**Small and Micro Business Assessments (SaMBA)**

**What is a small / micro business or civil society organisation?**

*Small businesses and civil society organisations* are defined in the Better Regulation framework manual as those employing up to 49 full-time equivalent employees and *micro-businesses* as those employing up to 10 employees.

**When is a SaMBA required?**

A SaMBA is mandatory for all new domestic regulatory proposals that come into force after 31 March 2014, except those which qualify for the ‘Fast Track’.

**When would the RPC expect to see a SaMBA?**

The BRFM sets out circumstances when a SaMBA is required. However, many impact assessments would benefit from providing a SaMBA even when it is not mandatory, for example with some deregulatory and/or European and international measures. The RPC encourages the wider use of SaMBAs because this contributes further to the balanced reporting of the regulatory burden faced by small businesses.

The inclusion of a SaMBA is particularly advisable for measures which, although deregulatory and benefitting businesses overall, could affect small businesses negatively. Producing a SaMBA in cases where a policy proposal benefits large businesses at the expense of small businesses is recommended, so that alternative policy options or exemption/mitigation options are considered.

**What should a SaMBA include? What level of analysis does the RPC expect?**

The default assumption for SaMBA is that where a large part of the intended benefits can be achieved without including smaller businesses, an exemption will normally be applied. Departments should think carefully about whether it is necessary to extend a measure to micro and/or small businesses at the very outset of policy development.

The regulatory requirement can be extended to smaller businesses if:

**a.** any ***disproportionate burdens***have been mitigated; and

**b.** the exemption of small businesses is not viable or compatible with achieving ***a large***

***part of the intended benefits***of the measure.

The SaMBA should include sufficient analysis on both points to ensure that any decision about the exemption (or not) of smaller businesses is based upon the evidence.

***Potential red point***

**Table 1: Exemption and mitigation**

|  |  |  |  |
| --- | --- | --- | --- |
|  | | *Large parts of benefits maintained when applying an exemption* | |
| **YES** | **NO** |
| *Disproportionate burdens and / or*  *if it is viable to mitigate costs* | **YES** | Exemption should be applied | Disproportionate costs to small businesses should be mitigated |
| **NO** | Neither exemption nor mitigation required |

However, it should be noted that a SaMBA that does not recommend an exemption or mitigation measures is not necessarily a bad SaMBA, or not fit for purpose. There might be instances where exemption could be counterproductive or significantly disadvantageous, for example, when small businesses are actually beneficiaries of the proposal or with regulations concerned with public safety/health, consumer protection or the provision of public goods. The RPC does not make judgements on policy decisions, but only on the underlying evidence base. It is, therefore, not in the RPC’s remit to judge the policy decision of not exempting small businesses as long as the impact on small businesses has been assessed appropriately and the policy decision is informed by sufficient evidence.

Another reason why exemption might not be possible is because of *“dynamic effects”*, i.e. business migrating to smaller firms if they are exempt from requirements. If this is likely to be the case, departments should provide evidence and analysis of the likelihood of such effects, which will depend on the nature and structure of the market.

When full exemption is not applied, departments should consider applying partial exemption or mitigation. The BRFM lists potential examples of mitigation actions. In line with the BRFM guidance, the impact assessment should include an analysis of the impact of mitigating options proposed, their effect and their rationale. This could be either a qualitative or quantitative assessment and should include any potential familiarisation and on-going costs to business.

Where no mitigating options are proposed, say because it is considered that there is no disproportionate burden and / or such action would not be economically viable, this must be clearly evidenced in the impact assessment.

What are *“disproportionate burdens”*?

The economic intuition behind small businesses being disproportionately affected by regulation is that any costs resulting from complying with regulation can often be seen as fixed costs, because they do not depend on the output of the business. Since larger businesses operate on larger scale, such fixed costs are likely to make up a smaller proportion of their overall costs. An identical increase in fixed costs in absolute terms will, therefore, translate into a larger relative increase in costs to smaller businesses.

The RPC recommends that departments consider the increase in absolute and relative costs to business, but also assess whether small businesses are disproportionately affected, based on the relative increase in costs. This should be the default position, unless good reasons can be provided why such an approach might not be suitable in the specific circumstances of the proposal considered.

The working assumption applied by the RPC is that small businesses are indeed disproportionately affected by regulation, unless the SaMBA provides evidence showing otherwise. This means that where a department:

1. does not apply an exemption or mitigation; and

***Potential red point***

1. does not provide any evidence in the IA on whether costs are disproportionate; and
2. does not demonstrate clearly that exemption or mitigation would not be appropriate, the IA will not be considered fit for purpose by the RPC.

What is meant by *“a large part of the intended benefits”*?

There is no particular threshold for the proportion of benefits that would be lost which, if exceeded, would justify not applying an exemption. Ultimately, a decision on what does or does not constitute a “large or sufficient part of intended benefits” is a policy choice.

**The RPC expects to see sound analysis backing up any decision not to exempt small and micro businesses. This could be achieved by departments providing evidence on the:**

1. **‘policy cost’ of exempting small and micro-business. Departments should provide an analysis of how much of the policy objective would be compromised by applying full exemption to small businesses; and**
2. **impacts of not exempting small and micro-business. Departments should provide an indication of how much of the overall costs to business they expect to fall on small businesses.**

Required evidence at different stages

The RPC acknowledges that the micro level data required for the analysis outlined above, especially on policy costs to small businesses associated with specific measures, might be difficult to obtain or not exist at all. Any figures provided might not, therefore, be particularly robust.

However, departments should, at consultation stage, where possible, provide information on the areas highlighted in table 2 below. If a department does not have all the information necessary, it should explain clearly how it will aim to obtain the necessary information and use the consultation period to test its assumptions and hypotheses with stakeholders. The final stage impact assessments should provide more detailed and robust data, where possible. If such data has not been obtained, the department has to explain how it actively tried to gather the relevant information and why it was not possible or proportionate to obtain the information.

***Potential red point***

**Table 2: The necessary evidence base for SaMBAs**

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| **Consultation** **stage** | The SaMBA should include **provisional indication of**:   1. how much of the policy objective is sacrificed by applying a full exemption; and 2. how much of the overall cost to business is expected to fall on small businesses (with no exemption).   Departments should identify how many small businesses are expected to be affected by the proposal and how much of a role small businesses play in the regulated sector.  Since data availability might be more limited at this stage, departments may not be able to provide numerical estimates. **If data are limited at this stage, the SaMBA should include assumptions and hypotheses that will be tested during consultation, or at least set out how information will be obtained during consultation.** |
| **Final** **stage** | The SaMBA should include **broader analysis describing the likely**:   1. proportion of the policy objective sacrificed by applying a full exemption; and 2. proportion of the overall cost to business expected to fall on small businesses.   Departments should identify approximately how many small businesses are expected to be affected by the proposal and how much of a role small businesses play in the regulated sector.  **The SaMBA should include quantitative estimates, if feasible. If no estimates are provided, departments will need to explain how they attempted to obtain the necessary information**, especially during consultation, and why these attempts had been unsuccessful. |

***Examples of good SaMBAs***

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| **Legislation to require energy suppliers to provide key, personal information on consumer bills in a machine readable format (RPC13-DECC-1962):** The objective of the proposal is to require energy providers to place a 2cm x 2cm machine readable image, such as a bar code or Quick Response (QR) code, on all domestic retail consumers’ paper energy bills. When scanned by a generic reader, this image will provide access to 12 key pieces of consumption data in a manner that is easy to understand.  The Department’s original final stage IA was red-rated by the RPC on the basis that the SaMBA was not fit for purpose. The Department had not provided sufficient evidence that the objectives of the proposal could not be achieved with an exemption for small and micro businesses, given the very small market share of these businesses.  On re-submission, the SaMBA provided good quantitative analysis, indicating that 10 energy suppliers are believed to be small or micro businesses, and the total market share of these 10 suppliers is estimated to be around 0.2%. Small and micro businesses are, however, expected to bear 3.2% of the costs associated with this policy – around £120,000 in total. Given that small and micro businesses hold a market share of only approximately 0.2%, but the costs imposed on them are considerably higher at 3.2%, the impact on small businesses can be seen as disproportionate.  Given the very small market share of small and micro businesses, a full exemption was applied because the vast majority of the policy benefits could still be achieved. ([IA](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421575/IA.pdf)) ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/463875/2014-08-14_-_RPC13-DECC-1962_3__-_Legislation_to_require_energy_suppliers_to_provide_key_personal_information.pdf)) |

**Continuity of essential supplies to insolvent businesses (RPC13-BIS-1919):** When a business enters insolvency, suppliers may invoke a termination clause in their contract and withdraw their supply. Where those supplies are essential to the continuation of the business, this can have an adverse impact on the likelihood of a successful rescue of the business and on the amount returned to creditors. These essential suppliers may also threaten to withhold supplies or services unless a 'ransom' payment is made. This causes a transfer from the body of creditors of the insolvent business to the essential supplier, reducing the likelihood of a business rescue and reducing returns to the wider body of creditors.

The IA provides detailed quantitative analysis on the number of small and micro businesses affected, the reduction in benefits from exempting small and micro businesses, and the costs to small and micro businesses of the proposal. It explains that small and micro businesses can be expected to benefit from the policy at both a macro and micro level, through the following impacts:

▪ Improved returns to unsecured creditors generally (nearly 90% of which are small or micro businesses) of £46.69m. This benefit would be significantly reduced in the event that small and micro business suppliers were excluded from the scope of the policy, with any benefits to excluded suppliers occurring as a transfer from other businesses (up to 99% of which are likely to be small or micro businesses).

▪ Enhanced prospect of business rescue for small and micro businesses that are dependent on supplies and that are enabled to continue trading.

▪ The Department concludes that exempting small and micro businesses would significantly undermine the rationale for the policy and its benefits – and particularly the benefits to small and micro businesses. The SaMBA explains that specific guidance and information will be made available and tailored to the needs of small and micro businesses in order to mitigate potentially disproportionate familiarisation costs. The Department also explains that it will engage with representative bodies of suppliers affected.

The impact on small and micro businesses will be monitored and reported on as part of the post implementation review (PIR). ([IA](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418435/Continuity_supply_IA_-_Final.pdf)) [Opinion not published]

**Review and changes to the Riot (Damages) Act 1886 (Green, Final) (RPC14-HO-2008(2)):** The proposal is to modernise the law relating to public liability for compensation to individuals and businesses as a result of riots. It introduces a public liability cap per claim, alongside modernising elements of the process (to cover motor vehicles, introduce excess payments, and provide for “new-for-old’ replacements).

The policy is designed so that the cap will only affect larger claims which, in general, will come from larger businesses.  The majority of smaller businesses will experience a net benefit from the changes as they will now be able to claim compensation for damage to motor vehicles etc. The analysis provides a quantitative assessment of the number of businesses that will be affected that are likely to be small or micro businesses. The assessment provides estimates of the overall proportion of the costs and benefits falling on small businesses.  The department presents two policy options and estimates that small businesses will only face a very small portion (2%) of the overall costs falling on all businesses under the first option, and may even be beneficiaries of the policy under the second option. This demonstrates that the overall burden on small and micro businesses is unlikely to be disproportionate.

The department also explains that the proposal would not be affordable if small and micro businesses were completely exempt from the costly elements of the proposal as this would result in the net impact of the policy decreasing from £19.7m to -£49.4m in NPV terms. This is because, from the costs faced by business and individuals, the public sector makes savings and it is these savings which help to fund the additional support for business in the form of time support and replacement value. If the cap were to be removed for small businesses then, under option two, the net impact on small businesses would be positive with a present value of £2.98m. However, such a change would increase costs to the public sector resulting in a negative NPV. The SaMBA explains that this would be unaffordable and would ignore one of the objectives of the policy, which is to consider the impact on the public purse. For these reasons, the department concludes that it is not possible to remove the cap on claims for small businesses and that it is required in order to maintain the overall benefits of the policy.

By providing this analysis the department showed that small businesses are not disproportionately affected and that exemption would significantly undermine the policy benefits. In the RPC's view, the evidence presented fully justified the department not applying an exemption or mitigation procedures. ([IA](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316707/RDAia.pdf)) ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336298/RPC14-HO-2008_Review_and_changes_to_the_Riot__Damages__Act_1886_committee.pdf)) [update links]