
REGULATORY POLICY COMMITTEE

CASEWORK GUIDE FOR EXTERNAL STAKEHOLDERS

FOREWORD

Delivering independent scrutiny is the core function of the Regulatory Policy Committee (RPC). We do this to improve the quality of evidence and analysis used to inform government decision making on regulations and to ensure that government claims regarding the burden of regulation on business are credible.

Our scrutiny role is delivered through casework – most commonly the opinions we produce on the impact assessments produced by departments. This guide is intended to summarise our approach for our stakeholders. It provides an overview of the key elements of casework, including how we engage with departments, the principles that guide our approaches, and the processes that we follow.

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This guide summarises aspects of our work that are set out more formally elsewhere including:

- a) the [Better Regulation Framework guidance](#) (BRF): the guide produced by the Better Regulation Executive (BRE) for government officials developing or implementing policies which impact the level of regulation on businesses and civil society organisations; and
- b) the RPC's independent [role](#) in assessing the quality of evidence and analysis used to inform regulatory proposals.

WORKING WITH DEPARTMENTS AND REGULATORS

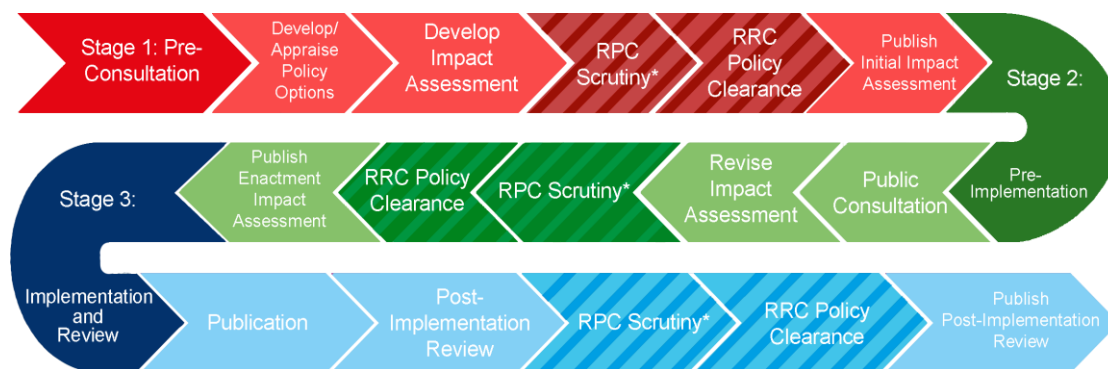
PRE-SUBMISSION

1. The key function of the RPC is to improve the individual and overall quality of impact assessments (IAs) by scrutinising:
 - the rationale for intervention, the options considered (including non-regulatory options);
 - the calculation of, and supporting evidence for, the impacts of the proposals upon business and civil society organisations, with particular focus on the impact on small and micro businesses; and
 - the consideration of wider societal impacts and sufficient reference to monitoring plans.

By doing so the RPC assists ministerial decision making.

2. In addition, since the introduction with the [Small Business, Enterprise and Employment Act 2015](#) of the statutory role of independent verification body (IVB) for the Business Impact Target (BIT), **the RPC has traditionally undertaken this additional IVB function, including for this parliament (2019-2024)**. The SBEE requires the government of the day to do the following within the first year of a new parliament:
 - Publish a business impact target (BIT) for the duration of the parliament (and an interim BIT for the first three years);
 - Publish details of regulation that does, and does not, count towards the BIT during the parliament (explaining therefore which regulatory proposals are in scope of the target);
 - Publish a metric for calculating the economic impact on business of measures in scope of the BIT; and
 - Appoint an IVB to verify the economic impact on business of measures in scope of the BIT.

3. As IVB, the RPC has two key roles in relation to the exercise of statutory functions:
 - a. Confirming departments' and regulators' assessments of regulatory provisions as either qualifying or non-qualifying in relation to the BIT after the government has determined a measure to be a regulatory provision;
 - b. Verifying the Equivalent Annual Net Direct Cost to Business (EANDCB) of qualifying regulatory provisions (QRPs).
4. In addition, the RPC verifies the EANDCB figures of significant (over +/-£5 million) departmental non-qualifying regulatory provisions (NQRPs). This function applies only to non-qualifying measures implemented by government departments, not those of regulators.
5. Regulators nevertheless frequently and voluntarily provide the RPC with summaries of their NQRPs. The RPC's non-statutory role here is to highlight if any measures might, in fact, qualify for the BIT. The RPC does not verify the EANDCB of regulators' non-qualifying measures, as regulators are not required to provide this information.
6. The diagram below illustrates where, in the stages of policy development, RPC scrutiny can take place.



WHAT IS THE PURPOSE OF DEPARTMENTAL ENGAGEMENT?

7. Engagement with departments delivers the following:
 - a. **Supporting and improving capability in departments and regulators.** The RPC aims to work with departments and regulators to help them develop their internal capability in terms of appraisal and understanding the framework. More specifically the RPC can explain the general requirements, including clarity

regarding expectations on [proportionality](#), as well as also ensuring departments are aware of the resources and advice that are available to them. This increases the quality of IAs which the RPC receives over time and ensures that departments and regulators work with the RPC effectively whilst managing their own expectations.

- b. **Providing support on individual cases.** Early and consistent engagement between departments/regulators and the RPC is always encouraged. Some cases raise specific complex or novel issues, and RPC opinions can raise issues that departments might not readily understand or know how to resolve. Pre-submission, post informal advice and post Initial Review Notice (IRN)/Red rated opinion meetings can help work through these issues and provide an opportunity to 'get it right' as early in the process as possible, aiming to avoid unnecessary or incorrect work or errors being taken forward.
- c. **Transparency, tracking and reporting.** In order to provide transparency of its independent opinions, to stakeholders – the RPC publishes its opinions at the most appropriate point once the policy proposals considered in the IA are in the public domain. In routine cases, the opinion will be published at the same time as the IA is put in the public domain, commonly on introduction of the measure to parliament. This is because the RPC views the publication of the legislation as announcing of the policy and it does not consider itself constrained by the publication or not of the associated IA. In cases where publication of the IA is delayed, the RPC reserves the right to publish its opinions when it considers it can assist parliamentary scrutiny.

Where, after receiving a 'not fit for purpose' opinion, a department decides to proceed with publishing an unamended IA – instead of resubmitting a revised IA for further scrutiny - the RPC will alert the Department of its intention to publish its red rated opinion on our website once the IA and policy have been confirmed to be in the public domain.

TYPES OF SUBMISSIONS

8. In line with the requirements of the BIT, there are a range of different types of submission that the RPC sees, each with different levels of detail and different considerations in relation to the fitness for purpose.

9. From departments:

a. Mandatory submissions:

- Final stage IAs (above *de minimis*, or where there are other reasons for submission under the framework);
- Post Implementation Reviews (PIRs) where there is a statutory requirement.

Note: The IRN - which alerts departments to points the Committee believe would lead to a red rating and allows them 15 working days to revise - is applied to both of these submissions.

b. Voluntary submissions:

- Pre - Consultation stage IAs (formal or informal):
 - Formal allows for an IRN (if required) and a formal opinion which would be published;

Informal consultation submissions allow the RPC to provide advice which the department can use to amend the IA prior to its use in a consultation. By choosing the informal route the RPC will provide a detailed assessment but will not undertake an IRN as part of the process or give a formal opinion with a fit for purpose rating. An informal opinion is an internal document which will not be ultimately published. The RPC will however expect to see the points raised in the document sufficiently addressed by the time a final stage IA is submitted and it will provide more formal comments relating the pre-consultation IA in its final stage opinion.

On receipt of an informal opinion the department will have an opportunity to discuss the points made with the Secretariat if they so wish.

- Final stage IAs (below *de minimis*);
- Other post-implementation reviews;
- *De minimis* assessments where there is some methodological difficulty.

10. From regulators:

c. Mandatory submissions:

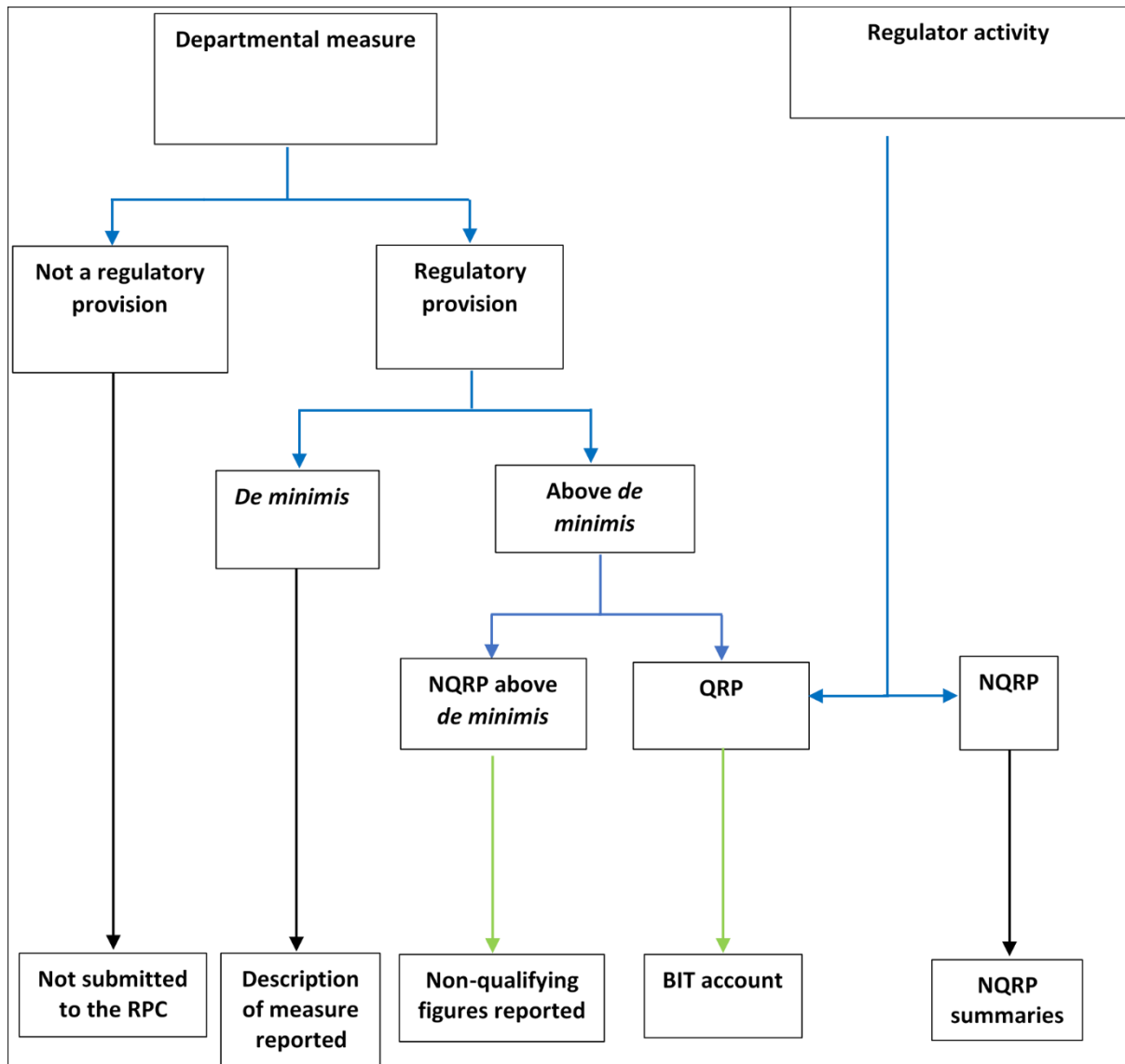
- BIT (EANDCB validation) assessments – the IRN would be used with these submissions

d. Voluntary submissions:

- NQRP summaries.

11. The type of submission affects the scope of RPC scrutiny – what departments or regulators are required to submit, and what elements the RPC can rate a submission on, are different in different case. The requirement to validate an EANDCB applies to nearly all departmental measures¹ at final IA stage whether they are qualifying or non-qualifying regulatory provisions. The types of measure and what the RPC would expect to see are summarised in the following chart.

¹ Except measures self-certified by MHCLG as falling within the Grenfell exclusion.



PRODUCING AN RPC OPINION

1. The RPC scrutiny process is intended to identify whether a submission is 'fit for purpose' or not. As set out above, different types of submission have different scrutiny requirements – a 'green-rated' opinion means that the Committee are satisfied – for example, the EANDCB is robust (for validations) or the IA is fit for purpose (for final stage IAs).

2. If the submission is not of a sufficient standard, the RPC will usually issue an IRN and the submission will be recorded as being 'not fit for purpose as first submitted'. Depending on the response to the IRN, the subsequent submission will either be rated 'red/green' (where there is a sufficient response to the issues raised), or 'red/red' (where the final submission remains insufficient).

ACTING AS DEPARTMENTAL / REGULATOR LEAD

3. Within the RPC Secretariat, individuals are allocated as departmental leads/**account managers**. These leads have regular (at least quarterly) conversations with the relevant departmental Better Regulation Units (BRUs). These discussions are not intended to cover specific cases, but are used to help inform casework allocations, forward look/work planning and post-opinion case tracking, as well as ensuring that the relationship between a department and the RPC is as smooth and open as possible. Meetings will normally include discussions of the volume and potential size of upcoming submissions (including pipeline and call in cases) as well as the Department's training needs and broader concerns and opportunities to present the role of the RPC to departmental officials.

PRE-SUBMISSION

MEETING WITH DEPARTMENTS

4. RPC departmental leads encourage early engagement with departmental policy teams. Such 'pre-submission' meetings can be of particular use for cases that raise challenging methodological issues, or where the proposal is complex or novel. In some cases, they might also cover more informal conversations to provide steers on less contentious issues. These meetings or conversations should be used and provide general advice. The meetings are intended for:
 - a. departments to explain potential issues or areas of complexity, explain time constraints and expectations, to have the opportunity to have general advice from the Secretariat on potential approaches or to be made aware of cases with similar issues; and
 - b. the Secretariat to develop an understanding of the proposal, provide advice general and methodological issues, and discuss timing pressures.
5. Any advice provided to the Department is advisory – **it cannot be binding on the opinion/the Committee** at that stage in the process as

the Committee may take a different view, especially in cases which might be on the borderline of a green-rating. Rather the meeting uses Secretariat experience and expertise to provide clear, specific, helpful guidance and support.

PROCESS ON SUBMISSION

6. The RPC operates a collegiate scrutiny process. This allows for all members of both the Secretariat and Committee to potentially contribute to reviewing the IA at some point of the process. It also allows the Committee, by means of group sign off, to collectively “own” the opinions.
7. On timelines, the RPC has agreed maximum turnaround times for:
 - Final stage IAs, regulator BIT assessments and NQRP summaries of 30 days (45 days in total for cases which receive an initial review notice);
 - Pre-consultation stage IAs of 20 days (30 days in total for formal cases which receive an initial review notice). Where possible the RPC aims to issue opinions in advance of the deadlines.
8. Once the acknowledgement of receipt email has been issued by the Secretariat, engagement with departments by the RPC is kept to a minimum.

CASE IS RECEIVED BY THE RPC

9. All cases should be submitted to the RPC via regulatoryenquiries@rpc.gov.uk – the submission email is required to state the type of submission e.g. Consultation IA (formal or informal), Final IA, EANDCB validation, Post Implementation Review (PIR) or NQRP), the department submitting, the relevant RPC reference number (if it is a revision), the relevant minister and the email address for the minister’s office (for final stage IAs), email address for departmental contact, origin of intervention, legislation type (e.g. EU or domestic), and discuss any potential timing pressures or whether there have been any pre-submission meetings.
10. The RPC will issue an acknowledgement email to all people (the department) included in the submission.
11. Cases are allocated to Committee leads according to the availability of Committee members while avoiding conflicts of interest. Subsequent submissions to a previous opinion will usually be allocated to the same Committee lead for consistency in analysis and review.

THE RPC REVIEWS THE SUBMISSION

KEY CONSIDERATIONS IN ASSESSING AN IA

12. The RPC uses the following criteria for its rating of IAs:

The RPC's 8 recommendations to departments

1. Don't presume regulation is the answer
2. Take time and effort to consider all options
3. Make sure you have substantive evidence
4. Produce reliable estimates of the costs and benefits
5. Assess non-monetised impacts thoroughly and where possible give an indication of scale
6. Explain and present results clearly
7. Understand the real cost to business of regulation
8. Undertake a Small and Micro Business assessment (SaMBA)

13. In applying these recommendations the following questions should be considered and answered as the mainstay of an assessment:

1. What is the problem; what is the rationale for intervention, what is the counterfactual, are there clear objectives, are alternatives considered?
2. Are there options at pre-consultation, is the highest NPV preferred? If not why not?
3. Is the IA informed by consultation? Are assumptions evidenced/sourced?
4. In the production of the estimates what is the appraisal period; has the appropriate counterfactual been used; what impacts have been identified & monetised; are transitional & ongoing costs included; have non-wage uplifts, an optimism bias, any uncertainty, price/present value base years, impacts by group all considered?
5. If impacts not monetised has the IA explained why? Are the impacts sufficiently identified and discussed?
6. The IA should be a stand-alone document, can the numbers be re-produced, is technical language kept to a minimum and clearly explained?
7. Is the EANDCB correctly calculated to allow for validation?
8. Has a SaMBA been provided and is it sufficient?

14. At final stage, the RPC will issue a red rating when it considers that the EANDCB cannot be validated or that the SaMBA is deficient.

15. BIT assessments can only receive a red rating for the EANDCB.
16. Within this period of assessment the RPC may consider seeking input from external stakeholders, normally a copy of their consultation response, to assist the Committee with its considerations. Stakeholders are urged therefore to provide such information as vital input to our process.

POST IMPLEMENTATION REVIEWS

17. As a general rule, the same processes, principles and approaches should be applied to the production of post implementation review opinions.
18. The questions and issues the RPC is asked to consider in relation to PIRs are however different. Scrutiny is applied to see whether there is sufficient evidence to support the Department's recommended next steps on whether to renew, repeal, amend or replace the existing requirements. Again, input from stakeholders is welcomed.
19. The different considerations are set out in the relevant chapter of the RPC [case histories](#) and the PIR cross-Whitehall [guidance](#).
20. In the first instance, in any cases, where a possible red rated issue is identified an IRN would be issued. If the issues are not sufficiently addressed, in a revised PIR, then the RPC can issue a red opinion in the same way as with an IA.
21. In addition to the above specific considerations when assessing the IA or PIR, a level of proportionality also needs to be taken into account as part of the scrutiny.
22. Proportionality:
 - a. The questions the RPC asks are related to the type of submission received – the framework requirements for different types of measures should be reflected in the degree of proportionality applied.
 - b. Proportionality in IAs and PIRs is about ensuring the appropriate level of resources is invested in gathering and analysing evidence on the impacts of a policy. The Better Regulation Framework sets out the context when it says that “all new policies, programmes and projects should be subject to a proportionate assessment of costs and benefits. Parliament,

especially the scrutiny committees, expect sufficient information on the impact of a measure, whether or not it impacts business...the level of analysis should be proportionate to the problem it is addressing, and reflect the scale or impact of the measure.”

- c. The RPC [publicly available guidance document on proportionality](#) is proactively recommended to assist departments and regulators. It contains the RPC’s general expectations and advice on how the scale and complexity of a measure necessitates different levels of evidence and analysis.

OPINIONS - FORMAL

23. RPC opinions are standalone documents. Opinions are written to be comprehensible to a lay reader. The opinion template is kept under review to ensure it is relevant and useful for stakeholders.

24. The opinion template currently covers the following points:

- a. Description of the proposal – describes concisely the intended effect of the proposal, and what businesses will need to do differently as a result of the change.
- b. Impacts of the proposal – describes the impacts, costs and benefits of the different elements of the proposal and the number of businesses affected. The content of this section should be sufficient to provide a reader with assurance that the EANDCB of measures can be broadly understood (so it is not necessary to describe all the impacts, but those that have a material contribution to the overall effects). The section is proportionate to the scale of the measure, and how complex the calculations are.

The impacts section also confirms, for final stage and BIT assessments, the EANDCB and BIT status of the measure.

- c. Quality of submission – this section is the bulk of the opinion and provides the RPC’s insight into the quality of the evidence used to inform the impacts. It should highlight any aspects of the appraisal that have been done well and those that could be improved; discuss any improvements made in response to an initial review notice (if applicable); comment on the small and micro business assessment, and include any further

commentary relating to the quality of evidence (where relevant to the type of submission).

- d. Tables – the departmental assessment tables capture the information in the assessment as submitted. For the EANDCB box, this includes the initial estimate – in the IA as submitted prior to any IRN (or in the previous submission if the case received a red opinion following an IRN) and the final estimate. This is important to help capture the impact of RPC scrutiny. The business NPV and societal NPV should be taken from the IA.
- e. The RPC assessment boxes include the final validated information. The SaMBA row specifies whether this assessment is sufficient or not or not required. The row relating to the rating as initially submitted is used only in cases that received an IRN.

EANDCB figures should be reported to the nearest £0.1 million.

A formal opinion would be used for:

- Formal pre-consultation IA
- Final stage IA
- BIT validation assessment
- PIR

REGULATOR'S NON-QUALIFYING REGULATORY PROVISION SUMMARY ASSURANCE

25. In addition to providing BIT assessments, regulators can voluntarily provide their NQRP summaries for RPC assurance.
26. The RPC will assess the list of activities provided and provide assurance that the contents of the summary aligns with the BIT exclusions listed in the BRF. If the RPC believes any activity does not meet the criteria it can initially seek clarification from the regulator. If this still does not meet the criteria then the RPC will consider whether a BIT assessment is needed for a specific measure instead and engage with both the regulator and BRE to seek a more formal submission.

INITIAL REVIEW NOTICES (IRNs)

27. IRNs enable the RPC to raise concerns with the department sooner, during the 30 day assessment, instead of issuing a red opinion at the

end of the assessment period. This allows departments to remedy concerns earlier in the process, use fewer resources, and reduce the chance of receiving a red rating. As such the IRN only covers the points that the RPC believes would generate a red rating and points for improvement. IRNs are intended to be read by the IA authors with the relevant version of the IA alongside.

An IRN is used only where there are points that would be likely to lead to a red rated opinion – for example, in a final stage IA, if they are likely to have a material effect on the EANDCB or insufficient SaMBA.

28. Timing:

- a. An IRN needs to be issued within the RPC's assessment period. The time taken for the department to respond (normally 15 days) is not included in the overall turnaround time. The subsequent opinion then needs to be issued within 45 working days of submission (including the time taken to issue the IRN).
- b. On an IRN issued on a formal consultation stage IA (20 working days) the RPC adds only an additional 10 working days to its time frame (thus the opinion is issued within 30 working days, excluding the time it is with the department).

29. The points raised in the IRN should be discussed in any subsequent opinion, including highlighting the improvements made by the department in response to the comments. The opinion will also include an explanation as to the quality of the IA prior to the IRN.

AFTER OPINIONS HAVE BEEN ISSUED

MEETING A DEPARTMENT FOLLOWING A RED OPINION / IRN

30. Following the issue of an IRN or a red rated opinion, departments will often want to meet with the RPC to discuss the issues raised. This is strongly encouraged, especially if there are a number of issues or they are complex.
31. While it is not appropriate for the Secretariat to guarantee a Green opinion they will explain in greater detail the Committee's thinking behind the points, highlighting cases that have included similar issues and suggest how they were resolved.
32. For very significant cases, or those in which the committee lead is particularly involved, the committee lead may join in the discussions.

33. Following a post IRN/Red rating meeting the department would be expected to resubmit the IA to address the concerns of the Committee and receive a subsequent green rating. In doing so it would be made clear that a resubmitted case, following a red rated opinion, would not allow for an IRN procedure to be part of the process. Departments should provide both a clean and tracked changed version of the IA to assist the re-assessment.

DEPARTMENTAL PIPELINES, CALL-IN AND INTELLIGENCE GATHERING

34. RPC teams need to be aware of possible cases which will require scrutiny and use a range of approaches to seek out potential IAs. Primarily this is through via regular contact with their BRUs to ascertain a forward look of policies heading to the RPC; receiving sight via BRE of departmental “pipelines”; and utilising sources of intelligence such as news reports and input from external stakeholders. Where potential IAs are identified the RPC will, with BRE and the department, consider how best to proceed with scrutiny using the agreed internal process.
35. Where the RPC considers there is a case for a formal call in it will write to BRE recommending that an IA be submitted for scrutiny. If BRE agrees it will be for them to request the IA from the department. The onus for ensuring the IA is sent for scrutiny is with BRE in such cases. If BRE disagrees with calling in the IA, then the Committee will consider whether on sight of a published IA it will proceed with an opinion regardless of the BRE view and publish on its website.