



Department for
Business & Trade

BETTER REGULATION FRAMEWORK

Guidance

September 2023

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1 Introduction

1.1 The Better Regulation Framework (BRF or Framework) is the system government uses to manage the flow of regulation and understand its impacts. The BRF plays an important role in helping to drive behaviour and approaches to policy making across government. As set out in the [Smarter regulation to grow the economy](#) paper, the UK's new approach recognises that regulation should be applied proportionately, and that there must be sufficient evidence that any identified risk of not regulating is credible and real. The new Framework provides the right system to ensure the future regulation of our changing economy is streamlined, recognises dynamic factors not just immediate compliance costs, and puts smart, forward-looking regulation at the heart of government decisions.

1.2 This new framework follows the five regulatory principles set out in the [Benefits of Brexit](#) report:

- **A sovereign approach.** We will use our new freedoms to follow a distinctive approach based on UK law, protected by independent UK regulators and designed to strengthen UK markets.
- **Leading from the front.** We will focus on the future, shaping and supporting the development of new technologies and creating new markets. We will use our new freedom to act quickly and nimbly and we will pursue high-quality regulation because it leads to better markets.
- **Proportionality.** Where markets achieve the best outcomes, we will let them move freely and dynamically. We will pursue non-regulatory options where we can. When strong rules are required to achieve the best outcomes, we will act decisively to put them in place and enforce them vigorously.
- **Recognising what works.** We will thoroughly analyse our interventions based on the outcomes they produce in the real world and where regulation does not achieve its objectives or does so at unacceptable cost, we will ensure it is revised or removed.
- **Setting high standards at home and globally.** We will set high standards at home and engage in robust regulatory diplomacy across the world, leading in multilateral settings, influencing the decisions of others and helping to solve problems that require a global approach.

1.3 The objectives of the reforms to the Better Regulation Framework are:

- a) to increase the consideration and use of alternatives to regulation
- b) earlier and more holistic scrutiny of regulatory proposals through consideration of wider impacts beyond direct costs to business
- c) earlier and more consistent evaluation of whether implemented regulations are achieving their aims

- 1.4 The new approach therefore brings independent scrutiny, by the government's independent advisory body, the Regulatory Policy Committee (RPC – see **chapter 4**), forward in the policy cycle, refocusing on assessing the case made for regulation to ensure that government regulates only where necessary. It ensures that proposals are assessed against a wider range of impacts and ensures that well-considered monitoring and evaluation plans are in place before implementation.
- 1.5 While the BRF's primary purpose is to support ministerial decision making, it also has an important role in enabling parliamentary scrutiny of regulation and transparency in general. The BRF also continues to hold an important role in supporting the UK in meeting international commitments arising from Free Trade Agreements (FTAs).

Transition to the new Framework

- 1.6 The new Framework is launched with the publication of this guidance, which means that departments can use the new Framework for new Regulatory Provisions.
- 1.7 However, new policies can require long lead-in times from conception to being ready to announce or consult on a lead regulatory option. This can be to make sure that alternatives to regulation have been fully considered, that sufficient evidence has been gathered, and that the proposals have been through the independent scrutiny process (where relevant) before publication.
- 1.8 Therefore, a transition period is necessary. This will be a period of 12 months. Specifically, until the start of September 2024, departments can seek collective agreement to a consultation or announcement for a new 'Regulatory Provision' (see **chapter 2** for definition) having used either the previous or new Framework. For the avoidance of doubt, either choice is acceptable during this transition at the discretion of the relevant Minister. See the [guidance for the previous Framework](#).
- 1.9 In addition, some current Regulatory Provisions will already be past the early-stage collective agreement point, for example, if they are at, or past, the point of consultation on a lead Regulatory Provision. These will have been developed using the previous BRF and will therefore continue on that basis.
- 1.10 The transition period will not result in any gaps in coverage – all relevant Regulatory Provisions will use either the previous or new Framework.

Examples of which Framework applies

Example 1: Seeking collective agreement in March 2024

A department plans to announce plans for a new regulatory provision. This is within the transition period and it is at their discretion whether to use the previous or new Framework.

Example 2: Seeking collective agreement in October 2024

A department plans to seek collective agreement in October 2024 to announce plans for a new regulatory provision – for example using a consultation where it is a preferred option. This is past the transition period and they must use the new Framework.

Example 3: If using the previous system

Referring to example 1, if a department chooses to use the previous system within the transition period then the regulatory provision will continue to use the previous system – including beyond September 2024 where relevant.

How to use this guidance

- 1.11 The purpose of this guidance is to explain how the BRF process should operate and to guide policymakers in government on how to comply with the BRF when introducing new Regulatory Provisions.
- 1.12 It is first and foremost written for departments creating new Regulatory Provisions. The guidance sets out key considerations for developing regulatory policy. It follows the policy making cycle and sets out the process for earlier scrutiny of decisions to regulate and where such scrutiny is required.
- 1.13 **It is strongly recommended that policymakers read this guidance in its entirety prior to engaging with the BRF process.** This applies whether a Regulatory Provision is included or excluded from RPC scrutiny, as this guidance contains explanations and support which is likely to be needed for **any** Regulatory Provision.
- 1.14 With the exception of the transition arrangements described above, this document supersedes the [‘Better Regulation Framework: Interim Guidance’](#) published in March 2020.

2 Scope

- 2.1 The Framework applies to **Regulatory Provisions** as defined below. If something is not a Regulatory Provision, it is not in scope of the Framework.
- 2.2 If a measure is not in scope of the Framework, then you do not need to follow this guidance. However **other guidance may still be applicable** – for example, the [Green Book](#) and/or the [Guide to Making Legislation](#).

Definition of a Regulatory Provision¹

- 2.3 A **‘Regulatory Provision’** is a **‘statutory provision’** that relates to a **‘business activity’** which—
- a) imposes or amends requirements, restrictions or conditions, or sets or amends standards or gives or amends guidance, in relation to the activity, or
 - b) relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which relate to the activity.

A **‘statutory provision’** is:

- a) a provision of an Act,
- b) a provision of subordinate legislation made by a Minister of the Crown, or
- c) any other provision which has effect by virtue of the exercise of a function conferred on a Minister of the Crown, or independent regulator that has agreed to sign up to the BRF, by or under an Act.

A **‘statutory provision’** does not include:

- a) a provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament (see section 29 of the Scotland Act 1998),
- b) a provision which could be included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998), or
- c) a provision falling within the legislative competence of the National Assembly for Wales (see section 108A of the Government of Wales Act 2006).

¹ The definition is mostly the same as the prior legal definition from s21 to s27 of the Small Business, Enterprise and Employment Act 2015. However, there are some differences, such as removal of the exclusion for making or amending measures which will have effect for a period of less than 12 months.

'Business activities' means activities carried on:

- a) by a business for the purposes of the business, or
- b) by a voluntary or community body for the purposes of the body.

References to a **business or a voluntary or community body do not include**² a business or a voluntary or community body which—

- a) is controlled by a public authority, or
- b) is acting on behalf of a public authority in carrying out the activities.

Notwithstanding the above definition, **provisions and their impacts are out of scope from the definition of Regulatory Provisions where they are in connection with:**

- a) imposing, abolishing, varying or in connection with any tax, duty, levy or other charge;
- b) procurement;
- c) grants or other financial assistance by or on behalf of a public authority; or
- d) commencement orders.

How the Framework applies to regulators

- 2.4 Regulatory provisions in scope of the BRF include statutory provisions made by ministers for, or on behalf of, regulators, but not provisions made by regulators themselves (for example, where they have a separate legal identity to the ministerial department and have legislation making powers). Where an independent regulator makes its own Regulatory Provisions it is recommended that the regulator follows the Framework where possible, whilst avoiding duplication when there is a separate process in place that considers better regulation issues. Additional guidance on this will be issued at a later date.
- 2.5 As an example, the financial services regulators, including the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA), do not have the power to create Regulatory Provisions under the above definition, and are therefore out of scope of the BRF. If the Government were to make a Regulatory Provision in relation to financial services, then that would be in scope of the BRF. As with all regulatory authorities, as well as government departments and arm's length public bodies with responsibility derived from central government for public funds, the financial services regulators are still bound by the Green Book. The FCA and PRA are also establishing a Cost Benefit Analysis (CBA) Panel, as required by the Financial Services and Markets Act 2023, in order to support their production and development of CBA. This will improve their understanding of whether proposed interventions are likely to be effective and proportionate.

² See [here](#).

3 Summary of the Framework

The Better Regulation Framework (BRF)

- 3.1 The BRF applies to all Regulatory Provisions (see **chapter 2**) and sets out the process for ensuring that the principles for better regulation are applied whenever government brings forward proposals for new Regulatory Provisions.
- 3.2 The BRF is designed to ensure that government regulation is proportionate and is used only where alternative, non-regulatory approaches, will either not achieve the desired policy outcomes or will achieve them at disproportionate cost. By enabling ministerial decisions to be based on robust analysis of the costs and benefits of different options, the Framework helps ensure that new regulation is implemented only where there is clear evidence that it will generate net positive outcomes for society and is implemented and enforced in a way that minimises the burdens on businesses and consumers, and supports other priorities such as innovation and competition.
- 3.3 The Framework builds on the principles of appraisal and evaluation set out in HM Treasury's 'Green Book' and 'Magenta Book' to ensure objective analysis is provided to support decision making, and that the Government is accountable for new regulation. Where government intervention requires a legislative or policy change, departments are expected to analyse and assess the impact of the change on the different groups affected. This generally takes the form of an impact assessment (IA).
- 3.4 The interactions between the Framework and the regulatory policy-making cycle can be broken down into three stages:
1. **Initial policy development** – The initial development of policy proposals within departments, prior to formal or informal consultations. **This is the subject of chapter 5 of this guidance.**
 2. **Pre-implementation** – This refers to the stage where a Regulatory Provision has been identified as a preferred option. The Regulatory Provision should be logged with the RPC Secretariat (see **chapter 4**) and consideration given to the work needed to comply with the Framework. **This is the subject of chapters 6-10 of this guidance.**

In summary, if the regulation has significant annualised impacts on business (greater than +/-£10m Equivalent Annual Net Direct Costs on Business (EANDCB)), the department must produce an 'Options Assessment' (OA – see **chapter 7**) for independent scrutiny by the RPC, unless an exclusion or exemption applies. This OA is required ahead of seeking collective agreement on a preferred Regulatory Provision; including for any consultations that have a Regulatory Provision as a preferred option. Regulatory Provisions with impacts on business of +/-£10m must also have a final impact assessment (IA – see **chapter 10**) for laying in Parliament alongside the regulation, regardless of exclusions or exemptions from independent scrutiny (see **chapter 6**). The regulation should include a review provision unless a statement is made, in the [Explanatory Memorandum](#) (see **chapter 11**), on why it would not be appropriate to include one.

3. Post-implementation review (PIR) – Once the proposals have come into force, this stage includes reviewing whether the regulation is meeting its intended objectives, whether the policy could be improved, and whether it could meet its objectives at lower cost. **This is the subject of chapter 13 of this guidance.**

Impact Assessments, Options Assessments and Explanatory Memoranda

- 3.5 Regulatory impact assessments (RIA or IA), also known as ‘final stage IAs’ (or often ‘final IA’), are used to support the appraisals of new primary or secondary legislation. The IA is an assessment of the anticipated impacts of the proposal.
- 3.6 An Options Assessment (OA) is related to an IA, but is produced at an earlier stage in the process of developing the Regulatory Provision, specifically for RPC scrutiny in the new Framework.
- 3.7 **A regulatory IA needs to be prepared for all Regulatory Provisions where impacts are greater than \pm £10m EANDCB.** The final IA must be laid in Parliament alongside the legislation, permitting scrutiny by parliamentarians and other relevant bodies. This is an important consideration, not only for public and parliamentary transparency, but also to enable the UK Government to meet its legal obligations under international law. **The requirement to produce a full regulatory IA is separate from the question of whether independent scrutiny of an OA or the final IA is required.**
- 3.8 For de minimis measures (measures with impacts below \pm £10m EANDCB), departments should provide a proportionate assessment or estimate of the impacts – to self-certify that the measure is below the de minimis threshold.
- 3.9 It should be noted that the House of Lords’ Secondary Legislation Scrutiny Committee (SLSC) recommends that, even if the policy does not meet the formal threshold for an IA, a short explanation of the net effects of the policy should always be included in the Explanatory Memoranda (EM), including estimated figures for costs and benefits.
- 3.10 The IA/OA process is based on the ROAMEF³ policy cycle and uses options analysis, including via an assessment of costs and benefits, as set out in the Green Book, to ensure good practice in developing policy based on robust evidence. The level of analysis should be proportionate to the problem that is being addressed and reflect the scale or impact of the measure.
- 3.11 An IA summarises the rationale for government intervention, the different policy options considered (including non-regulatory options) and the impacts of the intervention, as well as quantifying expected costs and benefits. Impacts should be set out in the most meaningful way possible given the evidence that has been identified and researched by the department. Where possible, this should include monetised costs and benefits. If monetising is not possible, quantitative

³ Rationale, Objectives, Appraisal, Monitoring, Evaluation, Feedback

estimates of numbers of businesses and household affected etc should be used. In some cases, qualitative evidence should be set out. The Green Book and the BRF both expect proportionate analysis, which means that departments are expected to make greater efforts to identify and analyse evidence for policies with more significant impacts.

3.12 An IA should document:

- the total Net Present Social Value (NPSV)⁴
- the Net Present Value (NPV) to business⁵
- the Equivalent Annual Net Direct Costs on Business (EANDCB) for direct impacts on businesses
- the Equivalent Annual Net Direct Costs on Households (EANDCH) for the direct impacts on households or other ‘person units’
- other analysis as appropriate and proportionate, for example distributional effects, net zero and environmental impacts

Overview of analysis and scrutiny requirements for Regulatory Provisions		
<u>Stage</u>	<u>Analysis</u>	<u>RPC Scrutiny</u>
Announcing a Regulatory Provision as a preferred regulatory option	OA required unless exempt or excluded (for example, exempt if under ±£10m EANDCB)	Required unless exempt or excluded (for example, exempt if under ±£10m EANDCB)
Consultation – N.B. This may be the same stage as above (if above condition is met), or could be before or after.	Proportionate analysis required. Where relevant, departments can use information from the OA to demonstrate this, but will want to redact any sensitive information first.	RPC scrutiny not required beyond OA stage scrutiny (where relevant).
Final stage	Final stage IA required unless under ±£10m EANDCB	RPC scrutiny not required apart from the highest-impact measures where the Regulatory Provision BOTH: a) over EANDCB of ± £100 million AND b) had inadequate (weak / very weak) scores on the wider impacts or monitoring and evaluation

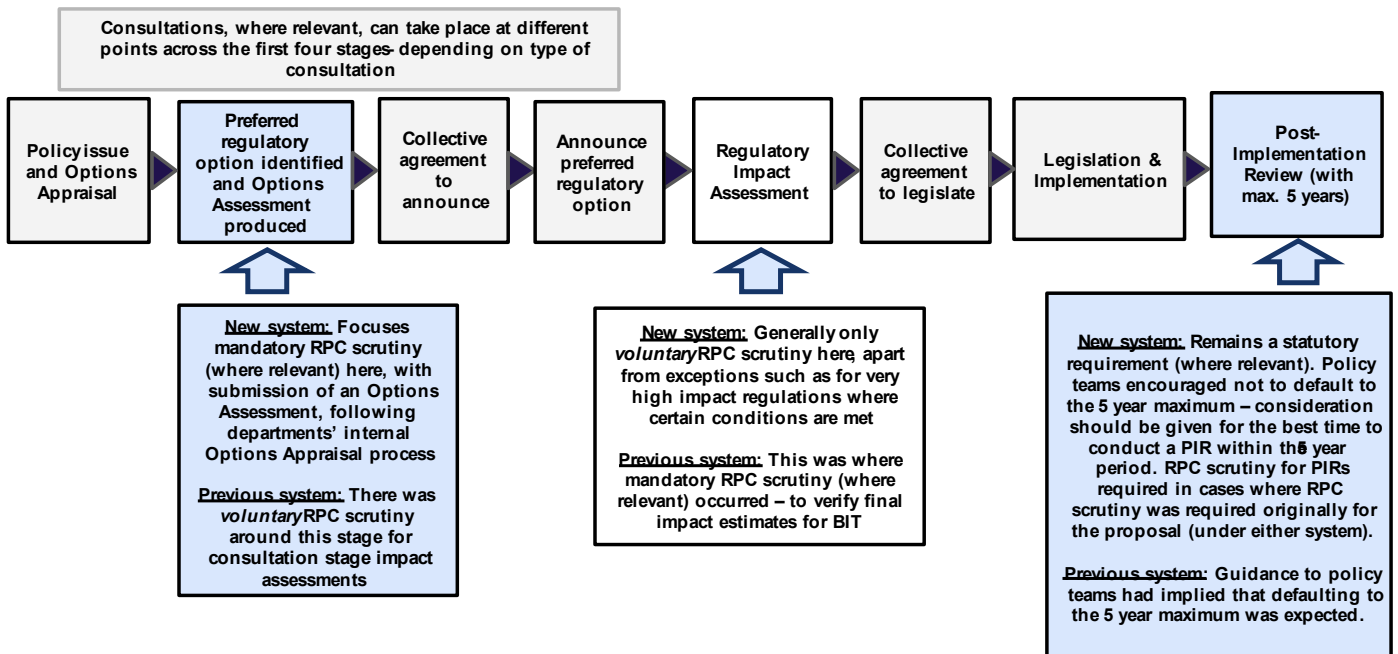
⁴ NPSV is the net benefit to society and the economy as a whole (including businesses). It shows the present value of all benefits (including benefits to business and society at large) less the present value of all costs (to business and society at large). See the [Green Book](https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government) for further guidance: <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government> .

⁵ NPV to Business is the net direct and reasonable indirect benefits of a policy to business only. It shows the present value of all benefits to business less the present value costs to business.

		on the OA, or falls within an exclusion category (apart from the Building Safety exclusion) and has therefore not gone through OA scrutiny
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Overview of key stages of the BRF

Note: This is an illustrative high-level summary of some of the key stages of the BRF process, and should not be considered as a substitute for understanding the relevant steps that sit below or around those identified in this overview.



4 Key information

Key bodies

- 4.1 Every department has a **Better Regulation Unit (BRU)**, to champion the BRF in the department, oversee that department's processes for better regulation and advise teams on how to comply with the requirements.
- Policy teams and analysts should **consult their departmental BRU** to ensure they are complying with the correct guidance.
 - Policy teams must consult their BRU as soon as possible if they consider they are **unable to follow the BRF process**.
- 4.2 The **Better Regulation Executive (BRE)** leads across government on Better Regulation policy and is responsible for embedding it in the policy making cycle. This includes publishing guidance on how to follow the BRF process and providing advice and support to BRUs.
- 4.3 The **Regulatory Policy Committee (RPC)** is the government's independent advisory body for providing scrutiny of the evidence and analysis that supports the introduction of new Regulatory Provisions. The RPC scrutinises evidence and analysis, primarily in the form of an Options Assessment (OA), supporting the case for why regulation is necessary for measures that are subject to the BRF.
- 4.4 The RPC is supported by a **secretariat** that is staffed by civil servants – both policy professionals and analysts. The RPC Secretariat supports the independent RPC and the operation of the BRF scrutiny process. It is part of government and will be clear with departments about any information that it will share or not share with the independent RPC and its members.

Records and reports

- 4.5 The RPC Secretariat manages operational aspects of the BRF process. It is responsible for maintaining a record of:
- **All Regulatory Provisions.** Departments must submit basic information about all Regulatory Provisions (see **chapter 6**), including regulations that fall under one of the exclusion or exemption categories listed at **Annex 1** – this is to support transparency and for monitoring and evaluation purposes.
 - **RPC opinions.** The RPC Secretariat will also maintain a record of OAs submitted for independent scrutiny and the opinions issued by the RPC, including ratings by category (see **chapter 6**). This will ensure both the RPC and BRE hold up to date knowledge of the number of regulations that are being developed by departments and how they are performing in the various aspects of the production of OA/IAs.
 - **Post-implementation review (PIR) due dates.** Departments must maintain an accurate log of statutory PIR due dates so they can ensure they do not miss the relevant statutory deadlines. Through dialogue with BRUs, the RPC

Secretariat and BRE will also seek to maintain a record, to track cases and keep notes of when a PIR should have been completed for each regulation.

Controls on the BRF process

- 4.6 **Departments need to confirm when seeking collective agreement that the BRF processes have been followed.**
- 4.7 **Where departments seek collective agreement without appropriate BRF clearance**, this should be noted and will be for Ministers collectively to decide whether to give agreement.
- 4.8 **Departments must not introduce Regulatory Provisions to Parliament without the correct accompanying material** unless there is a valid reason. The material must include an IA where relevant (see **chapter 10**), and an RPC opinion where scrutiny was required. This will be monitored by the RPC Secretariat.
- 4.9 The RPC will publish an annual report, in its “independent Better Regulation watchdog” capacity, summarising the Government’s regulatory activities and offering some breakdown by department. This will make overall performance of the BRF transparent, for scrutiny both by Parliament and other stakeholders. The RPC will also continue to publish its opinions and views independently, respecting the confidentiality of the policy development process.

Requirements that complement the BRF

- 4.10 There are other administrative requirements necessary for the clearance and publication of proposals, legislation and documents that work alongside the BRF. The advice in this guidance complements these requirements and does not affect the need to comply with them.
- **Annex 5** provides the key considerations policymakers should bear in mind when answering the question on trade and investment in the OA template.
 - **Annex 7** lists other guidance on how to meet the requirements of good policy development, Cabinet clearance, making legislation, and parliamentary scrutiny.

Common commencement dates

- 4.11 The policy of bringing regulatory changes into force on one of two annual common commencement dates is intended to reduce the costs to business of keeping on top of their regulatory obligations.
- 4.12 Where feasible and appropriate, **departments should aim to commence regulatory changes on 6 April or 1 October**, however legislation can be laid or made in advance.

- 4.13 **If departments intend to implement a regulation outside of these commencement dates, they should make sure that the rationale behind this is clear** when seeking collective agreement. Commencement orders to bring primary legislation into force are not Regulatory Provisions (see **Chapter 2**) and do not require IAs.

Devolved regulation

- 4.14 In areas of reserved competence, regulation is typically commenced on a UK-wide basis.
- 4.15 Where legislation includes a mixture of devolved and reserved provisions, **departments should discuss at an early stage with officials in the devolved administrations** and seek to align commencement dates as far as possible on a UK wide basis.

Approach to Retained EU Law (REUL) reform scrutiny

- 4.16 This guidance, which covers the reformed BRF, has been introduced in parallel to the delivery of the programme of work put in place by the Retained EU Law (Revocation and Reform) Act 2023.
- 4.17 It was agreed that the approach to scrutiny of REUL reform should follow the equivalent of the previous BRF process, where independent scrutiny will be required for cases where impacts exceed $\pm£5m$ EANDCB. This is referred to as the 'bespoke approach to REUL reform analysis for 2023'.
- 4.18 A review will be undertaken by the end of 2023 on whether this parallel process should continue into 2024, or whether the new BRF should apply to REUL/assimilated law reforms for 2024 onwards.

Further resources and training

- 4.19 Training will be available on regulatory IAs and OAs via the RPC Secretariat and the Government Economic Service. Departmental teams should contact their BRU for support on how to access this training and will be able to contact the RPC Secretariat.
- 4.20 In addition, it is recommended to refer to the RPC pages on GOV.UK, which offer additional guidance and case histories.

5 Policy development process

Understanding the costs, benefits, and risks of any new measure or proposal is fundamental to better regulation and better policy making.

- 5.1 The BRF assumes that policy teams follow good policy making practice in considering possible solutions to policy problems:
- They follow HMT Green Book⁶ policy appraisal processes. This involves departmental analysts and consideration of the available evidence. This is considered in the following section.
 - Where regulation is already in place, proportionate monitoring and evaluation forms part of this work, which may include the production of a Post-Implementation Review (PIR) where necessary (with independent RPC scrutiny of this if required). For the avoidance of doubt, PIRs do not simply replace monitoring and evaluation, they are part of the wider evaluation programme. RPC Scrutiny of future regulation will ask departments to say whether this has happened or not. **Chapter 13** covers PIRs in more detail.
 - Alternative options to regulation must be considered early in the policy development process. Guidance on alternatives will be published separately. Policy teams should use this guidance, with assistance from their BRUs if needed. This is covered below.
 - If the preferred policy solution is likely to be a Regulatory Provision, it falls into scope of the BRF. When a regulatory option emerges as one of the preferred options, the policy team should liaise with their departmental BRU, and via them with the RPC Secretariat where necessary, to conclude whether the regulation proposed would be captured by the BRF.
 - Departments should also consider if there are different regulatory options that have lower costs to business, households and/or lower other impacts than the preferred regulatory approach.

The Green Book

- 5.2 As set out in the HM Treasury Green Book, the objective of appraisal and evaluation is to provide objective analysis to support decision making. Appraisal can take different forms, including the production and scrutiny of business cases for spending decisions. Where government seeks to solve a policy problem through primary and/or secondary legislation, departments are expected to analyse and assess the impact of the change on the different groups involved – which should generally take the form of an Impact Assessment (IA). For small regulatory changes, standalone IAs may not be required, though any analysis included to support these changes should be in line with Green Book methodology.

⁶ HM Treasury: The Green Book: appraisal and evaluation in central government is available [here](#)

HM Treasury Green Book

The role of appraisal and evaluation is to provide objective analysis to support decision making. Decision making processes include the scrutiny of business cases by government departments, [Treasury Approval Processes](#) and the [Regulatory Impact Assessment process](#). The principles of the Green Book should also support options appraisal when formal decision-making processes are not required.

Other considerations

- 5.3 Options appraisal should consider a range of policy options. These should include alternatives to regulation, such as industry-led approaches, as a means of delivering the policy aim, as explained in the following section.
- 5.4 Consideration should also be given as to whether it might be beneficial to co-operate with, or adopt an approach similar to that of, our international counterparts, in order to address the problem collectively, or whether it is desirable for the UK to take a divergent approach. Consideration should also be given to the point that co-ordinated action may be more effective and regulatory consistency may lower costs to businesses. International examples or comparators may also provide useful evidence as to likely impact of a proposed measure or ideas for alternative approaches. The Foreign, Commonwealth and Development Office and your departmental BRUs can provide advice and support in relation to gathering relevant evidence.

Alternatives to regulation

- 5.5 An essential first step in considering any form of regulatory intervention, which is expected to generally only occur when there is a market failure, is to identify the policy aims and what outcomes an intervention is intended to achieve. Identifying this early helps to ensure that the eventual policy approach and decision best addresses those aims, rather than defaulting to legislation being the answer.
- 5.6 Departments must ensure that they consider fully the possible use of alternatives to regulation ('alternatives') in the early stages of policy development. The use of alternatives can help to solve policy problems more quickly and encourage greater compliance. It can also help to minimise burdens on businesses and consumers, and promote competitive markets.
- 5.7 In addition to published guidance on alternatives, advice about alternatives and how they can be used is available both from your departmental BRU and from the [BRE alternatives team](#).
- 5.8 If an alternative to regulation, which does not require legislation, is identified as the preferred solution, RPC scrutiny is not required. However, some alternatives may still require some legislation to put them into effect. Examples of such approaches include:

- Plastic bag charges (consumers can choose to buy a bag or use their own, but retailers must keep records)
- ‘Traffic light’ food labelling (manufacturers do not have to use it, but if they do, they must use the standard format).

5.9 Departments should also consider other regulatory options that are quicker and encourage better compliance than their initially preferred option.

Indications that alternatives have not been adequately considered

5.10 Indications that alternatives have not been adequately considered could include (where relevant to the policy under consideration):

- No information or data to show that the sector / community to be regulated has been engaged at an informal level.
- Inadequate consideration of how the measure is intended to influence behaviours.
- No analysis of a null or minimal option – how the policy aim could be achieved using existing regulation, or by small changes.
- No comparisons with regulatory or non-regulatory policy implementations in the sector; related or comparable sectors; or other areas of policy.
- No worked-through example(s) of how the policy might be implemented using one or more of the standard alternatives (Economic incentives; Self-regulation; Co-regulation; Information and Guidance; Codes of Conduct; Standards and Accreditation).

The RPC will consider the extent to which these types of points are addressed when opining on OAs. There is a potential trade-off between achieving the policy objectives and more intrusive regulation. Departments should also consider alternative approaches that have been introduced internationally.

Consultation and preferred options

5.11 The Framework does not specify when consultation should happen, as not all measures require one. So it is up to departments, with reference to the [Consultation Principles](#), to decide whether, and when, to carry out consultation. Where OA scrutiny is required, this should be completed ahead of collective agreement to announce that a Regulatory Provision is a preferred option – including via consultations containing a Regulatory Provision as a preferred option. **Please see the examples below.**

5.12 In practice, in many cases we would expect the OA, where required, to form the basis for the consultation-stage analysis, and to be done prior consulting on regulatory options. However, where a department is undertaking a consultation with multiple options and no favoured option, a consultation might occur prior to any requirement to carry out an OA. In such a case, the scrutiny and clearance

of the OA would come after consulting (and before government announces a preferred regulatory option).

Consultation examples

Consultation example 1: A department would like to announce a potential Regulatory Provision via consulting on it as a preferred option, whilst also providing other options. If the Regulatory Provision requires OA scrutiny, this should be done ahead of seeking collective agreement for the consultation – as the consultation would be announcing that a Regulatory Provision is a preferred option.

Consultation example 2: A department would like to consult to gather more evidence on several options. These include a Regulatory Provision, but there is no indication that it is a preferred option at this stage. In line with the Consultation Principles, the department should still provide proportionate analysis alongside the consultation where possible, however OA scrutiny would not yet be required. Following the consultation, in this example, the department then decides it would like to announce the intention to create a Regulatory Provision. If the provision requires OA scrutiny, this should be done ahead of collective agreement for this announcement.

- 5.13 However, where a department is consulting on a preferred regulatory option, the new system requires that the department should go through the BRF process (including OA scrutiny if required) ahead of seeking collective agreement for the consultation, noting the BRF verdict in the write round. **Please see chapter 1 for transition timing between the previous and new Framework.**

6 Is RPC OA scrutiny required?

- 6.1 Departments are expected to engage pro-actively with the RPC Secretariat, via their BRUs, early in the policy development process.
- 6.2 Engagement with the RPC Secretariat at an early stage allows for clarification on whether a measure falls within scope of the Framework and can enable BRE to advise on potential alternatives to regulation. **Departmental BRUs must log all Regulatory Provisions with the RPC Secretariat to enable the Secretariat to maintain an internal central case register.**
- 6.3 BRUs need to log **Regulatory Provisions that fall under one of the independent scrutiny exclusion categories (see below)**. However, only the following very basic information is required:
- the name and a basic summary of the measure
 - the exclusion category that applies
 - a brief justification for the exclusion
- The RPC Secretariat will supply a reference number and note the date that the measure was logged.
- 6.4 **For Regulatory Provisions that use the de minimis exemption (see below)**, some additional information, necessary for the department's internal assessment, should be logged on the central case register. This includes:
- evidence supporting the consideration and discounting alternatives for regulation
 - consideration of any relevant past evaluation (including PIRs)
 - an assessment (or estimate) of direct business impacts (EANDCB) justifying the application of de minimis
 - a short qualitative summary of the wider impacts on the new regulatory scorecard
- 6.5 The separate **exclusion and exemption** terminology is used in order to help clarify that although both these categories do not require RPC scrutiny, they are nonetheless treated differently – for example in relation to the above logging processes. The collection of this information enables transparency and allows for clarification and/or for the RPC Secretariat to challenge where the case for an exclusion is not sufficiently clear. This information also provides BRE and the RPC with understanding to be able to monitor and evaluate the functioning of the Framework.
- 6.6 If a Regulatory Provision, which has been excluded or exempted from scrutiny, subsequently changes significantly, it is possible that the previous exclusion may no longer be applicable therefore require an OA.

Exclusion categories (from independent scrutiny)

- 6.7 To make best use of resources both in departments and the RPC, **the BRF focusses on those Regulatory Provisions that will benefit most from independent scrutiny**, in line with the objectives set out in **chapter 1**.
- 6.8 Independent scrutiny at OA stage would not be proportionate where it is clear it will add little value, for example in circumstances where specific regulation is the only option available. The below summary sets out instances where the Government has decided that a Regulatory Provision is excluded from independent scrutiny, apart from the highest impact measures in certain circumstances for most exclusion categories final stage scrutiny (**see chapters 10 and 11**).

Summary of categories for exclusion from independent scrutiny

- **Regulatory provisions that are necessary to implement international commitments and obligations.**
- **Regulatory provisions that are necessary to comply with court judgments.**
- **Regulatory provisions that are necessary to introduce or update technical standards or listed items in a schedule to an act**, where these follow the recommendations of the relevant independent advisory body (for example, changes to the classification and scheduling of drugs under the Misuse of Drugs Act 1971).
- **Regulatory provisions that are necessary to make any other technical or drafting amendments to existing legislation.** This includes those under the 'minor and technical' definition in 'The Guide to Making Legislation'
- **Regulatory provisions for operational, day-to-day conduct of regulators.**
- **Regulatory provisions imposing fines or penalties.** This exclusion does not cover Regulatory Provisions that introduce powers to issue fines and penalties
- **Regulatory provisions for the safety of tenants, residents and occupants in buildings**

Please refer to the full explanations of the exclusions available at Annex 1, before seeking to apply them.

De minimis exemption

- 6.9 Where not otherwise excluded by any of the categories listed above, Regulatory Provisions (other than Bills), which departments can demonstrate will have an Equivalent Annual Net Direct Cost to Business (EANDCB) of less than $\pm/\text{£}10$ million, are exempt from scrutiny under a de minimis exemption.
- 6.10 For de minimis measures, departments do not need to produce an OA but should produce a less detailed, but proportionate, assessment of the impacts. This should be adequate to self-certify that the measure is below the de minimis threshold.
- 6.11 In cases where both the department and the RPC Secretariat agree that a particular case should be treated differently to the de minimis rule, in either direction, then bilateral agreement can override the exemption. This is to allow sensible flexibility for examples such as where a de minimis measure has very high wider impacts, or on the other hand where a measure is above de minimis but where there is agreement that independent scrutiny would not add value. The requirement for bilateral agreement mitigates the element of subjectivity that this could introduce. The reason for the agreement would need to be recorded. If the agreement would be for a case above de minimis to not receive independent scrutiny, it will first need ministerial approval from any department that is involved in the Regulatory Provision.

Urgent measures

- 6.12 Where legislation is required urgently, for example to address an emergency situation such as essential public safety reforms, the relevant minister may seek to agree, as part of the collective agreement process (where relevant), that there is insufficient time for the measure to be assessed under the BRF. The rationale for this should be made clear.
- 6.13 In such a case, it is still expected that the required analysis of impacts is presented to Parliament alongside the legislation or, where that is not possible, as soon as practical thereafter, and subject to RPC scrutiny where required.

Bills

- 6.14 **The de minimis exemption will not apply to public bills** that contain Regulatory Provisions⁷. This is in recognition of the fact that primary legislation is adding new laws to the statute book and because, although the impacts of a bill may be below the de minimis threshold when considered in isolation, it might be enabling secondary legislation with potentially significant impacts that should be considered as the primary legislation is introduced.

⁷ For the avoidance of doubt, exclusion categories do otherwise apply to bills, and finance bills are excluded from independent scrutiny.

- 6.15 **For private members bills**, in the case where the government supports the bill (including where it supports it subject to amendment), the relevant department must produce a Regulatory Impact Assessment (unless a relevant exemption applies). See the [Guide to Making Legislation](#) for more information about private members bills.

Voluntary scrutiny

- 6.16 If Departments wish to seek assurance from independent scrutiny for measures that are covered by an exclusion, then they have the option to submit an OA or IA voluntarily. The RPC welcomes voluntary submission regardless of whether or not they meet the above exclusion criteria and will generally be happy to provide an opinion – subject to timing and RPC capacity.

The 'call-in' process

- 6.17 The above exemptions and exclusions are self-certified by departments. However, in order to help ensure that they are being applied correctly and consistently, the RPC Secretariat operates a 'call-in' process, to allow challenge for what they consider may be a potential incorrect application of an exclusion or exemption. In this way, the RPC Secretariat will play a 'critical friend' role by highlighting relevant considerations.

Scrutiny of final IAs

- 6.18 Under the new BRF there is not a requirement for independent scrutiny of final IAs, except for measures with very high anticipated impacts where scrutiny will be required in order to assure Ministers and Parliament of the robustness of the analysis for such large measures. Please see **chapter 11**.

7 Options Assessment

- 7.1 If a Regulatory Provision is not in one of the exclusion or exemption categories, a **department needs to complete an Options Assessment (OA) and submit it to the RPC** for independent scrutiny. This will involve providing evidence in the [OA template](#) (Annex 6).
- 7.2 The completed OA template is not expected to be published. Where relevant, departments could use information from the OA (redacting any sensitive information) to publish consultation stage proportionate analysis.
- 7.3 An RPC opinion is required when seeking collective agreement on a proposed Regulatory Provision, including collective agreement for any consultation that has a Regulatory Provision as a preferred option.

See **chapter 3** for a summary of the differences between an OA and a Regulatory (or final stage) Impact Assessment. The templates for OAs and IAs are separate and departments should familiarise themselves with both early on in the policy development process. While BRE recommends that departments use these templates, it is not a requirement. Departments may however find these templates helpful to understand the type of information required at different stages of the process.

How to appraise your measures

- 7.4 **When completing an OA**, departments' focus should be on providing a convincing rationale for intervention, demonstrating consideration of a range of options (including non-regulatory alternatives) and identifying the main costs and benefits of the policy, with an indication of the likely scale of impacts where possible and supported with appropriate evidence. **This should include quantified business impacts, even if this is just the best estimate at this stage.** Other impacts may be left unquantified, including household impacts where quantification may not always be proportionate, at this stage.
- 7.5 As a general note on the OA, and later IA, it is up to those producing the document to ensure the rationale is presented clearly, and to draw in all the necessary analysis in the most appropriate order. The topic guide and suggested discussion points are provided in the template to assist with this, but do not represent a required order in which the evidence must be presented, nor a mandatory set of topics to cover. Where a suggested topic is not covered by the department, it is reasonable for the RPC to expect an explanation.
- 7.6 It is expected that only significant impacts are highlighted and where possible a sense of scale should be indicated in the narrative.
- 7.7 Analysis of impacts is expected to be carried out where they are relevant, and it is proportionate to do so. For example, if a measure has no impact on trade it should be noted but no further analysis is required.
- 7.8 Where possible, departments are invited to avoid unnecessary duplication of material, provided the material remains clear and easy to read.

Criteria

- 7.9 The new BRF system focuses scrutiny on the following categories:
1. the rationale for intervention
 2. the different options considered to deliver the policy objectives, including alternatives and the Small and Micro Business Assessment (SaMBA – see Annex 3) considerations
 3. the approach taken for selecting the best option from a shortlist produced using the Green Book process
 4. the ‘scorecard’, which is a new section described below
 5. an initial monitoring and evaluation (M&E) plan

These elements are described in more detail below.

- 7.10 **At the point where an OA is being prepared, a preferred option should be identified from the short list and initial cost-benefit analysis will likely have been carried out.** This should help departments understand the stage of policy development at which they should arrive before submission of an OA to the RPC is required.

The expected components of an OA

A. Rationale

- 7.11 A key part of the OA is the strategic case for policy intervention, also referred to as the ‘rationale’. **This is covered in parts 2-4 of the OA and IA templates.**
- 7.12 The rationale should cover:
- the issue that needs to be addressed
 - why government needs to intervene
 - the consequences of not intervening
- 7.13 This could include descriptions of the market failure which may result⁸, or whether there is a legal requirement for the regulation.
- 7.14 **Departments are asked to provide SMART objectives for their proposal** – objectives that are Specific, Measurable, Achievable, Realistic and Time-limited, and should also link to departmental and HMG objectives.
- 7.15 Departments are asked to describe the logical change process by which their objectives will be met. This could be a written description, a ‘theory of change’ diagram, or another methodology that serves a similar purpose. This guidance is intentionally non-prescriptive in this regard and departments should use the most appropriate tool for the context of the policy under consideration.
- 7.16 An important part of the rationale should include evidence of learning from previous experiences of making similar Regulatory Provisions. This could be

⁸ See pages 28 and 29 of HM Treasury’s [Green Book](#) for examples relating to market failure.

taken from a PIR covering relevant regulation, other relevant evaluation, or international best practice.

B. Long list and alternatives

- 7.17 Departments need to show the long list of options they have considered, as required by the Green Book. They also need to show evidence of the alternatives that were considered and why they were rejected. **This relates to section 5 of the OA/IA template.**
- 7.18 Departments should also consider how their measure impacts on small, micro, and medium sized businesses. **More information on this is given in Annex 3.**

C. Short list and preferred way forward

- 7.19 Departments need to explain how they arrived at the short list of options as well as how and why the preferred option was selected. **This relates to section 6 of the OA/IA template.**

D. Scorecard

- 7.20 The scorecard is a two-part table which sits within **section 7 of the OA** (and is restated in a more complete form in the final IA). The scorecard acts as point of continuity through the evolution of the IA for a proposal.
- 7.21 **Part A** of the scorecard includes:
- net present social value (NPSV)
 - Business NPV
 - direct business impacts, measured by EANDCB
 - impacts on households, measured by EANDCH

Positive
Negative
Neutral
Uncertain

- 7.22 **Part B** includes assessments of wider impacts such as those on trade, innovation and net zero. This focus on wider government priorities is a key part of the new BRF process.

May work for
May work against
Neutral
Uncertain

- 7.23 Departments should indicate where these impacts are not relevant for a measure. You should follow a ‘best endeavours’ approach, providing information where proportionate and appropriate.
- 7.24 **At the OA stage proportionate attempts should be made to estimate the direct impacts on business (EANDCB) and, if possible and proportionate, to estimate the direct impacts on households (EANDCH). Annex 4 gives more information.**
- 7.25 Additionally, some indication of the scale of other impacts should be presented. The scorecard can be used to indicate a magnitude, or range of impacts, as well as the direction of impacts (whether costs or benefits). This can apply to both monetised and non-monetised impacts where appropriate to do so. The text boxes can be used to explain more complex interactions, or to signpost to a later section where they are explained fully.
- 7.26 The coloured boxes are intended to give a quick view of the likely impacts. **Only one of the boxes on each scorecard may be selected.**
- 7.27 Regardless of how the information is entered, whether numbers or text, analysts should ensure that the meaning is clear even if the impacts are uncertain.
- 7.28 Please refer to Annex 4 for associated guidance on the more technical aspects of the calculations.

E. Monitoring and evaluation plans

- 7.29 As part of the OA, departments are required to submit an initial monitoring and evaluation (M&E) plan to the RPC. **This is covered in section 8 of the OA/IA template.** This should show the initial development of an M&E plan for the preferred policy option.
- 7.30 Departments are strongly encouraged to consider how they might develop an indicative M&E plan for a proposed Regulatory Provision at the outset of the policy development cycle. This should then be refined as part of the process of developing the final Regulatory IA. This aligns with the good practice represented in the ROAMEF cycle in the Green Book.
- 7.31 Requirements for an initial M&E plan at OA stage closely mirror the requirements for plans produced as part of a consultation stage IA under the previous system. This is depicted by Figure 1.2 of [HMT’s Magenta Book](#) below.

Figure 1.2: Evaluation planning expected at each appraisal stage.



Source: Figure 1.2: Evaluation planning expected at each appraisal stage. [The Magenta Book](#), HM Treasury guidance on evaluation

7.32 **Specifically, as part of their initial M&E plan, departments should aim to address the following:**

- When do departments intend to carry out a Post-Implementation Review (PIR) of the policy (this must be within five years of implementation)?
- What is the rationale for choosing this date?
- How will the impact of the new arrangements be monitored?
- What are the main external factors that will have an impact on the success of the intervention?
- How might departments assess whether the aims and objectives of the intervention have been met, or whether the intervention should be amended?
- This might include any indicative evaluation questions to be answered [see p.31 of the Magenta Book].
- How might departments assess whether there have been unintended consequences for businesses or households? This includes, any disproportionate or unexpected administrative costs, plus any other unexpected or unwanted outcomes.

- What monitoring and evaluation arrangements are in place for any existing/related Regulatory Provisions and how can they maintain the appropriate flexibility?
- Are there any existing sources of data that could be used to inform the review?
- Are there any known issues with accessing or collecting the data that is required?
- What circumstances/changes in the market or sector would require the policy to be reviewed sooner or change the preferred option?

- 7.33 The above list is not intended to be either a prescriptive, or exhaustive, list of areas to be covered in the initial M&E plan. It is **wholly expected** that a department's plan will not be fully developed at this point.
- 7.34 Rather, these are considerations that are relevant throughout the cycle of developing an M&E plan. The initial plan should be proportionate to the level of evidence that is available at this early stage. As evidence emerges through the development of the preferred option, areas that might be addressed as part of a Regulatory IA (for example, changes in market/sectors) may be covered at that stage.
- 7.35 The RPC will be looking for justification of the department's M&E timeline. This is separate from the s.28 requirement under the SBEE Act 2015, which places a statutory duty for an initial PIR to be carried out within a maximum of five years of commencement, as set out by the relevant statutory instrument.
- 7.36 There may, however, be instances outside of the requirements of the SBEE Act where there is a legislative requirement to carry out a PIR of measures within a certain timeframe. For example, the Building Safety Act 2022⁹ places a legal requirement on the Government for an independent review of the building safety system after a period of five years.
- 7.37 In such instances, the expectation is that departments would briefly set out such requirements within their M&E plans, which will be treated as suitable justification for the timeline for review.
- 7.38 Overall, departments should consider the most appropriate timeframe for a review to be carried out. This should be proportionate to the size and scale of the impacts of the measure in question while accounting for a range of contextual factors. **See chapter 13 for further guidance on PIRs.**
- 7.39 Some principles to consider when developing M&E plans can be found in the ['PIR Principles of Best Practice' guidance](#).

⁹ <https://www.legislation.gov.uk/ukpga/2022/30/section/162/enacted>

Other elements of the OA

- 7.40 In addition to the above requirements, departments should set out how they intend to **minimise any administrative burdens of complying with the regulation. This relates to section 9 of the OA/IA template.**
- 7.41 This applies to both business and household costs. Whilst it is understood that the nature of these burdens may be different, the underlying burdens for both groups typically relate to time and material costs, which are not intended as part of the policy. These include, for example, familiarisation costs, form filling and software updates.
- 7.42 The final part of the OA is the declaration and signature which can be made by either a policy director or chief analyst.

8 RPC Independent scrutiny

- 8.1 The process for earlier RPC scrutiny has similarities to the previous system, but with a change on the focus of the categories on which the RPC offers ratings and comments.
- 8.2 Where the previous system focused on verification of the estimates of direct impacts to business (required for the business impact target) and the small and micro business assessment (SaMBA), the new process focuses initially on how well the case for proposed regulation has been evidenced (retaining the SaMBA as a part of this).
- 8.3 Where independent scrutiny is required, the policy team and analysts should factor the time required into plans. The proposed approach to logging cases means that the RPC Secretariat should get early warning of a case, can anticipate it coming, and engage with the relevant departmental BRU where appropriate.
- 8.4 When ready, the department submits their OA to the RPC Secretariat using the OA template.

Considerations for RPC opinions

- 8.5 The RPC look at whether the evidence and analysis presented in the OA supports the need for regulation and the justification for proceeding with further policy development of a regulatory approach, based on appropriate application of HMT Green Book processes and techniques. The RPC considers:
1. **Rationale.** Has the issue to be addressed been identified and evidenced? Why does government need to intervene and what would be the consequences of not doing so? Have SMART objectives been identified and a logical change process described setting out how the intervention will meet the objectives?
 2. **Options identification (including SaMBA).** Have departments considered a range of options including alternatives to regulation? Have departments considered exemption or mitigation for smaller businesses? Have departments adequately demonstrated that in moving from a long list of options to a short list, Green Book processes have been followed?
 3. **Short list appraisal and preferred way forward.** Has sufficient appraisal of the short list options been conducted to justify the selection of the preferred way forward, including cost-benefit analysis where proportionate?
 4. **Wider impacts** on the scorecard. Have the two parts of the regulatory scorecard for the preferred way forward been completed adequately? This includes quantitative and/or qualitative assessments of the impacts on society, business, households, the business environment (for example, competition and innovation), international trade and investment, and natural capital and decarbonisation. Analysis of distributional and non-monetised impacts should also be provided where possible.
 5. **Monitoring and evaluation plan.** At OA stage, this should be a light touch, high-level description of what policy success will look like, how it could be assessed, when that could happen, and what data would be needed to

evaluate the policy. Broadly this should correspond to an M&E plan produced for a consultation stage IA, as set out in the Magenta Book.

- 8.6 For criteria 1-3 above, the RPC offers Green/Red ratings, whereas for criteria 4-5 it will retain its current four-point scale (Good / Satisfactory / Weak / Very weak). It will offer an overall Green/Red rating for the OA covering criteria 1-3 together.

Initial Review Notices

- 8.7 Where initial consideration of an OA raises issues that are likely to lead to a Red rating, the RPC usually issues **an initial review notice (IRN)**. This process is an opportunity for the department to address the RPC's concerns so that a revised OA can be submitted and hopefully a Green rated opinion can be issued. This forms part of the OA scrutiny stage in a similar manner to how IRNs were managed under the previous BRF system.

RPC opinions on OAs

- 8.8 This overall rating will summarise whether or not the RPC thinks the case for the proposed regulation has been adequately evidenced. This will result in two broad outcomes:

A) Fit-for-purpose (Green rated) at OA stage

The OA receives a fit-for-purpose or Green rating, indicating that the proposal to regulate is supported by evidence and analysis, and that work on the scorecard and M&E plan is acceptable at this stage of the policy cycle. The RPC opinion is likely to identify areas for improvement which departments should act on as the proposal is taken forward.

A department can also receive a Green rating where the proposal to regulate is supported by evidence, but has inadequate (weak or very weak) scorecard and/or M&E plans and further work is required on these. Departments are able to develop both of these in parallel with finalising proposals and either a) explain the actions taken when the final IA is published, or b) submit an IA for a revised RPC opinion if desired. In a few cases, the RPC may strongly recommend that a further iteration of either or both of these sections is re-submitted, and departments should do this before seeking collective agreement on the proposals.

OR

B) Not fit-for-purpose (Red) at OA stage.

The RPC considers that the proposed regulation is not evidenced adequately. Departments can either chose to carry out further work on the OA and re-submit (and in most cases the IRN process will already have facilitated this), or proceed to seek collective agreement whilst making clear the concerns of the RPC.

- 8.9 **Departments are strongly advised to avoid seeking collective agreement if their proposals have been ‘Red-rated’ by RPC.** The RPC’s opinion must be noted when seeking collective agreement. Clearance will not necessarily be granted for the department to proceed prior to finalising the Regulatory Provision.
- 8.10 **The RPC aims to produce an opinion on an OA within 30 working days** (with an additional 15 days added in case of an IRN being issued along with the time required for the department to respond to the points – generally also assumed to be 15 days).

Publication of RPC opinions

- 8.11 Where a proposal has been subject to scrutiny, the most recent version of the RPC’s opinion will be published at the point at which the measure is laid in Parliament in order to assist parliamentary scrutiny and for transparency to other stakeholders.
- 8.12 This does not force departments to submit measures for additional scrutiny. The RPC also takes a proportionate approach in terms of what needs demonstrating to change a rating – for example, it could be a simple matter of providing some additional information. See also **chapter 9** below.
- 8.13 Before publication of the RPC opinion, consideration should be given as to whether any of its content is sensitive and should be redacted before publication. This is in line with the approach taken in the previous BRF system. The RPC Secretariat will engage with the relevant BRU on this.

9 Collective agreement

- 9.1 Domestic measures that have an impact on business usually need collective agreement from Cabinet, or the relevant Cabinet Committee, before departments can proceed to develop detailed proposals. For further information and advice on clearance, please consult your BRU or speak to your departmental desk officer in the Cabinet Secretariat of the Cabinet Office.
- 9.2 When seeking collective agreement for a Regulatory Provision, papers and correspondence should demonstrate compliance with the BRF process (whether scrutiny is required or not) along with any opinion issued by the RPC. If for any reason this is not feasible, it should be noted and will be for ministers to decide whether to give agreement.
- 9.3 Where a measure is a Regulatory Provision, the relevant material should include proportionate analysis. This should be an OA where scrutiny is required. To demonstrate compliance with the BRF, departments should also provide one of the following:
- Where independent scrutiny was not required or was required but not sought, the departmental rationale for why this is the case.
 - Where scrutiny was required, either:
 - i. a 'fit for purpose' (Green-rated) RPC opinion on the OA supporting the case as issued at OA stage or
 - ii. a 'not fit for purpose' (Red-rated) RPC opinion on the OA flagging issues with the case for regulation

Development of the IA beyond initial clearance to proceed

- 9.4 Assuming collective agreement to proceed is granted, in line with Green Book process, the proposal can be finalised and further work done on the IA. The department can resubmit to the RPC to improve the rating on any aspects of the opinion – particularly a better developed scorecard of impacts or for M&E plans. Please consult your Cabinet Secretariat Desk Officer should the policy change as it may require new collective agreement.
- 9.5 Where an RPC opinion on the OA was Green but contained recommendations, **the department should set out how those recommendations have been addressed** in their final proposals and IA. The department should identify the changes that have been made.
- 9.6 The RPC may consider any further revision of the OA/IA (or components of it) that the department submits later in the process. This might be voluntary (because a department wants to be able to demonstrate to Parliament that the RPC has endorsed the IA) or as a result of policy changes following collective agreement.

- 9.7 In such cases, the RPC can reconsider only those aspects of the IA that have changed from the initial scrutiny. The RPC can revise its opinion to reflect changes from resubmission – this may, for example, change the rating of the scorecard or M&E plan if these have been significantly improved.
- 9.8 As set out in **chapter 11**, when a department is seeking collective agreement for a final proposal, which was subject to OA stage scrutiny, they should transparently identify where they have, or have not, acted on recommendations in the RPC opinion and provide justification for where they have not.

10 Development of the Regulatory IA

- 10.1 This chapter covers aspects of the development of the impact assessment that should be published alongside relevant legislation when it is laid before Parliament (the 'regulatory IA' or 'final-stage IA'). Dependent on the type of legislation, this (or an earlier OA) may have been subject for RPC scrutiny during its development.
- 10.2 Measures that have gone through the OA scrutiny process will have some of the material needed for some parts of the Regulatory IA already prepared. The suggested outline and links in the OA and IA templates also provide guidance on the issues to consider and useful contacts. **Links to the [OA and IA templates](#), updated impacts calculators, and technical guidance are available in Annexes 4 and 6.**
- 10.3 When developing a Regulatory IA, **departments should address any relevant comments the RPC made on the OA.**
- 10.4 In developing a Regulatory IA, departments are expected to provide a more detailed analysis of the likely impacts of the regulation accompanied by a refined monitoring & evaluation plan to support the evaluation of the measure.
- 10.5 The final IA template builds on the material for the OA and continues beyond the declaration and signature to outline the additional information needed for the final IA; including the full completion of the summary of analysis table and evidence base. Please note that the declaration should be updated for the final IA as it must be signed by a minister.
- 10.6 At final IA stage the scorecard should be finalised. This means that the impacts in parts A should be quantified (EANDCB, EANDCH, NPSV, business NPV), and the impacts in part B, which are proportionate to quantify, should have been evidenced.
- 10.7 The purpose of the **summary of analysis table** is to give departments and the RPC a useful side-by-side view of the options. The content of this table can be kept brief, as the options will be covered in more detail elsewhere in the IA.
- 10.8 The remainder of the IA is the **evidence base**, which is very similar to the previous IA template. This is where the most detailed evidence available to support the final policy proposition should be laid out. This section of the IA template has been updated, especially around natural capital and the environment, and trade and investment. **Please read the suggested outline carefully.** Not all the sections will require large amounts of evidence, but departments should explain why a particular topic is not addressed.
- 10.9 While it is generally not mandatory for the Regulatory IA to be submitted to the RPC for scrutiny under the reformed system (other than for a few exceptional cases – see **chapter 11**), where departments would find it helpful, they can submit further iterations of IAs for scrutiny on a voluntary basis. In such cases, the RPC will update its opinion as appropriate.

- 10.10 In this way, it is possible for a department to amend an IA based on recommendations provided by the RPC at the OA stage and receive reassurance that the RPC is satisfied that its advice has been addressed.

What are the requirements for a Regulatory IA?

- 10.11 For Regulatory Provisions that have been subjected to early scrutiny and approved to proceed, when developing their Regulatory IA, **departments should seek to address any relevant comments the RPC made on the OA.**
- 10.12 In developing a Regulatory IA, departments are expected to provide a more detailed analysis of the likely impacts of the regulation accompanied by a refined monitoring & evaluation plan to support the evaluation of the measure.
- 10.13 Under the new BRF there is no requirement for independent scrutiny of final IAs, except for measures with very high anticipated impacts where scrutiny is required in order to assure Ministers and Parliament of the robustness of the analysis for such large measures. Specifically, final-stage RPC scrutiny is needed for any Regulatory Provisions that **both** have an EANDCB of \pm £100 million or more **and** one of the following conditions are met:
- a) The RPC opinion of the scorecard elements of the OA received a weak or very weak rating.
 - b) The RPC opinion of the M&E plans in the OA received a weak or very weak rating.
 - c) The measure falls within an exclusion category (apart from the Building Safety exclusion) and has therefore not previously been subject to OA scrutiny.

General principles

- 10.14 A Regulatory IA should be prepared for all significant Regulatory Provisions (EANDCB greater than \pm £10m), as a standard of good policy making, and where an appropriate IA is expected by Parliament and other stakeholders. The IA must be published alongside the legislation. This is important not only for public and parliamentary transparency but supports the UK to meet its international obligations. This requirement to produce an IA is separate from the question of whether independent scrutiny of an OA/IA is required under the BRF.
- 10.15 The level of analysis in the Regulatory IA should be proportionate to the problem it is addressing and reflect the scale and/or impact of the measure. Proportionate analysis should be used to support ministerial decision making, the collective agreement process, and for parliamentary scrutiny.
- 10.16 Primary and secondary legislation can sometimes be part of a single policy development process. Where a measure is implemented through a

combination of primary and secondary legislation, the assessment of impacts will evolve and develop as the requirements of both pieces of legislation are finalised and the underlying information and modelling is refined. Appropriate IAs may be necessary for both primary and secondary legislation.

- 10.17 In cases where the final policy approach for future secondary legislation is unclear, the IA for the primary legislation should describe examples of the potential scale, and the nature of impacts, for how legislative powers are expected to be used. Where impacts cannot be monetised, departments should provide at least a narrative-based IA that describes the impacts of the entirety of the policy, covering the primary, and related, secondary legislation. If further guidance is required, please contact your BRU or the RPC secretariat.
- 10.18 Where the Regulatory IA for the primary legislation also covers the expected impacts of the secondary legislation, it can be re-used to support the clearance of the secondary legislation. If the policy changes significantly during the process, or further information is available - that was unavailable at the time of the primary legislation – in such a way that the evidence set out in the OA for the primary legislation is not sufficient to justify the secondary legislation, then the OA/IA for the secondary legislation should revise the assessments made for the original primary legislation proportionally to ensure that the secondary legislation OA and IA reflect:
- changes to the scope of the secondary legislation
 - greater clarity on the impact of the secondary legislation, if this had been uncertain when the IA for the primary legislation was prepared
 - new information that has become available, which changes the assumptions underlying the IA for the primary legislation
- 10.19 This revision should be proportionate to the scale of the measure and the significance of the revision to its estimated impact.

Trade impacts

- 10.20 For measures that have an impact on trade and investment, it is necessary for departments to consult the Department for Business and Trade on any IAs and consider whether the impacts require notification to the World Trade Organisation (WTO).
- 10.21 For example, for goods and services regulation, departments should include an assessment of whether the measure introduces different requirements and effects for domestic and foreign businesses, or different requirements for businesses from different countries, and demonstrate how the measure is consistent with the UK's international obligations for equal treatment. Consideration should also be given to arrangements with Northern Ireland.

- 10.22 Additionally, considerations should be given to the international regulatory environment early on in the policymaking process. [The International Regulatory Cooperation \(IRC\) Strategy](#) aims to drive international collaboration and learning to improve the UK's domestic regulatory environment.
- 10.23 For further guidance on any of these issues, please refer to the DBT guidance (available through the department's BRU) and contact the [DBT Better Regulation Unit](#). **More information is also given in Annex 5.**

Impacts on competition

- 10.24 For measures that affect a market where products and services are provided by private/public sector organisations, this is likely to affect competition. Departments should consider completing the Competition and Market Authority's (CMA) "competition assessment checklist" to supplement the analysis in the IA. This is encouraged and may be expected for measures with a high impact.
- 10.25 Guidance on how to complete the checklist can be found in the [Competition impact assessment: guidelines for policymakers](#). Departments who are undertaking a competition assessment with complex issues should speak to the CMA for further guidance.

Impacts on innovation

- 10.26 If a measure is likely to have an impact on innovation, the impacts should be considered in the IA. Measures are more likely to have innovation impacts if they affect the creation of new or improved products, processes, services; or if they affect organisation methods or market competition. Further guidance on defining and measuring innovation and its adoption can be found in the [OECD Oslo Manual](#).
- 10.27 Departments should also consider how the design, monitoring and evaluation of their policy can better support innovation whilst protecting citizens and the environment. Guidance on how regulation can support innovation can be found in the Regulatory Horizons Council's [Closing the Gap report](#). It outlines important principles / practices (i.e. taking an inclusive and collaborative approach, being proportionate and adaptable, being outcomes-focused and future-facing) and provides many case studies illustrating good practice.
- 10.28 For any questions, please contact proinnovationregulation@dsit.gov.uk.

Environmental impacts: natural capital and net zero

- 10.29 For potential effects on natural capital the [Green Book A1](#) provides the process to follow. This process includes screening questions and a 4-step approach to identify whether and how an intervention may affect stocks of natural capital and the benefits they provide. More detailed guidance is available in the DEFRA guidance on [Enabling a Natural Capital Approach \(ENCA\)](#). The ENCA supplementary guidance also includes values and additional guidance for other environmental effects which it may be appropriate to include in the appraisal.
- 10.30 The Green Book also provides guidance on valuing changes of energy usage and greenhouse gas (GHG) emissions. Measures which affect the consumption of energy or land use may have impacts on decarbonisation and the transition towards net zero. For such measures, departments should consult the [guidance on valuing energy usage and greenhouse gas emissions](#), which sets out how these impacts can be assessed. For any questions relating to quantification, please contact GHGappraisal@beis.gov.uk.
- 10.31 It is important to take a whole-system approach in assessing whether a policy could impact emissions, including whether there could be potential interactions with consumer or producer behaviour, or interdependencies with other government policies. For broader questions relating to these issues, please contact netzeroregulation@beis.gov.uk for support and someone will get back to you as soon as possible.

Enactment impact assessments

- 10.32 Enactment IAs are required only for primary legislation that has been amended in its passage through Parliament in such a way as to significantly change the impacts of the policy on business. An enactment IA replaces the Regulatory IA and is then published alongside the enacted legislation on www.legislation.gov.uk. If the impacts of the Act remain unchanged then an enactment IA is not necessary.

11 Finalising the policy

Final stage scrutiny for the highest impact measures

- 11.1 Under the new BRF there is no requirement for independent scrutiny of final IAs, except for measures with very high anticipated impacts where scrutiny is required to assure ministers and Parliament of the robustness of the analysis for such large measures. Specifically, final-stage RPC scrutiny is needed for any Regulatory Provision that **both** have an EANDCB of \pm £100 million or more **and** one of the following conditions are met:
- a) the RPC opinion of the scorecard elements of the OA received a weak or very weak rating; or
 - b) the RPC opinion of the M&E plans in the OA received a weak or very weak rating; or
 - c) the measure falls within an exclusion category (apart from the Building Safety exclusion) and has therefore not previously been subject to OA scrutiny.

Finalising proposals

- 11.2 Following any RPC scrutiny, whether mandatory or voluntary, the Regulatory Provision should be finalised by the department and any necessary further work completed on the IA ready to support the final proposal to ministers and Parliament.
- 11.3 Further engagement with the RPC might be required on issues such as M&E, or if the proposals change significantly. If a preferred option changes in such a way that the rationale for intervention and original options assessment can no longer be reasonably applied to it, then some form of resubmission to the RPC is likely to be required.
- 11.4 Where a department chooses to self-certify its Regulatory IA, it is the department's responsibility to put into place a robust internal process for self-certifying their IAs as 'fit for purpose' before the legislation is laid in Parliament. Where an opinion was provided, for the purposes of parliamentary scrutiny, departments are required to provide assurance that the RPC's comments have been adequately addressed.
- 11.5 The RPC are generally happy to scrutinise Regulatory IAs where a department would find this helpful, although this might be subject to RPC capacity. As such, departments are strongly encouraged to contact the RPC Secretariat at the earliest opportunity to seek Regulatory IA scrutiny.

Review and sunset provisions

- 11.6 At an early stage in policy development, departments should consider whether either a statutory review provision is required or a sunset provision is appropriate.
- 11.7 **Statutory review provisions** often impose a legislative duty to carry out and publish a [post-implementation review](#) (PIR) of the measure within five years of commencement and then regularly on at least every five years, or more frequently if appropriate to the secondary legislation. See below.
- 11.8 **Sunset provisions** impose an automatic expiry of legislation on a specified date, usually within seven years, and ensure scrutiny of the decision on whether or not to renew the regulation. They are not a requirement, but a tool for policy makers to use where they are deemed appropriate.
- 11.9 Departments should track statutory instruments that include either a statutory review provision or sunset provision, to ensure that they are reviewed and acted upon (if required) in sufficient time before the relevant deadline.
- 11.10 A PIR is a good time for an initial review of a sunset provision.

Statutory review provisions

- 11.11 The legislative requirements to include a statutory review provision are set out in [sections 28 – 32 of the Small Business, Enterprise and Employment Act 2015](#) (SBEE Act). Please refer to the [PIR statutory guidance made under section.31 of the SBEE Act 2015](#) in order to decide whether a statutory review provision is appropriate. Statutory review provisions may also be used even when not required under the SBEE Act.
- 11.12 In cases where regulations meet the legislative requirements to include a statutory review provision, but one is not included, a ministerial statement is required (s28(2)(b) SBEE Act). The statement should be included in the explanatory memorandum (EM) and should clearly explain the rationale for not including review provisions for the relevant secondary legislation (see s28(2)(b) which sets out some examples of circumstances where a Minister may determine that it is not appropriate to make provision for review).
- 11.13 In the absence of a review provision, the s.31 guidance outlines that the policy should still be subject to proportionate monitoring, evaluation, and non-statutory review, where appropriate. Departments should briefly outline their plans for monitoring and evaluation within section 14 of the EM which accompanies the legislation. There are examples of what to include in an EM within the Secondary Legislation Scrutiny Committee's [guidance](#) (see point.13).

- 11.14 For SIs that are not subject to the statutory duty to review, the National Archives' [guidance](#) is clear that an EM should contain a summary of plans for monitoring and review. This should address questions (where appropriate) including:
- What are the success criteria and/or objectives of this instrument? Where possible please explain the intended outcome in measurable terms, for example: 'The changes set out in this instrument aim to reduce identity theft by 10% over the next 3 years.'
 - When and how will they be reviewed? State who will review the outcome, when and how the results will be published. For example: 'The outcome will be subject to internal review after 12 months and the legislation may be amended accordingly.' or "The University of London has conducted a benchmark study and will review the position again in 3 years; a report will be published towards the end of...'

What do I need to do?

- 11.15 It is important that Departments prioritise analytical resources when planning for and, carrying out, an evaluation. For this purpose, Departments may also want to refer to the [RPC's guidance on proportionality](#) when planning for their evaluation.

Application to devolution measures

- 11.16 When using statutory review and sunset provisions for legislation in a devolved area, whether wholly or partially devolved, departments need to consult colleagues from the relevant administration, to secure agreement.

12 Introduction to Parliament

- 12.1 Departments should ensure the timely publication of their final Regulatory IA when an applicable instrument is laid before Parliament. Departments should also note the legal requirements for Impact Assessments to be in an [accessible format](#) when published online. Departments may wish to remove the long list of options prior to publication as this constitutes policy development and may be sensitive.
- 12.2 Publication should include, where applicable, the opinion from the RPC alongside either the relevant consultation document on [GOV.UK](#) or the relevant legislation on [www.legislation.gov.uk](#) under the impact assessments tab.
- 12.3 If a proportionate analysis has been prepared that do not use the standard template, for example for measures that have been self-certified in line with a department's internal processes, this can be uploaded to the 'More Resources' tab.
- 12.4 For measures without a Regulatory IA, or an alternative assessment of impacts, the relevant explanatory memorandum should set out the key impacts and include the rationale for not providing an IA. This should refer to the impacts and effects of the policy. This will help to facilitate parliamentary scrutiny. Ask your BRU or departmental parliamentary team for advice.
- 12.5 If departments have completed the independent scrutiny process, they should notify the RPC when they publish their final impact assessment.

Publication of RPC opinions

- 12.6 When the measure and the final IA are published, the latest version of any relevant RPC opinion should be published to accompany the final IA. This will be either the opinion issued at OA stage, or a subsequent revision to reflect resubmission.
- 12.7 Before publication of the RPC opinion, consideration should be given as to whether any of its content is sensitive and should be redacted before publication. This is in line with the approach taken in the previous BRF system. The RPC Secretariat will engage with the relevant BRU on this.
- 12.8 Both the lead department and the RPC can comment on covering webpages where necessary to clarify points in the final IA that are in response to comments made in the RPC opinion.

13 Post Implementation Reviews and legal requirements

Post-Implementation Reviews (PIRs)

- 13.1 A PIR is a process to assess the effectiveness of a measure after it has been implemented, and in operation, for a period of time. As set out below, there are statutory requirements and guidance for when PIR review provisions should be used.
- 13.2 In preparing a PIR, you will want to refer to chapter 8 of the HMT Green Book on monitoring and evaluation, the HMT Magenta Book on Evaluation, and the BRE's Principles of Best Practice guidance.
- 13.3 Where a review provision is included in legislation, a PIR should be carried out and published by the date specified. Most review provisions require departments to compare estimated vs actual impacts (including impacts from any unintended consequences), to assess if the objectives of the regulation have been achieved, whether the objectives are still valid and relevant and if they could be achieved in a less burdensome way. Departments will need to work with their legal team to see what parts of the legislation the review provision applies to and ensure that these are covered in the review.
- 13.4 Regardless of the presence, or otherwise, of a review provision in secondary legislation, the PIR statutory guidance under s.31 of the SBEE Act provides that all Regulatory Provisions should be subject to proportionate monitoring, evaluation, and/or non-statutory review; though not all measures require a PIR (e.g., for measures with negligible impacts).
- 13.5 Departments should take a proportionate approach to evaluation to ensure that resources assigned to monitoring and evaluation are deployed effectively from the outset. This is important to ensure that departments are allocating their analytical resource to best achieve ministerial priorities and commitments.

RPC scrutiny of PIRs

- 13.6 **A PIR should be scrutinised by the RPC if the original Regulatory Provision required scrutiny.**
- 13.7 Where there is no formal requirement for RPC scrutiny, departments may wish to voluntarily submit a PIR for scrutiny. If so, they are encouraged to discuss the merits of a submission with both their departmental BRU and the RPC secretariat.
- 13.8 Regardless of whether independent scrutiny is required, all reviews need to be conducted and published in line with the principles of proportionality and the relevant legal requirements. Furthermore, government publications, including a PIR setting out the conclusions of a review, may also require collective agreement.

- 13.9 **The RPC will publish an opinion on any PIRs that have been submitted for scrutiny**, whether required or voluntary.

How to comply with legal requirements for PIRs

- 13.10 If you are due to publish a PIR, please contact the Cabinet Secretariat in the first instance so that they can advise if collective agreement is required. An opinion from the RPC on the PIR should be obtained before seeking clearance to publish a review for any measure/s for which independent scrutiny of an IA or OA was required.
- 13.11 The statutory PIR report must be published by the deadline stated in the review provision of the legislation. Departments must ensure timelines for seeking collective agreement are considered so that clearance is obtained ahead of the deadline. Reviews must be published on <http://www.legislation.gov.uk/> alongside the relevant regulations. This publication requirement supersedes the requirement to lay a command paper in Parliament, unless your review provision states otherwise. Departments should notify RPC of the publication of their reviews, especially where an opinion on a review was required.
- 13.12 Departments, based on the findings of the review, need to provide their ministers with information to help them decide whether the measure should be retained without changes, amended, repealed, or replaced. In such cases where a department may wish to retain their measure, though there is not enough evidence to effectively evaluate its performance, departments should set out, concisely in the PIR, a rationale for requiring more time to gather the necessary evidence.
- 13.13 The revision of M&E plans should be treated on a case-by-case basis, and it is up to departments to explain why the existing evaluation plan is no longer sufficient alongside plans for addressing any evidence gaps. Departments should liaise with the RPC at the earliest opportunity to discuss an appropriate approach, especially where a PIR is to be scrutinised.

Further resources

- 13.14 The [PIR template](#) can be found on GOV.UK. The [statutory guidance on reviews](#) provides advice on when to include a review provision. Departments may also wish to refer to [Producing post-implementation reviews: principles of best practice](#) which details a set of overarching principles of best practice to be used in conjunction with departments' own guidance when completing PIRs.

The Cabinet Office's [Open Policy Making toolkit](#) includes a section on how to measure the impact and success of Open Policy Making, which sets out useful principles for PIRs. HM Treasury's [Magenta Book - guidance on evaluation](#) also provides useful guidance alongside the [RPC's guidance on proportionality](#) when conducting reviews. Other RPC guidance, such as the [case histories of post-implementation reviews](#), may also be useful.

Annex 1: Full list of exclusions and exemptions

Independent scrutiny: exclusion categories	
Regulatory provisions that are excluded from independent scrutiny, apart from the highest impact measures in certain circumstances for final stage scrutiny (see chapters 10 and 11) for most exclusion categories.	
Exclusion	Summary
<p>International obligations</p> <p>Regulatory provisions that are necessary to implement international commitments and obligations</p>	<p>This exclusion relates to where a specific legislative route is necessary to ensure compliance with the international obligation or agreement. This does not cover measures where there could be more than one way to fulfil an obligation. This exclusion does not cover those measures where an alternative to regulatory intervention could be implemented to fulfil an obligation (whether this is the preferred option or not).</p>
<p>Court judgements</p> <p>Regulatory provisions that are necessary to comply with Court judgments</p>	<p>This exclusion relates to Regulatory Provisions that are necessary to comply with court judgments, where a specific legislative approach is necessary to ensure compliance with the judgment. This does not cover measures where there could be more than one way to fulfil an obligation. Therefore, this exclusion does not cover those measures where an alternative to regulatory intervention could be implemented to fulfil an obligation (whether this is the preferred option or not).</p>
<p>Recommendations by independent advisory bodies for updates to technical standards and schedules.</p> <p>Regulatory provisions that are necessary to introduce or update technical standards or listed items in a Schedule to an Act, where these follow the recommendations of the relevant independent advisory body</p>	<p>This exclusion relates to Regulatory Provisions necessary to introduce or update technical standards or listed items in a Schedule to an Act (or other regulation), where these follow the recommendations of the relevant independent advisory body. For example, this includes changes to the classification and scheduling of drugs under the Misuse of Drugs Act 1971. This exclusion category also covers a range of facilitative regulations (e.g., authorisations of regulated products, as well as updates to the ‘List of High Risk’ imported food and feed not of animal origin).</p> <p>Independent scientific risk assessments are undertaken from which regulators make risk management recommendations to ministers on whether to regulate via SIs. As such, this subset of measures are excluded from independent scrutiny</p>
<p>Other technical or drafting amendments</p> <p>Regulatory provisions that are necessary to make any other technical or drafting</p>	<p>An exclusion from RPC scrutiny is provided for a range of Regulatory Provisions that are purely of a “technical nature” and do not impact on the substance of the legislation.</p> <p>This includes measures that fall under the ‘minor and technical’ definition in Cabinet Office’s Guide to Making Legislation. This covers typographical corrections, drafting improvements, clarifications, renumbering or</p>

<p>amendments to existing legislation</p>	<p>reordering, amendments to ensure consistency with existing legislation, as well as updates to references in legislation (p.175). This exclusion category will also cover Regulatory Provisions needed to update technical lists arising out of developments in scientific or other technical expertise but will not cover those arising through developments in policy itself.</p>
<p>Operational, day-to-day conduct of regulators</p> <p>Regulatory provisions for operational, day-to-day conduct of regulators</p>	<p>Applies to regulator activities only. This does not cover regulator activities that have effect by virtue of the exercise of a ministerial function and are Regulatory Provisions (e.g., fulfilling a statutory direction given by a minister etc).</p> <p>This exclusion aligns with the previous administrative exclusion for regulator activities. This covers policy development by regulators, including formal and informal consultations, policy reviews, and ad hoc information requests. Regulator casework including specific investigation and enforcement activity, individual licence decisions, and issuing of individual advice are excluded. Other excluded activities include education, communications activities, and promotional campaigns by regulators, including media campaigns, posters, factsheets, bulletins, letters, websites, and information and advice helplines. Changes to the organisation and management of the regulator would all also be excluded, except where such changes arise from legislation and affect the regulatory obligations of business.</p> <p>This does not exclude regulator activities that have effect by virtue of the exercise of a ministerial function and are Regulatory Provisions (e.g., fulfilling a statutory direction given by a minister etc). These relate to a sub-set of measures that often result in a regulator imposing and amending requirements, giving guidance, or doing something in relation to the securing of compliance with and enforcement of conditions, etc. Such measures may fall within the definition of a "Regulatory Provision" in that it could be a statutory provision (i.e., a provision which has effect by virtue of the exercise of a function conferred on a Minister of the Crown by an Act) and would e.g. "relate to the enforcement of requirements" in relation to a business activity.</p>
<p>Fines and penalties</p> <p>Regulatory provisions imposing fines or penalties</p>	<p>An exclusion from RPC scrutiny is provided for the issuing of fines and penalties to businesses and individuals. This includes those administered through the police or Border Force (e.g., the Clandestine Entrant Civil Penalty Scheme).</p> <p>This exclusion does not cover Regulatory Provisions that introduce powers to issue fines and penalties. Regulations which enable the issuance of fines and penalties may fall within the definition of a "Regulatory Provision" if it (a) imposes or amends requirements, restrictions or conditions, or sets or amends standards or gives or amends guidance, in relation to a business activity; or (b) relates to the securing of compliance with, or enforcement of, requirements, restrictions, conditions, standards or guidance which relate to a 'business activity'.</p>
<p>Building safety</p> <p>Regulatory provisions for the safety of</p>	<p>Regulatory provisions that have been certified by departments or regulators as relating to the safety of tenants, residents and occupants in buildings that stem from, or relate to, the government's response to the Grenfell tragedy,</p>

tenants, residents and occupants in buildings

the Building Safety Act 2022 or otherwise to the government's wider reviews, inquiries or working groups.

Examples of matters in scope, include:

- Implementation of recommendations from the Independent Review of Building Regulations and Fire Safety.
- The government's response to the Grenfell inquiry, any other Grenfell-related or connected review or working group including amendments to Approved Documents (covering Building Standards and Fire Safety) and any restrictions on the use of construction products (e.g. combustible cladding).

The Independent Review of Building Regulations and Fire Safety was chaired by Dame Judith Hackitt and published an interim report in December 2017 and its final report in May 2018.

The **Approved Documents** sit beneath the Building Regulations and offer one route to compliance with them (though not the only route). The relevant Approved Document for fire safety in residential buildings is Approved Document B.

Note:.. This exclusion is from all elements of independent scrutiny.

Independent scrutiny: exemptions

Exemption	Summary
<p>De minimis</p>	<p>Regulatory provisions that have been certified by departments or regulators as falling under the de minimis rule, namely those that have an equivalent annual net direct cost to business (EANDCB) of less than \pm£10 million. This de minimis threshold will act as the primary trigger for independent scrutiny rather than being in the same category as the other exclusions listed below. This de minimis threshold also remains as the trigger for when full IAs are required, to support parliamentary scrutiny and to meet international obligations.</p> <p>Any Regulatory Provisions where the equivalent annual net direct cost to business is less than \pm£10 million will be excluded from RPC scrutiny. In cases where both the department and the RPC agree that a particular case should be treated differently to the de minimis rule, in either direction, then bilateral agreement would override this exclusion.</p> <p>It is for departments to establish an appropriate process to record decisions on whether a measure is below the de minimis threshold. Such measures may be subject to 'call in' to confirm that the de minimis threshold has been appropriately applied.</p> <p>Some departments have a significant number of measures where the impacts are so low that independent scrutiny would be unnecessary. As such, a de minimis threshold will maintain the focus of the BRF on regulatory measures with the most significant impacts on business, where not otherwise excluded by falling within any of the independent scrutiny exclusion categories below.</p>
<p>Urgent emergency measures</p>	<p>Where legislation is required urgently, for example to address an emergency situation, such as essential public safety reforms, the relevant Secretary of State may seek to agree, as part of the collective agreement process (where relevant), that there is insufficient time for the measure to be assessed under the BRF. The rationale for this should be made clear. It would nevertheless be expected that the required analysis of impacts would be presented to Parliament alongside the legislation or, where that is not possible, as soon as practical thereafter, including RPC scrutiny where required.</p>

Annex 2: Key Terms, Definitions Acronyms

Key terms and definitions	
Term	Definition
Regulatory Provision	See Chapter 2
Statutory provision	See Chapter 2
Business activities	See Chapter 2
Regulatory Impact Assessment (IA) or Final IA	The impact assessment (IA) that should be published alongside relevant legislation when it is laid before Parliament. Final IA is short for 'final proposal stage' IA.
Enactment Impact Assessment	An Impact Assessment required for primary legislation where it has been amended during its passage through Parliament in such a way as to significantly change the impacts of the policy on business. An enactment IA replaces the Regulatory IA and is then published alongside the enacted legislation on www.legislation.gov.uk . If the impacts of the Act remain unchanged then an enactment IA is not necessary.

Acronyms	
Acronym	Reference
BIT	Business Impact Target
BOU	Brexit Opportunities Unit
BRE	Better Regulation Executive
BRF	Better Regulation Framework
BRU	Better Regulation Unit (departmental)
CCD	Common commencement date
EANDCB	Equivalent annual net direct cost to business
EANDCH	Equivalent annual net direct cost to household
EDS	Economic and Domestic Affairs Secretariat
IA	Impact assessment, also known as a regulatory impact assessment or final impact assessment
IRN	Initial review notice
M&E	Monitoring and evaluation
NPSV	Net present social value
NPV	Net present value
OA	Options assessment
PIR	Post-implementation review
REUL	Retained EU Law
ROAMEF	Rationale, Objectives, Appraisal, Monitoring, Evaluation, Feedback
RPC	Regulatory Policy Committee
SaMBA	Small and micro-business assessment

SBEE	Small Business, Enterprise and Employment Act 2015
SI	Statutory Instrument
SLSC	Secondary Legislation Scrutiny Committee
SMART	Specific, Measurable, Achievable, Realistic and Time-limited
WTO	World Trade Organisation

Annex 3: Small, micro and medium business assessments

Small and micro business assessment (SaMBA)

As part of the options assessment departments are asked to consider distributional impacts, including the impact on small and micro businesses. Although the proportion varies across sectors, approximately 99 per cent of businesses in the UK are small (10-49 employees) or micro-businesses (0-9 employees). These businesses also account for around 48 per cent of employment and 34 per cent of turnover¹⁰.

In addition to the large volume of smaller businesses, a number of factors mean that regulatory changes may fall disproportionately on them. As a result, the Government has committed to considering whether the impacts of regulatory changes will fall disproportionately on them, and whether such businesses could be exempted from regulation, or the impacts mitigated in some way without compromising the policy objectives.

SaMBA is still a key requirement for RPC opinions and can still lead to a Red rating via the 'Options identification' category of RPC scrutiny.

What do I need to do?

At an early stage, when considering the options, it is important to consider the scope of the proposed measure, its impacts, including any disproportionate effects on small and micro-businesses and how this can be mitigated – see section 5 on policy development.

The starting point for consideration should be exempting small and micro-businesses from the requirements of new Regulatory Provisions. In many cases it may be possible to achieve the majority of the intended benefits even if smaller businesses are exempted – for example where larger businesses account for the majority of the intended regulated activity or where the activities of larger businesses account for the majority of the harms the regulation seeks to prevent.

If, after assessment, it is concluded that the measure should apply to small and micro-businesses, you should consider how burdens could be mitigated or minimised. There are a wide range of options that may include partial exemption, extended transition periods; simplifying requirements; or exempting smaller businesses from having to register. Also subject to Managing Public Money, there may be options to exempt small or micro businesses from the fees for registration or licensing, or having a different regime with different fees¹¹.

If you believe that no mitigating actions are necessary because there is no disproportionate burden or that the policy could not be delivered if small and

¹⁰ 2022, BEIS - Business Population Estimates for the UK and Regions 2022

¹¹ The [Managing Public Money](#) rules on cost recovery and avoiding cross-subsidy.

micro-businesses were exempted or the impacts on them mitigated, you must provide evidence of this in the supporting analysis.

A SaMBA is mandatory for all domestic measures that require collective agreement and have an impact on business greater than the \pm £10m EANDCB threshold. Departments should also consider the impact on small and micro-businesses of regulatory policy which is below the threshold, and conduct an assessment where appropriate.

If your measure does not affect small and micro-businesses, you should make clear why this is the case when seeking collective agreement and in the relevant analysis in the IA.

Medium-sized business regulatory exemption assessment

Alongside the small and micro business assessment (SaMBA), departments should include in the development of policy proposals an assessment of the case for whether medium-sized businesses (in the range 50 to 499 employees) might also be exempted from the proposed regulation (or that the impact this wider range of businesses be mitigated in some way).

Departments should address both groups of businesses (1-49 and 50-499) in the same section of the IA (assuming there is not a good case for doing otherwise).

The RPC assess both groups against the same criteria as they have previously used in assessing SaMBAs and opinions then discuss any issues with the SaMBA and/or the medium-sized business assessment in their opinions.

Annex 4: Technical note

The new BRF has no statutory target or report which must be completed, and this allows for a more flexible system, focused on improving regulation rather than measurement towards a target. There is no reason to sum metrics across a range of very disparate measures to reach a final annual impact.

This is a new approach which increases flexibility for departments, especially around use of the new metric Equivalent Annual Net Direct Cost to Households (EANDCH). It allows BRE to be less prescriptive in exactly what information is presented and how. It also means that various elements of terminology are left to departments to decide on interpretation.

The key principle for departments to follow is **decide on a reasonable way to analyse and present the information, and then explain what you have done and why.**

Terminology in the OA template and guidance

Uncertainty

The scorecard in the OA/IA template allows departments to log an impact as uncertain. This is not meant in the statistical sense of uncertainty which relates to confidence intervals. This is an everyday meaning of uncertainty: 'we don't know'. It should be selected when an impact could cover a very wide range and could eventually settle to be anywhere in that range with equal probability, so far as is known. Analysts should imagine a wide uniform distribution for where the impact may end up.

Neutral

The scorecard in the OA/IA template allows departments to indicate if an impact is neutral. This can also be interpreted as a negligible impact, but care must be taken when making this assessment. The neutral category could include those cases where a large positive impact is netted off against a large negative impact, and this might be misleading, especially if those impacts affect different groups. If this is the case, the department should use separate lines in the scorecard table to indicate the significant impacts. For cases where all impacts are all relatively small, or not significant, this is not necessary. This raises the next question of what is considered significant.

Significance

The guidance refers to significance in several places. It is for departments to decide case by case how to interpret the significance of impacts. This will require judgements which may be subjective.

The use of 'significance' in this guidance does not refer to statistical significance, which concerns sampling theory and related uncertainty. If analysts wish to include an indication of statistical significance in their findings, then this is welcome, and they should clearly indicate this more technical use of the term when it occurs.

Presenting impacts in the scorecard

Note that NPSV (Net Present Social Value) and bNPV (Business Net Present Value) are unchanged in their scope and definition, and the Green Book should be consulted for further information. These do not need to be quantified at OA stage although it is helpful if early analysis has been carried out.

The BRF requires that initial estimates of EANDCB (Equivalent Annual Net Direct Cost to Business) are submitted at OA stage. If possible estimates of EANDCH would also be helpful. These may be fairly early estimates which may be adjusted later.

The simplest approach when preparing material for the scorecard, whether for the OA or IA, is for departments to keep measurement and calculation of EANDCB, NPSV, and bNPV broadly as they are now when performing initial analysis.

EANDCB now has some forms of pass through recognised. This is discussed below.

Departments should then estimate EANDCH and work out how much pass through is expected between businesses and people. They should adjust EANDCB/H accordingly, taking care not to double count impacts, and enter the resulting values into the new IA calculator, along with wider impacts which will contribute to NPSV and bNPV

EANDCH

The new metric, Equivalent Annual Net Direct Cost to Households (EANDCH), is analogous to the current EANDCB measure for business costs and is calculated in the same way. The impact assessment calculator now accommodates this new set of costs/benefits.

Who is included?

The EANDCH should include the direct costs of policies on households or other person units. The overall aim is to capture the impacts on people in the most meaningful way possible. This framework allows flexibility in which person grouping is used. If it makes more sense, owing to the nature of the policy, to calculate the costs and benefits on individuals, consumers, employees, or some other person grouping, rather than households, this should be done instead and explained. We would not expect these indicators to be converted to a household measure for the OA or IA.

However, if a department decides to calculate EANDCH using households as the person unit, this should be consistent with the definition of household used by ONS for ease of understanding. That is, one person living alone, or a group of people (not necessarily related) living at the same address who share cooking facilities and share a living room, sitting room or dining area.

There may be other groups who could be considered in or out of scope, such as tourists, students, migrants, prisoners, foreign workers etc. It is for the department to judge how they are treated in the analysis and to explain this in broad terms. It is not necessary to provide an exhaustive list assessing whether all possible groups should be included or excluded.

There may be cases where the distinction between businesses and households is unclear in relation to how EANDCB and EANDCH impacts should be assessed. For example, some actors in the gig economy may be more like participants in an informal economy, while others are more like micro businesses. It is up to the department to decide how best to categorise business and household impacts in these cases and to explain the reasoning.

What is included?

EANDCH should include costs or benefits which directly affect people's budgets – the money in their pockets. This could be related to wages, or other compliance costs faced by households such as the costs of obtaining documentation and information. As per the general exemptions this would not include areas related to taxes, duties or levies, such as tax on petrol or alcohol duty. It is also worth noting that the scope of the BRF is regulatory measures which impact on business, and so measures which only affect households are likely to be out of scope.

EANDCH should include time costs, including familiarisation and form-filling, as these are regarded as analogous to the administrative costs which are felt by businesses when complying with new policies. There could be other time costs which are also relevant, such as travel time, or time off work. It is for the department to decide which costs are most significant and to decide on appropriate techniques and data for quantifying and monetising these impacts which may be complex.

Departments are not expected to carry out disproportionately complicated analysis for relatively small impacts. Departments should also be mindful of being able to justify when introducing contentious elements into the analysis. For example, a decision to value individual's time differently may be justified by the scope of who is impacted by a policy, but this should be carefully considered in the light of eventual publication of the impact assessment.

EANDCH is not expected to include general welfare costs and benefits or indirect costs and benefits (with the exception of some types of pass through, which is discussed below). These wider impacts should be accommodated within the NPSV calculations as they are currently. These are discussed further in a later section.

Once the appropriate person grouping is established and the range of relevant impacts arrived at, the actual calculation of EANDCH is less flexible. It is defined in an analogous way to EANDCB and only certain forms of pass through are recognised under the new system.

Pass through

Pass through mostly occurs when a business incurs a cost/benefit and passes it on to customers. For costs to business, this is usually passed on in the form of higher prices, although it could also be in the form of changes to the quantity or quality of the business's products. In some cases, there may be a regulatory constraint placed on business profits, which may result in the cost being transferred to customers in the form of a benefit. This could take various forms such as more money staying in customers' pockets, or a safer product being introduced.

The pass through impacts which can be treated as direct in the BRF are:

(a) wherever the regulation explicitly requires businesses to transfer monetised costs/benefits to households/individuals,

OR

(b) where there is a clear expectation by the design of the policy that businesses will pass through monetised costs/benefits,

then departments should:

- adjust EANDCB to account for this;
- estimate EANDCH

There may also be cases where the reverse is true and households pass some cost to business. The same considerations should be made and the reverse adjustment should be applied.

Cases of pass through are indirect effects and would not usually be included in EANDCB/H. However, because one of the intentions of the new BRF is to better capture the impacts on people of regulatory proposals, and these often happen via pass through, the new framework makes a limited number of exceptions to that rule, and will treat those passed on impacts as if they are direct effects for the purpose of EANDCB/H. Care must be taken to avoid double counting these impacts as they are moved from EANDCB to EANDCH or vice versa.

Sometimes there will be business-to-business pass through. This should be discussed in the distributional analysis if appropriate, rather than making adjustments to EANDCB. There may also be person-to-person pass through. Similar to the business case, this should be indicated in the distributional analysis if it is significant, rather than adjusting the EANDCH.

Situations where pass through would be expected to be quantified and EANDCB/H adjusted accordingly would include:

- a cost to business resulting in a benefit to customers (or vice versa) without needing any intermediate mechanism to bring it about. This could be a direct transfer, or a regulatory constraint on business profits which automatically leaves the consumer with more money in their pockets. An example might be a restriction on gambling profits which leaves more money in the gamblers' pockets.
- a mandated pass through where a business cost must be partly funded by consumers
- intended pass through. This would occur when part of the policy intention is that pass through should happen, possibly around encouraging behavioural change.

Situations where pass through could possibly be estimated if the department thinks it is material to stakeholders in understanding the policy, but we would not expect EANDCB/H be adjusted include:

- likely pass through: we expect a proportion of costs to be passed through and can perhaps estimate the likely amount but it's not an explicit part of the policy intention.
- unknown/Business choice: pass through which happens due to the decisions of businesses, which might be quite variable and is largely unknown at IA stage. This may be difficult to estimate due to lack of data on different businesses having different models for gaining market share, competing on price vs quality etc.

Direct and indirect costs

The RPC secretariat have published guidance on what constitutes a direct as opposed to an indirect cost for the purposes of EANDCB. [RPC guidance on direct vs indirect effects](#)

When sufficient case studies have been generated, we expect to be able to publish a similar guidance for EANDCH to assist with determining which costs or benefits can be described as direct.

In the meantime departments should work with the existing guidance as an analogy for the new metric. In particular the Summary and Key points box in the linked guidance can be read with the word 'business' changed to the appropriate person unit relevant to the policy, to derive a reasonable sense of the difference between direct and indirect impacts relating to EANDCH.

One key difference between EANDCH and EANDCB is that somewhat fewer regulations directly impact individuals compared to businesses. We expect much of the impact on people to manifest through the new recognition of pass through of costs from business. This is the special case of treating an indirect cost as direct as discussed earlier.

What to include

The areas which are more relevant to EANDCH will be those relating to money in a person's pocket or time taken out of their day. This may include:

- employment matters, such as minimum wage, limits on working time
- energy costs
- housing costs, for example, regulation of landlords
- household time, for example, recycling
- costs or benefits passed through from EANDCB which are an inevitable or intended part of the policy design

What not to include

Please note that general social welfare costs and benefits are not expected to be included in EANDCH, but in line with the Green Book, should be analysed and monetized, if possible, in the consideration of NSPV. These are areas which have an impact on people but not in an immediate way. This would include things such as:

- environmental concerns, including a wide variety of issues such as air quality, rubbish collection, climate change
- law and order, including policing, crime rates, courts, prisons
- matters relating to the economy, trade business environment
- health and social care system, although there may be some marginal cases due to impacts on employment
- house building and planning

Some of the above may become relevant to EANDCH depending on the policy design and impacted groups. However, in the first instance EANDCH may be treated quite narrowly, in a similar way to EANDCB.

These are not exhaustive lists and are intended to give a sense of what to include. The RPC secretariat will be able to give further advice on specific cases.

Annex 5: International Trade and Investment key considerations

This annex provides the key considerations policy makers should bear in mind when answering the new question (see below) on trade and investment in the Impact Assessment template.

Is this measure likely to impact on international trade and investment? (Yes/No)

The purpose of this question is to ensure that policy makers are giving due consideration to the impacts that regulatory policy could have on foreign trade and investment into, and out of, the UK.

Relevant changes to regulation that could affect trade and investment include changes that affect:

- the ability of UK businesses to trade or provide services overseas
- the ability of overseas businesses to export to the UK or provide services in the UK
- whether foreign investors or companies operating in the UK are impacted differently to UK-owned companies or investors
- whether the assets of foreign investors or companies are entirely removed from them or otherwise substantially taken out of their control

The ability of businesses to trade within the UK would be traditionally captured within impact assessments. However, the ability of overseas businesses to export to the UK is a new aspect that policy makers will need to consider.

There is no set format for how policy makers should answer this question. However, policy makers should consider the four points below.

For goods regulations, this should include an assessment of whether the measure could create a technical barrier to trade, identifying whether:

- the measure is a 'technical regulation', for example, setting out product characteristics or production method
- there may be a 'significant' trade impact
- a less trade restrictive measure would achieve the same objective
- the measure is not based on an 'international standard when one exists or if no 'international standard' exists
- it contains labelling requirements

For services regulations, this should include an assessment of whether the measure could:

- ‘significantly affect’ international trade in services
- grant monopoly rights
- authorise or establish a small number of service suppliers and substantially prevent competition among those suppliers
- alter the definition of a natural person who has the right of permanent residence in the UK. The UK is obliged to accord substantially the same treatment to its permanent residents as it accords to its nationals

Measures relating to the balance of payments and national security measures may also require notification.

For both goods and services should include an assessment of whether the measure introduces different requirements for domestic and foreign businesses or different requirements for businesses from different foreign countries and demonstrate how the measure is consistent with the UK’s international obligations for equal treatment.

International Regulatory Cooperation

Policy makers should also consider where and how international regulatory considerations fall within the policymaking process. [The International Regulatory Cooperation \(IRC\) toolkit](#) is aimed at both UK government officials and industry regulators who work on the design, monitoring, enforcement, and review of regulation. It acts as a reference guide by providing a series of prompts to ensure a more systematic consideration of the international environment when working on regulation.

When the analysis is likely to include a “Yes” answer to any of the above questions, it is important for departments to notify contacts in DBT so that they can provide further advice.

Annex 6: OA/IA templates, calculator and guidance

Template	URL
<i>Options Assessment Template</i>	Options and Impact Assessment Templates
<i>Impact Assessment Template</i>	Options and Impact Assessment Templates
<i>OA/IA calculator</i>	Options and Impact Assessment Calculators
<i>OA/IA calculator guidance</i>	Options and Impact Assessment Calculator guidance

Annex 7: Other relevant sources of guidance

Topic	Guidance
Policy development, appraisal, and evaluation	
The Green Book	The Green Book: appraisal and evaluation in central government
The Magenta Book	Magenta Book: Central Government guidance on evaluation
Consultation Principles	Cabinet Office Guidance: Consultation principles
Regulatory Policy Committee	Reports and guidance
Legislation	
Guide to making legislation	Cabinet Office Guidance: Guide to making legislation
Secondary Legislation Scrutiny Committee	Publications of the SLSC
Monitoring and evaluation	
Post Implementation Reviews	Principles of Good Practice Principles of good practice
Statutory Reviews	Statutory review guidance for departments: Small Business, Enterprise and Employment Act 2015
Devolved administrations	
Scottish Government	Business Regulation Guidance
Welsh Government	Business, economy and innovation
Regulating businesses	
Economic growth duty	Growth duty: statutory guidance
Competition guidance	CMA's Competition Impact assessment: guidelines for policymakers
Regulators' Code	Regulators' Code
Other	
Rural proofing	Practical guidance to assess impacts of policies on rural areas
Public Authority Definition	Departmental Guidance Statement on Control by a Public Authority
Primary Authority Scheme	Local regulation: Primary Authority
Managing Public Money	Managing Public Money
Open Policy Making Cabinet Office	Open Policy Making toolkit
International Regulatory Cooperation Toolkit	A reference guide to consider where and how IRC considerations fall within the policymaking process
Public Sector Equality Duty	Public Sector Equality Duty quick start guide
Policy Profession	The Policy profession pages on gov.uk



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