**Impact Assessment Evidence Base**

The aim of this section is to provide practical advice on the key building blocks of an impact assessment and highlight RPC expectations on the type and quality of analysis expected. Where such expectations differ significantly between consultation and final stage IAs, this is noted and explained throughout the text, as far as it is possible to do so.

**Section 1: Problem under consideration**

**1.1 Establishing the problem and rationale for regulation**

One of the first aspects of a consultation stage full IA the RPC concentrates on is the department’s answer to the question: *“What is the problem the proposal is seeking to address?”* The RPC would expect departments to:

1. **articulate clearly the evidence for there being a problem that needs addressing**

*and*

1. **the evidence that this problem will not be corrected by market forces alone.**

Both [the Green Book](https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-governent) and the IA tool kit provide detailed guidance on the types of issues that can affect the ability of markets to allocate scarce resources efficiently. Both documents also highlight that equity concerns and other social welfare objectives can act as drivers for government intervention. The Green Book states: *“this underlying rationale is usually founded either in market failure or where there are clear government distributional objectives that need to be met.”*

The RPC recognises all these arguments. The RPC finds it preferable if the problem being addressed can be established and articulated using these types of conceptual frameworks. Whatever the identified problem is, evidence should be presented as to its existence and its scale, drawing a distinction between perception and reality where the two diverge.

The RPC expects the chosen option to be supported by the analysis. It does not consider that a decision to go ahead with a proposal based on a “ministerial preference” rather than a sound economic rationale, supported by robust evidence of the problem, is sufficient to justify such a policy choice.  **Where a department has not, at consultation stage, clearly identified the existence of a problem the RPC reserves the right to issue a red opinion.**

***Potential red point***

***Potential red point***

**Retrofitting components to HGVs to reduce vulnerable road user casualties (Consultation Stage, Red) (RPC15-DfT-2327):** The costs and benefits were set out well, especially for a consultation stage IA. However, this indicated that the costs of proposal would be greatly in excess of the benefits to society. The IA recognised this but stated that the preferred option had the “potential to increase safety of vulnerable road users in line with Ministerial imperatives to increase road safety”. The RPC does not comment on policy decisions, but considered that on this occasion the Department has provided insufficient justification for choosing an option with such a large negative NPV.

**Ballot thresholds in important public services (Consultation Stage, Red) (RPC15-BIS-2402):** In this case the IA did not explain and present the rationale for the proposals in a straightforward and logical way. The RPC did not consider that the IA provided a clear enough basis for consultation. The Department’s description of the problem was extremely limited and essentially relied on the statement that “important public services can have far reaching effects on significant numbers of ordinary people”. While that is clearly the case, the RPC expected more evidence/discussion on this point for a measure of this kind, e.g. better assessment of the costs and disruption caused, and its impact on the economy. The Department stated that industrial action can raise serious equity considerations and put the provision of public services at risk. In this instance, the RPC felt that the Department needed to provide further evidence on the existence and likely scale of this effect. ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454855/RPC15-BIS-2402__3010__-_Ballot_thresholds_in_important_public_services_-_IA_c__-_opinion.pdf))

**1.2 Linking the options to the problem**

Once the problem has been established the second question to answer is “*how does each of the proposed interventions address the problem?*”

**RPC expects departments to explain how, or how not, each of the options presented will provide a partial or complete solution to the problem(s) identified.** This should involve discussing and comparing the twin priorities of achieving the objectives of the intervention, providing a solution to the problem, but also doing so in a way that limits the costs to business and civil society organisations as well as maximising any benefits. **Where the link between the problem identified and the impacts of the options are not clear, the RPC reserves the right to issue a not fit for purpose opinion at consultation stage.**

***Potential red point***

**Gender pay gap (Consultation Stage, Red) (RPC15-GEO-2384):** the proposal was to consult on ways of introducing a requirement for business with more than 250 employees to report on their ‘gender pay gap’. The Department, in its initial submission, explained that the gender pay gap can be explained by a variety of factors, has reduced over time and is zero/negative for people below the age of 39. The initial submission did not explain sufficiently why introducing a requirement to report on pay by gender could lead to an increase in the speed of the reduction of any pay gap. In a later submission, the Department explained that the intrinsic aim of the policy was to make businesses reflect on internal factors that might contribute towards a pay gap. The reporting requirement was mainly a tool to ensure that businesses are actually undergoing such a review of their internal practices. The later submission received a ‘green’ rating by the RPC.

The RPC looks for a clear statement in the IA of which of the options discussed is preferred or being taken forward, and a clear justification for this choice. **In most instances, this will be on the basis that the appraisal suggests that such an option is likely to be the one with the highest net present value (NPV), ie the most net beneficial or least net costly to society as a whole.**

The RPC also recognises that there will be cases where departments can justify recommending a policy option that does not necessarily have the highest NPV. For example, this could be the case when the existence and scale of non-monetised benefits can be clearly demonstrated.

However, as mentioned earlier, departments should remember that appealing to ministerial priorities is not, on its own, a sufficient justification for choosing a policy option not supported by the appraisal and evidence, and hence could not result in a fit for purpose opinion issued by the RPC.

***Potential red point***

**Paediatric First Aid (PFA) in early years provision (Consultation Stage, Red) (RPC15-DfE-2356):** The Department’s proposal was a response to a coroner’s recommendation, a 103,000 signature petition, a subsequent parliamentary debate and a national review, following a tragic incident in a nursery class. The Department stated that “*the national review has shown that parents would welcome additional reassurance that their children are safe through increased paediatric first aid provision”.*

Initially, the Department provided no assessment of the possible health and safety benefits of the proposal. There was no information on the number of health incidents and, therefore, the level of risk under the existing PFA requirements. There was no assessment of how much the proposal might lower these risks. The IA was, therefore, rated as not fit for purpose on the basis that it did not identify satisfactorily a fundamental impact of the proposal. In addition, without any assessment of the above benefits, it was difficult to understand fully the rationale for the proposal or how the options compare, and its justification for a preferred option to address the problem.

Subsequently, the Department addressed satisfactorily all comments made by the RPC and proposed to use the consultation to strengthen its assessment of possible impacts.

***Additional examples in relation to problem identification and policy justification***

**Ex-military aircraft occupant placard (Final Stage, Red) (RPC12-DFT-1371(2)):** This proposal required ex-military aircraft to display a placard explaining that the aircraft is not certified under international airworthiness requirements. The IA failed to demonstrate that there was currently any lack of safety awareness among passengers travelling in such aircraft. Indeed, responses from stakeholders suggested this was not a problem. As the IA was submitted before limitations were placed on RPC ratings of final stage IAs, the IA received a red rating for this and other reasons. A revised IA was submitted addressing other concerns but not the rationale issue. As the problem did not relate to direct cost to business the IA received a green rating, but with highly critical comments on the quality of the analysis. ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260631/RPC-Published-Opinions-2012.pdf))

**Sheep identification – electronic slaughter tag (Consultation Stage, Red), (RPC13-DEFRA-1721):** This proposal introduced mandatory use of electronic identification (EID) slaughter tags, and electronic reading by markets and abattoirs. The preferred option would result in a net benefit to business because the benefits to markets, keepers and abattoirs, due to the reduced cost of reading animals, is greater than the costs to farmers who will need to purchase more expensive electronic tags. The original IA suggested that it was thought that commercial pressures would drive the take up of EID tags for lambs intended for slaughter, but that this did not happen. The RPC asked for a clearer explanation of the market failures which had been identified as preventing these commercial drivers from taking effect. This resulted in a red-rated RPC opinion of the consultation stage IA. A revised IA was submitted; it explained that the marketplace had not driven the use of the EID slaughter tags because of competition for trade, and fear that it would divert sales direct to abattoirs away from livestock markets. The revised IA received a green-rated RPC opinion.

**Section 2: Impact assessment options**

**2.1 Non-regulatory options to regulation**

The Government’s Principles of Regulation state that “*in many instances alternatives to regulation are more effective, such as simplifying existing regulation, giving clearer information to consumers or developing voluntary codes of practice*”.*[[1]](#footnote-1)* Therefore, the RPC expects departments to consider non-regulatory options (also commonly known as “alternatives to regulation”) and analyse their viability and effectiveness. A lack of such analysis is likely to result in a not fit for purpose opinion from the RPC at consultation stage.

***Potential red point***

A summary of RPC expectations by stage and type of impact assessment process is presented below.

**Table [XX]: Non-regulatory options - RPC expectations by stage and type**

|  |  |  |
| --- | --- | --- |
| Domestic | Consultation stage | 1. Discussion of non-regulatory options with the same level of detail as all other options, explaining clearly the incentives and potential costs and benefits. 2. Clear explanation of legal requirements and/or the economic rationale why alternatives to regulation might not be viable. 3. Monetisation of non-regulatory options as far as possible. If full monetisation is not feasible, provision of assumptions about potential uptake and effectiveness drawing from the experience in other sectors and the literature. 4. Test of the assumptions during consultation. |
| Final stage | 1. Update of assumptions from consultation responses. 2. Monetisation of all options as far as possible and proportionate. 3. Clear explanation of why regulation is favoured. For example, why was a voluntary approach,say resulting in half the costs to business but delivering 60% of the policy benefits, seen as an inferior approach? |
| EU/International | * Clear explanation of whether and why a regulatory approach by the UK is required to fulfil the EU obligations. | |

The RPC would like to see more assessments and more monetisation of costs and benefits for non-regulatory options. RPC analysis shows that, in 2014, only one in two domestic regulatory measures submitted via a full track route discussed non-regulatory options. In addition, only one in eight quantified and monetised non-regulatory options fully.

Where a department is proposing to regulate, the RPC will look for analysis outlining why alternatives to regulation are not viable or will not be effective in achieving the policy objective. Where possible and proportionate, this analysis should include quantification.

At consultation stage, the focus of the impact assessment should be to present a suitable set of options, including non-regulatory alternatives, and to identify and explain costs and benefits of all options in a comparable fashion. At final stage, the focus should be on monetising the impacts as much as feasible and proportionate, to support any recommendation for a regulatory approach. Where non-regulatory approaches are currently in place, their effects should be fully assessed as part of the ‘do nothing’ option. The RPC acknowledges that non-regulatory options are not feasible in all cases. The RPC recognises that the scope to implement the policy via different options might be particularly limited with international measures or the transposition of EU directives.

* 1. **Broader issues departments should consider in the analysis of options**

**2.2.1 The relationship between regulatory and non-regulatory approaches**

The RPC expects departments to show awareness and provide clear analysis of the relationship between non-regulatory approaches and regulatory ones. The effectiveness of regulation might depend on the level of voluntary schemes already in place. Existing forms of self-regulation or co-regulation might make new regulation partially redundant as the benefits of such new regulations would be reduced.[[2]](#footnote-2)

Departments should consider how the position might evolve over time. Are businesses currently thinking about a voluntary approach and should it be included in the counterfactual? Would the introduction of statutory regulation stifle voluntary efforts by business?

* + 1. **Incentives**

While there might be some degree of substitutability between regulatory and non-regulatory approaches, the incentives involved can be very different. For example, self-regulation could be imposed by dominant players in the market to stifle entry and competition and standards set by industry voluntarily could, therefore, be stricter at times.[[3]](#footnote-3)

Many non-regulatory options are based on building appropriate incentives for the parties involved. Government has greatly increased its analysis of behavioural responses to incentive schemes, for example by setting up the UK Behavioural Insights Team (UKBIT) in 2010. Analysis by BIT and results from other academic research in the field of behavioural economics are increasingly being used for policy making and the design of regulation.[[4]](#footnote-4) The principles arising from this research extend beyond regulatory policy. Departments should make use of such sources when analysing the potential outcomes of non-regulatory approaches, and the incentives involved, when more standard forms of data are not available.

* + 1. **Set of non-regulatory approaches considered and justification for regulation**

Departments should not only consider formal non-regulatory options, such as voluntary codes of practice or industry standards, but also analyse to what extent recent developments and market mechanisms could partially address the issue. Such mechanisms could be, amongst others, the strengthening of consumer awareness and pressure from new technologies. These should be taken into account in the counterfactual.

Departments should avoid assuming as standard that non-regulatory options produce lower uptake than regulation and that they, therefore, lead to smaller costs to business while delivering a smaller net benefit to society. While this might be true in many instances, it should be founded in evidence rather than just asserted. Departments should also explain why the delivery of a smaller part of the policy objective at the benefit of a reduced cost to business is not acceptable.

By definition, The RPC does not, usually, see cases in which a non-regulatory option is taken forward. Below are some cases which included a good analysis of non-regulatory options.

**Employers in Great Britain, with at least 250 employees, to publish mean and median gender pay gap figures, mean and median gender bonus gap figures and a table with the breakdown of the number of males and females by salary quartiles (RPC-GEO-3023(4))**

These regulations will require companies with more than 250 employees to publish the following figures annually: (a) mean and median gender pay gaps; (b) mean and median gender bonus gaps; and (c) the number of men and women in each quartile of the company’s pay distribution.

The Government previously pursued alternatives to regulation. In particular, since 2011 the Department encouraged large employers to voluntary publish gender pay gap information through the *Think Act Report* initiative. However, only 5 out of almost 280 employers who signed up to the voluntary initiative published the information. The Department explains that while the gender pay gap has slowly fallen over the last five years, decreasing from 19.85% in 2010 by 0.75% to 19.1% in 2015, the voluntary approach would be very unlikely to achieve the policy objective of accelerating the reduction in the gender pay gap over time.

**Material Recovery Facilities (RPC12-DEFRA-1625):** The proposal requires Material Recovery Facilities to sample the quality of their input and output material streams in a standardised way and make information on this transparent and public.

The IA does not provide an assessment of a non-regulatory approach as such, but explains clearly the pre-regulatory environment. It provides good theoretical analysis, which is backed up by consultation responses from the industry, on why existing voluntary approaches cannot address the issue at hand.

The IA explains that competitive pressure on operating costs is very high in this sector. In addition, asymmetric information in this market means that buyers of recycled material cannot verify the quality at the point of purchase. The pressure on costs means that businesses properly assessing the quality of their produce are often at a competitive disadvantage due to increased costs, while the buyers’ inability to verify quality means that any quality signal cannot be seen as credible in the absence of mandatory, standardised sampling and reporting requirements. ([IA](file:///\\op2pdrv02\users$\DoulisK\Cases))([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336556/2013-01-21-RPC13-DEFRA-1625_3_-environmental_permitting_regulations_2010_materials_recovery_facilities.pdf))

**Community right to buy into renewable electricity developments (RPC14-DECC-2027):** This final stage IA is, in general, very detailed and provides a lot of evidence. It assesses the cost and benefits of the primary legislation enabling government to introduce a legal framework in which individuals in the community are guaranteed the opportunity to purchase a stake in a renewable electricity development.

The Department explains how it has worked closely with industry to develop a voluntary framework to facilitate shared ownership. It explains that the government intends to stay with the voluntary approach, but wants to be ready to intervene if a review shows that progress under the voluntary scheme is insufficient. The IA assesses the incremental costs and benefits associated with taking up these powers against three scenarios for the voluntary uptake. While it could be argued that the threat of legislation undermines how “voluntary” the current approach is, the Department, by providing different scenarios, can make a case for when the overall benefits of legislation will outweigh those derived under the voluntary framework. ([IA](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319453/IA_DECC0158_ISSUE_CR2B.pdf))([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/347508/2014-03-27_-_RPC14-DECC-2027_-_Community_right_to_buy_into_renewable_electricity_developments.pdf))

**Tackling avoidance of the ban on exclusivity clauses in zero hours contracts (RPC14-BIS-2236):** This consultation stage IA investigates possible responses to tackle the avoidance of the ban of the use of exclusivity clauses in employment contracts which guarantee no hours (zero hour contracts). The IA presents legislative options as well as the introduction of non-statutory codes of practice. The IA takes all options to consultation and does not state any preference at this stage.

All options are considered in similar detail, although the Department explains that it has only been able to estimate familiarisation costs associated with the non-statutory code. It explains that it would assume that ongoing benefits to businesses taking up the voluntary code must outweigh ongoing costs.

The Department expects the non-statutory code to deliver a smaller proportion of the benefits associated with the policy at a lower cost to business. The evidence presented makes clear that this assertion is appropriate in this case. ([IA](https://www.gov.uk/government/publications/zero-hours-contracts-tackling-avoidance-of-a-ban-on-exclusivity-clauses-final-impact-assessment)) [Opinion not published]

**Smoke alarms in private rented properties (RPC14-CLG-2266):** The proposal makes the installation of smoke alarms on each floor of private rented properties mandatory. The final stage IA sets out the long history of non-regulatory approaches over the last decades. It shows that non-regulatory approaches have been successful in achieving close to 90% coverage. The Department provides evidence and argues, given the long history of non-regulatory approaches, that a small percentage of landlords will never respond to these approaches. It further explains that these landlords often own high-risk properties.

The IA shows that increasing coverage to (almost) full coverage will result in overall benefits to society as the reduction of domestic fires comes with large benefits. In its assessment of the policy option, the Department assumes a reasonable growth in uptake in the counterfactual. By doing this, the Department shows awareness of the effects of existing non-regulatory approaches and their effect on the costs and benefits associated with the regulatory proposal. In effect, it provides a full cost-benefit analysis of the regulatory approach compared to the counterfactual of solely continuing with existing non-regulatory approaches. ([IA](http://www.legislation.gov.uk/ukdsi/2015/9780111133439/impacts/2015/158)) [Opinion not published]

**2.2.4 Explaining why options are not being taken forward**

When a decision has been made not to take forward an option, the IA needs to explain why. This does not mean that full monetisation of costs and benefits should be undertaken for options when it becomes apparent early on in the process that they are not feasible, or will be significantly worse value for money than other options. An IA needs to contain sufficient analysis of each option to explain why it is not being taken forward. In a consultation stage IA, if options are not being taken forward without sufficient justification this is likely to result in a red-rated opinion. At final stage it is expected that a single option will be recommended, although the RPC may comment if it is not clear whether other options were considered or why they were discarded.

1. [https://www.gov.uk/government/publications/2010-to-2015-government-policy-business-regulation/2010-to-2015-government-policy-business-regulation#appendix-2-using-alternatives-to-regulation](https://www.gov.uk/government/publications/2010-to-2015-government-policy-business-regulation/2010-to-2015-government-policy-business-regulation%23appendix-2-using-alternatives-to-regulation) [↑](#footnote-ref-1)
2. Examples are agreements between employers and unions, where employment relations are largely achieved through agreement between the two parties, or similar more informal approaches in workplaces without unions. It appears that the principle of such agreements could be applied in other spheres. [↑](#footnote-ref-2)
3. The potential anti-competitive effect of both regulation and self-regulation if it favours incumbents at a cost to new entrants should be considered in impact assessments in general. [↑](#footnote-ref-3)
4. The report “Regulatory Policy and Behavioural Economics” commissioned by the OECD provides a useful overview on the use of behavioural economics in regulatory policy: <http://www.oecd-ilibrary.org/governance/regulatory-policy-and-behavioural-economics_9789264207851-en> [↑](#footnote-ref-4)