



Impact Assessment Case Histories

A condensed version for regulators

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FOREWORD

This document provides a compendium of past RPC decisions that are considered to demonstrate the practical application of a principle explained in the Better Regulation Framework Manual (BRFM) or other relevant guidance. These decisions were made by the RPC with reference to the aforementioned guidance and represent their interpretation of how this guidance should be applied.

The first section of this document relates to specific issues that have arisen around better regulation methodology in the last Parliament. This includes issues that arose around classification of measures for the purposes of OITO. The second section describes how to produce a good quality assessment of impact. Examples are given of common mistakes that are made in IAs as well as examples of good use of techniques to assess the impacts of regulation.

The RPC will be developing revised Case Histories for the new Parliament in the near future. As these are issued, the relevant sections for regulators will be updated.

Please Note:

Some links to RPC opinions issued in 2012 provide a document with multiple opinions. Please use the find function and the RPC reference number given to locate the opinion of interest.

SECTION 1: The Better Regulation Framework and One-in, Two-out Methodology

1.1 Direct versus indirect impacts

1.1.1 New Entrants

Costs and benefits to future businesses entering a market were previously seen as indirect impacts. This was because those businesses do not yet exist and any estimates would therefore also be somewhat speculative. However, this meant, for example, that deregulatory measures (e.g. simplified guidance), which mainly benefit new entrants, could easily be net costly in OITO terms because of the familiarisation costs to existing companies. Following a request from HSE, this approach was reviewed and the methodology revised. It is now clear that impacts on new entrants should be treated in the same way as impacts on existing businesses. However, any estimates relating to the number of new entrants would normally be accepted only in respect of official data relating to historical turnover (churn) of businesses in the particular industrial sector. Any costs or benefits associated with an increase in the rate of entry of new businesses, as a result of a proposed change, are still considered indirect.

BRFM 1.9.38

Relevant IA

Revocation of the Construction (Head Protection) Regulations 1989 (RPC12-HSE-1286): the policy simplified regulations regarding head protection on construction sites. This was first ruled as being a deregulatory IN as transition costs to existing businesses were direct, while benefits to new entrants were indirect. Following the change to the methodology this was reconsidered and ruled to be an OUT. ([IA](#)), ([Opinion](#))

1.1.2 Voluntary Measures

Where business is given an option to act, questions often arise as to whether the impact of their actions is direct or indirect. The principle is that where the regulation was the main thing preventing the business from acting, and this is supported by evidence, then the impact can be considered direct. When both the removal of the regulation and other factors are required, for example innovation to take advantage of a new freedom, then impacts are indirect.

Relevant IAs:

Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011 (RPC11-HMT-0869): this policy allowed credit unions to increase membership and offer more services. It was clear from the evidence provided that the affected businesses wished to grow and were prevented from doing so only by the regulations. The costs and benefits to firms of expanding were therefore considered direct and in scope of OIOO. ([IA](#))

Orphan works (RPC11-BIS-1063): orphan works are copyrighted works whose author is unknown. This policy allowed the use of orphan works, subject to certain safeguards. One of the main expected benefits of this policy was from new businesses that might be created to take advantage of newly-available material. As these benefits would arise only as a result of innovation from business, they were considered indirect. There were other direct benefits to existing users of orphan works therefore the policy was an OUT. ([IA](#)), ([Opinion](#))

Extending the primary authority scheme (RPC11-BIS-0899): the primary authority scheme allows a business operating in multiple local authority areas to nominate a primary authority to co-ordinate all local authority enforcement activity relating to that business. The policy extended the scheme. As the scheme resulted in a reduction in the level of regulatory activity a business was required to undertake, the impacts were ruled to be direct. There have been a number of other policies to extend the primary authority scheme, all of which have been treated in the same manner. (See also deregulation). ([IA](#)) ([Opinion](#))

Gambling Act 2005: triennial review of stakes and prize limits (RPC13-DCMS-1459): there is a limit on the maximum value of stakes and prizes used in gaming machines. The policy increased this limit, allowing businesses to make greater profits from higher value machines. As it would be reasonably straightforward for businesses to move to higher-value machines it was accepted that the regulation was the only thing that prevented businesses from gaining these benefits. The benefits were therefore considered to be direct. ([IA](#)) ([Opinion](#))

1.1.3 Removing inefficient use of resources

Removing regulations means that resources are no longer used in complying with those regulations. In some cases this can result in reduction in work for businesses (e.g. lawyers and business services firms). In these cases it should be assumed that by removing the regulation the policy allows resources to be re-allocated to a more efficient use, any transition costs of the re-allocation of these resources should be considered indirect. There is, in effect, a saving to society from resources previously devoted to regulation that is now available for productive use elsewhere in the economy.

Relevant IAs

Enabling digital by default (RPC13-MOJ-1867): this measure simplified the process of applying for lasting power of attorney, which resulted in a loss of income to solicitors. The RPC was clear that loss of income to solicitors (whether direct or indirect) resulting from deregulation or simplification of regulation should not be counted as a cost to business as it removes the inefficient use of resources. More generally this also covers other businesses that derive income purely from regulation. These costs are excluded as the benefits to lawyers would otherwise ignore the opportunity cost, i.e. the income that lawyers could earn from taking on other work. A more general way of expressing this is that there is a resource saving to society from resources previously devoted to regulation that is now available for productive use elsewhere in the economy. ([IA](#)) ([Opinion](#))

Amendments to the Pension Schemes Bill (private sector defined benefit transfers) (RPC14-HMT-2212): the proposal required employers to pay for independent financial advice for employees who are moved from a defined benefit to defined contribution pension scheme. The Treasury had counted the additional income to independent financial advisers (IFAs) as a direct benefit, offsetting the costs to employers. The RPC decided that the income to IFAs was simply the equivalent of the compliance cost to employers and should not be used to offset it. By way of illustration, the RPC noted that if an employer had its own in-house financial advice service, and could use it to meet the requirement; it would seem perverse to conclude that the regulatory requirement had no net cost to that business.

1.1.4 Behavioural change

A direct impact on business is defined by the BRFM as an impact that can be identified as resulting directly from the implementation or removal/simplification of regulation. Subsequent effects that occur as a result of the direct impacts, including behavioural change, are generally considered to be indirect. However, whether a particular impact requires behavioural change is neither a necessary or sufficient condition for judging whether it has a direct or indirect effect. As such, caution should be exercised when drawing conclusions from previous cases as a judgment on direct/indirect effects will always be considered on a case by case basis.

BRFM 1.9.35

Relevant IAs

Amendment to the Energy Act 2008 - powers to implement and direct the roll-out of smart meters (RPC10-DECC-0558): smart meters are a new form of gas and electricity meter that provides customers with more information about their energy use. The smart meter also provides suppliers with more information allowing for more targeted tariffs. The policy was to ensure the roll out of smart meters. If smart meters result in more efficient use of energy this could have large benefits for business users. However, these benefits were considered indirect as they result only if business customers choose to act on the information and change their behaviour, rather than as a direct result of having a smart meter. This case is purely about giving customers more information on which they can base a decision whether or not to act. As such the required behavioural change is considered an indirect effect. In addition and by the same reasoning, losses to energy suppliers were also considered an indirect business impact. ([IA](#))

Proposed changes to Part L of the Building Regulations 2013 (RPC11-CLG-1130): the policy amended the building regulations to increase energy efficiency standards. The measure imposed a cost to builders, but a benefit to the eventual occupants of buildings of lower heating costs. As lower costs would result from more efficient buildings and not require a change in behaviour, they were considered to have a direct impact. The regulatory policy was classified as zero net cost as the energy savings to non-domestic consumers were expected to exceed the costs to developers. ([IA](#)) ([Opinion](#))

Standardised packaging of tobacco products (RPC12-DH-1229): this proposal was to reduce tobacco consumption by mandating the standardisation of tobacco pack

colour, shape and the removal of all branding except brand name in a standardised type face. In this case, the impact of the loss of profit to manufacturers and retailers is direct as it restricts economic activity from use of branding, prohibits a form of promotional activity and has the reduction of cigarette consumption of cigarettes as the primary objective. If loss of profits was considered an indirect cost, this would score as net beneficial to tobacco companies, which would be a counter-intuitive outcome. ([IA](#))

Banning of inducements to make personal injury claims (RPC14-FT-MOJ-2125): this proposal banned lawyers from offering claimants financial inducements, or similar rewards, in return for making a claim. The objectives were to discourage weaker personal injury compensation claims from being made and to prevent claimants from being misled by offers of inducements which do not materialise in practice. The IA estimated that the policy would result in a reduction in the overall volume of claims. However, the IA asserted that the subsequent reduction in income to lawyers would be as a result of behavioural change on behalf of the claimant, and as such should be considered to be indirect.

The RPC rejected the behavioural change argument and concluded that the reduced volume of claims would be a direct impact of the regulation as the proposal introduced a direct ban on an activity that resulted in profit to business. That is, the ability of lawyers to attract customers, who would have used their service in return for an inducement, has now been banned. As such, the lost profit to solicitors from a reduction in these cases should be considered to be a direct impact of the proposal.

1.1.5 Displaced economic activity

If a policy bans, severely restricts or makes more expensive, a particular economic activity then this may result in an increase in substitution towards other activities. There may, therefore, be some increased profits in other areas of the economy. These benefits are considered to be indirect while the lost profits from the economic activity that has been banned are considered to have a direct impact.

Relevant IA

Prohibition on the sale of tobacco from vending machines (RPC11-DH-1048): this policy banned the sale of tobacco products from vending machines. This resulted in a loss of profits that would have been gained from these sales. This cost was considered to be direct. Consumers unable to purchase tobacco from vending machines may now choose to purchase more tobacco from retailers or to consume more of other products. Any additional profits from either of these activities were considered to be indirect. ([IA](#)), ([Opinion](#))

1.1.6 Regulated transfer of assets

If a policy transfers ownership of an asset to a business then this is a benefit to business equal to the value of the asset. If the asset has a negative value (i.e. it is a liability) then the transfer is a cost. Where the asset has no market value, its value can be estimated by other means (e.g. the discounted value of future cash flows). In the case of economically-regulated markets, this identified a potential problem as the

future benefits of the asset come from increasing prices to consumers. When this first arose the BRFM was clear that price increases were considered to be indirect. The issue was referred to the cross-Whitehall group on the economics of regulation which agreed that, while price increases are indirect, in this case they are being used as a proxy for the value of the asset, which can be considered a direct benefit. The BRFM has now been amended to make it clear that in the case of economically-regulated assets the value of the asset can be calculated using the present value of return from the asset, including any benefits from future changes to regulated prices resulting from ownership of the asset.

BRFM 1.9.23-1.9.24

Relevant IA

The Transfer of private sewers and lateral drains to statutory water and sewerage companies (RPC11-DEFRA-0778): the policy transferred ownership of private sewers and drains, many of which were in a dilapidated state, to water companies. The sewers resulted in both costs, in the form of liability for their maintenance, and benefits, in the form of future increases to regulated prices. The value of the asset was determined as the NPV of future costs and benefits and this was a direct benefit to water companies. ([IA](#)) ([Opinion](#))

1.1.7 Pass through

When a regulatory burden is placed on businesses they have to decide how to respond. They may increase prices, cut wages, reduce investment or reduce dividends. The EANCB metric is an attempt to capture the burden on business by regulation. Whether this burden can be passed on through some mechanism is generally regarded as being indirect for the purposes of OITO. The BRFM (paragraph 1.9.45) states that pass through should be excluded from the calculation of the EANCB. Pass through is shorthand for where, for example, businesses pass through the costs/savings of regulation/deregulation to other parties, usually consumers in the form of price increases/decreases. The first round impact of the regulatory change, for example the compliance costs to business, is the direct impact of the regulation. The second round impact, after pass through, for example higher prices to consumers, would be an indirect impact of the regulation. Only the direct impact should be included in the EANCB.

Examples of the normal application of pass through

Reforming the regulatory framework for employment agencies and employment businesses (RPC14-BIS-2150): the proposal resulted in impacts on employment agencies. It was expected that employment agencies would pass these costs on to their customers (i.e. organisations wanting to hire workers}. The direct impact is on employment agencies; the indirect impact is on hiring organisations. Note that this had an impact on the size of the EANCB because some of the hiring organisations were in the public sector and, therefore, not in scope of OITO.

The future of the energy company obligation (ECO) (RPC14-DECC-2105): this proposal involved, during the first year, a scaling back of regulatory requirements

compared to the existing ECO policy and therefore reduced costs to energy supply companies. The Government expected that energy companies would pass on these savings to energy consumers and the energy companies appeared to have agreed to this. However, the department provided further information which explained that there was no legal requirement, or anything that had regulatory force, for energy companies to pass on these cost savings to consumers. The pass through of business costs to consumers was, therefore, confirmed as indirect.

Plastic carrier bags charge (RPC14-DEFRA-2124(2)): this proposal required large retailers to charge consumers five pence for each carrier bag. The policy was expected to result in a substantial reduction in the number of carrier bags that would be used. Since the existing cost of the carrier bags was, in effect, being passed on to consumers in the form of higher prices, the department's initial analysis suggested that, because retailers would pass on the savings from fewer carrier bags to consumers in the form of lower prices, this would not be a direct benefit to retailers. However, it was confirmed that the direct impact was on retailers and this was reflected in the EANCB (although the measure, as regulatory, was zero net cost). Note that there was also another pass through issue, in that retailers were expected, though not required, to pass on the net revenue from the sale of carrier bags to local good causes. However, as the latter would be civil society organisations, this had no impact on the EANCB. [\(IA\)](#)

Exceptions to the normal application of pass through

There are a very few exceptions. As noted above, one might be where the pass through is mandatory, (i.e. backed by regulatory force). Another possibility (example below), is where the business experiencing the initial impact of regulation/deregulation acts only as a conduit. For example, following a Regulatory Framework Group discussion it was agreed that when a cost is paid by an agent on behalf of a principal, this should be considered to be a direct cost to the principal, not a cost to the agent that is passed through.

HM Land Registry local land charges (RPC13-FT-BIS-1925): Currently land charges are set at local authority level. The proposal is to standardise them at a level below the current average. Most customers will be better off, but a minority will see their fees rise. These fees are normally paid by conveyancers on behalf of their clients. Initially, this was considered to be a direct cost to conveyancers that was passed on to clients (who were a mix of individuals and businesses). Following RFG discussion, it was agreed that this should be considered to be a cost on clients since they are ultimately responsible, and which conveyancers are paying on their behalf. Note that this measure was out of scope of OITO as it related to fees and charges but the issue was relevant to its fast track status. [\(IA\)](#)

1.1.8 Mitigating action

Often businesses that are regulated will have the opportunity to change their behaviour to mitigate the impact of regulation. The costs of any action a business takes to mitigate costs of regulation should be considered direct as they are an alternative to facing the full cost of the policy.

Relevant IA

Migration permanent limits - Tier 1 and Tier 2 (RPC10-HO-0601): part of the policy was a reduction in the number of migrants who could enter the UK through Tier 2, which was an employer-sponsored route for individuals who had jobs waiting in the UK. Employers who could no longer hire migrant workers could either do without, leaving the job empty, or up-skill domestic workers. While businesses were not required to up-skill domestic workers by the policy, it was a response designed to mitigate the costs the policy would otherwise place on them, and so were considered direct. ([Opinion and IA](#))

1.1.9 Impact on labour supply

Whether the associated costs and benefits of measures that result in an effective increase/decrease in labour supply should be considered as being direct will be considered on a case by case basis.

Relevant IA

Banning exclusivity clauses in zero hours contracts (RPC14-BIS-1965(2)): the proposal was to ban the use of exclusivity clauses in employment contracts that do not offer guaranteed hours. Individuals who are currently constrained by these clauses would benefit from being able to take additional jobs. This would also benefit individuals' new employers, e.g. by allowing them to increase output. A key consideration with this case was whether this benefit to business, resulting from an effective increase in labour supply, was direct. On balance, the department's assessment that the benefits were direct was judged to be reasonable. The costs (to their existing employers) and benefits (to their new employers, in their second job) from changes in individuals' availability happened at the same point, i.e. when the individuals took a second job. In addition, as the costs to businesses currently using exclusivity clauses are clearly direct, it seemed reasonable to take the flip side of this - the benefits to other businesses - as direct also. Finally, the proposal, through having the effect of liberalising the labour market, had some of the same characteristics as a pro-competition measure. Since the department did not submit it as a pro-competition measure, this was not a direct factor in the Committee's decision. However, it provided some additional support that zero net cost may be appropriate for this case. ([IA](#))

1.2 Impacts on non-compliant Actors

When calculating both the NPV and EANCB of a policy, any costs that are incurred as a direct result of non-compliant activity should not be included. This applies both to costs from non-compliant activity that is now prevented (e.g. lost revenue from prevented theft) and to costs of punishments (e.g. fines). These impacts should, nevertheless, be discussed within the IA and monetised where appropriate.

1.2.1 Fines and penalties

When a policy results in an increase in the level of fines and penalties incurred, the cost to non-compliant businesses of paying those fines should not be included in the NPV and EANCB. The revenue from the fines should be treated in the same way as any other benefit. The cost should still be monetised and discussed in the IA. This applies in cases only where there is strong evidence of non-compliance, normally when the policy specifically relates to fines and penalties.

1.2.2 Insurance

Businesses often have insurance against liability. Any costs these firms are forced to pay as a result of non-compliance, including legal costs, are ultimately passed on to insurance companies. This is best understood by separating the transfers into costs and benefits. There is a cost to the business as a result of non-compliance; this should not be included in either the NPV or the EANCB. Insurance company payments result in a benefit to the business and an equal cost to the insurance company. This cost is not included in the EANCB because it is indirect (see pass through) and is not included in the NPV because it is a transfer and not a true resource cost.

1.2.3 Settlements without admission of guilt

When a court finds against an actor it is assumed that they are non-compliant. When an actor chooses to settle without an admission of guilt it should not be assumed that they are non-compliant. Where evidence is available that a proportion of settlements are an attempt by businesses to avoid court costs or reputational damage of fighting a case, and that in a proportion of these cases firms are not non-compliant, this should be reflected in the IA.

1.3 Other issues

1.3.1 Enforcement and compliance levels

Normally, an IA should assume 100% compliance when calculating costs and benefits of regulation. However, if a department has specific evidence that compliance is not likely to be 100% then they should assume lower levels accordingly. A department should also depart from the 100% compliance assumption when it would make analysis meaningless, for example when looking at the costs of taking non-compliant firms to court. When a department assumes low levels of compliance they should still set out the potential costs of full compliance.

Relevant IAs

Construction (Design and Management) Regulations 2015 (CDM 2015) (RPC13-HSE-1824): this was an EU-driven policy to improve health and safety in construction. HSE took the view that its existing outcome-focussed approach meant that the more prescriptive EU regulations would have no benefits and so, while required to transpose them, HSE chose not to enforce them. HSE, therefore, assumed 12 per cent compliance and provided evidence to support this. See also [gold plating \(IA\)](#)

The Transfrontier Shipment of Waste (Amendment) Regulations 2012 (RPC12-DEFRA-1648): This proposal included a number of elements intended to improve the ability of public bodies to monitor and regulate effectively the movement of waste between states. The impact on businesses of any increased detection of non-compliance was considered out of scope. The only elements of the proposal that were thought to impact on compliant businesses were an increase in fees and charges with no change in the scope of regulation. On this basis, the proposal was assessed as being outside the scope of one-in, two-out. ([Opinion and IA](#))

1.3.2 Independent regulators

The actions of independent regulators are not in scope of OITO and are instead covered by the Accountability for Regulator Impact framework. However, when a department places an additional requirement on a regulator, then this should be considered to have a direct cost to business which is in scope of OITO.

In addition, if the costs of the regulator or trade body are funded directly by industry then any cost impact on the regulator (due to regulatory functions) is a direct cost to business, regardless of whether the actual charge to business increases. A judgment about proportionality may apply. There may be cases where, if the impacts are very small and non-monetised, they may be viewed as small variations on “business as usual” costs. This is a very particular exception.

Relevant IAs

Amendment to the Financial Services (Banking Reform) Bill - restricting charges for high-cost short term credit (payday loans) (RPC13-HMT-1984): the Government legislated to introduce a cap on the cost of payday loans, placing a duty on the Financial Conduct Authority (FCA) to impose a cap. The policy did not set out the exact level of the cap but set out criteria the FCA should use when determining the cap (i.e. to secure protection for borrowers against excessive charges). However, the FCA already had the power to cap interest rates on borrowing although they had decided not to exercise that power to the point when the Government decided to legislate.

The RPC concluded that the measure was in scope of OITO and that the Treasury would need to account for the statutory duty placed on the FCA to cap the cost of payday lending. The RPC noted that for the measure to be considered out of scope of OITO, the Treasury would have to demonstrate that:

- it was inevitable that the regulator would use its existing powers in the same way for which the Government had legislated for the regulator to curb excessive payment charges by payday lenders;
- the regulator would have opted specifically to impose a cap on payday lending charges, rather than any other intervention; and
- under these circumstances the regulator would have set the cap within twelve months of the time frame set by the Treasury in legislation (January 2015).

REMIT criminal sanctions (RPC14-DECC-2076(3)): the REMIT proposal resulted in expected additional costs to *Ofgem* due to the undertaking of a number of new criminal investigations each year. According to the department, *Ofgem* was not proposing to increase the cost of the licence fee to industry to recover the additional cost of investigations. However, as *Ofgem* is funded by industry, in effect, any increase in cost to the regulator represents a foregone cost saving to business and should, therefore, be treated as a direct cost to business and included in the EANCB. This is most obviously the case where the IA states that the regulator will pay for these additional costs through efficiency savings.

The “absorbed costs” should be treated as a direct cost to business, as in the REMIT case. This reflected that, in the counterfactual, the costs to business would be lower as it should be assumed that the regulator’s efficiency savings would have been passed to them in the form of a reduction in their charge to fund the regulator.

In some cases it may not be proportionate to monetise “absorbed costs”. In these cases, the above principle would still apply and the proposal would, therefore, be within scope of OITO.

However, in the absence of a *de minimis* for OITO, in order to minimise burdens on departments, in such circumstances only a very short validation IA may be required at the final stage (potentially to confirm a zero net cost assessment). ([IA](#))

1.3.3 Permissive regulation

Where a regulation allows a business to do something it could not before, it can usually be assumed that it will do so only if the benefits outweigh the costs. Both costs and benefits should be monetised if possible. Where this is not possible, it may be reasonable to assume that benefits will be at least equal to costs and so score the impacts as having a net impact of zero. A similar logic can be applied to civil society organisations such as charities. In these cases there is unlikely to be a financial benefit, but it can be assumed that they would take advantage of a new option only if they consider it the most cost effective way of delivering their objectives. There may be exemptions to this logic and the IA should always explain the nature of the business benefits.

BRFM 1.9.21

Relevant IA

Access to intermediary services by descendants of adopted people (RPC14-FT-DfE-2042): this measure increased the number of people eligible to use adoption agencies to facilitate contact with a birth parent of an adopted person. The OITO section of the RTA put this forward as a permissive measure: adoption agencies can supply the service if they wish and can also charge but they are likely to do so only if the benefits to them are at least equal to the costs. This argument lends itself more readily to businesses, where benefits take the form of revenue or profit. The RTC set out the reasoning for why it can also be applied to charitable organisations: while these agencies may feel obliged to provide the service requested, often without charge, it is reasonable to assume that this will be of benefit to them in terms of furthering their objectives. ([IA](#))

1.3.4 Treatment of foreign companies lost profits

All the costs and benefits of new (or changes to) regulatory policy that fall on UK - based enterprises is considered as in scope of the better regulation framework. Any business activity undertaken within the UK, regardless of the nationality of its ownership, or how or where it repatriates its profits, is in scope of OITO.

Relevant IA

Age of Sale – nicotine-inhaling products (RPC14-DH-2195): this measure limited the sale of nicotine-inhaling products, such as electronic cigarettes, to adults only. This had an impact on the manufacturers of these products. When considering the impact on manufacturers, all costs and benefits that fall on businesses operating within the UK were included *regardless* of the nationality of ownership (a GDP approach). In this case, the department estimated that eight per cent of nicotine-inhaling products manufacture and value-added occurred domestically. ([IA](#))

Section 2: Good Practice and Common Errors in Writing Impact Assessments

2.1 Make sure you have substantive evidence

Assumptions made in an IA should, where possible, be supported by evidence. The extent of this evidence will depend on the size and nature of the proposal and the importance of the assumption. Where it has not been possible to obtain robust evidence to support an assumption, an IA needs to set out what efforts have been made and why they did not result in evidence being available. At the consultation stage, it is accepted that only limited information will 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-rated opinion at the consultation stage. At the final stage, lack of evidence without sufficient justification is likely to result in a red-rated opinion if it relates to direct costs to business, and a negative commentary otherwise.

Relevant IAs

Replacement of rules on welfare of animals at the time of slaughter and killing (implementation of EU Regulations 1099/2009 in England) (Final stage IA, Red) (RPC12-DEFRA-1424): this was a revised IA submitted following a red-rated opinion on grounds other than evidence. (See [Explain all assumptions and the evidence underpinning them](#)). The IA lacked sufficient evidence to underpin the assumptions that had been made. Some assumptions were based on an earlier consultation on a related proposal in which the only support for the assumption was that no one had commented otherwise. One assumption was based on expert judgment by a previous official who had since left and no audit trail was available to justify how this assumption had been made. No ranges were provided for figures to give an idea of the level of uncertainty. A revised IA was later submitted and received a green rating with some negative commentary around the evidence-gathering process. ([Opinion](#)) ([IA](#))

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 achieved 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-rated opinion including positive comments on the evidence base. ([IA](#))

HIV Testing Kits and Services (Revocation) Regulations 2014 (Final stage, Red) (RPC13-FT-DH-1829): this policy would revoke the ban on the sale of HIV home-testing kits, effectively opening the market for the sale of these. The department received two red-rated opinions on the basis of the lack of evidence available to

underpin the estimated benefit to business as a result of this new market. In both submissions the department pointed to the substantial uncertainty around its 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 the department did not justify why their estimates were the 'best available', the submission received a second red-rated opinion. ([IA](#))

2.2 Produce reliable estimates of costs and benefits

2.2.1 Counterfactual

All options should be assessed against the counterfactual of what would happen if there was no policy change. This will not always be the status quo as there may be other changes that are expected to take place in the future. When there are multiple policy changes taking place in the same area, each with its own impact assessment, this should be taken into account when creating a counterfactual. Using the wrong counterfactual is likely to result in a red-rated opinion both consultation and final stages.

BRFM 2.3.32

Relevant IAs

Collective redundancy consultation: government response (Final stage IA, Red) (RPC12-BIS-1353): this IA provided an estimate for the savings to business from a reduced minimum period of consultation when making collective redundancies. The benefits to business were significantly over-stated as the counterfactual had not been assessed accurately. The IA assumed that the current minimum period required was 'biting' in all cases, when, in fact, many businesses would have been doing them for that length of time, or longer, anyway. The IA also incorrectly assumed in the counterfactual that employees of a business becoming bankrupt would produce zero output, while the business would continue to pay them. The IA received a red-rated RPC opinion on these, and a number of other grounds, on the basis that the estimated benefits to business were not robust. The IA was later resubmitted with significant changes to the analysis of the counterfactual, and a large reduction in the estimated benefits. The revised IA received a green rating. ([Opinion and IA](#))

Proposal to exempt holiday lets from EPC requirements where they are rented out for less than 4 months in a 12-month period (Final stage IA, Red) (RPC12-CLG-1255): this IA explained that there was an inconsistency between the regulations which said an EPC was required for a short-term holiday let, and the published guidance which said it was not. The proposal was to bring the regulations in line with the guidance. The IA assumed in the counterfactual that all owners of short-term lets would have followed the regulations and obtained an EPC, so they would all benefit from the change in regulations. The RPC's red-rated opinion said that the IA did not explain whether the regulations were considered legally binding, or why it was assumed the published guidance would be completely ignored. In the revised IA, the department revised its assumption, based on improved evidence and reasoning, that

all owners would have taken note of the guidance and not obtained an EPC. The monetised benefits were reduced to zero, and the measure was justified by providing additional certainty. This IA received a green rating. ([Opinion](#))

2.2.2 Identifying costs and benefits

For each option the IA should identify all of the groups affected by the policy and what the impact on them will be. All impacts should be identified, not just those that are direct. This includes non-UK impacts and impacts on non-compliant actors. At the consultation stage, failing to identify all impacts is likely to result in a Red opinion. At the final stage, failing to identify direct impacts on business will result in a red-rated opinion, failing to identify other impacts will result in a negative commentary.

Green Book 5.25 (Including footnote)

2.2.3 Monetising costs and benefits

All costs and benefits should be monetised where possible. This includes both direct and indirect impacts. Where reasonable, non-UK impacts and impacts on non-compliant actors should be monetised, although these will not be included in the NPV. There are a number of techniques for monetising impacts that do not have a market price. When attempting to monetise an impact, consider who else in government might have previously needed to monetise impacts of this type. See [Make sure you have substantive evidence](#) for more information on evidence underpinning monetisation. At the consultation stage, it is not expected that costs and benefits will be monetised, although it will help support a meaningful consultation if early estimates are provided. At the final stage, failure to monetise will result in a red-rated opinion if it relates to direct costs to business, and a negative commentary otherwise.

Green Book 5.8-5.31

2.3 Assess non-monetary impacts thoroughly

Where impacts cannot be monetised, they should still be thoroughly assessed in the IA. If monetisation is impossible, consider whether it is possible to quantify impacts, to provide some information on the scale of the issue. If quantification is not possible, impacts should at least be discussed in detail. It will often be possible to quantify benefits of a policy, but not its costs. In these cases, consider using weighting and scoring or multi-criteria decision analysis to support the assessment. Where impacts cannot be monetised because of a single uncertain variable, consider using break-even analysis. At the consultation stage, the IA should set out if there are any expected evidence gaps that will make impacts difficult to monetise, so consultees have an opportunity to share any evidence of which they might be aware. At final stage, failure to assess the likely direction and scale of impacts which cannot be monetised will result in a red-rated opinion if they relate to direct cost to business, and a negative commentary otherwise.

2.4 Explain and present results clearly

2.4.1 Explain the policy and background sufficiently for an intelligent non-expert to understand

The authors of an IA will often have a great deal of knowledge of the policy area in which they are working. However, the same should not be assumed of the reader. An IA is intended for a number of audiences including stakeholders, senior officials, ministers and Parliament. Not all of these will have specialist knowledge of the policy area. An IA should explain clearly what the regulated area currently looks like and what will change as a result of the proposed intervention. Failure to explain the intervention clearly is likely to result in a red rating at both consultation and final stages (the RPC cannot confirm if direct impacts on business have been adequately assessed if they are unclear of the details of the policy intervention).

Relevant IAs

Commencement of the Flood and Water Management Act 2010, Schedule 3 for Sustainable Drainage (Final stage, Red) (RPC11-DEFRA-0928): the proposed policy was to amend regulation around sustainable drainage. The policy mandated that new developments should use sustainable drainage when it is not more expensive than conventional drainage, and by clarifying responsibilities for maintenance. When the IA was first submitted to the RPC, it was not clear exactly what the policy would do, in particular the RPC was not clear on how the new maintenance responsibilities would work, or on how the relative prices of conventional and sustainable drainage would be defined. This resulted in a red-rated opinion. The IA was subsequently resubmitted and received a green-rated opinion. ([IA](#))

Eurocodes (Consultation stage IA, Amber) (RPC11-CLG-1107): this consultation stage IA referred to the referencing of Eurocodes in British standards for the construction industry. It was explained how this would provide the construction industry with an alternative, up-to-date technical solution for meeting the regulatory requirements. However, the IA failed to explain the relation between the British standards and the regulations; it was not clear what Eurocodes actually were, and the problem was difficult for a non-expert to understand. Rather, the IA relied heavily on the phrase “*the building regulations themselves are expressed in functional terms*”. Following discussions with the RPC, the department provided additional information which made the policy and background slightly easier to understand. The IA was given an amber rating, along with the recommendation that the IA should clarify the proposed approach as well as the ‘do nothing’ in more detail. ([Final IA](#)) ([Consultation IA](#))

2.4.2 Explain all assumptions and the evidence underpinning them

When monetising impacts, it is necessary to make assumptions. Where assumptions are made, the IA should set out clearly the assumptions and the evidence used in making them (see [Make sure you have substantive evidence](#) for more on evidence requirements). At the consultation stage, it is accepted that evidence could be limited, but the IA should, nevertheless, set out the key assumptions to test with stakeholders.

Failure to do so is unlikely to result in a red rating at the consultation stage, but may lead to lack of substantive evidence at the final stage. At the final stage, failure to explain assumptions will result in a Red rating if they relate to direct costs to business, and a negative commentary otherwise.

Replacement of rules on welfare of animals at the time of slaughter and killing (Implementation of EU Regulations 1099/2009 in England) (Final stage IA, Red) (RPC12-DEFRA-1424): many of the assumptions in this IA were simply stated without an explanation of how they have been arrived at. There were some overarching comments about consultation, but it was not clear how they related to specific assumptions. Without understanding how assumptions had been arrived at, the RPC was unable to determine if they were robust. A revised IA received a second red rating (see [Make sure you have substantive evidence](#)). A further revised IA received a green rating. ([IA](#))

Proposed changes to Part L of the building regulations 2013 (Final stage, Red) (RPC11-CLG-1130): the IA presented estimates for the bill and energy savings from increased energy efficiency in new homes, which was based on some complex and technical analysis. While many of the assumptions had been presented and explained clearly, it was difficult to understand how these had been applied and how the overall numbers had been calculated. Also, the IA failed to provide historical data to support projections of future building rates. This lack of clarity meant that the RPC was unable to validate the estimated impacts on business as robust. Following the RPC's red-rated opinion, the department submitted a revised IA with much clearer and more detailed explanations for the basis of the assumptions and calculations. The IA, along with the estimate of the impact on business, was approved by the RPC. ([Opinion and IA](#))