Proportionality guidance for regulators

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Introduction

1. Proportionality in BIT assessments is about ensuring the appropriate level of resources is invested in gathering and analysing evidence on the impacts of a policy.

2. The Better Regulation Framework Manual (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 58-61) of the BRFM provides more detailed guidance on proportionate analysis.

3. Some Departments and regulators have found it difficult to gauge how the RPC interprets this guidance. The RPC recognises the need to prioritise analytical resources in order to focus on the most important and impactful measures at times of high demand and limited resource.

4. This document illustrates how the RPC applies that guidance in practice and provides an indication of the level of analysis the RPC expects to see from regulators.

Level of analysis

5. The RPC expects that a lower level of resource will be applied to evidence gathering and analysis for smaller measures. However, it is important to emphasise that analysis and evidence are ALWAYS required within an BIT assessment. Even when the Equivalent Annual Net Direct Cost to Business (EANDCB) figure rounds to zero, sufficient evidence needs to be presented for the RPC to be confident that the impact does indeed round to zero. In all instances, the RPC requires at a minimum both a clear description of the impacts of the measure and a brief justification of the key assumptions, no matter how small the anticipated impacts.

6. A primary consideration is the impact of your measure. The Figure 1 sets out the principal considerations when determining impact.

Figure 1 – Determining the level of impact

This guidance is intended to help Regulators to decide how much resource should be used in the development of a BIT assessment by outlining the expectations that the RPC might have by level of impact.

How can you determine the impact levels of a measure?

STEP 1

What is the size of the regulated market?

Does measure change existing requirements in a fundamental way?

How many different factors need to be considered to understand the impact of the measure?

Is there a high risk of the measure not meeting its objectives?

Is the measure likely to have disproportionate impact on one group of businesses (such as small businesses, or businesses in one sector)?

Is measure novel or contentious?

Is measure permissive?

STEP 2

Equivalent annual net direct cost to business (EANDCB)
(expected or preliminary values)

7. The table below aims to clarify what the RPC will look for to determine the level of impact of a measure and therefore what constitutes proportionate level of analysis. It should be emphasised, however, that proportionality will always remain a matter of judgement because it is neither possible nor desirable to set out, <u>in fixed terms</u>, exactly what is a proportionate level of analysis.

8. Every IA must cover a set of basic elements to allow the RPC to assess its 'fitness for purpose'. The degree of detail required under each of these elements must be decided by the author of the IA. Even for very large measures, we encourage succinct plain English descriptions of proposals, without omitting potentially important detail or including irrelevant evidence.

9. Please note that the table does not indicate where the RPC will focus, or LIMIT its scrutiny. Each case is always judged on its own merits and, where appropriate, the RPC requirements can go beyond what is set out in the table. **It is also worth noting that clear descriptions of the impacts of the measure and brief justifications of key assumptions are minimum requirements for any BIT assessment.**

Figure 2 – Determining the level of impact

GUIDE ON LEVEL OF IMPACT			
High impact	**Medium impact**	**Low impact**	**Very low impact**
A measure should be considered high impact if it meets <u>ANY</u> of the criteria below,	*A measure should be considered medium impact, if it is not 'High impact' but meets <u>ANY</u> of the criteria below,*	*A measure should be considered low impact if it meets <u>MOST</u> of the criteria below,*	*A measure should be considered very low impact if it meets <u>MOST</u> of the criteria below,*
Large number of businesses/individuals/organisations will be affected (thousands, large proportion of the market) *Measure introduces a radical change to existing requirements/regulations* *A large number of factors need to be considered to estimate the impact of the measure and there is a high degree of uncertainty* *There is a high risk of the objectives not being met* *Distributional impacts would change relative status of the affected parties in a considerable way*	*Considerable number of businesses/individuals/organisations will be affected (hundreds to low thousands, considerable proportion of the market)* *Measure introduces a substantial change to existing requirements/regulations* *Multiple factors and a number of uncertain assumptions need to be considered to estimate the impact of the measure* *Objectives of the measure are more numerous and challenging* *Distributional impacts would be noticeable to the affected party/parties but not radically changing their relative status*	*Small number of businesses/individuals/organisations will be affected (low hundreds and/or low proportion of the market)* *Measure introduces a small change to existing requirements/regulations* *Impact of the measure can be estimated by considering a small number of factors* *Objectives of the measure are limited and/or modest and/or relatively easily achievable* *No, or very limited, distributional impacts* *Measure is permissive*	*Small number of businesses/individuals/organisations will be affected (less than a hundred and /or low proportion of the market)* *Measure introduces a minor, technical or administrative change* *Impacts can be estimated using simple methodology* *No distributional impacts* *Measure is permissive*
AND *EANDCB greater than +/- £20 million*	***AND*** *EANDCB greater than +/- £5 million but less than +/- £20 million*	***AND*** *EANDCB less than +/- £5 million*	***AND*** *EANDCB rounds to zero*

RPC expectations

<u>Very low impact</u>

10. In this scenario, the RPC would normally expect to see a **light-touch, low-resource** validation assessment which sets out the following:

- A clear description of the policy.

- A brief description of the businesses and other entities likely to be affected and how (i.e. what will businesses do in response to the measure, and what will businesses need to do differently as a result of the measure).

- A straightforward analysis of the likely impacts of the measure

- A clear explanation that impacts round to zero (for example by a break-even analysis). There is no need to calculate individual impacts, if the assessment shows that it is unlikely that the total impact would exceed £100,000 per annum.

- A best estimate of the monetised impact where possible, but this may be zero.

- Estimates and assumptions supported by easily obtainable evidence e.g. publicly available data, in-house expertise (appropriately justified) or informal consultation.

- If easily obtainable data is not available, assumptions should be stated clearly and the reasoning underpinning them described. It is helpful also to explain briefly why relevant data are not readily obtainable.

- A clear description of which impacts are within scope of the BIT (i.e. what are the direct impacts).

- Indirect impacts do not need to be monetised or discussed in detail.

Low impact

11. The level of evidence in this scenario would be similar to the very low impact scenario. The RPC would still expect to see a light-touch, low-resource BIT assessment which sets out the following:

- A clear description of the policy.

- A description of the businesses likely to be impacted and how (i.e. what will businesses do in response to measure, and what will businesses need to do differently as a result of measure).

- A relatively straightforward analysis of the likely impacts of the measure.

- Estimates and assumptions are supported by easily obtainable evidence but evidence is robust. The assessment should use available data sources and easily collectible formal or informal consultation evidence (focused on key stakeholders, e.g. industry bodies or trade unions; high number of consultees and high response rates to consultation are not required as long as the view of the key players is represented).

- Estimating the impact of the policy based solely on assumptions (in the absence of evidence) should be a measure of last resort and should be well justified

- A best estimate of the monetised impact

- A clear description of which impacts are within scope of the BIT (i.e. what are the direct impacts).

- Indirect impacts do not need to be monetised or discussed in detail but it would be good practice to highlight what they are.

Medium impact

12. In this scenario, the RPC would expect to see a more thorough BIT assessment which would include the following:

- A clear description of the policy.

- A description of the businesses likely to be impacted and how (i.e. what will businesses do in response to measure, and what will businesses need to do differently as a result of measure).

- Detailed analysis of the likely impacts and the scope of the measure

- Estimates and assumptions are based on robust evidence; involves relatively detailed formal consultation which captures views of a wider range of stakeholders; draws on wider range of data sources including academic literature, government and industry reports

- May require collection of additional data if this is needed to fill key gaps in the evidence base and explains clearly why the regulator has not chosen to do so, if appropriate.

- Ensures and shows that data is relevant, reliable, unbiased and complete

- Estimates and uncertain assumptions should have been tested with stakeholders and/or based on robust data.

- Provides a detailed description of any areas where relevant evidence is lacking, explains why this is the case and describes what efforts have been taken to gather relevant evidence.

- Identifies the most likely and/or significant risks and uncertainties and their potential effects on the measure's impacts. Provides low, high and best estimates of impacts if uncertainty is high. Justifies your choice of the best estimate.

- Provides greater, but possibly not full, monetisation

High impact

13. In this scenario, the RPC would expect to see a BIT assessment with a high level of resource devoted to it. This would include the following:

- A clear description of the policy.

- A description of the businesses likely to be impacted and how (i.e. what will businesses do in response to measure, and what will businesses need to do differently as a result of measure).

- Monetisation of all impacts for which this is possible.

- Evidence from comprehensive formal consultation, the IA should use the sample of consultees that is representative of affected businesses and other stakeholders and response rates are high.

- Bespoke data gathered in support of assumptions if required – evidence gathering may involve commissioned work.

- Estimates and uncertain assumptions should have been tested with stakeholders and/or based on robust data.

- If there is significant uncertainty or risk, this should be explored using sensitivity analysis and/or scenario analysis.

- At very high levels of impact we anticipate that assessments will be based on modelling, which should be fully explained and the methods used should be justified.

- A clear and well-evidenced assessment of which impacts are within scope of the BIT (i.e. what are the direct and indirect impacts, and why have they been categorised as such).

- Analysis of the distribution of impact of the policy

Other issues

14. A few further RPC tips for completing your BIT assessment are:

- The key issue with many assessments of impact is **a lack of evidence** and analysis. No matter how low impact you believe your measure to be, you need to be able to convince an independent reader that is the case… and to do that, you inevitably need evidence to support your assessment, or a rationale as to why your assumptions are reasonable.

- Comply or explain – where you are relying on a minimum amount of evidence/analysis and not seeking to improve your evidence base you need to explain why. It is not enough to say 'it is not proportionate to go further' – the question is why is it not proportionate? What is your assumption of minimal impact based on?

- Almost every case will have individual issues and areas that require a greater amount of detail in the BIT assessment. As such, we do not seek to suggest a word or page limit, but rather leave it to the common sense of the policy team developing the BIT assessment to know what detail is needed to be able to accurately assess the policy, and what detail is superfluous.