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**Impact Assessment Case Histories**



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**FOREWORD**

Since the Regulatory Policy Committee (RPC) was established in 2009, it has provided opinions on over two and half thousand impact assessments (IAs) and related documents. In this period, there has been a number of changes to the better regulation system, most notably the introduction of ex-ante scrutiny by the RPC in 2010, the One-in, One-out (OIOO) and later One-in, Two-out OITO) policy in 2010 and 2013 respectively and the fast track system in 2012. These changes have led to an increasingly complex methodology [for impact assessments and] particularly for OIOO/OITO. While the Better Regulation Framework Manual (BRFM) and the related FAQs deal with most of these complexities, some cases require further guidance.

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. This document is aimed at people with some experience of IAs and the better regulation framework, and assumes a degree of familiarity with the [Better Regulation Framework Manual](https://www.gov.uk/government/publications/better-regulation-framework-manual) and [The Green Book](https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-governent). When using this document you may find it useful to also have a copy of both of these documents at hand.

The first section of this document relates to specific issues of better regulation methodology. It sets out examples that help clarify the rules in the BRFM. This includes issues that have arisen around classification of measures for the purposes of OITO. The second section describes how to produce a good quality IA. 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. In future, it will include examples for authors of post implementation review IAs.

This document is designed to be of assistance in the writing of IAs and in correctly classifying policies for OITO but it is important to remember that no two policies are identical. If you have particularly complex issues regarding the better regulation framework you are advised to discuss them with the RPC secretariat or the Better Regulation Executive (BRE) before submitting an IA.

**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](http://consultations.hse.gov.uk/consult.ti/cd239/viewCompoundDoc?docid=62900&partId=63252&sessionid=&voteid)), ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251177/2013-01-29-RPC12-HSE-12862-Revocation-of-the-Construction-Head-Protection-Regulations-1989.pdf))

**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](http://www.legislation.gov.uk/uksi/2011/2687/impacts))

**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](http://www.ipo.gov.uk/consult-ia-bis1063-20120702.pdf)), ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/373053/RPC11-BIS-1063_5___Orphan_works__IPO__-_IA_f__adj_-_opinion.pdf))

**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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31985/12-864-impact-assessment-extending-primary-authority-scheme.pdf)) ([Opinion](https://www.gov.uk/government/publications/impact-assessment-opinion-the-extension-of-the-primary-authority-scheme-to-cover-the-age-restricted-sale-of-alcohol-and-fire-safety-regulations))

**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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249274/Triennial_Review_of_Gaming_Machine_Stake_and_Prize_Limits_Impact_Assessment.pdf)) ([Opinion)](https://www.gov.uk/government/publications/impact-assessment-opinion-gambling-act-2005-triennial-review-of-stake-and-prize-limits))

**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](https://consult.justice.gov.uk/digital-communications/opg-enabling-digital-default/supporting_documents/iaopgdigitaldefault.pdf)) ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265153/2013-09-20_-_RPC13-MOJ-1867_-_Enabling_Digital_by_Default.pdf))

**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](http://www.legislation.gov.uk/ukia/2010/291))

**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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226965/Part_L_2013_IA.pdf)) ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265107/2013-07-26-RPC11-CLG-1130_3_-Proposed_changes_to_Part_L_of_the_Building_Regulations_2013.pdf))

**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 andhas 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](http://www.legislation.gov.uk/ukdsi/2015/9780111129876/impacts/2015/96))

**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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213414/Tobacco-Vending-Machine-IA-final-04052012.pdf)), ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260631/RPC-Published-Opinions-2012.pdf))

**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](http://www.legislation.gov.uk/uksi/2011/1566/pdfs/uksiem_20111566_en.pdf)) ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260631/RPC-Published-Opinions-2012.pdf))

**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](http://www.legislation.gov.uk/ukdsi/2015/9780111127735/impacts/2015/74))

**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](https://www.gov.uk/government/consultations/land-registry-wider-powers-and-local-land-charges))

**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](https://www.gov.uk/government/publications/impact-assessment-opinion-migration-permanent-limit-tiers-12))

**1.1.9 Primary/enabling powers**

Where a primary power is being taken that will have effect only through secondary legislation, any impacts on business should, nevertheless, be considered for the proposals as a whole. The IA must discuss how the primary powers will be used and what the overall effects are expected to be.

Where an IA is submitted that assesses the impact of a proposal as a whole (e.g. covering both primary and secondary legislation), it is possible for the RPC to validate the EANCB figure(s) at that stage providing the IA identifies the appropriate implementation date(s) for individual measures, where they differ.  RPC scrutiny of a further IA – typically at any secondary legislation stage – is necessary only where there have been changes to the proposals which have a material impact on the costs and benefits to business and/or where the estimates are refined (e.g. caused by the availability of more precise information in secondary legislation).

See paragraphs 1.9.14 and 2.3.45-46 of the BRFM too and section 1.6.6 of this document for more information on how primary/enabling powers are classified and scored.

However, if a primary power is being taken with the intention that a voluntary scheme will be agreed with business under the threat of secondary powers if businesses don’t comply, then the costs of the voluntary scheme should be considered to be a direct impact of the primary power.

See section 1.6.6 for more information on how primary/enabling measures are classified.

**Relevant IA**

**Community right to buy into renewable electricity developments (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 for use if voluntary agreement is not reached. The consultation stage IA correctly identified the measure as an IN with the cost to energy companies of complying with the regulation as a direct cost to business. ([IA](https://www.gov.uk/government/publications/infrastructure-bill-the-community-electricity-right)) ([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))

**1.1.10 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368510/bis-14-1015-zero-hours-contracts-tackling-avoidance-of-an-exclusivity-ban-consultation-final-impact.pdf))

**1.2 EU and internationally-driven regulation**

All references to EU regulation in this section also apply to other internationally-driven regulation unless explicitly stated otherwise. EU measures are out of scope of OITO, but still require an EANCB to be calculated for high impact measures. With the exception of those regarding scope, all of the rules applying to EANCB for in scope measure also apply to EU measures.

**1.2.1 Gold plating (going beyond minimum requirements)**

While EU and international regulations are out of scope of OITO there is an exemption where measures are gold plating, as defined in the transposition guidance. In these cases the difference between the impact of the domestic regulation and that required by the EU/international regulation is treated as an IN.

BRFM 1.9.9.ii

**Relevant IAs**

**Payment Surcharges (RPC12-BIS-1461):** the policy was to ban businesses from charging excessive surcharges for use of debit cards as this was seen as a kind of hidden charge. This was an EU-driven policy, but was implemented early. The measure was treated in a similar way to a temporary measure, being considered as an IN with a value of its full EANCB, but only for the period between domestic implementation and the implementation date required by the EU. Note that at the consultation stage the costs were not monetised so the IA referred to the policy as zero net costs. ([IA](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32704/12-1009-consultation-ban-above-cost-payment-surcharges-impact.pdf)) ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260631/RPC-Published-Opinions-2012.pdf))

**Construction (Design and Management) Regulations 2015 (RPC13-HSE-1824):** this was an EU-driven policy which aimed to improve health and safety in construction. There were two ways in which it could be implemented; a direct copy out approach would place an additional responsibility on individuals. Alternatively, the responsibility could be placed on businesses resulting in a much lower overall cost. The direct copy out approach was considered by lawyers to be gold plating as it imposed a higher overall burden. This measure was initially considered to be in scope of OITO as it took up an option that was costly to business, even though it reduced costs overall. The methodology was subsequently clarified to say that where there are no alternative options that do not represent gold plating, costs to business of a non-gold plated option are out of scope even if there are options that impose lower costs on business. This measure was, therefore, out of scope of OITO. See also [levels of enforcement](#Enforcement). ([IA](http://www.legislation.gov.uk/ukia/2015/42/pdfs/ukia_20150042_en.pdf))

**1.2.2 Existing higher standards**

Often EU regulation is passed in an area already covered by domestic regulation. If the existing UK standards are higher than those set out by the EU and are maintained then this is gold plating. However as there is no change to the level of regulation, there is no additional cost or benefit relative to the counterfactual (the ‘do nothing’ option). Under current interpretations of the guidelines the measure is treated as out of scope of OITO on the grounds that it has no direct impact on business. The same principle applies when the EU deregulates in an area in which there is existing EU regulation, for example, by bringing in a new derogation. Failure to take up the derogation is gold plating, but has no additional costs or benefits to business. Similarly, if some or all of the existing higher UK standards are removed, this is a reduction in gold plating relative to the counterfactual and so qualifies as an OUT.

The use of the ‘do nothing’ counterfactual in assessing the impacts on business is specific to cases with existing higher standards. The usual counterfactual in gold plating cases is that the department implements the minimum requirements of the EU directive.

**Relevant IAs**

**The Motor Vehicles (Driving Licences) (Amendment) Regulations 2012 - EPILEPSY - (RPC12-DfT-1533):** One proposal (relating to seizures because of physician-directed change or withdrawal of medication) reduced the period after which individuals could resume driving from twelve months to six months. This reduction was not an IN as it was EU-derived. The EU minimum standard had been reduced to three months. By retaining the period at above three months the policy was gold plating, but was not scored as an IN as it involved no direct cost to business.

Another proposal (relating to first unprovoked epileptic seizure) did not implement a reduction in the EU minimum standard. However, although this meant the UK standard would now be above the EU minimum, this was out of scope of OITO as it would maintain existing UK standards (i.e. no direct cost to business). ([IA](http://www.legislation.gov.uk/ukia/2013/1106/pdfs/ukia_20131106_en.pdf)) ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260631/RPC-Published-Opinions-2012.pdf))

**UK implementation of the EU Accounting Directive: Chapters 1-9 (RPC14-BIS-2166):** the EU Accounting Directive reduced to eight the number of notes to the accounts that small businesses were required to report. However, the directive also gave member states the option to retain an additional five notes should they wish. The existing requirements of UK company law and UK accounting standards were higher than the lowered EU requirements even when maintaining the additional five. The average number of notes reported by UK small businesses was 17. The department made the decision to take up the option to retain the additional five notes. In so doing it went beyond the minimum requirement of the directive and therefore had gold plated bringing this decision in scope of OITO. However as the net result was to reduce the number of notes currently required by UK regulation, the resulting cost reductions to business were scored as an OUT.

**1.2.3 Accidental gold plating**

Occasionally, an EU policy may be implemented in a way that is thought to be the minimum but for it to transpire later that it was implemented with higher requirements; gold plating. If the policy was originally implemented before OIOO, then the removal of gold plating scores as an OUT. However, if the accidental gold plating occurred during OIOO/OITO, then the overriding principle that an OUT cannot exceed the original IN applies so no OUT is scored.

**Relevant IA**

**Proposed route for specific seafarer certification for operating on workboats less than 500 gross tons (GT) (RPC13-DFT-1760):** the existing certification route for seafarers working specifically on workboats did not allow them to work on vessels over 200 GT. As a result, seafarers had to follow the International Convention for the Standards of Training, Certification and Watchkeeping (STCW) for unlimited qualifications. The proposal was to introduce a new certificate that would allow seafarers to work on workboats of up to 500 GT. The growth in the size of workboats was not anticipated at the time the original regulatory obligation came in to force, therefore no IN was ever scored. This was accepted as an OUT on the basis that the underlying regulatory obligation (the STCW Convention) pre-dated OIOO. Had the underlying regulation come into force during OIOO/OITO an OUT could not have been scored. ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386203/RPC13-FT-DfT-1760_2__-_Proposed_route_for_specific_seafarer_certificatation_for_operating_on_workboats_less_than_500_gross_tons_-_EANCB__v_.pdf))

**1.2.4 Correct counterfactual for directly-applicable regulation**

When a European measure is directly applicable, but there are derogations that require domestic legislation, the counterfactual for calculating the EANCB should be that the European measure is implemented with no gold plating (i.e. all beneficial derogations are taken up). Taking up derogations cannot, therefore, be claimed as an OUT. Had the derogations not be taken up, this would be gold plating and would have been scored as an IN.

**Relevant IA**

**The second revision of the UK's large commercial yacht code (RPC13-FT-DFT-1798):** the department classified the proposals as an OUT as a “domestic equivalent standard” for large yachts for meeting an international obligation on crew accommodation. The OUT was not confirmed by the RPC as the proposal was the lowest cost way of meeting the international requirements and therefore should be assumed in the counterfactual.

**1.2.5 Correct counterfactuals for EU and international regulation**

The EANCB for the implementation of an EU policy should consider the costs and benefits of that policy against the counterfactual that the policy did not exist at the EU level, not the counterfactual that the UK chose not to implement it. Therefore, avoidance of any punitive impacts of not implementing (e.g. infraction costs), should not be counted as benefits of the policy in the EANCB. These costs should still be presented and discussed in the IA, particularly if they are material to the decision between options.

**Relevant IA**

**The Air Navigation Order 2009 - changes as a result of EASA air operations regulations (RPC12-DfT-1361): t**he department presented an EANCB calculated on the basis that the UK unilaterally failed to implement the new European legislation on air safety. The department held that if it did not reconcile existing UK legislation with the new European legislation then UK air operators would be unable to lawfully operate. By ensuring compliance with EU legislation, the department enabled the continued function of the aviation market. Consequently an EANCB of -£8.9 billion was calculated. The department re-calculated the EANCB using the correct counterfactual - that the EU legislation did not exist - resulting in a new EANCB figure of £0.05 million. The use of the correct counterfactual is therefore demonstrably important. ([IA](http://www.legislation.gov.uk/ukia/2014/383/pdfs/ukia_20140383_en.pdf))

**1.2.6 Early implementation of EU/international measures less than 12 months early**

EU and international measures implemented early are in scope of OITO. Only the costs and benefits that occur during the period of early implementation are scored. This is true for any period length including those less than 12 months.

**Relevant IA**

**Implementation of Chapter 6 of the EU transparency Directive – country by country reporting (RPC14-HMT-2237):** this proposal aimed to increase global standards of transparency in the extractives sector, by requiring companies to report publically on the payments they make to governments in all their countries of operation. The proposal was a European Directive implemented in the UK 11 months in advance of the deadline set by the EU. Because of ambiguity in the guidance, there was uncertainty as to whether or not the early implementation of the EU directive was out of scope of OITO under the guidance on time-limited measures (BRFM paragraph 1.9.26). The Committee agreed that early implementation of EU directives, even if less than 12 months, are in scope of OITO. ([IA](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298603/bis-14-669-impact-assessment-consultation-on-the-uk-implementation-of-the-eu-accounting-directive.pdf)) ([Opinion](https://www.gov.uk/government/publications/impact-assessment-opinion-implementation-of-chapter-6-eu-transparency-directive-country-by-country-reporting))

1.3 Fees and Charges

**1.3.1 Policies covered**

The fees and charges exemption from OITO applies only to fees and charges related to regulatory enforcement and compliance activity. The examples given below are cases that were at the margin of being classified as out of scope of OITO.

BRFM 1.9.9.vii

**Relevant IAs**

**MoT fee review (RPC13-FT-DFT-1836):** the maximum amount a firm can charge is fixed by legislation. Businesses are free to charge any amount they wish below the maximum. The proposal was to increase the maximum. This was considered a regulated price rather than a fee or charge as it was charged by businesses not an enforcement body, and because it was a maximum rather than a set level. However, the measure was still out of scope of OITO as it represented a periodic adjustment to an existing scheme (the changes were in line with inflation). This was a fast track out of scope proposal so no full opinion was published.

**Proposals to bring payments in lieu of training (PILOT) under the tonnage tax in line with actual training costs (RPC12-DfT-1477):** certain shipping firms may choose to access a less onerous tonnage tax regime in exchange for agreeing to certain obligations, one of which involves training. Smaller firms, which cannot provide sufficient training may, instead, make an equivalent payment - a PILOT. As training costs increased above the rate of inflation the level of the payment had to be increased to bring it in line with training costs. This measure was considered to be out of scope of One-In, One-Out (OIOO) as it was a fee/charge where there was no change in the level of regulatory activity. (See also annual up-rating) ([IA](http://www.legislation.gov.uk/ukia/2013/1135/pdfs/ukia_20131135_en.pdf))

**Enhanced court fees (RPC13-MOJ-1958):** the proposal was to charge certain users of civil courts a fee that, for equity reasons, went beyond full cost recovery in order to fund other areas of the civil courts system that do not recover costs. HMT considered that it was likely to be classified by ONS as a tax. The policy was, therefore, considered part of the managing public money framework and not the better regulation framework. ([IA](http://www.legislation.gov.uk/ukia/2013/238)) ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/273897/2014-01-14_-_RPC13-MOJ-1958_-_Enhanced_Court_Fees.pdf))

**1.3.2 Scope of regulatory activity**

Changes to fees and charges are out of scope of OITO except where they result in an expansion in the scope of regulatory activity. An increase in the scope of regulatory activity is usually defined as either a new set of regulations or an increase in the number of firms captured by an existing set of regulations.

BRFM 1.9.9.vii

**1.3.3 Regulatory burdens resulting from fees and charges (e.g. new fees)**

While increases in fees and charges themselves are out of scope of OITO, any additional regulatory burdens placed on a business as a result of having to pay fees and charges are not. This occurs most commonly when a new fee is introduced and businesses must provide additional information and set up a new billing process to pay the fee.

**Relevant IA**

**Cost recovery for consents issued under petroleum or offshore methane gas and carbon dioxide storage licences and pipeline works authorisation (RPC12-DECC-1490):** the policy was to introduce a new fee to recover costs related to providing licenses for offshore methane gas and carbon dioxide storage. However, the cost of the fees themselves was out of scope of OIOO. As these businesses were not previously paying a fee there were some administrative costs to them of setting up a billing process. These costs were in scope of OIOO making the overall policy an IN. ([IA](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208032/ia_offshore_methane_gas_carbon_dioxide_storage_licences_pipeline_works_authorisations.pdf)), ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260631/RPC-Published-Opinions-2012.pdf))

**1.3.4 Fees beyond full cost recovery**

Where a fee is charged which goes beyond cost recovery, the cost beyond that required to recover cost is considered a tax and so is not in scope of the better regulation framework. These measures are subject to agreement from HM Treasury through the Managing Public Money framework.

**Relevant IA**

**Enhanced court fees (RPC13-MOJ-1958):** the proposal was to charge certain users of civil courts a fee that, for equity reasons, went beyond full cost recovery in order to fund other areas of the civil courts system that do not recover costs. HMT considered this and agreed that it was likely to be classified by ONS as a tax. The policy was therefore considered part of the managing public money framework and not the better regulation framework. ([IA](http://www.legislation.gov.uk/ukia/2013/238)) ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/273897/2014-01-14_-_RPC13-MOJ-1958_-_Enhanced_Court_Fees.pdf))

**1.4 Regulation and deregulation**

The BRFM (page 87) defines regulate/regulatory as follows: to have the effect of increasing the scope of government regulation or adding government controls to an industry or sector.

Deregulate/deregulatory (page 84) is defined as follows: to have the effect of reducing the scope of government regulation, including the removal of existing regulation, or amendment/recasting that reduces the scope of existing regulation.

The ease with which the above definitions of regulatory and deregulatory can be applied will differ from case to case. There have been a number of proposals where it has been unclear into which category they should fall. Below we record the issues at play in some of those cases.

**1.4.1 Proposals containing both regulatory and deregulatory elements**

For any proposal including both regulatory and deregulatory elements to be considered for an OUT, two conditions must be met. First, the elements must be logically part of the same package of reforms. Secondly, the regulatory element must be demonstrably smaller than the deregulatory element. Where the regulatory element is net beneficial it should be treated as zero rather than adding to the size of the OUT.

Fast track deregulatory cases with regulatory elements will normally not be approved as deregulatory, unless they can be shown that the regulatory element is necessary to deliver the deregulation or, itself, widens choices for business.

**Relevant IA**

**Reforming the regulatory framework for employment agencies and employment businesses’ (RPC14-BIS-2150):** theemployment agencies case included both deregulatory (redefining employment agency to exclude job boards) and regulatory (prohibiting employment agencies advertising jobs exclusively overseas) elements. A much smaller number of organisations would be affected by the regulatory element. The RPC opinion, therefore, accepted that the policy package could be seen as deregulatory overall. The net cost of the regulatory element could be deducted from the net savings to business from the deregulatory elements to leave a likely net OUT. Having a regulatory component does not, therefore, automatically classify a measure as zero net cost. ([IA](http://www.legislation.gov.uk/uksi/2014/3351/impacts/2014/399))

**1.4.2 New legislation that removes regulatory burdens**

The definition of deregulation is based on the outcome of a policy and not the legislative vehicle used to enact it. As such, if a new piece of legislation removes a regulatory burden from business then this is considered deregulatory. However, where new legislation is needed to create a legal framework in which business can operate, this is more regulatory in nature.

**Relevant IAs**

**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 coordinate all local authority enforcement activity relating to that business. The proposal extended the scheme. While this required an increase in legislation, it reduced the regulatory burden on business and so was considered an OUT. (See also direct versus indirect above) ([IA](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31985/12-864-impact-assessment-extending-primary-authority-scheme.pdf))

**Access rights to underground land (RPC14-FT-DECC-2054):** while landowners do not own the rights to oil and gas under their land they do own access rights to an unlimited depth. This can cause problems for horizontal drilling for gas which passes under land owned by a large number of individuals. The drilling is at sufficient depth that it can have no cost to the land owners, but drilling firms still have to negotiate access rights with all owners. It is also possible an owner may attempt to extract a ransom payment or block drilling for political reasons. In these cases the firm could take the land owner to court and is likely to be granted access subject to a reasonable fee (which precedent suggest will be low). However, going through the courts is burdensome. The policy proposal was to give drilling firms automatic access rights subject to some form of compensation payment. This was considered deregulatory as it essentially replaced the current process for getting access rights with a new, less burdensome one. While the payment of compensation, on its own, would be considered regulatory, it was considered to be part of an overall deregulatory package as the policy to grant access rights could not happen without it. ([IA](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/358553/access_rights_IA_oil_and_gas.pdf)) ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388479/2014-10-30_-_RPC14-FT-DECC-2054_2__-_Underground_Access_Rights_clauses_in_2014_Infrastructure_Bill__impact_on_oil_and_gas_activities.pdf))

**Introduction of permissive legislative framework for defined ambition pension schemes and removal of statutory indexation for existing defined benefit schemes (RPC13-DWP-1992):** the defined ambition pension measure was to create a framework that enabled the pensions market to develop new and innovative types of pension provision within defined ambition (DA) schemes. The department considered it to be a regulatory proposal that was in scope of OITO and would have a net benefit to business (an IN with zero net cost’). This is because the legislation defined collective schemes in order to allow for them to be set in the UK – something that was not previously possible. The RPC decided that additional information was required to confirm whether the measure is regulatory or deregulatory. In particular, if legislative obstacles that prevent DA schemes developing are being removed, then the measure would be deregulatory. If the issue is that new legislation is needed to create the legal framework for DA schemes, then it would seem to be more regulatory in nature.

**1.4.3 Increasing a maximum-regulated price**

When legislation sets a maximum price businesses can charge for a good or service, but allows business to charge less than this, then an increase in the price can be considered deregulatory. This change increases business freedom as they may choose to charge a higher price, but may also choose to continue charging the same price. This does not apply if the price is fixed and businesses are forced to increase charges as a result of the change.

**Relevant IA**

**MoT fee review (RPC13-FT-DFT-1836):** the maximum amount a firm can charge is fixed by legislation. Businesses are free to charge any amount they wish below the maximum. The proposal was to increase the maximum. This was considered deregulatory as MoT providers could choose to continue charging the current price. This was a fast track out of scope proposal so no full opinion was published. (See also fees and charges above).

**1.4.4 Counterfactual – tribunal judgments**

Where a legal decision imposes cost on business and legislative action is taken to reduce this cost any quantification of the cost savings to business must include the legal change in the counterfactual.

**Relevant IA**

**Working Time Directive (holiday pay) (RPC14-BIS-2275):** the Employment Appeals Tribunal (EAT) ruled that employers must include certain types of overtime in the holiday pay of their employees. The ruling also potentially opened claims to go back as far back as 1998. In response, the department proposed to limit the backdating of claims to two years. Even with the department’s proposal, businesses would clearly be incurring higher costs compared to the situation prior to the EAT ruling. However, the appropriate counterfactual would include the EAT ruling and its associated costs. That the costs of the EAT ruling should be excluded from the cost of the proposal was supported by paragraph 1.1.5 of the BRFM which states that “…*court or tribunal cases (where conclusion of a case has resulted in a change in the interpretation of a regulations)*” are “…*not subject to RRC clearance*”. The department’s proposal reduced the scope of existing regulation (the Employment Rights Act) on business, as now interpreted by the EAT. The two-year time limit on back-dated claims was seen as a restriction on employees rather than on trade unions and, therefore, was not regulatory to civil society organisations. The proposal was, therefore, approved as deregulatory. This case also led to a clarification of the BRFM guidance (in the OITO Q&A) that proposals in response to court or tribunal judgments are in scope of OITO.

**1.4.5 New entrants**

Where a measure is deregulatory for incumbents but may have the effect of increasing the costs or reducing the ability of any potential firm wishing to enter the market (new entrants) then the policy could be deemed to be regulatory.

**Relevant IA**

**Extension to national and local analogue radio licences (RPC14-DCMS-2210):** the radio licences measure proposed to amend existing legislation to allow *Ofcom* to grant a further extension to analogue radio licences for a specified period of time. The licence extension would allow existing analogue radio stations to continue broadcasting without the need for them to participate in a costly competitive tendering process to have their licences renewed. On the face of it, the proposals seemed deregulatory on the basis that extending licences would save businesses and *Ofcom* the cost of going through a competitive tendering process. However, there would also be an impact on competition as potential new entrants would not have the opportunity to bid for licences. The potential impact on new entrants seemed more regulatory.

The RPC decided that the measure should be seen as deregulatory because it increased the frequency of bidding, it would have been seen as regulatory to the incumbents. It was also agreed that it should be accepted as an OUT, against the current guidance. This was because the pro-competition guidance could not be applied in reverse for this measure. Had that been possible, the benefits to incumbents could potentially have been struck out, leaving the measure as zero net cost. Finally, any costs to potential new entrants, or of reduced competition, from the measure were classed as indirect.

**1.5 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.

**1.5.1 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.

**1.5.2 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. I 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.

**1.5.3 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.

**1.6 Other OITO Exemptions**

**1.6.1 Financial systemic risk**

Measures that specifically deal with financial systemic risk are out of scope under OITO. Financial systemic risk is defined (OECD 2004) as “The risk that the inability of one institution to meet its obligations when due will cause other institutions to be unable to meet their obligations when due*.* Such a failure may cause significant liquidity or credit problems and, as a result, could threaten the stability of or confidence in markets.”

BRFM 1.9.9.v

**Relevant IAs**

**Wheatley review of LIBOR: implementation (RPC12-HMT-1603):** following revelations of manipulation of the London Interbank Offer Rate index HMT proposed a number of amendments to how LIBOR would be calculated. As LIBOR is referenced in a huge number of financial contracts it was accepted that there was a systemic risk to the financial system and so regulations to increase confidence in LIBOR were out of scope of OITO. ([IA](http://www.legislation.gov.uk/ukia/2013/1158/pdfs/ukia_20131158_en.pdf)), ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260631/RPC-Published-Opinions-2012.pdf))

**Alternative investors fund managers directive (RPC12-HMT-1674):** the proposal was to implement an EU measure regulating alternative investment funds. HMT proposed to gold plate the measure by not taking advantage of a derogation exempting smaller funds. While it was clear that the measure overall related to financial systemic risk it was not clear that the specific area that was gold-plated did. This part of the measure was therefore covered by neither the EU nor Financial Systemic Risk and so was in scope of OITO (Treasury eventually amended the policy to take up the derogation). ([Opinion and IA](file:///\\op2pdrv02\..\gambrillp\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\WYTB145P\impact-assessment-opinion-alternative-investors-fund-managers-directive))

**1.6.2 Pro-competition measures**

For a measure to be considered as being pro-competition the IA must clearly answer positively to the four tests found in the BRFM 1.9.16

If a measure is not solely about promoting competition, then, where possible, costs and benefits related to pro-competition should be separated. When it is not possible to separate them the measure should be treated as zero net cost if it can be demonstrated that promoting competition was the main aim.

BRFM 1.9.15

**Relevant IA**

**The regulation of payments networks (RPC13-HMT-1877):** the department claimed that the proposal is out of scope of OITO on the grounds that the regulation is for pro-competition purposes. The RPC rejected this assessment on the grounds that some elements of the objectives are focused on consumer protection. This was the basis of a red-rated opinion as the BRFM states that departments l need to identify, and score for OITO, any impacts not related to the pro-competition purpose of the measure"(paragraph 1.9.18). In the revised IA, the department emphasised the pro-competition nature of the proposal, explaining how the objectives and policy has evolved over time. The RPC concluded that, although a small aspect of the proposal remained in scope of OITO, it would be too difficult, and therefore disproportionate, for the department to monetise it. In line with the BRFM, the proposal was classified as zero net cost. ([IA](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/81568/impact_assessment190712.pdf))

**1.6.3 Time-limited measures**

A time-limited measure which lasts for less than 12 months is out of scope of OITO. Measures which last for more than 12 months should be scored as though they were not time limited, but appear on SNR for only the period in which they are in force. In effect, they are their own OUT. When measures which were scored as an IN under OITO expire they will score an OUT equal to the initial IN. The EANCB should not be recalculated based on current information. When a measure commenced before OIOO expired, the OUT should be calculated as normal. If a time-limited measure is extended, only differences between the new, and old, measures should be scored. If the new measure is identical to the old one then it should be scored as zero net cost.

BRFM 1.9.24

**Relevant IA**

**The future of the energy company obligation (ECO) (RPC14-DECC-2105):** the original ECO commenced on 1 January 2013. ECO required energy companies to deliver carbon savings by achieving targets relating to the installation of energy efficiency measures. It was due to run until 31 March 2015. In April 2014 ECO was replaced by a policy (ECO2) which has lower carbon-saving targets but runs for an additional two years, to 31 March 2017. The BRFM (paragraph 1.9.25) states that the expiry of a time-limited measure that has been costly to business is treated as an OUT. The expiry of ECO, therefore, resulted in an OUT (equivalent to the value of the original IN). The introduction of ECO2 resulted in an IN. The difference between the two was the net impact on the OITO account. In this case, the IN for ECO2 was lower than the OUT for ECO, making this a net OUT in terms of its impact on the OITO account. ([IA](http://www.legislation.gov.uk/uksi/2014/3219/impacts/2014/363))

**1.6.4 Specific enforcement actions**

Policies relating to specific enforcement actions are out of scope. This applies only to policies designed to deal with a specific breach, not any policies relating to enforcement.

**Relevant IA**

**Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2013 (RPC13-DfT-1849):** the IA claimed that the proposal relating to a seafarer’s right to take a case to an employment tribunal on annual or additional paid leave matters was out of scope under enforcement. However, this did not meet the definition of “*specific enforcement action’ (“imposed on individual companies to remedy non-compliance”).* The department submitted a revised IA with costs to compliant businesses scored as an IN (as it went beyond minimum international requirements). ([Opinion and IA](https://www.gov.uk/government/publications/impact-assessment-opinion-merchant-shipping-maritime-labour-convention-hours-of-workamendment-regulations-the-2013-regulations))

**1.6.5 Periodic adjustments**

Periodic adjustments to existing regulation (e.g. to National Minimum Wage or Statutory Sick Pay rates) are out of scope if the adjustments are provided for in existing legislation and the current level of regulation is maintained (i.e. there is no expansion or reduction in the scope of existing legislation). The baseline in these cases is typically (but not exclusively) either the relevant measure of price increases (e.g. consumer or retail price inflation) or the recommendations of an independent committee where one exists. Where the policy deviates from this baseline the difference is in scope of OITO.

BRFM 1.9.9.viii

**Relevant IA**

**Amendment to the National Minimum Wage regulations 2013 - increase in NMW rates (RPC13-BIS-1786):**  The IA was for the annual update of NMW rates. The majority of the policy was out of scope of OITO as it was a periodic adjustment based on the recommendations of the independent Low Pay Commission (LPC). However the Government had chosen to deviate from the LPC’s recommendations with respect to the minimum wage for apprentices. As the Government raised this part of the minimum wage by more than the LPC’s recommendation this element was in scope of OITO and scored as an IN. ([IA](http://www.legislation.gov.uk/ukia/2013/1047)) ([Opinion](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/250074/2013-06-05-RPC13-BIS-1786-NMW-increase-in-rates-2013-14-opinion-f.pdf))

**1.6.6 Enabling measures/primary powers**

For more information on how enabling measures/primary powers are treated, please refer to section 1.1.9.

The OITO classification for enabling measures/primary legislation should be determined as follows:

1. Primary legislation that has a direct impact on business – in scope and scored at the primary legislation stage implementation date(s);
2. Primary legislation that, itself, has no direct impact on business but where the use of the related secondary legislation has a direct impact on business – **in scope at primary legislation stage and classified along the lines of “zero, at this time**”. Direct impacts on business to be scored at secondary legislation stage implementation date(s).
3. Enabling measure/primary legislation that, itself, has no direct impact on business and where the use of the power/secondary legislation also has no direct impact on business – out of scope.

Measures should be scored for OITO on the basis of their implementation dates (and therefore appear in the SNR which covers that date). See BRFM 1.9.14.

**Relevant IA**

**Implementation of the Wood Review proposals for UK offshore oil and gas regulation (RPC14-DECC-2129):** the objective of this policy is to maximise the economic recovery of UK oil and gas by increasing the effectiveness of sectoral regulation. While the IAs provided an indication of the scale of the costs and benefits to business that could arise from the proposals as a whole, reflecting both proposed primary and secondary legislation, the primary legislation alone would not impose any immediate costs and benefits for business. Therefore, these proposals were classified as an IN with zero costs at this stage. The department was asked to refine the figures at secondary legislation stage for scoring in the OITO account. ([IA](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370077/Implementation_of_the_Wood_Review_proposals_for_UK_offshore_oil_and_gas_regulation_-_IA.pdf))

**1.7 Other issues**

**1.7.1 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](#Goldplating). ([IA](http://www.legislation.gov.uk/ukia/2015/42/pdfs/ukia_20150042_en.pdf))

**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](https://www.gov.uk/government/publications/impact-assessment-opinion-the-transfrontier-shipment-of-waste-amendment-regulations-2012))

**1.7.2 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341280/remit_criminal_sanctions_ia.pdf))

**1.7.3 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](http://www.legislation.gov.uk/ukia/2014/298/pdfs/ukia_20140298_en.pdf))

**1.7.4 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/394793/IA_NIP.pdf))

**1.8 Reasons for red-rated opinions by stage**

**1.8.1 Deregulatory RTA**

A deregulatory RTA is required to demonstrate that the measure is deregulatory and does not contain any regulatory aspects. The [deregulation](#Deregulation) section of the BRFM contains more on the definition of deregulation. A red (not confirmed) RPC response can be issued given if either the proposal appears not to be deregulatory or if the RTA fails to provide sufficient information to enable the RPC make a decision Departments are also required to set out in the RTA, the OITO status of the proposals. Incorrect OITO status is not sufficient for a red (not confirmed) RPC response to be issued if there is any uncertainty, the proposal should be considered in scope of |OITO and an EANCB validation required

**Relevant RTAs**

**Regulations to amend the early childcare register and the general childcare register (RPC13-FT-DFE-1905):** this RTA covered a number of proposed changes to the rules around childcare providers. The policy included both regulatory and deregulatory changes. As not all of the changes were deregulatory, a red (not confirmed) RPC response was issued. This would have been the case even if the department had been able to demonstrate a net reduction in regulatory burden. [IA](http://www.legislation.gov.uk/uksi/2014/912/impacts)

**Review of statutory consultation requirements for heritage and planning applications (RPC13-FT-CLG-1943):** this proposal was to reduce the burden on statutory consultees to planning applications. The RTA correctly identified this as a deregulatory proposal. However, the RTA stated that the policy had no direct impacts on business but, nevertheless, identified it as an OUT. A measure with no direct impact on business should have been identified as out of scope of OITO. Because the classification as deregulatory was correct, the RPC confirmed that the proposals were suitable for the fast track. However, the OITO section of the RPC’s response stated that the proposals appeared to be out of scope of OITO but that the department should confirm with consultees that there were no direct impacts.

**1.8.2 Low-cost RTA**

A low-cost RTA is required to demonstrate that the proposal is unlikely to exceed the low-cost threshold (total gross cost to business below £1m in every year). This includes transitional costs and, unlike OITO, also includes indirect costs and is based on the highest year; it is not an EANCB. A red (not confirmed) RPC response can be issued if either it appears that the cost of the proposal may exceed the low-cost threshold or if the RTA fails to provide sufficient information to enable the RPC to make a decision.

**1.8.3 EANCB validation**

An EANCB validation is required to demonstrate that the EANCB, which t will be included in SNR, is an accurate reflection of the impacts on business and is consistent with OITO methodology. A red (not validated) RPC response can be issued only if the assessment of the EANCB is incorrect.

**1.8.4 Consultation stage impact assessment**

There are no restrictions on the reasons a consultation stage impact assessment can be given a red rating. The rating should reflect the overall quality of the IA. [Section 2](#Recommendation1) has more information on what to look for in a good IA.

BRFM 1.4.16

**1.8.5 Final stage impact assessment**

For a measure that is in scope of OITO or an EU measure, a red rating can be issued only if the calculation of the assessment of the EANCB is incorrect, or if the SaMBA is not fit for purpose. For a measure that is out of scope of OITO, a red rating can be issued only if the assessment of the direct cost to business is incorrect or if the SaMBA is not fit for purpose.

BRFM 1.4.17

**Relevant RTAs**

**Tackling illegal immigration in privately-rented accommodation (RPC13-HO-1880):** In this IA, the department had incorrectly over-stated the benefits of reducing illegal migration by including reduced costs of providing public services, but not including lost tax revenue. While this error meant that the IA was not fit for purpose, the impact that had been calculated incorrectly was on government, rather than on, business and so was not grounds for a red rating. ([Opinion and IA](https://www.gov.uk/government/publications/impact-assessment-opinion-tackling-illegal-immigration-in-privately-rented-accommodation))

**1.8.6 Post-Implementation review**

There are no restrictions on the reasons a PIR IA can be given a red rating. The rating should reflect the overall quality of the IA.

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

**2.1 Don’t presume regulation is the answer**

**2.1.1 Rationale for intervention**

It is generally assumed that, when functioning properly, the market will deliver efficient outcomes without regulatory intervention. An IA should explain why the market is not functioning efficiently in the area in which there is an intention to intervene. The Government may also intervene for equity reasons in which case it needs to be made clear that this is the case and that there is no market failure. Failure to set out the rationale for intervention will potentially result in a red rating at the consultation stage. At the final stage this will not normally result in a red rating as it does not affect direct cost to business, but will result in a negative commentary in the opinion.

Green Book 3.1

**Relevant IAs**

**Consultation on the use of zero hours contracts (Consultation Stage, Amber) (RPC14-BIS-1965):** there was concern that zero hours contracts were being used in a way that was detrimental to employees. The consultation stage IA set out a number of options to deal with these concerns. The IA set out two market failures to justify government intervention: asymmetric information and negative externalities. While the RPC accepted that both of these were legitimate issues, it did not consider that the IA explained the problem fully. From the evidence provided the RPC considered the unequal market power of employers in certain labour markets to be an equally important cause. As the IA justified action, this was not sufficient to prevent the IA from being fit for purpose, but was something that should be dealt with before consultation, so it resulted in an amber rating. (See also [Present a Range of Options](#Range).) ([Opinion and IA](https://www.gov.uk/government/publications/impact-assessment-opinion-zero-hours-contracts))

**Consumer bill of rights: supply of goods (Final Stage, Green) (RPC-BIS-1720):** this policy was to amend consumers’ rights when purchasing goods. It was part of a wider package of measures on consumer rights. This IA not only set out why there was an intention to make certain specific amendments to consumer rights, but clearly and concisely set out the economic justification for consumer protection in general. The rationale was supported by reference to academic research carried out in the area. ([Opinion and IA](https://www.gov.uk/government/publications/impact-assessment-opinion-consumer-bill-of-rights-supply-of-goods))

**Ex-military aircraft occupant placard (Final Stage, Red) (RPC12-DFT-1371(2)):** this policy required ex-military aircraft to display a placard explaining 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, and 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 policy 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; as 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 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.

**2.1.2 Cost-effectiveness**

As well as identifying why the Government may wish to intervene in an area, the IA should explain why the policy is considered to be cost-effective, i.e. why the benefits are expected to exceed the costs. This will often be reflected in the NPV but may not be if some of the impacts are not able to be monetised. At the consultation stage departments need explain only why they think their proposals are likely to have benefits and could prove to be cost-effective following further consideration. Failure to do this could result in a red or amber rating depending on whether it would prevent meaningful consultation. At the final sage, this could result in a red rating if it is considered to cast doubt on the direct impacts on business; otherwise it will result in negative commentary in the opinion.

Green Book 3.1

**Emissions performance standards** **(Final Stage, Red) (RPC13-DECC-1941):** this policy introduced a mandatory efficiency standard on all new-built coal-fired power stations. The IA explained why pollution was a market failure, but did not justify the need for this specific intervention sufficiently. The assumption in the IA is that other regulations would prevent power stations being built and that this power would function as a regulatory backstop. However, no scenarios were presented for where this backstop would come into force. This resulted in a policy that produced some costs but no benefits. As the IA failed to justify the recommended option it was not considered to be fit for purpose. As these pre-dated changes to final stage RPC RAG ratings, it resulted in a red rating. Following the initial red rating, this policy was moved to the fast track as low cost so a revised IA was not seen by the RPC. [IA](https://www.gov.uk/government/publications/emissions-performance-standard)

**2.2 Take time and effort to consider all options**

**2.2.1 Present a range of options**

Ultimately, the IA process is to appraise options. An IA should present a range of options; this is particularly true at the consultation stage. Options presented should be viable. If there is only one viable option then the IA should explain why this is the case. At the consultation stage, presenting only a limited number of options without sufficient justification is likely to result in a red-rated opinion. At the final stage it is expected that a single option will be recommended, although the committee may comment if it is not clear why the IA makes that recommendation.

**Relevant IA**

**Zero hours contracts (Consultation Stage, Amber on other issues) (RPC14-BIS-1965):** there was concern that zero hours contracts were being used in a way that was detrimental to employees. The consultation IA set out a number of options to deal with these concerns. This included both regulatory and non-regulatory options. All of these options were being considered at consultation as well as possible combinations and it was made clear that there was no preferred option at that stage. The IA was given an amber rating for other reasons, but was considered a particularly good example in terms of the range of options presented. (See also [Rationale for Intervention](#Rationale)). ([Opinion and IA](https://www.gov.uk/government/publications/impact-assessment-opinion-zero-hours-contracts))

**2.2.2 Explain 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 need 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 committee may comment if it is not clear what other options were considered or why they were discarded.

**2.3 Make sure you have substantive evidence**

Assumptions made in an IA should, where possible, be supported be 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](#explainassumptions)). 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260631/RPC-Published-Opinions-2012.pdf)) [(IA](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82578/animal-welfare-killing-ia-120912.pdf))

**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](https://www.gov.uk/government/publications/infrastructure-bill-the-community-electricity-right))

**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](http://www.legislation.gov.uk/uksi/2014/451/impacts))

**2.4 Produce reliable estimates of costs and benefits**

**2.4.1 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](https://www.gov.uk/government/publications/impact-assessment-opinion-collective-redundancy-consultation))

**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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260631/RPC-Published-Opinions-2012.pdf))

**2.4.2 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)

**2.4.3 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](#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

**2.5 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 it 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.

**2.6 Explain and present results clearly**

**2.6.1 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82428/suds-consult-annexf-ia-111220.pdf))

**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](https://www.gov.uk/government/publications/referencing-of-british-standards-based-on-eurocodes)) ([Consultation IA](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8397/2045945.pdf))

**2.6.2 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](#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 over-arching 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](#evidence)). A further revised IA received a green rating. [(IA](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82578/animal-welfare-killing-ia-120912.pdf))

**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](https://www.gov.uk/government/publications/impact-assessment-opinion-proposed-changes-to-part-l-of-the-building-regulations-2013))

**2.7 Small and micro-business assessment**

IAs for all domestic regulatory measures coming into force after April 2014 require a small and micro-business assessment (SaMBA).

BRFM 1.6.3

**2.7.1 Identify impacts on small and micro --businesses**

A SaMBA should separate t what proportion of the costs and benefits of the policy fall on small and micro-businesses. It should also consider whether there will be any disproportionate impacts on small and micro-businesses. Insufficient detail is more likely to result in an amber-rated opinion. At the final stage insufficient assessment of the impacts on small and micro-businesses will result in a red-rated opinion.

BRFM 1.6.5

**Relevant IA**

**Continuity of essential supplies to insolvent businesses (Final stage, Red) (RPC13-BIS-1919):** the policy was to prevent providers of essential supplies (e.g. IT suppliers) from extracting ‘ransom payments’ from insolvent companies by threatening to cut off essential services. The IA did not contain sufficient information on what proportion of suppliers, which bore the costs of the policy, and creditors, who reaped the benefits, were small and micro-businesses. This resulted in a red-rated opinion although the other areas of the IA were considered to be fit for purpose. A revised IA was submitted explaining that the policy was net beneficial to small and micro-businesses overall, but still did not explain what would be the impact of exempting small and/or micro-businesses from the policy. Although the policy was net beneficial to small and micro-businesses, it wasn’t clear whether specific businesses might be worse off, and whether most of the benefits would still arise if small and micro businesses were exempted. A further revised IA was submitted with additional information which demonstrated that most of the benefits of the policy could not be delivered without including small and micro-businesses and received a green rating. This IA contains a good example of a SaMBA. [(IA](https://www.gov.uk/government/consultations/continuity-of-supply-of-essential-services-to-insolvent-businesses))

**2.7.2 Consider options to minimise impacts on small and micro -businesses**

Government policy is that small and micro-businesses should be exempt from new regulatory measures. If they are not exempt, the IA must explain why and this must be supported by appropriate analysis. If a full exemption is not viable, the IA must set out what other options have been considered and why any that are not taken forward were discounted. The BRFM contains a list of suggested approaches for reducing burdens on small and micro-businesses. At the final stage, failure to consider realistic options for reducing burdens on small and micro-businesses is likely to result in a red-rated opinion. BRFM 1.6.7

**2.8 Regulatory triage assessments (RTAs)**

You should always remember when drafting RTAs that they are single purpose documents designed to demonstrate your policy is eligible for the fast track; they are not mini-IAs. The document should focus on the relevant data. Longer RTAs mean more work for both departments and the RPC, and lead to longer turnaround times.

**2.8.1 Deregulatory RTAs**

The purpose of a deregulatory RTA is to demonstrate only that the proposal is deregulatory. See [Deregulation](#Deregulation) for more information on how this is defined. A deregulatory RTA should set out the current regulatory framework, how this will change, and why this change is considered deregulatory to business. The key question to ask is: what will this allow businesses to do that they were not previously able to, or what will businesses no longer have to do that they were previously compelled to do. The RTA does not have to include any information on the costs and benefits of the proposal nor does it have to justify the policy. The RTA should set out whether the policy is in scope of OITO, although an incorrect assessment will not result in a red rating (See [Deregulatory RTA](#DeregRTA)).

If you have a single proposal that requires some additional regulation to create an overall deregulatory effect then this is eligible for the fast track as deregulatory proposals. However, if you have a package of proposals, including both regulatory and deregulatory measures, this is not eligible, even if the overall impact is net beneficial to business.

**2.8.2 Low-cost RTAs**

The purpose of a low-cost RTA is to demonstrate only that the proposals are low cost. Low cost is defined as unlikely to have a gross cost to business of more than £1m in every year. The cost to business for fast track is different from EANCB as it is a gross cost, therefore includes both direct and indirect costs and costs such as fees and charges that are out of scope of OITO. The level of evidence required is, in part, determined by the size of the expected impact. For proposals with gross costs significantly below the low-cost threshold, it is normally sufficient to explain the impacts and why they will be low; this does not necessarily require monetisation. As measures get closer to the threshold more evidence is required and a full range should be included to demonstrate that even the higher estimates are below the threshold. The RTA should set out whether the policy is in scope of OITO, although an incorrect assessment will not result in a red rating (See [Deregulatory RTA](#DeregRTA)).