains that there will be no associated secondary legislation and the IA's assessment of the Bill impacts is therefore that of the whole policy.

## EANDCB

The RPC considers the EANDCB to be fit for purpose and in line with scenario 1a of the RPC's primary legislation guidance, where the assessment of the direct impacts of business of the whole policy can be verified at this stage.<sup>3</sup> The IA provides a sufficient assessment of direct impacts on businesses arising from the Bill and explains that there is no associated secondary legislation.

### *Direct and indirect impacts*

The IA provides a table on page 10 explaining why it assesses all of the costs and benefits of the measure as indirect. The non-monetised impacts in this table are clearly not direct impacts on business. It is less clear that the monetised costs and benefits are indirect, in as far as it can appropriate to score a measure allowing businesses to comply with regulatory requirements through less burdensome means, such as using electronic rather than paper form, as a net benefit to business for BIT purposes. However, the Department addresses this point very well at paragraph 25, which sets out the additional steps required for the costs and benefits to occur, including international standardisation and the interoperability of electronic trade document platforms. The Department's assessment that this makes these impacts indirect appears to be reasonable.

The IA states that familiarisation cost is considered indirect as businesses are not required to use electronic trade documents, and the paper system continues to be operable. Therefore, the IA states that businesses are not required to become familiar with the legislation. Familiarisation costs are appropriately netted off the benefit estimates. It would, however, appear that businesses would need to familiarise themselves with the regulatory change to decide whether they would benefit from transitioning to a paperless documentation system. The IA would benefit from discussing how it treats these costs for businesses who choose not to move to a paperless system.

### *Counterfactual*

The IA provides a sufficient explanation of the counterfactual position, explaining the baseline for what would happen without government intervention. The methodology for establishing the counterfactual position appears reasonable and supported by evidence. The IA would benefit from explaining whether the baseline should consider any changes that might occur over the appraisal period, such as changes to export levels and technological changes.

Please see also comments in the 'cost-benefit analysis' section.

## **SaMBA**

The IA estimates that around 12% of the UK's small and micro businesses (SMBs) are involved in international trade and may therefore be impacted by the proposal<sup>4</sup>. The proposal does not exempt SMBs on the basis that the measure is expected to have a significantly positive impact on SMBs through increased access to trade finance and reduced trade barriers. The IA would benefit from providing more robust evidence to support this.

The IA should also consider the extent to which SMBs might indirectly be negatively impacted by the proposal and consider whether mitigation actions might be appropriate. For example, the IA could helpfully assess whether SMBs involved in producing and transporting paper trade documents might be negatively impacted as more businesses transition to an electronic system. The SaMBA could consider whether guidance or templates for electronic documents might assist SMBs. In addition, the SaMBA should assess whether SMBs would have the resource and capability to benefit from the proposed changes to the same extent as larger firms.

## **Rationale and options**

The IA sets out the problem under consideration and rationale for intervention, describing how the digitalisation of trade documentation can deliver lower transaction costs, greater administrative efficiency and increased access to trade finance. It explains that a combination of these factors will result in greater international trade. The IA would benefit from providing stronger evidence to support the assertion that the proposal will deliver these benefits. The IA states there is strong industry support for the transition towards paperless trading, citing the International Chamber of Commerce's memo to the government<sup>5</sup>. The IA would be strengthened by clarifying whether more stakeholders are supportive of the proposed changes.

The IA has only considered one regulatory option alongside the 'do nothing' counterfactual, explaining how the proposed reforms cannot be made in any other way than through primary legislation. Although it seems clear that non-regulatory options would not achieve the set policy objectives, the IA would benefit from

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<sup>4</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/524847/bis-16-230-smes-supply-chains-exporters.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/524847/bis-16-230-smes-supply-chains-exporters.pdf). Page 5

<sup>5</sup> <https://iccwbo.org/content/uploads/sites/3/2020/04/icc-memo-on-essential-steps-to-safeguard-trade-finance-operations.pdf>

considering potential variations in the scope of the (de)regulatory option and stronger justification for the Department's preferred option. The IA states that the trade documents covered by this legislation account for an estimated 20% of total trade document, which includes: 1) bills of exchange; (2) promissory notes; (3) bills of lading; (4) ship's delivery orders; (5) warehouse receipts; (6) mate's receipts; (7) marine insurance policies; and (8) cargo insurance certificates. For the benefit of the reader, the IA would benefit from providing a clearer justification for the scope of the legislation and explain why the legislation does not cover all trade documents, such as certificates of origin and documents relating to tax.

## Cost-benefit analysis

The IA explains that the main type of businesses in scope of this proposal are UK firms currently engaging in international trade. The IA sets out the main costs and benefits of the proposal on pages 10-11, including justification for non-monetised impacts. The IA sets out the steps involved in producing its net benefit estimate of £1.14 billion over the 10-year appraisal period (paras 30-38). This is a crude estimate but is sufficient as an order of magnitude estimate of potential benefits. The IA would benefit from setting out the calculations at each step, perhaps in an annex. The IA would benefit from explaining whether all of the costs at paragraphs 42-45 have been netted off this figure. The cost-benefit analysis draws upon various trade industry sources, including HMRC and International Chamber of Commerce data. The IA would benefit from a section to discuss the robustness of the evidence base and potential evidence gaps. The IA includes a discussion on key assumptions, risks and an explanation of whether mitigation actions were taken (pages 16-17). It would benefit from considering the use of sensitivity analysis for more of these assumptions, especially those considered 'medium risk'. The IA would be strengthened by including a discussion on potential unintended consequences of the proposal. The cost-benefit analysis would be strengthened by considering the distributional impacts of the proposal, including whether it could create winners and losers. Therefore, the IA would benefit from providing more details, if available, of how the department expects businesses that choose not to adopt electronic trade documentation would compete for business.

The IA does not separately analyse the costs and benefits of the proposal but instead assesses them as net benefits. The IA would be strengthened by presenting the proposal's costs more clearly, including a breakdown for each cost component. The Department has utilised ONS Annual Survey of Hours and Earnings data to estimate the familiarisation costs to business. The IA would be strengthened by explaining whether non-wage labour costs have been included in the estimation of familiarisation costs.

## Wider impacts

The IA covers a good range of wider impacts, including assessment of innovation, competition, trade, and the environment. While the IA provides detailed assessments on competition and the environment, it would be strengthened by further considering the trade and innovation impacts. The IA explains that the proposal is expected to

positively impact trade through an increase in efficiency and a reduction in costs. The IA would benefit from providing more details on this and considering the external factors that must occur for these benefits to be realised. For example, the positive trade impacts appear to be contingent on trading partners also choosing to adopt an electronic trading system and the interoperability of these systems. As noted in the 'cost-benefit analysis' section, the IA would be strengthened by further consideration of potential distributional and competition impacts from businesses who choose not to adopt the electronic trade documentation system.

The IA does not include an assessment of the impact on security. It would be improved by explaining how the digitalisation of trade documentation may present new cybersecurity risks, such as hacking and leaking of confidential documents. The IA would benefit from assessing potential impacts on security and considering mitigation actions, as appropriate. In addition, the IA should also consider the potential impact of the proposal on businesses involved in printing and couriering paper trade documents.

## Monitoring and evaluation plan

The IA includes a high-level monitoring and evaluation (M&E) plan for the proposal on pages 20-21, which sets out the key indicators that the Department intends to use to track the impacts of the proposal. This includes, for example, the adoption rate of electronic trade documents by UK exporting businesses. The M&E plan would be strengthened by explaining how the impacts to businesses and potential unintended consequences will be identified and assessed.

The M&E plan would benefit significantly from setting out the timeframe for evaluation, the stakeholder engagement plan and evaluation techniques. The IA should also consider how rapid technological changes (e.g., changes to blockchain platforms) might affect the costs to business and the adoption rate of electronic trade documents. Although it is not mandatory, the Department is encouraged to produce a proportionate post-implementation review (PIR) on this proposal, given the high NPV estimate, to ensure that the proposal is working as intended and meeting its objectives. The Department may find it helpful to refer to the RPC guidance on PIR<sup>6</sup>.

### Regulatory Policy Committee

For further information, please contact [regulatoryenquiries@rpc.gov.uk](mailto:regulatoryenquiries@rpc.gov.uk). Follow us on Twitter [@RPC\\_Gov\\_UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website [www.gov.uk/rpc](http://www.gov.uk/rpc). To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#).

A member of the RPC did not participate in the scrutiny of this case to avoid a potential conflict of interest.

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<sup>6</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/790031/RPC\\_case\\_histories\\_\\_\\_post-implementation\\_reviews\\_\\_March\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/790031/RPC_case_histories___post-implementation_reviews__March_2019.pdf)