**3.2 Proportionality**

The BRFM (para 1.5.17) states: “*You should ensure that the resource you invest in undertaking an RIA is proportionate. Some of the factors that should be considered when deciding what level of analysis would be appropriate include: the scale of the expected impact, stage of the policy, sensitivity of the policy and the ability and cost of doing further analysis relative to the benefits this analysis may yield. Any limiting factors in identifying robust estimates of the impact of the measure should be fully explained in the RIA*.” Section 2.2 (pages 60-63) of the BRFM provides more detailed guidance on proportionate analysis.

This section of case histories seeks to supplement that by illustrating how the RPC applies this guidance, i.e. providing an indication of the level of analysis the RPC expects to see from departments. The RPC fully recognises the need to prioritise analytical resources in order to focus on the most important and influential measures. In the last parliament measures with EANDCBs less than or equal to +/- £1 million accounted for approximately 60 per cent of the volume of proposals within the One-in, Two-out framework[[1]](#footnote-1) but only amounted to 0.6 per cent of the absolute value of all validated in-scope proposals.

It should be emphasised, however, that proportionality will always remain a matter of judgement because it is neither possible nor desirable to set out, in fixed terms, exactly what is a proportionate level of analysis. Each case will need to be judged on its own merits, both by departments when considering appropriate level of analysis and by the RPC when scrutinising the quality of evidence presented in an IA.

**Please note that this section deals mainly with what departments need to provide in relation to full impact assessments. RPC requirements for validations (particularly of smaller measures) and for confirmation of NQRP status are different, and generally require less resource from departments. Departments are encouraged to consider the particular type of case they are dealing with and, if in doubt, to contact the RPC to check that they are approaching it correctly.**

* + 1. **Levels of analysis**

The BRFM (2.2.4) states that “*The principle of proportionality is not used to guide whether or not an RIA should be completed for policy approval. It relates only to the scale of effort invested in the analysis required for an RIA*”.

Proportionality also cannot be used as a justification for not providing a baseline level of analysis. Impact assessments should always:

1. explain what is the problem the proposal is seeking to address;
2. consider an appropriate range of options (at consultation stage), including any non-regulatory ones;
3. explain how each of the potential interventions would address the problem; and
4. provide an adequate level of analysis of the impacts of the proposal (as defined at BRFM paragraph 2.2.7). In particular, even where impacts are not fully monetised they must be described.

The principle of proportionality can be used when deciding the level of detail to be included in explaining the policy problem, options and how each option would address the problem. It can also be used when deciding whether to undertake full quantification and monetisation of all impacts. Any decision not to engage in full monetary analysis on the basis that it would require a disproportionate use of resources needs to be explained clearly in the IA, especially where this is partially or completely linked to an absence of evidence or data.

The Treasury Green Book states that “*all new policies, programmes and projects, whether revenue, capital or regulatory, should be subject to comprehensive but proportionate assessment, wherever it is practicable, so as best to promote the public interest*” (paragraph 1.1). It then states further: “*as the stages of an assessment progress, data must be refined to become more specific and accurate. The effort applied at each step should be proportionate to the funds involved, outcomes at stake, and the time available. Accordingly, in the early steps of identifying and appraising options, summary data only is normally required. Later on, before significant funds are committed, the confidence required must increase*” (paragraph 2.5).

**Testing Kits and services (revocation) regulations 2014 (RPC13-FT-DH-1829-HIV):** This policy revoked the ban on the sale of HIV home-testing kits, effectively opening up the market for their sale. This was a substantial policy proposal. As a result of the policy, businesses were able to produce and sell HIV home-testing kits, and consumers were no longer limited to only visiting a professional for testing. DH initially received two Red opinions on the basis of the lack of evidence available to underpin the estimated benefit to business. The second submission calculated an EANDCB of -£7.16 million, whilst in the final IA this was reduced substantially to -£2.81 million. In both submissions DH pointed to the substantial uncertainty around their estimates and the limited support for these estimates from stakeholders. Whilst the second submission provided more detailed evidence, with a combination of survey data from different sources, there were significant changes to the estimated market for the product between the first and second submissions which was not explained or justified. On the basis that DH did not justify why their estimates were the ‘best available’, the submission received a second Red opinion. In the third submission DH clarified these changes and included evidence gathered via an online survey of the UK community pharmacy sector. This evidence allowed the Department to present robust estimates of the volume of kits that may be purchased directly by consumers in UK, resulting in a Green opinion from the RPC. The resource costs of conducting an online survey were not substantial and additional evidence was appropriate given the scale of the measure and significant uncertainty surrounding previous estimates.

The sections below set out the criteria that are relevant to help inform what might constitute a proportionate level of analysis for a policy. However, policies must be treated on a case by case basis and the SCS that signs off an IA is responsible for ensuring that the analysis it contains is proportionate.

* + 1. **How a policy’s impacts might affect what constitutes a proportionate level of analysis**

The BRFM (2.2.3) lists key factors affecting the level of analysis required, including those that relate to the policy’s expected impact:

1. *the* ***scale, duration and distribution of expected impact****;* and
2. *the* ***level of uncertainty*** *around likely impacts*.

Departments should use **the scale of a policy’s likely impacts** as the most important factor in deciding what level of analysis is required. This could be measured by the expected Net Present Value or EANDCB, which capture elements of the scale and the duration of a policy. Policies that have large, widespread and ongoing effects will usually require a greater depth of analysis than ones with minor, temporary effects.

Policies that have large costs and benefits which offset one another to produce relatively small net effects, or those that impose large costs or benefits in the future but are heavily discounted, should be treated as being large scale. For policies in which the NPV is not available, the number of individuals, groups or businesses affected and the size of any impacts it will have, can be used to gauge the scale of the effects. Even for cases that have a relatively small expected NPV greater levels of analysis are expected for policies that have disproportionate impacts on specific groups.

This criterion can also be applied to deciding on the appropriate level of analysis required for individual costs and benefits. For instance, even when appraising a policy that has very large impacts it may not be a proportionate use of resources to monetise one very small benefit. The materiality of the change should also be taken into account. For instance, ignoring a tiny cost may make very little difference to the NPV of a large measure but could change the classification of a small net beneficial measure into a net costly measure.

If there is a significant **degree of uncertainty** around the estimated impacts, or they are based on untested assumptions, then an analysis of the effects of uncertainty should be conducted. This should focus on calculating upper and lower estimates and/or making use of **sensitivity analysis**. This analysis needs to be particularly robust when producing figures, such as EANDCBs, for validation.

***Potential red point***

Example where a simpler assessment would have been proportionate.

**Proposal for new regulations on health and safety in mines (RPC14-FT-HSE-2206):** This policy implemented an independent review’s advice to combine 47 pieces of health and safety legislation regarding mines into a single set of regulations. This would result in slightly reduced administrative burdens but would make little substantive difference to the operations of mines. The HSE estimated one-off familiarisation costs to the industry of around £242,000. The reduced administration costs were estimated at £1.8 million in present value terms, and a couple of other minor benefits were identified to give an OUT of £2.1 million. The department presented a huge quantity of analysis, totalling over 66 pages of material and including many technical details that were not of particular relevance. While the department received a green for the opinion, they would also have received a green for a simpler assessment that focused on the familiarisation and administrative costs.

Example where the assessment provided was proportionate.

**Speeding up cheque payments: legislating for cheque imaging – RPC14-FT-HMT-2001(2)**

This policy recast and modernised existing cheques legislation to enable ‘cheque imaging’ to be introduced in the UK. Under the policy, customers with cheques could either take it to their bank branch to be scanned and processed digitally, or use their mobile banking application to create the digital image of the cheque and pay it in electronically. The RPC opinion highlighted the robust assessment of the costs and benefits in the IA. The cost and benefit analysis is detailed yet concise. In the IA, the department breaks down the costs and benefits to business into a number of sections, under the headings of either transitional or recurring. Each section has sufficient explanation of the impact and estimates are supported with evidence. This improves the readability and clarity of the IA. The department also highlight potential issues related to assumptions made and accuracy of estimates. The cost and benefit analysis is supported by accompanying tables detailing the breakdown of a particular cost estimate year by year. Furthermore, the IA includes sections on social and environmental benefits. Both contain a good level of detail and explanation on the nature of these benefits.

A policy may have a relatively small expected NPV but disproportionate impacts on specific groups. This would justify a relatively high level of analysis. See example below.

**RPC13-DCMS-1757(2) – Banning video on-demand content not suitable for classification by the British Board of Film Classification:** The measure banned video-on demand content unsuitable for classification. Prior to the enactment of the policy, material deemed unsuitable for classification could not be supplied in hard-copy format under the Video Recordings Act 1984. However, the Act did not apply to video-on-demand (VOD) services. The measure banned access to unclassifiable material on VOD services, bringing regulations for VOD in line with those for hard copy material. The IA had an estimated EANDCB of £0.11 million, primarily relating to lost profits for content providers. The department understood that the policy would affect small and micro businesses who were heavily involved in the digital distribution of unclassified material. However, the policy was unlikely to have significantly impacted large businesses - the IA stated that larger companies are more likely to focus on classifiable material to achieve economies of scale. Therefore, this policy may have had a relatively small expected NPV, but disproportionate impacts on certain groups.

The example below is one where the policy impact was fairly uniform. However, note that the large size of the benefit meant that a high level of evidence was also required.

**RPC11-BIS-0899 – Extending the primary authority scheme**: The Primary Authority scheme enabled businesses to have a single source of advice and point of contact for their local regulatory system. The policy made it easier for businesses operating in a single local authority area to receive tailored advice, and for smaller businesses to obtain advice through co-ordinating bodies. The scheme was voluntary, but estimated to impact 21,000 businesses by 2025. The department estimated that regulatory consistency and reliable advice would lead to an annualised net benefit of £2,400 for each business, resulting in an estimated total annual net benefit of £49.5 million by 2025. The EANDCB figure for this IA was -£23.8 million. Although the overall benefit to business was substantial, the policy had fairly uniform impacts on business and thus the level of analysis expected would, other things being equal, be less than a policy imposing disproportionate impacts on certain groups.

* + 1. **How sensitivity and contentiousness affects what constitutes proportional analysis**

The BRFM (2.2.3) key factors also relate to the sensitivity of the policy, including:

1. *the* ***level of interest and sensitivity*** *surrounding the policy;*  and
2. *the degree to which the policy is* ***novel, contentious or irreversible***.

Contentious policies that provoke a high level of public interest are likely to attract media attention and so require a deeper level of analysis. This is because the evidence for such policies is likely to receive a greater level of independent scrutiny. In particular, any data, assumptions or consultation evidence used should be robust and defendable.

It is likely that if any part of a **policy is contentious** or provokes **a high level of public interest** then the entire policy will come under increased scrutiny. It may not be sufficient, therefore, to provide in-depth analysis only for one cost or benefit, even if it is the only contentious impact. Additionally, even relatively minor impacts may be considered controversial in particular settings, for instance if they cause they represent gold-plating of EU legislation.

If **policies are novel** then there is likely to be less familiarity with their impacts and so more rigorous analysis may be needed. It may be necessary to focus on the less researched aspects of the policy and provide a discussion of how the novel aspects would fit within the existing policy framework.

**Irreversible policies** are likely to need a greater level of analysis because the option of future removal is not available. In particular a greater focus on the worst-case estimate and sensitivity analysis may be needed.

**Gender Pay Gap (RPC14-GEO-2384):** This policy required employers with at least 250 employees to provide information showing whether there is a difference, on average, in pay between male and female employees. This is a highly contentious policy area and accordingly received a significant degree of coverage in national newspapers. However, the Department did not explain the underlying rationale for intervention and what current problems the intervention aimed to address. The Department also did not justify why the proposal was seen as proportionate given that it estimated it would impose substantial costs on business but provided little evidence for the existence of the potential benefits. As a result, the IA initially received a not fit for purpose rating.

**RPC-3002(3)-BIS-Trade Union Bill:** The Trade Union Bill IA had a low EANDCB figure, of -£1.41 million, but had significant wider societal impacts and was a contentious policy. The Bill included a number of measures, including a 50 per cent turnout threshold for a ballot to provide a legal mandate for industrial action and a requirement that trade union or employer association members to ‘opt in’ to political funds by written notice. The Department expected that the measure would result in fewer days being lost to strike action and have an overall positive impact on society. However, the policy clearly had a significant impact on trade unions.

* + 1. **How practical factors affect what constitutes proportional analysis**

The BRFM (2.2.3) key factors also relate to practical issues, including:

1. *the* ***data available*** *and the resources required to gather further data*;
2. *the* ***stage of policy*** *development*; and
3. *the* ***time available*** *for policy development*.

If the **data required** to accurately quantify or monetise the impacts of the proposal is readily available then it should be used in the analysis. This would be the case if it were either publically available or could be easily provided by businesses or other groups.

Where new data collection or extensive research is required this should only be conducted if it is cost effective. In cases where the impacts concerned are likely to be of a very small and uncontroversial nature it would be disproportionate to use excessive resources trying to quantify or monetise them. This applies equally to minor impacts of policies whose wider effects may be significant. The RPC does recognise the inherent difficulty in judging whether additional analysis is cost-effective before the impacts of the policy are known. However, broad indicators of the policy’s scale are usually available and so could be used to inform a decision on proportionality. Where the IA is at consultation stage and the Department plans to use the consultation to collect key data, the IA should explain how the consultation will be used.

For policies in which **the time available for policy development** is constrained by external forces, such as the response to emergencies, only analysis that can be conducted within a few days would be expected. However, a lack of forward planning or political time constraints are not justifications for limited analysis.

**European Commission’s Regulation on bus and coach passenger rights (RPC13-DfT‑1163(3)):** This was an EU-driven proposal that included provisions on non-discriminatory pricing, rights in the case of cancellation and the rights of disabled passengers. The Department did not fully explore how many businesses and passengers would be affected by the proposal and did not make use of responses to the consultation to inform the final IA. For example, the exemption for drivers from the mandatory disability awareness training was objected to by 196 responses out of the 208 received. This illustrates that the **lack of use of** **existing and available evidence, including from the consultation,** can be a sufficient reason for the RPC to give a red opinion.

**Helping Home businesses – Amendment to the Landlord and Tenant Act 1954 (RPC-CLG-2202(3)):** The policy amended the Landlord and Tenant Act 1954 to clarify that if a home business is established or run in a rented dwelling the tenancy will remain as a residential tenancy, rather than switch to a business tenancy with greater tenant rights. Consultation evidence suggested that a very small number of landlords were likely to be affected by this change as there was already widespread knowledge of the case law rule that the tenancy is residential as long as the property remains primarily a home. The scale of the policy impact was, therefore, likely to be very small. The Department was able to estimate the familiarisation costs of the policy as £0.49 million, based on a subset of landlords taking time to read the new proposals. However, the Department explained that it would be very difficult to quantify how many individuals running home businesses would no longer have to rent private office space, or the extent to which private landlords would find it easier to rent properties. The RPC accepted the department’s claim that quantifying and monetising these impacts would require a disproportionate quantity of resources for such a minor measure.

**Introduction of permissive legislative framework for Defined Ambition pension schemes (Consultation, Green) (RPC13-DWP-1992):** The proposal explained how Government’s legislative intervention was required in order for it to create the framework which would enable the pensions market to develop new and innovative types of pension provision within the Defined Ambition (DA) schemes. By creating this space within the legislative framework, employers would be able to offer DA pension schemes to their employees and, then, collectively decide on the choice (and design) of a pension model.

The introduction of the DA framework would produce some costs for employers arising “*from the need for all current schemes to assess how the new definitions apply to them and identify themselves under the new framework*”. However, the Department expected that the proposals would be beneficial overall and stated that these would “*give employers and employees more choice and flexibility over their pension arrangements*”

The Department was, at that stage of the scheme’s development, unable to *“provide reliable information to quantify the costs or benefits of the primary proposals*”. The RPC concluded this seemed to be a reasonable assessment at that stage of policy development. The RPC advised that the Department should use the consultation to strengthen this qualitative information, where possible.

* + 1. **Examples of proportionate level of analysis and resourcing in impact assessments**

**Consultation stage**

For consultation stage impact assessments, the RPC recognises that it may be difficult and not a proportionate use of resources to seek evidence on all potential policy options in line with the guidelines set out in the table above. Collection of qualitative evidence may be more reasonable, and the RPC considers proposals on a case by case basis. See also the case histories ‘introduction’ section, which gives a guide to red-rated points at consultation stage.

At consultation stage, it is accepted that only limited information will normally be available and the IA should focus on the key variables and how evidence will be collected. Lack of evidence will not normally result in a Red opinion at consultation stage provided that it is clear how the Department proposes to gather evidence before final stage. At final stage, lack of evidence without sufficient justification is likely to result in a Red opinion if it relates to direct costs to business.

***Potential red point***

**Community right to buy into renewable electricity developments (Consultation stage, Green) (RPC14-DECC-2027):** This policy aimed to help encourage more support for renewable electricity developments by giving local community groups a right to buy into projects. The intention was that this would be done with industry on a voluntary basis with primary powers being taken as a backstop if agreement was not reached. The IA was very well evidenced, with a combination of academic papers, survey data and information provided by stakeholders. As this was a consultation stage IA, the focus was less on detailed evidence underpinning costs and benefits, and more around supporting the rationale for the proposed intervention and demonstrating how it would deliver the expected benefits. The IA received a Green opinion including positive comments on the evidence base.

**Final stage**

The example below is one where the final stage IA made particular good use of the consultation period to strengthen the evidence base.

**Paediatric first aid in early years’ provision (RPC15-DfE-3001(3)):**

This proposal introduced paediatric first aid training into the qualification requirements for new employees to the ‘early years’ workforce, with the aim of increasing the number of staff trained in paediatric first aid (PFA). The department received a fit-for-purpose opinion from the RPC at consultation stage, but this included a number of queries for the department to consider during consultation, and answer at final stage. The Department addressed the RPC’s queries comprehensively in the final stage IA, and sought evidence at consultation to support specific assumptions. For example, in the consultation stage fit for purpose opinion, the RPC queried the assumption that none of the initial costs of introducing PFA training would not be passed on to businesses. Stakeholder consultation and an additional survey of further education training providers offering relevant courses and apprenticeships found that 50% of training providers already offered PFA training, and that many other providers stated that it would be easy to add PFA training to their programme. Providers that covered 29% of trainees claimed they would need funds to offer the training. Thus the department made the assumption that 29% of the initial costs of PFA training would fall on business.

1. Excluding the 183 measures classified as ‘zero net cost’ [↑](#footnote-ref-1)