



INDEPENDENT VERIFICATION BODY REPORT
December 2021 to December 2022

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CONTENTS

FOREWORD BY THE CHAIR	3
INTRODUCTION	4
PROGRESS AGAINST THE BUSINESS IMPACT TARGET	5
<i>QUALIFYING REGULATORY PROVISIONS (QRPs)</i>	5
<i>NON-QUALIFYING REGULATORY PROVISIONS (NQRPs)</i>	6
<i>IMPACTS ON SMALL AND MICRO BUSINESSES</i>	7
QUALITY OF IMPACT ASSESSMENTS SUBMITTED FOR RPC SCRUTINY	7
<i>NUMBER OF IMPACT ASSESSMENTS SUBMITTED LATE FOR SCRUTINY</i>	7
<i>INCREASE IN THE NUMBER OF NOT-FIT-FOR-PURPOSE IMPACT ASSESSMENTS</i>	8
<i>QUALITY OF OTHER ASPECTS OF IAS CONSIDERED IN RPC OPINIONS</i>	8
INFLUENCE OF THE RPC ON REPORTED IMPACTS	9

FOREWORD BY THE CHAIR



This report delivers on our statutory responsibility as the Independent Verification Body for the Business Impact Target (BIT), which aims to measure the additional burden that new government regulations place on businesses. Over the last year, regulatory measures increased the net direct costs to business by **£9,893.8 million** (as set out in the [Government's Better Regulation annual report](#)). This is in addition to the **£4,445.2 million** increase over the previous two years, and takes the BIT total for the current parliament to an increase of **£14,339.0 million**, compared to the Government's target of keeping the costs constant.

The Government announced a review of the Better Regulation Framework (BRF) in November 2020. This is ongoing and limited progress was made during 2022. As I write this, things appear to be moving again and I hope that it will be concluded shortly. As we have said elsewhere, the RPC is very supportive of the main aims of the reforms – to require mandatory scrutiny earlier in the development of regulation, to consider a wider range of impacts in IAs, and to ensure that post-implementation reviews are undertaken where required. We hope that the review delivers on all of these objectives and that it is properly adhered to by government departments. We will continue to work with Government to develop the new framework.

Over the last year there has been a concerning increase both in the number of impact assessments (IAs) that have been red-rated and in the number that have been submitted to the RPC for scrutiny significantly later than should be the case (a number after the legislation had been introduced to Parliament). There has also been ongoing poor performance by departments in undertaking post-implementation reviews. We hope that the proposed changes to the BRF will help address these concerns, but it will also require an ongoing commitment from Ministers to abide by the BRF process.

We are anticipating a significant amount of legislation across 2023 to deliver on the objectives of the Retained EU Law (REUL) Bill, which is currently making its way through Parliament. We had significant issues with the IA prepared for the Bill (see [our red opinion](#)), but are working with the Government's Brexit Opportunities Unit to ensure that the proposed changes are subject to appropriate scrutiny. The timescale on which it is currently proposed this should happen is concerning and it will need to be properly project managed and resourced in order to deliver on the government's commitments – particularly as the workload increases through 2023.

I would like to thank the members of the committee for their efforts during the year. Five new members joined at the start of the year – Daniel Dalton, Stephen Gifford, Hilary Jennings, John Longworth and Derek Ridyard – joining existing members – Jonathan Cave and Andrew Williams-Fry. I would also like to thank the members of the secretariat for their support.

Stephen Gibson
Chair

INTRODUCTION

1. The Small Business, Enterprise and Employment Act 2015 (“the SBEE Act”) requires the Government, for each parliament, to set and report on a Business Impact Target (BIT) and appoint an Independent Verification Body (IVB) to validate the figures produced by government departments of the contribution of individual regulatory measures to meet the BIT.¹
2. In December 2020, the Government set a £0 “holding” BIT, pending a review to consider a revision of the target and associated methodology for assessing the impact of regulatory measures. It also reappointed the Regulatory Policy Committee (RPC) as the IVB for the current parliament that started following the December 2019 general election.
3. The Committee’s role as IVB is to verify the estimates of the direct impacts on business set out in the impact assessments (IAs) that accompany government regulatory proposals, and that exemptions from the BIT are applied correctly. The Government produces reports under the SBEE Act that summarise progress against the BIT for each year of the parliament and (at the end of the parliamentary term) for the whole period of the parliament. This report from the RPC in its role as IVB verifies the Government’s third annual report² for the current (2019-2024) parliament, covering the period from 17 December 2021 to 16 December 2022.
4. **As the IVB, the RPC can verify that the Government’s report correctly records the qualifying regulatory provisions (QRPs) for the period and that we have verified the associated figures for EANDCB and BIT scores.³**
5. **As reported, the qualifying regulatory provisions introduced over the period increased direct costs to business by £9,893.8 million net.**
6. **When combined with the equivalent figure for the period covered by the previous two BIT reports (£4,445.2 million net), the cumulative total for the parliament to date is an increase in direct costs to business of £14,339.0 million net. This compares to the ‘holding’ BIT of £0 set by the Government.**
7. The Table below shows the change in business impacts compared to the Government’s BIT target since the current regime was introduced in 2015.

	2015 Parliament*	2017 Parliament*	2019 Parliament
BIT Target	£10bn reduction	£9bn reduction	£0 ‘holding’ target
Interim Target	£5bn reduction	£4.5bn reduction	£0 ‘holding’ target
BIT Outcome	£6.6bn reduction	£7.8bn increase	£14.3bn increase [†]

* The 2015 and 2017 Parliaments ran for shorter periods than the five years for which the BIT was set. The three-year interim targets may be more appropriate for comparison with outturns.

† Cumulative outcome for Dec 2019 to Dec 2022 (excluding temporary Covid measures)

¹ <https://www.legislation.gov.uk/ukpga/2015/26/section/25/enacted>

² <https://www.gov.uk/government/publications/better-regulation-annual-report-2021-to-2022>

³ The equivalent annual net direct cost to business (EANDCB) is the metric used in IAs to produce consistent estimates. The contribution of a measure to meeting the BIT is calculated by multiplying its estimated annual impact (EANDCB) by the assumed five years of a parliament, or by a smaller number where the anticipated impact will last for a shorter period.

8. The Retained EU Law (Revocation & Reform) Bill 2022 includes clauses that would remove the statutory requirements set out in the SBEE Act 2015. If it receives Royal Assent as drafted, the BIT and associated requirements will cease to apply and we will no longer have a statutory role as the IVB. In that case, the BIT Report on which this IVB Report comments would be the final such report. We would however anticipate continuing to produce an annual report, although with a potentially different scope and format.

PROGRESS AGAINST THE BUSINESS IMPACT TARGET

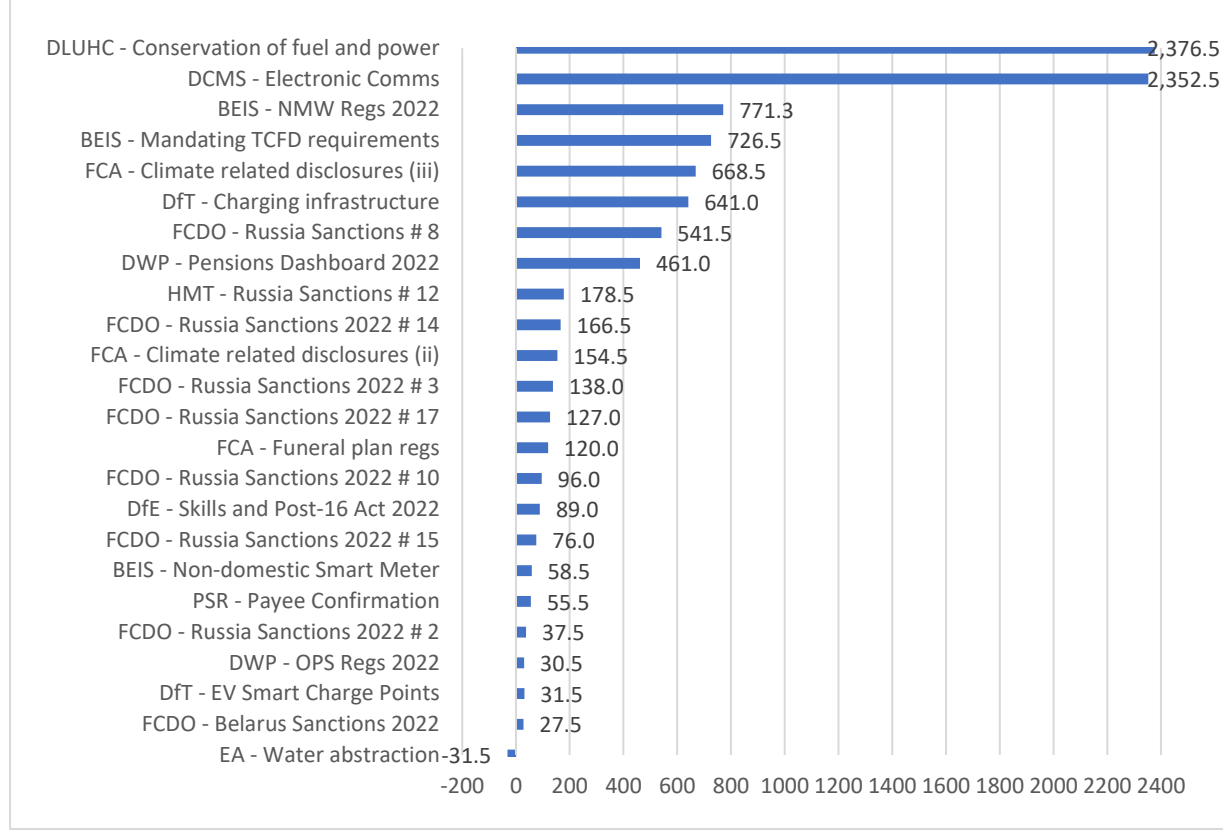
9. We have verified the EANDCB and 'BIT score' figures for the QRPs listed in the Government's report (columns 4 and 5 in Table 3 and column 4 in Table 4 in the report).⁴
10. The overall net 'BIT score' reported in annual reports can be subject to adjustment in future reports (if numbers from previous years are later amended). There is no such adjustment this year. The reported net BIT score at the start of the period of the current report therefore remains that reported in last year's report.
11. Table 1 in the Government's report includes two measures not verified in previous reports. We confirm that these EANDCB figures remain unverified and so are not included in the BIT scores.
12. To summarise the position across the Parliament, the impact from the first two years of the parliament as reported last year was an increase in costs to business and other organisations of £4,445.2 million net. When combined with the increase in costs this year of £9,893.8 million net, the total impact for the current parliament to the end of December 2022 is an increase in costs of £14,339.0 million net.

QUALIFYING REGULATORY PROVISIONS (QRPs)

13. QRPs are listed in Tables 3 and 4 in the Government report. Over the period covered by the report there were a total of 24 QRPs, 19 from departments (in Table 3) and 5 from regulators (in Table 4). All 24 had verified estimated net direct costs (or benefits) to business – totalling £9,893.8 million.
14. There were two measures with significantly larger impacts than the others:
 - The Department for Levelling-up, Housing and Communities measure requiring changes to standards set through the English Building Regulations to improve the energy efficiency of both new and existing homes and reduce carbon emissions, contributing £2,376.5 million direct costs to business
 - The Department for Digital, Culture, Media and Sport's *The Electronic Communications (Security Measures) Regulations 2022*, which set out measures on public telecoms providers designed to ensure that public networks and services are following appropriate and proportionate security practices. This contributed £2,352.5 million direct costs to business.

⁴ Our role as IVB does not extend to verification of the NPV figures (in columns 6 and 7 of Table 3).

Figure 1 - Contribution of individual QRPs to the BIT score
Positive = increase in direct costs (£ millions)



NON-QUALIFYING REGULATORY PROVISIONS (NQRPs)

15. The Government’s BIT reports also include any measures that had impacts above the Better Regulation Framework’s £5 million *de minimis* threshold but were non-qualifying for the BIT. There were ten such measures reported in the period covered by this report (in Table 6 in the Government report). Nine of the measures have been self-certified by the relevant department as an NQRP under the building safety exclusion and submission of IAs to the RPC is not required by the BRF in such cases. We can verify the impact calculation for the remaining (DfT) measure and that this has been correctly categorised as an NQRP. Of the nine self-certified measures, only one had monetised impacts presented (which, with the DfT measure, made for a combined increase in direct business costs of £147.9 million). We believe that estimates of impacts should have been presented for the other eight self-certified measures in this table.

16. Since 2017, the *de minimis* exemption in the framework has allowed departments and regulators to self-certify regulatory proposals as exempt from RPC scrutiny and inclusion in the BIT score where the impacts are estimated to be less than +/- £5 million *per annum*. Table 7 (on page 31) in the Government report lists 136 such proposals last year from **departments**.

17. Departments self-certify measures as *de minimis* and, in these cases, are not required to submit an IA to the RPC for verification (although in some cases they submit voluntarily where they would like the benefit of an RPC opinion). Where, in discussion with departments, we consider that the IA for a measure is being classified as *de minimis* but

the impacts may exceed the threshold, a mechanism exists to “call in” such measures and require IAs to be submitted (although it was not used during the year).

18. The table starting on page 61 of the Government’s report summarises the measures reported by **regulators** that are non-qualifying for BIT purposes. In the case of regulators, this includes both those below the *de minimis* threshold and others where regulators are permitted to self-certify. While regulators are encouraged to submit summaries of their NQRP measures, so that we can consider whether we agree with the classification, this is voluntary and we are, therefore, not in a position to confirm whether this table is comprehensive and fully accurate.

IMPACTS ON SMALL AND MICRO BUSINESSES

19. IAs that are produced in support of regulatory proposals must consider specifically the impacts of the proposals on small and micro businesses. Any IA that we have rated as ‘fit for purpose’ will have had an adequate, proportionate assessment of these impacts.
20. Table 8 (on page 137) of the Government report sets out some of the measures introduced during the reporting period that included specific components to mitigate the impacts on small and micro businesses. This list is not exhaustive, but we commend the Government for considering such mitigations.
21. With effect from 3 October 2022, the Government extended the scope of this consideration to include a presumption of exemption from regulations for businesses up to 500 employees⁵. None of the measures verified for inclusion in this year’s BIT Report reflected consideration of this new policy.

QUALITY OF IMPACT ASSESSMENTS SUBMITTED TO THE RPC

NUMBER OF IMPACT ASSESSMENTS SUBMITTED LATE FOR SCRUTINY

22. As last year, we are concerned at the number of IAs that arrived with the RPC late in the decision-making process – in some cases when the legislation was already before Parliament. This means that our opinions are not able to play their intended role in informing ministerial decision-making and parliamentary scrutiny, nor support external accountability.
23. There was a significant increase this year in cases where the department submitted the IA to us too late for our opinion to accompany the legislation into parliament. While we did our best to ensure that our opinions were published in time for them to be of use to parliament, this is clearly far from ideal. It undermines the objective of the Better Regulation Framework for our opinions to inform Parliament of the robustness of the evidence supporting regulatory proposals.
24. These experiences contributed to a clarification in our policy on publication. As we reported to the House of Lords Secondary Legislation Scrutiny Committee in response to their report *Losing Impact: Why the Government’s impact assessment system is failing*

⁵ <https://www.gov.uk/government/news/red-tape-cut-for-thousands-of-growing-businesses>

Parliament and the public,⁶ we will now be making a clear statement when legislation reaches parliament in situations where our opinion is not available for publication at that point – as we have recently done for the Strikes (Minimum Service Levels) Bill⁷ which was submitted late by BEIS. We will also in future publish our opinions as soon as the relevant (draft) legislation is laid before Parliament whether or not the government’s IA has been published. We hope that these changes will increase awareness of the value of impact assessments and the BRF.

INCREASE IN THE NUMBER OF NOT-FIT-FOR-PURPOSE IMPACT ASSESSMENTS

25. The Better Regulation Framework allows the RPC to issue an opinion that an IA is “not fit for purpose” where it has sufficient concerns with the calculation of the EANDCB figure and/or the small and micro business assessment. Where timescales allow, we issue an “initial review notice” (IRN), which allows the department to revise the IA and re-submit it. In most cases this then results in a final ‘fit for purpose’ opinion.

26. We issued IRNs in relation to IAs as first submitted for three of the 24 measures that contributed to the total BIT score across the period of this report.

27. Even with the IRN process, there has been a concerning increase in the number of IAs that we have red-rated this year. Between 2016 and 2020 we did not publish any red rated opinions. **Since 2021 we have published eight red-rated opinions, including four in 2022 and two (so far) in 2023.**

28. The [cases we have red-rated](#) over the past 12 months were:⁸

- The Genetic Technologies (Precision Breeding Techniques) Bill (RPC opinion issued June 2022) – DEFRA
- Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (July 2022) – HM Treasury
- Energy Prices Bill (November 2022) – BEIS
- Retained EU Law (Revocation & Reform) Bill (November 2022) – Cabinet Office/ BEIS
- Prohibiting the sale to retail clients of investment products that reference crypto-assets (January 2023) – Financial Conduct Authority
- Strikes (Minimum Service Levels) Bill (February 2023) – BEIS/Department for Business and Trade

QUALITY OF OTHER ASPECTS OF IAs CONSIDERED IN RPC OPINIONS

29. In addition to red-rating IAs, the RPC provided quality ratings⁹ across four areas of scrutiny (rationale and options, cost-benefit analysis, wider impacts and, monitoring and evaluation) for the 19 IAs that were part of the 24 qualifying measures captured during

⁶ <https://rpc.blog.gov.uk/2022/11/29/rpc-response-to-recommendation-in-lords-committee-report/>

⁷ <https://www.gov.uk/government/news/strikes-minimum-service-levels-bill-ia-statement-from-the-rpc>

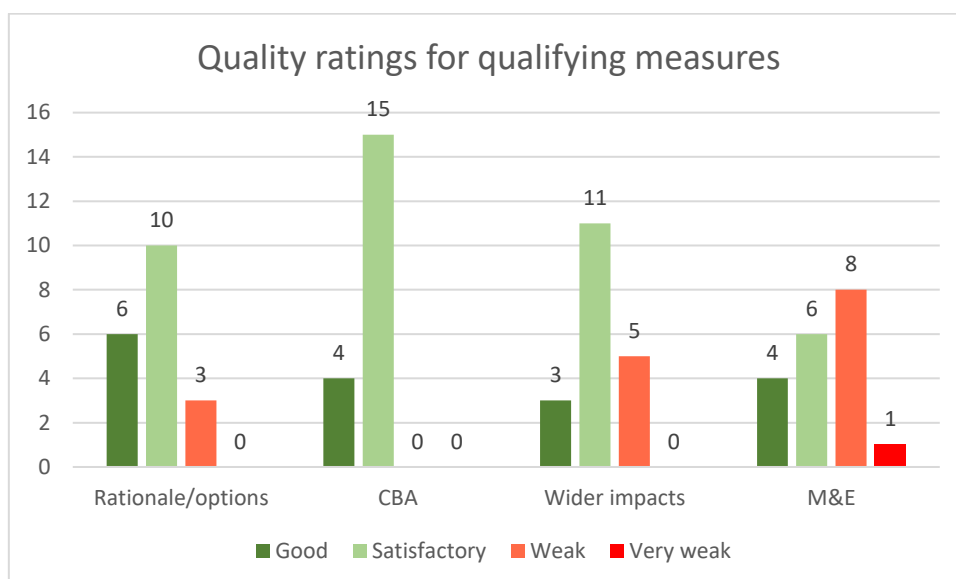
⁸ Not all of these would be included in the BIT score covered by the recent BIT report as that includes only measures that came into force between 17 December 2021 and 16 December 2022.

⁹ With the introduction of a revised opinions format at the end of 2020, RPC opinions now give IAs ratings of ‘Good’, ‘Satisfactory’, ‘Weak’ or ‘Very weak’ for four categories on which we do not formally rate on fitness-for-purpose – more [here](#).

this BIT reporting period.¹⁰ Figure 2 below shows the distribution of these ratings for those IAs:

- 16 scrutiny areas received a 'Weak' rating – indicating that: *The analysis is not sufficiently robust to address the issue. Improvements are required in one or a number of areas. It provides inadequate support for decision-making on these aspects of the assessment.*
- One of the measures received a 'Very Weak' rating (for monitoring and evaluation) – indicating that: *The analysis is poor and has significant flaws. Significant improvements are required in one or a number of areas. It provides inadequate support decision-making on these aspects of the assessment.*

Figure 2 – Quality ratings for qualifying measures



INFLUENCE OF THE RPC ON REPORTED IMPACTS

30. In some cases, either where we issue an IRN or where we offer feedback in the course of scrutiny, the department may amend the EANDCB figures in the IA. In such cases, the EANDCB and BIT score figures verified in the final IA differ from those initially submitted.
31. The table below sets out for such measures this year the initial and ultimately verified EANDCB figures, and shows the difference between the two figures. The total of the value of these differences gives an indication of the impact that RPC scrutiny has had on the Government's estimates of the impacts of their regulatory proposals and, therefore, on the BIT score reported.

¹⁰ For the 8 that did not receive ratings, this was due to their status as being EANDCB validations from regulators.

32. For the year covered by this report, four of the regulatory proposals listed in Tables 3 and 4 of the Government's report were amended following the issuing of RPC advice.¹¹ In these cases, RPC scrutiny adjusted the EANDCB figures by £279.7 million a year in total (ignoring whether the adjustment was up or down). The net impact of these adjustments on the final BIT score was to change the scored impact by £1,183 million.¹²

Impact of RPC scrutiny on verified EANDCBs for QRPs

Measure	Department / Regulator	EANDCB £m (+ cost / - benefit)		Change as a result of verification
		As initially submitted	Verified by RPC	£m
The Russia (Sanctions) (EU Exit) (Amendment) (No. 12) Regulations 2022 [ban on new outward investments to Russia]	HM Treasury	+17.9	+35.7	+17.8
The Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2022	FCDO	+278	+27.6	-250.4
The Russia (Sanctions) (EU Exit) (Amendment) (No. 8) Regulations 2022	FCDO	+116	+108.3	-7.7
Water abstraction e-alerts	Environment Agency	-10.1	-6.3	+3.8

¹¹ We do not include the correction of minor EANDCB miscalculations or cases where RPC offered informal advice to departments or regulators prior to formal submission.

¹² This figure estimates by how much the total net BIT score reported in the Government's report would have differed had it been calculated using the original unverified EANDCB figures and so shows the impact of verification on the headline BIT score.