



Review of government impact assessment capability in 2016

An independent report on the quality of analysis
supporting regulatory proposals

February 2017

Table of Contents

1.	Foreword	5
	Michael Gibbons, CBE Chairman, Regulatory Policy Committee	6
2.	Executive summary	7
3.	Introduction	11
4.	The changing context.....	13
5.	Overall departmental performance.....	21
	Fit for purpose ratings	21
	Potential drivers of declining departmental performance	21
	Thematic analysis of red-rated issues across government	23
	Missing costs: <i>identification of costs at consultation stage and monetisation at final stage</i>	26
	Lack of evidence to support unjustified assumptions	26
	BIT status.....	27
	Small and micro business assessment (SaMBA).....	27
	Lack of clarity regarding how a proposal will work or how calculations have been made	28
	Thematic recommendations	28
	Departmental performance – impact assessments and business impact target validation assessments	29
	Capability improvement activity by the RPC	29
	Analysis of departmental performance.....	30
	Highest performing departments.....	33
	<i>Department for Environment, Food and Rural Affairs</i>	33
	<i>Health and Safety Executive</i>	33
	<i>Department for Work and Pensions</i>	34
	Actions for highest performing departments.....	34
	Departments with average performance	34
	<i>Department for Business, Energy and Industrial Strategy</i>	34
	<i>Department for Culture, Media and Sport</i>	34
	<i>Department of Health</i>	35
	<i>Department for Transport</i>	35
	Actions for departments with average performance	36
	Lower performing departments	36
	<i>Department for Communities and Local Government</i>	36
	<i>Home Office</i>	36
	<i>HM Treasury</i>	37
	Actions for lower performing departments.....	37
	Departments with small samples.....	38
	<i>Department for Education</i>	38
	<i>Ministry of Justice</i>	38
	Actions for departments with small samples	38
6.	Departmental performance – post implementation reviews	39
	Department	39
	Number of submissions.....	39
	Total expected volume during the parliament	39
	Types of cases	40
	Annual net impact (£m)	40
	Number of submissions.....	40

Recommendation	40
Number of submissions.....	40
Origin	40
Number of submissions.....	40
Common red-rated points	40
Areas for improvement.....	41
Positive examples	41
Recommendations to departments on delivering better PIRs, and proposed RPC actions.....	41
7. Overall regulator performance.....	42
Quality of regulator submissions to date	42
Rating/submission type	42
QRP(%).....	42
NQRP(%)	42
QRP submissions:.....	42
NQRP submissions:	43
Commentary on regulator capability.....	43
What is the current support for regulators?	44
RPC-identified challenges/issues to be aware of	44
RPC plans for engagement and building capability in 2017	44
Short-term:	45
Medium-term:	45
Longer-term	45
Future engagement and building capability.....	45
RPC short-term building capability actions:.....	45
8. Validated impacts of regulatory changes	46
Measures that have come into force during the BIT annual reporting period May –Dec 2016.....	46
Update on measures from the previous BIT reporting period.....	47
Department	47
Measure	47
RPC-validated BIT score - £mil	47
Department	48
Measure	48
Annexes	49
1. Members of the Regulatory Policy Committee	49
2. Regulators in scope of the BIT	49
3. List of large measures (EANDCB over +/- £10m) – statutory review	51
Department	51
Measure	51
EANDCB	51
Department	51
Measure	51
EANDCB	51
4. List of validated measures in scope of the BIT	53

1. Foreword



Since our last report, there have been significant changes to the machinery of government. The Regulatory Policy Committee (RPC) is pleased to see that following these changes better regulation remains a government priority and the continuation of the business impact target (BIT) has been confirmed.

Looking ahead I am confident that the RPC will respond effectively to the regulatory consequences of Brexit. The independent RPC expects to scrutinise and validate all proposed changes in regulatory costs as they arise.

During 2016, the RPC welcomed the report¹ on better regulation published by the National Audit Office and the subsequent House of Commons Committee of Public Accounts enquiry and report². In particular, we support their call for departments to give further consideration in assessments of the wider impacts of regulatory change. The committee continues to encourage departments to place more emphasis on the assessment of the costs and benefits of policy beyond those to businesses and civil society organisations.

This report focuses on the quality of departmental assessments and analysis from across Whitehall, and on submissions from regulators, which the RPC has begun to receive. The report covers RPC opinions issued in 2016, and having reviewed 318 submissions, we conclude that there has been a significant overall decline in the proportion of fit for purpose ratings at first submission, which is a concern for the committee.

Government departments have also had, for some years, a commitment to evaluate the success of policies during their lifetime, through post-implementation reviews (PIRs). The committee has seen a limited number of, mainly minor, PIRs, and this report reflects on some emerging themes from such reviews. However, the RPC would have expected to have seen reviews on a number of significant measures by this stage, such as the large measures relating to pensions; these have not, in practice, been submitted to us. As a matter of good practice, the RPC would expect to receive in the near future, PIRs on all large regulatory and deregulatory measures from the last parliament.

In 2017, the RPC is pleased to have taken on the chair of the RegWatch Europe network, a group of like-minded independent scrutiny bodies from the Netherlands, Germany, the Czech Republic, Sweden, Norway and Finland. The network collaborates with the European Commission and the Regulatory Scrutiny Board, and is pleased to be supporting the Regulatory Scrutiny Board's first conference on independent scrutiny in March.

¹ <https://www.nao.org.uk/wp-content/uploads/2001/11/0102329.pdf>

² <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmpubacc/487/487.pdf>

I trust this report is of value to Whitehall, regulators and external stakeholders. The RPC continues to receive support from a broad range of business and other organisations. We welcome and appreciate all such expressions of confidence. Indeed such wide support remains important to ensure that the valuable work of the RPC continues to be sponsored by government.

Finally, I would like to thank the members of the committee and secretariat for their extremely hard work in delivering and maintaining high quality scrutiny during a period of transition and much increased workload. I firmly believe that within the current framework the work of the RPC has contributed to a better evidence base for policy making.

Michael Gibbons, CBE
Chairman, Regulatory Policy Committee

2. Executive summary

Background

2016 has been a year of considerable political upheaval. The referendum result to exit the EU means that the Government will begin the process of reshaping the UK's regulatory landscape. The RPC looks forward to playing its part through our rigorous independent scrutiny. Also, the RPC has taken on the leadership of RegWatch Europe, a group of like-minded independent scrutiny bodies from across the EU. We propose to continue the excellent work of the group in promoting improved scrutiny of European regulation.

Against a changing background, the RPCs core mission – to improve the quality of evidence and analysis underpinning the Government's decisions – remains unchanged. We welcomed the reports from the National Audit Office (NAO) and the Public Accounts Committee (PAC) in June and October 2016, respectively. We strongly support most of their recommendations, particularly that relating to the inclusion of monitoring and evaluation plans in impact assessments and more robust assessment of wider societal impacts alongside the business impact target metrics.

Whilst we also welcome the Government's response to the recommendations, we believe that government may miss an opportunity to improve the quality of evidence supporting its decisions. In particular, we are concerned that:

- The call for a more efficient and proportionate system – which we support – may be answered by a move to a system that simply requires a lower level of evidence scrutiny. Given the large number of submissions in 2016, which we found were not fit for purpose at first submission, we regard a reduction in independent scrutiny (especially of the most significant measures) as presenting a real risk to the quality of evidence-based policy-making. Parliamentarians and wider stakeholders (especially in business and civil society organisations) expect that the evidence placed before them in support of government proposals should be fit for purpose, and regard our work as a strong safeguard to that end;
- similarly, efficiency may be conflated with speed. This may lead to a system where scrutiny is treated as being relevant only to the validation of the business impact target (BIT) account – rather than as a key quality assurance stage in the overall decision-making process. We oppose suggestions that quality assurance of the evidence supporting significant measures before and after consultation, or parliamentary discussion, might be dispensable. We want to avoid a system that treats the BIT score as the only metric of significance for better regulation;
- We hope that the government's approach of encouraging (rather than requiring) departments to improve their assessment of the wider impacts³ of significant measures and to plan effectively for monitoring and evaluation will have a positive impact. However, we note that this approach has proved less effective at altering departmental behaviour than the stronger incentive of a

³ Wider impacts include both societal impacts and indirect impacts on business.

formal judgement of fitness for purpose. For example, a lighter-touch approach has been applied over an extended period for small and micro business assessments (SaMBAs) – with limited impact on the quality of analysis. We, therefore, consider that this approach should be evaluated over the next few months, with a view to taking stronger action as necessary.

Post-implementation review

- As the NAO and PAC both noted, monitoring, evaluation and review are essential to the policy-making process. It is, therefore, a matter of concern that we have seen only a limited number (28) of post-implementation reviews (PIRs) during 2016, when we would have expected to have seen reviews of a number of significant measures by this stage. There are 6 significant measures with statutory review clauses that the RPC expects to see PIRs on, and 45 significant measures with non-statutory PIRs expected. In addition, during the previous parliament 41 measures were enacted that had significant impacts on business but did not include statutory review clauses. Given the potential for learning from these measures to improve future significant policy proposals, the RPC believes that these policies should be reviewed with a level of rigour commensurate with their impact. As a matter of good practice, we would expect to receive PIRs on all high-impact regulatory and deregulatory measures from the last parliament.
- Of the PIRs scrutinised over the last year, 89% were rated fit for purpose. However, most of these related to low-impact measures, which were either approved for renewal or replacement; accordingly the proportionate approach to analysis was fairly light-touch. We remain concerned that larger measures, such as the major pensions measures, have not been subject to appropriate monitoring and evaluation. These measures largely drove the coalition government's success in achieving its One-in, Two-out target over the last parliament, and a clear understanding of the extent to which they have delivered their intended effects is crucial.

Departmental performance

This report's major focus is departmental performance. It reflects on the 318 RPC opinions issued to departments during 2016, and sets out our assessment of the analysis contained within those submissions.

Of these 318 first-time submissions:

- 72% were rated fit for purpose as first submitted; and
- 28% received initial review notices (IRNs) or red-rated opinions.

This compares to 80% of submissions that were rated fit for purpose as first submitted between 2012 and 2015. This overall decline is a cause for concern, though we note an improvement in performance to 78% in the last quarter of 2016.

There is significant variation among departments on the quality of impact assessments and the robustness of their analysis. Whilst a small number (for example, DWP, HSE and DEFRA) of departments demonstrate consistently high

performance, others (for example, HO and HMT) have performed less well over the year. Some of these departments have taken action to improve their use of evidence, which we strongly support.

Common issues that we have identified when scrutinising impact assessments include:

- ***missing costs*** - over a third of not fit for purpose submissions failed to appraise or identify all of the relevant costs;
- ***unjustified assumptions*** - roughly 20% of not fit for purpose submissions included insufficient justification for the approach taken to gathering evidence and assumptions made;
- ***lack of clarity*** - around 10% of submissions fail to set out clearly how a proposal would work and how calculations of the impacts were made; and
- ***assessment of impacts on small and micro businesses*** - too often, departments have failed to provide relatively basic evidence such as the proportion of those affected by the regulation that are likely to be small or micro businesses - around 7% of IRNs were a result of poor SaMBAs. In addition, we have seen very few examples of robust further analysis of the potential policy consequences of any exclusions or mitigations for small businesses.

Against this overall reduction in the quality of submissions, there are some good examples where departments have produced robust, innovative and proportionate analysis. We outline (in section 4) some examples of clearly argued and well-evidenced submissions. These have a clear explanation of the assumptions used in the analysis and appropriate and proportionate engagement with stakeholders used to support the department's assessment.

We emphasise that, while the proportion of submissions that are not fit for purpose when first submitted has increased, in the vast majority of these cases departments' responses to concerns raised by the RPC means that when the assessments are subsequently resubmitted and published they are considered fit for purpose. We then see that 99% of submissions are rated fit for purpose, either as originally submitted or following the department's response to initial scrutiny by the RPC.

As in previous reports, we note that the regulatory landscape has been dominated (in business impact terms) by a small number of significant measures and a high volume of relatively low impact measures: 76% of all measures submitted to us have impacts of less than or equal to £1 million, and 15% between £1 million and £10 million, with just 9% having impacts greater than £10 million per year.

The activities of most regulators have only recently come into scope of our scrutiny and we have so far seen relatively few submissions from regulators. We expect to see an increasing number in the coming months; as relevant regulators are required under the Small Business, Enterprise and Employment Act 2015 (as amended by the

Enterprise Act 2016) to publish their first list of qualifying and non-qualifying regulatory provisions (QRP & NQRP)⁴ summaries by 9 June 2017.

- Of 19 first-time QRP submissions received in 2016, 17 (89%) were fit for purpose. This is a better quality performance than is achieved by most departments, though we note that the requirements placed on regulator submissions are less comprehensive. There are more areas in departmental submissions that can be judged not fit for purpose by the RPC, such as consideration of alternatives to regulation.
- Of 14 first-time NQRP summaries received in 2016, 8 (57%) were fit for purpose – which may be because these summaries represent a new requirement where further guidance is needed. As good practice has been developed and shared, the quality of NQRP summaries has improved.

Next steps

- We will work with government to develop appropriate and robust scrutiny processes for the very considerable quantity of regulatory analysis that is expected to result from the UK's decision to leave the EU.
- Working with stakeholders from civil society organisations, we will continue to press for more robust analysis of wider societal impacts of government proposals. We will comment explicitly and consistently on the quality of this analysis, both in individual opinions and at an aggregate level in our next annual report.
- We will continue to press for improved monitoring and evaluation plans for significant measures and for appropriate post-implementation review of significant measures from the last parliament (such as the major pensions measures) – regardless of whether or not the legislation included review clauses. In our next report, we will comment explicitly and consistently on the quality of monitoring and evaluation plans proposed for significant measures, and will summarise our views on the quality of such plans across Whitehall.
- We will work with departments and regulators to improve the quality of their analysis, focusing our efforts on departments with the lowest proportion of fit for purpose ratings.

⁴ Qualifying regulatory provisions and non-qualifying regulatory provisions are defined at <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-03/HCWS574/>

3. Introduction

2016 has been a year of considerable political upheaval; the UK's decision to leave the EU brings new challenges and opportunities across the country, and we look forward to playing our part as the Government begin the process of re-shaping the UK's regulatory landscape.

There have also been a number of significant changes to the Government's (and our own) approach to better regulation and to regulatory scrutiny, including:

- the inclusion of regulators' actions within the scope of the business impact target;
- the first post-implementation reviews of legislation dating from the last parliament;
- our introduction of the initial review notice process for responding to initial submissions that are not fit for purpose; and
- strong recommendations from both the National Audit Office and the Public Accounts Committee (PAC), to which the Government is beginning to respond.

Our reflections on, and responses to, these changes are set out in section 4 of this report.

All of these initiatives have placed considerable pressure upon departments, at a time when their resources are constrained. We recognise that challenge, and support the Better Regulation Executive's drive to improve the efficiency of the system. Nevertheless, our core mission – to improve the quality of evidence and analysis underpinning the Government's decisions – remains unchanged, and we believe it remains appropriate to hold to the highest standards the analysis supporting significant ministerial decisions. Parliament, stakeholders, and the public expect no less. We also believe that increased efficiency need not – and should not – imply a reduction in overall scrutiny or quality. Rather, we agree with Government that we should direct resources proportionately towards the most significant proposals.

The bulk of this report (in sections 4-6) provides a transparent account of departments' and regulators' performance in assessing the impacts of regulation. Where possible, it highlights aspects of good practice and positive examples. However, the report also draws on experience from the RPC's scrutiny across the regulatory landscape to identify common themes and challenging issues in the analysis of regulation. We hope that these will be of particular help to those departments that make relatively few submissions, and have less experience of analysing regulatory impacts.

This presentation of comparative data is also intended to facilitate better interaction between and sharing of good practice by departments. We expect this to be helpful to those departments that have exhibited consistently lower performance during 2016, and to provide support to them in considering how they will respond to the changes to the framework which result from the PAC's report on the better regulation system as a whole.

This report does not focus on the overall validation of measures accounted for by the business impact target. Nonetheless, section 7 sets out some of the largest measures that have come into force, or have been validated, since our last report and their impact on the target.

4. The changing context

Background

The Regulatory Policy Committee (RPC) scrutinises evidence supporting government regulatory proposals. For significant regulatory measures, the RPC typically considers full impact assessments both before a public consultation is launched and before the final legislative proposals are introduced to Parliament. For less significant regulatory proposals, and for deregulatory measures, the RPC scrutinises government's assessment of the costs and benefits to business before measures are introduced to Parliament, but not ahead of any related consultation.

Following the passage of the Enterprise Act 2016, the RPC has the role of validating the impacts of the actions of greater number of national regulators where these are in scope of the Government's business impact target. This requirement applies retrospectively insofar as the costs and benefits of changes that have taken place since during the current parliament need to be assessed.

When scrutinising government submissions the RPC assesses the quality of the analysis and evidence in line with economic principles, including those set out in the HMT Green Book, and in accordance with the government's better regulation framework. The RPC has developed guidance and advice to support departments and officials in understanding the framework, and to provide further information on what is considered to be a robust and proportionate assessment.⁵

Based on the quality of the evidence presented, the RPC rates the assessments as either fit for purpose ('green-rated') or not fit for purpose (receiving an IRN or a 'red-rated' opinion). Any analysis including red-rated issues must be improved before publication. The government requires that red-rated issues are resolved before they are agreed collectively by the Government.

The RPC has worked with the Better Regulation Executive (BRE) - the part of Government with policy responsibility for the better regulation framework - to develop proposals to amend the better regulation framework to improve the quality of assessments, while delivering improvements in efficiency.

This section of the report sets out the very considerable recent changes to the context and content of our work. It also sets out our response to each change.

The UK's decision to leave the EU, and the change of Government

Following the June 2016 referendum, the Government have decided that the UK should leave the EU, and has begun the process of doing so. We stand ready to scrutinise evidence supporting the Government's decisions in the context of consequent regulatory changes, and later, as the process of determining the most suitable regulatory framework outside the EU begins.

We expect that this work, and the changes of policy direction that result from these decisions, will create a considerable burden on departments and regulators, and we are actively working with BRE to streamline the process as effectively as possible.

⁵ <http://regulatorypolicycommittee.weebly.com/>

Nevertheless, we think it important that Parliament, business and civil society stakeholders and the public are as fully informed as possible about the regulatory impacts of leaving the EU and of consequent regulatory changes; and we will comment on them further in future reports.

Public Accounts Committee report and the Government's response

In June 2016, the National Audit Office (NAO) published its report on the Government's business impact target (BIT), which was followed by a report from the Public Accounts Committee (PAC). The RPC contributed evidence to both of these reports, and we are pleased that our views were represented in the final recommendations of both bodies. The PAC's key recommendations, which the RPC strongly welcomes, were that:

- the Better Regulation Executive (BRE) should develop a more comprehensive picture of the total regulatory costs that government imposes each year on the business community – including those costs which are currently out of scope of the BIT and in particular tax administration;
- departments should set out satisfactory monitoring and evaluation plans in impact assessments and implement these plans once the legislation is in place;
- departments must show, in impact assessments, that they have considered seriously the wider societal impacts of regulatory measures. BRE must provide estimates of the wider costs and benefits of regulatory measures and information on department's and regulator's performance in assessing wider impacts; and
- BRE should change the rules to allow a more proportionate approach where significantly more effort can be applied to the assessment and validation of the small number of regulations with the greatest impact.

The PAC and NAO also suggested that:

- given that the Government's limited progress towards the BIT relies on new regulation requiring larger retailers to charge customers 5p for plastic bags, BRE should consider whether it is appropriate to include regulations imposed on business as contributing towards the BIT; and
- departments and regulators should understand better the effects of existing regulations on businesses for which they are responsible.

In response to the reports, the Government have committed to:

- present clearly the impacts of measures that are out of scope of the BIT, in particular tax administration, alongside its annual assessment of progress towards the BIT;
- encourage departments to set out the wider impacts of regulation in their impact assessments, rather than focusing only on those impacts which are relevant to the BIT,

- encourage departments to set out clear monitoring and evaluation plans for the most significant regulatory measures, which will support them in learning from the experience of implementing such measures;
- continue to look for ways in which the better regulation system can be made more proportionate and efficient; and
- set out clearly how government will improve its understanding of the existing stock of regulation.

We generally welcome these actions, which we believe will improve the quality of evidence supporting ministerial decision-making and the ability of government to learn from its experience of implementing regulation. We believe we have a role to play in ensuring that they have a real impact.

The RPC's response to the Government's commitments is set out in more detail below.

In support of the Government's commitment to ***present clearly the impacts of measures that are out of scope of the BIT, in particular tax administration, alongside their annual assessment of progress towards the BIT***, the RPC will:

- continue to comment in its annual report on the quality of evidence and analysis supporting regulatory measures that fall outside the scope of the BIT, and on the scale and appropriateness of such exclusions. We have long argued that such exclusions make the target unnecessarily complex and reduce its effectiveness, and will continue to press ministers to reduce the number and scale of exclusions; and
- provide advice, if requested, to the Office for Tax Simplification and the Advisory Body on the standards and scrutiny we apply, with respect to their work on Administrative Burdens, to ensure that the quality of evidence and analysis supporting the government assessments of the burdens of tax administration is consistent with the quality presented elsewhere.

In support of the Government's commitment to ***encourage departments to set out the wider impacts of regulation in their impact assessments, rather than focusing only on those impacts that are relevant to the BIT***, the RPC will:

- set out proportionate standards for evidence underpinning assessment of impacts, including wider societal impacts;
- comment explicitly in its opinions on the quality of evidence and analysis presented by departments on the wider societal impacts of regulation, and on the fitness for purpose of the assessment as a whole for supporting ministerial decision-making, as well as assessing the contribution [of regulation] to the BIT; and
- monitor the progress of departments in presenting robust and proportionate evidence on the wider societal impacts of regulation, and report on this progress in the RPC's next annual report. For some time we have been concerned, that departments fail to adequately assess the wider impacts of regulation. The RPC has consistently pressed for the opportunity to red-rate on this area, and to notify RRC that much analysis across government is lacking with respect to wider societal impacts.

- The RPC's experience of the effectiveness of encouragement alone in improving the quality of departments' analysis – for example on small business impacts – has been that it is not always effective. If our monitoring suggests that it is necessary, we will press for more rigorous measures to improve standards in this area.

In support of the Government's commitment to ***set out clear monitoring and evaluation plans for the most significant regulatory measures, which will support them in learning from the experience of implementing such measures***, the RPC will:

- comment explicitly in its opinions on the quality of monitoring and evaluation plans presented by departments alongside their estimates of the impacts of regulation;
- work with the cross-government evaluation group to help ensure that the next edition of the Magenta Book (which sets out standards for government evaluation) offers appropriate guidance for regulatory evaluations, and that our standards are consistent with those set out in the Magenta Book;
- monitor the progress of departments in presenting appropriate and proportionate monitoring and evaluation plans, and report on this progress in the RPC's next annual report. Again, we are concerned that encouragement alone may not drive sufficient improvement, and we may consider alternative ways to improve standards in this area; and
- continue to press for departments to produce high-quality post-implementation reviews of significant measures from the last parliament; we recognise that a light-touch approach is appropriate to smaller measures and welcome moves by some departments to review groups of such measures within thematic reviews of policy areas. We are, however, extremely concerned that we have seen very few reviews of measures with the largest impacts from the last parliament, such as the large measures relating to pensions.

We require convincing that the high cost of assessing detailed impacts of the complete stock of regulation is commensurate with the benefit, especially given past experience in this area, and with a background of limited resources. Nevertheless we will support the Government wherever required in their commitment to improve their understanding of the existing stock.

Efficiency and proportionality

We support the Government's commitment to ***develop a more efficient approach to assessing progress towards achieving the BIT*** as we recognise that it is appropriate to ensure that limited analytical resources are deployed proportionately in support of ministerial decisions relating to proposals having the greatest impact. Nevertheless, we are concerned that efficiency should not be conflated with a reduction in scrutiny, or with a focus only on the validation of the BIT. In particular, measures that qualify for the fast track are not subject to RPC scrutiny in areas such as the SaMBA. This is a concern for the RPC, given the overall low quality of SaMBAs. We will continue to press for robust, proportionate, properly validated evidence to be considered by ministers in their decision-making and to be presented the benefit of stakeholders (especially during consultation stage) and of Parliament. The RPC will:

- set out explicitly our expectations of proportionate analysis so that departments and stakeholders have a clear understanding of what degree of effort is appropriate to decisions at different scales;
- comment explicitly in our opinions on the proportionality of the analysis presented, and on where presenting less information might have been proportionate and appropriate;
- continue to work with departments to ensure that our scrutiny processes for their highest-priority measures (and especially of deregulatory measures) do not delay unnecessarily their work;
- continue to work with departments to ensure that they take appropriate advantage of flexibilities in the regulatory scrutiny system (for example, by completing appropriate analysis of primary legislation to reduce the effort required at secondary legislation);
- continue to improve our dialogue with departments so that recurring issues are identified and dealt with outside the formal submission process and so that departments can raise their concerns about proportionality and process with us; and
- increase the transparency of the regulatory process, and availability of the advice in RPC opinions, by publishing them more regularly to enable others to draw on relevant or related cases more effectively. This will support and drive greater transparency of departmental IAs with a view to enabling stakeholders to use or comment on the evidence in IAs more effectively. From March 2017, we propose to publish RPC opinions regularly, and within a reasonable period of having issued them to departments, unless there is some specific reason why this would not be appropriate – for example if a department is reconsidering its policy approach, or if to do so would pre-empt Government’s publication of its own policy.

Introduction of regulator actions to the BIT

The Small Business, Enterprise and Employment Act 2015 (as amended by the Enterprise Act 2016) will bring 44 additional national regulators⁶ into scope of the BIT⁷. The requirements of the Act are that regulators in scope of the BIT must publish:

- a list of all qualifying regulatory provisions (QRPs), with a figure showing the economic impact on business of each QRP (a BIT score). In practice this list will be generated through the submission of assessments of the impact of qualifying measures (BIT assessments) to the RPC.

Regulators are also encouraged to publish:

- a summary list of non-qualifying regulatory provisions (NQRPs) that have come into force, ceased to be in force, or are changed during the BIT annual reporting period (NQRP summary).

The RPC is therefore required to:

⁶ Non-statutory regulators were already subject to the 2015 Act. Some regulators had already been involved in the Better Regulation System voluntarily.

⁷ The full list of regulators is listed in Annex 2.

- scrutinise BIT assessments for qualifying measures implemented by regulators and validate that the estimated impact on business has been robustly calculated

The RPC has been asked by the Government to:

- provide an assurance statement on NQRP summaries indicating that we have reviewed the summary and are content that all of the measures are non-qualifying for the purposes of the BIT.

This responsibility builds on the RPC's wider remit of providing independent scrutiny of the economic impacts on business of qualifying regulatory provisions, and verification of the status of non-qualifying regulatory provisions. Most regulators have not engaged previously with the better regulation system, and, the RPC has not seen very many regulator submissions to date. Under the Enterprise Act 2016, however, relevant regulators are required to publish their first list of QRPs and NQRP summaries by 9th June 2017. These submissions will cover all regulatory provisions implemented to date during the current parliament (i.e. between May 2015 and May 2017). This means that the RPC is expecting to see a significant increase in the number of regulator submissions over the next three months, and is working with regulators and BRE on the timing of the submissions to ensure that it is able to process this expected increase within the timescales necessary for the BIT-reporting process.

A more detailed description of the performance of regulators is set out in section 6. We note that, to date, the quality of early regulator submissions is encouraging. We hope that this performance will be maintained as the analysis of regulatory activity becomes more routine.

Post-implementation reviews

The RPC has a crucial role in the scrutiny of post-implementation reviews (PIRs) for previously enacted measures. Departments have, since 2010, been required to commit to post-implementation review for certain classes of legislation⁸ and our expectation is that for other significant policies there should be non-statutory review as part of a good evidence based policy making process.

Reviewing implemented policies has several high-level purposes, including:

- ***improving government's understanding of how regulatory interventions work in practice by learning from experience.*** For example, by reviewing the extent to which previous policy interventions achieved the desired outcomes, government will have a stronger evidence base when making decisions on future policy design. A PIR provides an opportunity to understand what worked well and what could be improved;
- ***gathering evidence to assess the on-going need for intervention.*** For example, it may be appropriate to test whether technological changes have changed the need for Government to intervene. Also, collecting more real world evidence may

⁸ Policies that contain a review clause, or an equivalent administrative commitment to carry out a review. PIRs are not required for non-legislative measures.

highlight where further interventions are required, or whether non-regulatory actions are now appropriate;

- ***Improving the use of evidence and analysis in appraisal.*** A PIR provides an opportunity to revisit estimates and assumptions used in original impact assessments. This opportunity should be used to understand whether there are lessons to learn and apply in future assessments. For example, whether initial assessments were subject to significant optimism bias, or whether external factors that were not considered in the initial IA restricted the objectives of the measure;
- ***understanding the unintended consequences of specific regulations, and where interventions have produced unexpected results.*** For example, the PIR on The Supply of Machinery (safety) Regulations 2008.

The findings of a PIR should support a decision to scrap, renew, replace or amend regulation. This will take into account a range of factors, for example whether there is evidence that there is still a problem that requires government intervention, and the extent to which any transitional costs of amendment or change would produce sufficient benefits to justify incurring them.

During the period of this report, the RPC has received and commented upon 28 post-implementation reviews, most of which have related to low-impact measures and have, therefore, been fairly light-touch reviews. Overall, departmental performance on these smaller reviews has been strong; 27 (96%) were fit for purpose. We have also seen one or two strong examples of larger reviews, for example, the PIR on the Postal Services Act 2011.

We are, however, concerned that we have received fewer reviews of large measures than we would have expected at this stage of the Parliament, and that for 45 large measures where there was no review clause included in the legislation, no review has yet been conducted. These are listed in Annex 3.

Analysis of the post-implementation reviews submitted to us to date is set out in section 5.

Introduction of the RPC'S initial review notice process

To accelerate the resolution of any red-rated issues when concerns emerge early in the scrutiny process, the RPC introduced, in early 2016, a revised process for highlighting concerns via issue of an initial review notice (IRN). The analytical requirements for a fit for purpose submission have not changed, and most assessments that receive an IRN are normally improved and subsequently rated as fit for purpose. In the analysis that follows, assessments that received an IRN are treated as being not fit for purpose at first submission, as an IRN must include at least one point that would be red-rated if not corrected.

Departments have previously expressed concerns that we may misinterpret their analysis and award an inappropriate rating of not fit for purpose. The IRN system offers an opportunity to address these concerns; since October 2016 we have encouraged departments and regulators to challenge any concerns of factual

accuracy with respect to RPC opinions or notices as soon as possible. Specific and evidence based feedback from departments is a key element in improving our scrutiny. To date, we have received no such challenges.

Since the introduction of the IRN process, the number of assessments that were rated as being fit for purpose at first submission has declined considerably. It is possible that behavioural incentives within the better regulation system have changed as a result of the process, either because departments view IRNs as being less significant than red-rated opinions, or because the RPC feels able to impose IRNs more readily. There is some anecdotal support for both explanations, and we will take steps to test whether such explanations are valid.

5. Overall departmental performance

Fit for purpose ratings

During 2016, the RPC scrutinised 318 first time submissions and rated 72% as fit for purpose; the remainder received IRNs or red-rated opinions⁹. During the first year of RPC scrutiny in 2011, the percentage of fit for purpose opinions was below 60%. However, this can be attributed to both departments and the RPC familiarising themselves with the introduction of the framework. Over the period between 2012 and 2015 the percentage of fit for purpose opinions remained relatively consistent, with an average of 80%. There were also some periods when the percentage of fit for purpose ratings rose above this average. Nonetheless, the overall decline is a cause for concern. Some potential drivers of this decline are discussed in detail below. However, we note that during quarter four of 2016 there was a reversal of this trend, with an increase in the percentage of fit for purpose ratings.

Despite the overall trend in fit for purpose ratings, there are some positive examples of departments maintaining consistently high standards in the overall quality of submissions, and some helpful good practice examples of proportionate, innovative or robust assessments drawn from across government.

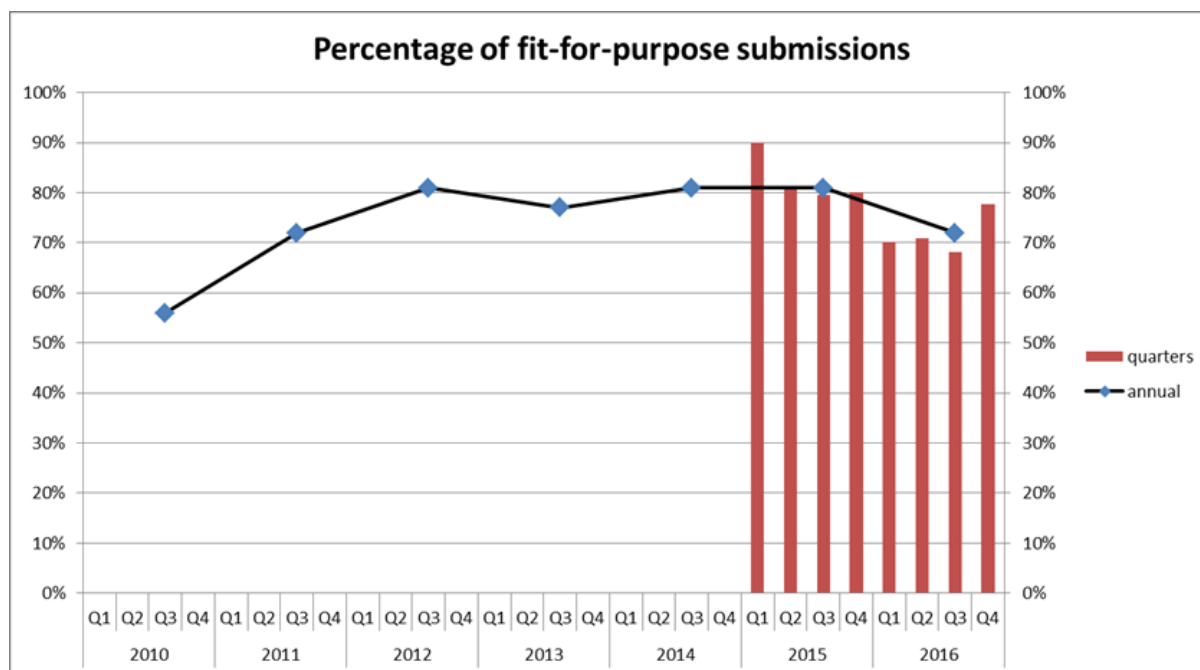
While the proportion of cases that are not fit for purpose when first submitted has increased, in the vast majority of these cases departments' responses to concerns raised by the RPC means that the assessments are subsequently rated fit for purpose. Of the cases that were rated not fit for purpose as first submitted, the majority of cases (92%) were rated as fit for purpose following revisions by the department. This means that 99% of submissions are rated fit for purpose either as originally submitted or following the department's response to scrutiny by the RPC.

Potential drivers of declining departmental performance

There are a number of possible explanations for the decline in quality. It is likely that it is caused by a combination of these, with some factors affecting certain cases or departments more significantly than others.

- ***Changes to the better regulation framework and rules:*** implementation of the Small Business, Enterprise and Employment Act 2015 has resulted in a number of changes to the framework. The legal basis for the business impact target required the previous administrative rules to be defined and specified in a different manner, or through using different language. There were also changes to the method of rounding figures. It is possible that these uncertainties are diverting departmental resources away from a focus on quality in the short term. Additionally, members of the committee and secretariat have also familiarised themselves with the new framework and acknowledge that there was a period of learning within the RPC.

⁹ The percentage of fit for purpose opinions is calculated by expressing the number of IRNs issued to departments as a percentage of the total number of opinions issued to departments. An IRN issued to a department is when the subsequent RPC opinion (fit for purpose, or not fit for purpose) has been issued.



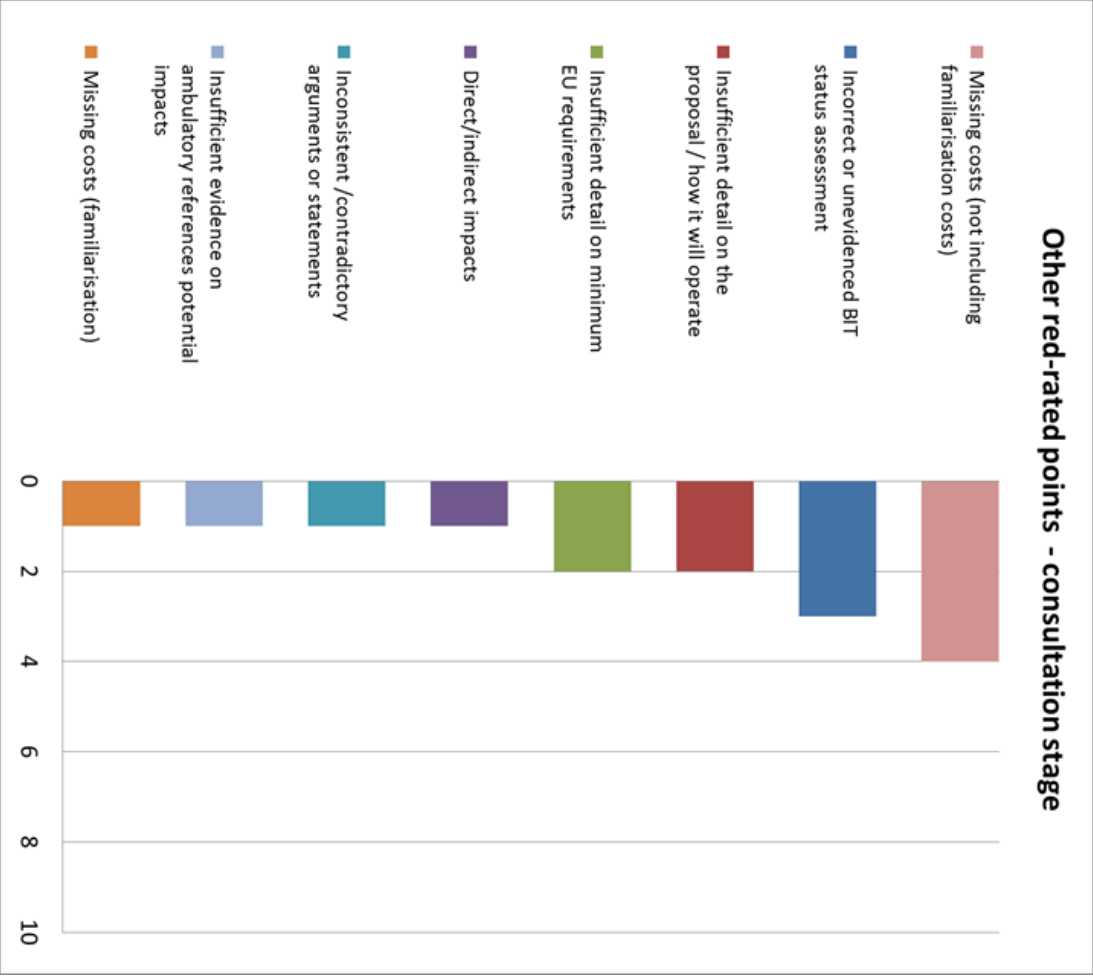
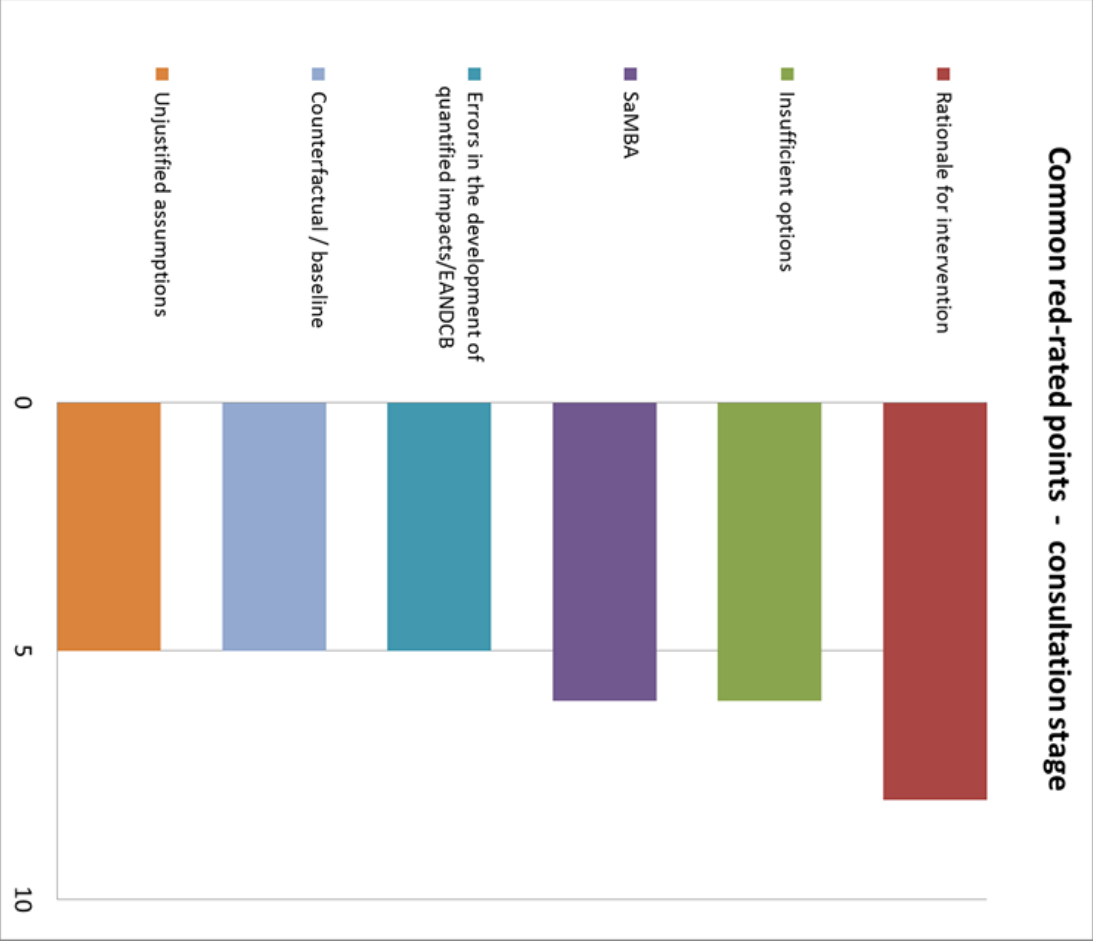
- ***Resource or time pressures within departments:*** feedback from departments suggests that, with departmental resources under increasing pressure, fewer resources are available to support the development of high quality impact assessments. This is compounded by a number of submissions produced under significant time constraints. The RPC has received a number of requests for reduced turnaround times, and has provided a quick service when possible.
- ***A shift in priorities away from better regulation and effective appraisal:*** the RPC is aware that in some of the departments performing less well impact assessments are viewed as something that is either a bureaucratic exercise or a post-hoc rationalisation of policy decisions. Therefore as available resources have reduced, departments may have chosen to decrease resources committed to the better regulation area. Furthermore, analysis may be carried out by staff with little experience in writing impact assessments and without sufficient analytical expertise or support. These factors may have contributed to the overall decline in performance.
- ***Initial review notice (IRN) process:*** the RPC introduced a process that is intended to be more proportionate in how red-rated issues are resolved, with a view to reducing the negative impacts on policy-development timetables for issues that departments are able to resolve. However, this has reduced the risks to, and penalties for, departments producing poor quality analysis. These penalties include the delay for policy teams in receiving a fit for purpose opinion, which has been reduced with the introduction of IRNs. Anecdotally there are some indications that this reduces the incentive to 'get it right' first time, as departments view IRNs as being less significant than Red ratings. We do not understand this view and will continue to explore the risks with the approach, especially with poorer performing departments. For the poorest performers we will consider removing access to the IRN process.

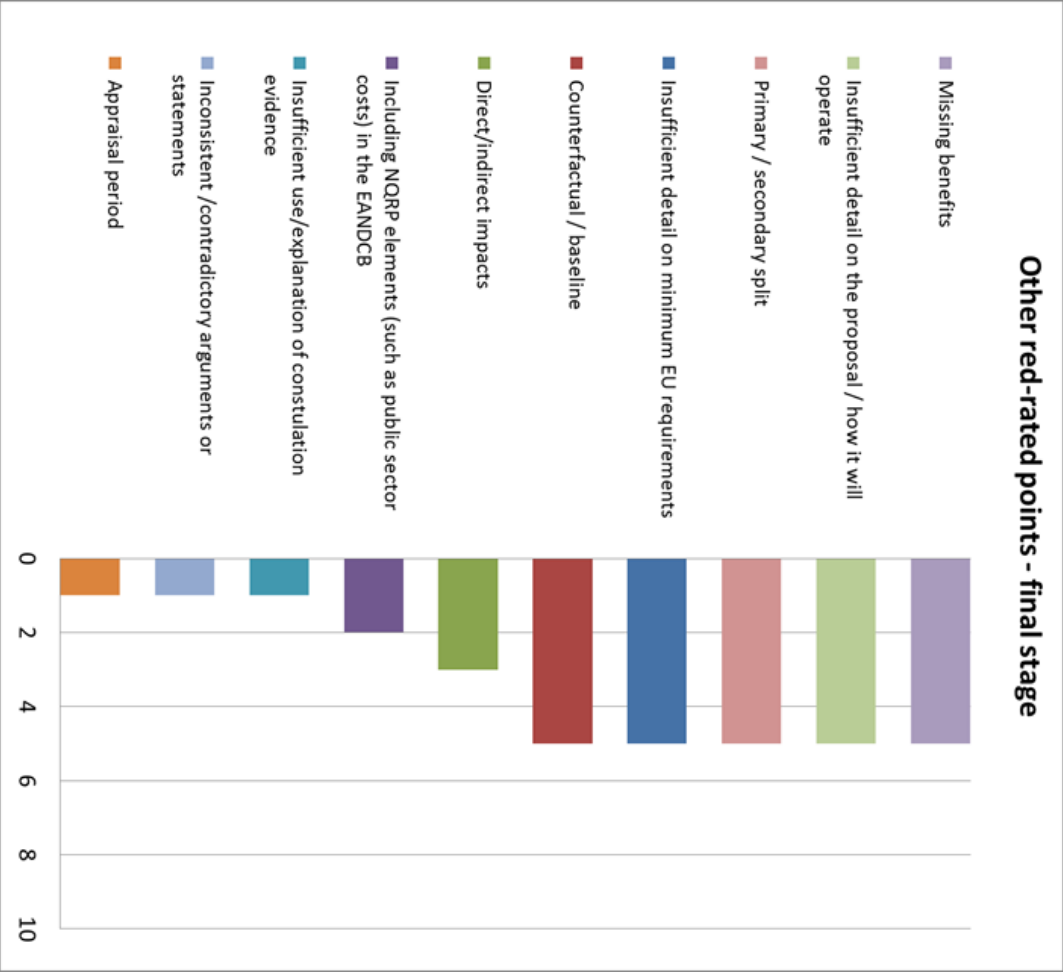
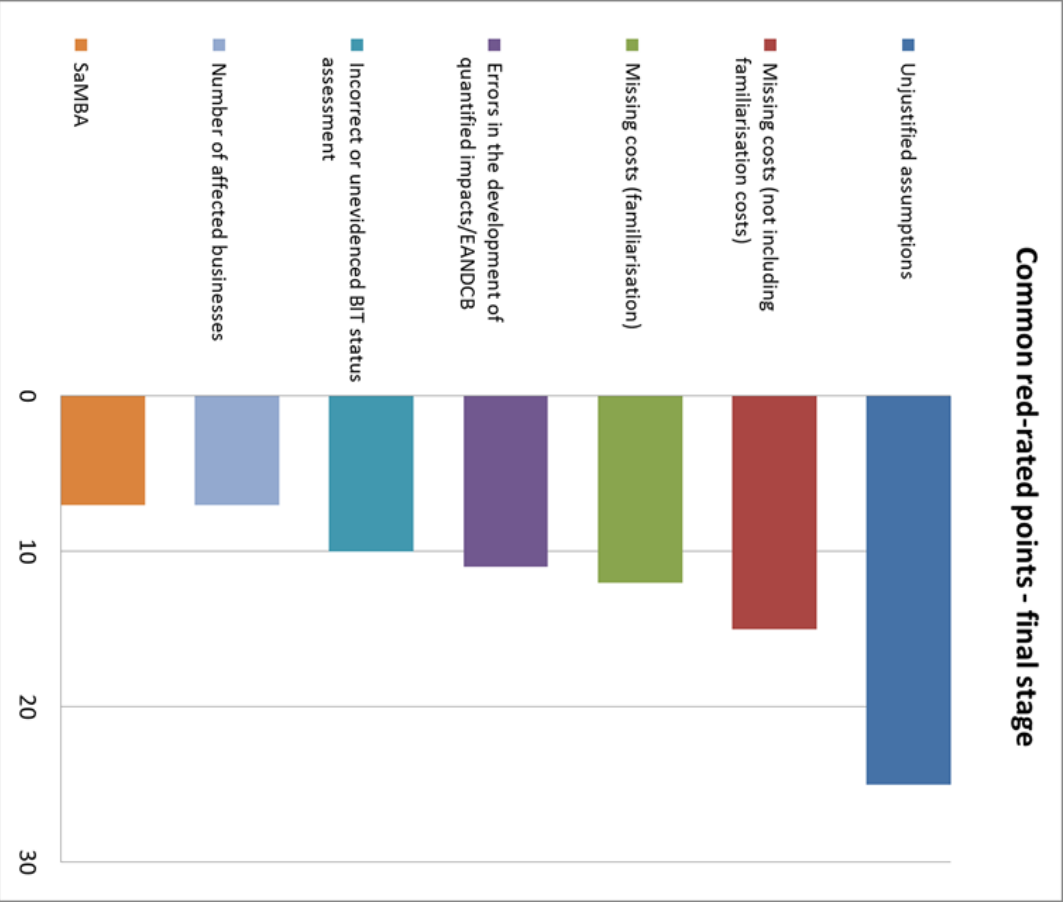
- As noted above, a further potential factor could be that the IRN process has changed the behaviours of the RPC, for example where an IRN is issued for a case that would have previously been rated fit for purpose.
- ***Major political changes and impacts on policy directions:*** the forming of a new Government in 2015, and the subsequent changes in the political landscape during 2016, has, in some cases, resulted in changes in policy direction, or has introduced new timetable pressures and requirements. This has placed new or different pressures on the analytical capability within departments. In some cases this has led to inconsistencies within impact assessments as the analysis has been reshaped to consider a different range of options.

Thematic analysis of red-rated issues across government

During 2016 the RPC issued 87 opinions or IRNs that highlighted issues resulting in a submission being not fit for purpose; of which 53 related to final stage submissions, 23 to consultation stage submissions, 4 to post implementation reviews and 7 to non-qualifying regulatory provision confirmations.

A significant proportion of red-rated assessments included more than one concern. Therefore, there are more red-rating 'reasons' than there are red-rated submissions.





The key themes emerging from red-rated submissions this year are:

- **Missing costs:** submissions failing to identify all the potential costs on business;
- **Lack of evidence to support unjustified assumptions:** assumptions are made without supporting evidence from stakeholders, or explanation as to why this evidence is not available, and at how the assumptions have been arrived;
- **Small and micro business assessment (SaMBA):** failure to include a SaMBA, or failure to assess adequately the impacts on small and micro businesses,
- **Lack of clarity regarding how a proposal will work or how calculations have been made;** and
- **BIT status:** for example the misclassification of a proposal as a NQRP or QRP, often due to the existence of gold plating.

These themes are considered in more detail below, accompanied by suggested actions for the RPC and recommendations for departments and BRE.

Missing costs: identification of costs at consultation stage and monetisation at final stage

Over a third of not fit for purpose submissions (35 of the 87) involved a failure to appraise or identify all the relevant costs. While this is a more significant issue at final stage, a quarter of consultation stage IRNs related to missing costs. Departments are not expected to quantify costs fully at consultation stage, providing a full discussion of the potential costs and their scale is important for an informed consultation process – and will aid the monetisation of impacts at final stage.

Disappointingly, 14 cases received IRNs following a failure to identify familiarisation costs. Familiarisation costs should be discussed in all IAs, if only to provide a qualitative explanation of why the department expects them to be negligible.

To improve performance in this area:

- the RPC aims to restructure the Government Economic Service (GES) IA training course to cover missing costs; and
- the RPC will provide links in IRNs to the specific guidance on identifying costs, for example in the RPC case histories.

Lack of evidence to support unjustified assumptions

A significant number of submissions receiving IRNs failed to provide sufficient justification for the underlying assumptions. Some submissions did not provide sufficient justification for the approach taken to gathering evidence and/or did not support assertions regarding disproportionate effort. The majority of these issues could be identified through better quality assurance, proof reading or peer review processes within departments.

All submissions, regardless of size, should explain how estimates and assumptions have been derived. There will always be uncertainty in appraising potential impacts

of policy proposals, and we accept that it may be disproportionate to devote much resource to seeking evidence in some cases. We do, however, expect all submissions to provide sufficient discussion of why the estimates and assumptions used are the most suitable and how they have been reached.

To improve performance in this area:

- the RPC will provide annotated examples of submissions with unjustified assumptions, suggesting how the IA could be improved and what would be required to achieve a fit for purpose rating in relation to specific areas; and
- the RPC will also provide examples of IAs with good sections containing well justified assumptions, to aid departments in future assessments.

BIT status

7% of IRNs issued related to incorrect assessment of the BIT status. For example, this could relate to the assessment of a proposal that includes elements of gold plating as a non-qualifying regulatory provision of EU origin.

However, this trend may be driven by difficulties in applying the rules-based framework, which has recently changed significantly, to a very diverse range of proposals and policies. While the RPC would like to see fewer cases making what are, in some instances, avoidable mistakes, if submissions contain robust and meaningful analysis then small, framework-related errors are not of a significant concern to us.

To improve performance in this area:

- the RPC plans to run an RPC roadshow – visits to departments. The RPC will engage with departments and highlight where they can go for help and advice. For framework issues, such as incorrect assessment of the BIT status, pointers to the available guidance may be required.

Small and micro business assessment (SaMBA)

For significant regulatory measures coming into force after March 2014, there has been a requirement for departments to include a SaMBA in the IA. Departments must assess whether there are likely to be disproportionate impacts on smaller businesses, with the default position being that such businesses should be exempt from regulation. Where departments feel that it is not appropriate to exempt smaller businesses, the IA needs to justify this conclusion and discuss potential mitigating actions and activities

Too often departments fail to provide basic evidence such as the proportion of small and micro businesses that will be affected by the regulation. Furthermore, there are very few examples where departments provide further analysis on the potential policy costs of any exclusions or mitigations – often relying on an argument that universal application of policy proposals is essential to the policy objective. The RPC

would like to see more analysis and evidence presented on the potential trade-offs between smaller business impacts and the policy objectives. Over the last three years, the RPC has taken a relatively light touch, transitional approach to scrutinising SaMBAs. In the last RPC report, we pledged to take a more rigorous approach, yet the quality of SaMBAs has not increased notably over the period. Therefore we will continue to increase the level of scrutiny of SaMBAs in the future.

To improve performance in this area:

- the RPC will provide examples of good SaMBAs, to aid departments in future assessments;
- the RPC will also provide annotated examples of submissions with poor SaMBAs, suggesting how the IA could be improved and what would be required to achieve a fit for purpose rating in relation to this area; and
- the RPC aims to adjust the GES IA training course to cover SaMBAs.

Lack of clarity regarding how a proposal will work or how calculations have been made

This theme brings together a number of issues already discussed, such as missing costs or unjustified assumptions. If it is not clear how a proposal would work, or how the estimates relate to the requirements, it is difficult to be confident that the appraisal is robust. Issues of this type could be driven by a number of factors, including a lack of proof reading or effective quality assurance. It is apparent that, in the development of IAs, many officials across a department or government can be involved – this may lead to inconsistencies.

To improve performance in this area:

- the RPC will provide annotated examples of submissions which lack clarity or contain poor explanation. The annotations will suggest how the submission could be improved and what would be required to achieve a fit for purpose rating.

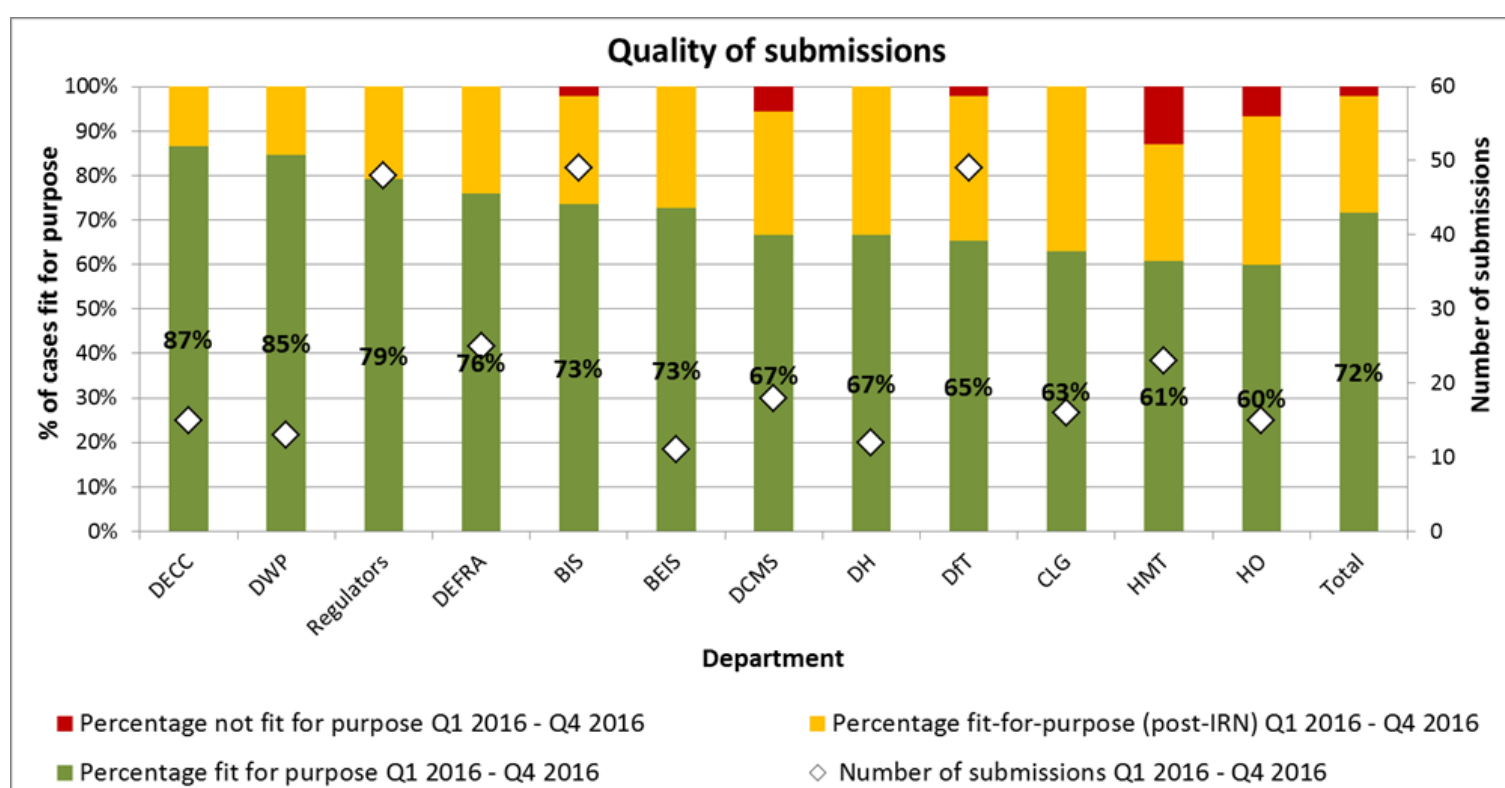
Thematic recommendations

- We encourage departments to make better use of meetings with the RPC prior to submitting an IA for scrutiny, particularly when departmental officials are not familiar with the RPC scrutiny process, and have not submitted many impact assessments to the RPC.
- We encourage departments to share good practice examples and evidence bases with each other.
- Departments should submit an enquiry to the RPC if they are unsure of whether a measure is qualifying or non-qualifying.

Departmental performance – impact assessments and business impact target validation assessments

There is a significant variation between departments on the consistency of the quality of IAs. This ranges from a small number of departments with very high performance, to a number with around 65% of submissions rated fit for purpose.

The graph below illustrates each department's average percentage of fit for purpose ratings for 2016 and number of submissions. It also shows the percentage of submissions that received fit for purpose opinions following IRNs, and the percentage of submissions that received Red-rated opinions following IRNs, for each department. Departments with a small number of submissions have been omitted from the graph below as we feel that the sample size is insufficient to draw conclusions.



Capability improvement activity by the RPC

The decline in the overall performance of departments over the last year, with the percentage of fit for purpose ratings falling from 81% to 72%, suggests that more needs to be done to improve the capability of departments. Building capability is intended to improve the quality and evidence based of impact assessments to aid better policy making. The graph¹⁰ above shows that, within the overall figure, the performance of individual departments varies widely. The RPC will help improve

¹⁰ For the purposes of highlighting the variation in performance between departments, this graph includes the results of former-BIS and former-DECC, due to the difference in the percentage of fit for purpose opinions between the two departments, prior to merging into BEIS.

departmental capability through a general approach across departments, and a targeted approach for lower performing departments. The RPC will also work with individual departments in order to improve their capability.

The RPC has undertaken a number of activities to help departments. For example:

- An RPC portal¹¹ has been established, containing key documents and information for departments and regulators.
- The RPC case histories document has been published on the RPC portal, which provides practical guidance and case study examples, of how the RPC has interpreted the better regulation framework methodology.
- The RPC meets departmental better regulation units (BRUs) and senior analysts on at least a quarterly basis to discuss departmental performance and other issues.
- The RPC delivers training, such as the GES IA training, and runs workshops for economists and BRUs.
- The RPC has disseminated to departmental BRUs methodological decisions that set new precedents on how cases are treated.

Analysis of departmental performance

This section sets out data and insights on the performance of individual departments¹² as well as highlighting specific issues with departments' submissions; these have been red-rated points or areas for improvement in IRNs. The RPC wishes to highlight these issues as areas of improvement that individual departments may wish to consider as they plan to improve their analysis.

Departments have been divided¹³ into:

- the highest performing departments
- those with average performance
- those with a lower percentage of fit for purpose ratings
- those with a small sample size.

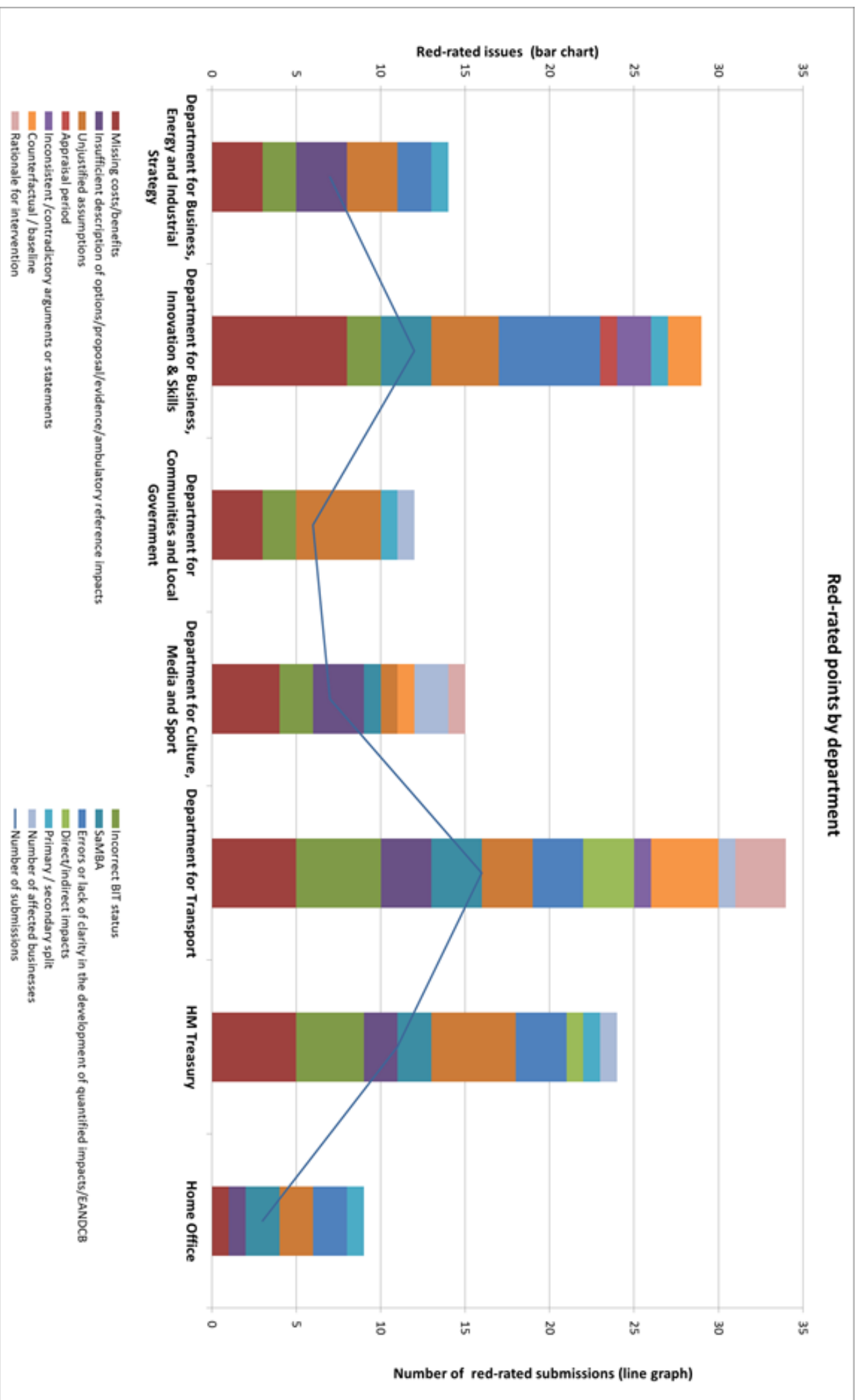
The graph below presents the red rated issues for those departments that have received five or more red-ratings during 2016. It is important to note that for a number of departments the volume of red-rated submissions is too small to allow us

¹¹ <http://regulatorypolicycommittee.weebly.com/>

¹² As DECC and BIS are no longer departments in their own right they have been excluded from the individual departmental analysis in this section. Analysis of BEIS, the department created through the merging of ex-DECC and ex-BIS, has been included. The RPC notes that DECC was previously one of the highest performing departments in Government.

¹³ The 'highest performing departments' are the three departments with the highest percentages of fit for purpose ratings where we have received more than 10 submissions. The 'departments with the lowest percentage of fit for purpose ratings' are the three departments with the lowest percentages of fit for purpose ratings where we have received more than 10 submissions. The departments with 'average performance' are remaining departments where we have received more than 10 submissions. The departments with a 'small sample size' consist of departments with 10 or fewer submissions in 2016.

to identify common issues. Even for departments with larger volumes, the numbers of cases that were not fit for purpose at first submission are relatively small. Thus the issues identified as common red-rated points may relate to a relatively small number of cases; they should be seen as areas where a department's red-rated points are concentrated rather than ones where a department is consistently at fault.



Highest performing departments

Department for Environment, Food and Rural Affairs

DEFRA is one of the higher performing departments in government, building on the improvements made during the previous parliament. It maintains a consistently high quality level of submissions.

Issues identified as red-rated points in IRNs

- Missing costs, including familiarisation costs
- BIT status

Good practice example

The 'water quality and agriculture: basic measures' IA provides a clear and comprehensive assessment of the impacts, and in particular provides a good example of how evidence and data from complex models can be presented and described within an IA, for example by providing a description of the model used, its underpinning assumptions, and providing expert stakeholder commentary on the quality of the model.

Health and Safety Executive

HSE is a regulator but has voluntarily engaged with the better regulation process through successive governments, and has consistently achieved a very high proportion of fit for purpose ratings. Despite the fact that HSE has submitted a small number of cases relative to other departments in 2016, we wish to highlight HSE's continually strong performance and high quality analysis in this report. In 2016, all of HSE's six submissions were rated fit for purpose by the RPC. The regulator continues to set out complex proposals in a clear and detailed way, while using consultation effectively to strengthen its evidence base and test assumptions.

Good practice examples

The 'Basic Safety Standards Directive (BSSD)' consultation stage IA provided a detailed assessment of a major EU directive that included many individual requirements. In order to inform its assumptions, HSE conducted an extensive engagement with hundreds of stakeholders from affected sectors. The IA also provided well-evidenced, quantitative assessment of the elements of the proposal where the expected impact was greatest, and of the areas where HSE intended to exceed the minimum requirements of the directive.

The 'Review of the Freight Container (Safety Convention) Regulations 1984' final stage IA provided a thorough discussion of the proposal and potential costs, using an informative approach to explain how assumptions were tested during consultation. The RPC welcomed this explanation, which also set out how stakeholder responses were incorporated into the final analysis, noting that HSE's approach was a transparent and 'good practice' use of consultation evidence.

Department for Work and Pensions

The RPC has received 13 submissions from the Department, with only two cases receiving not fit for purpose opinions at first submission, resulting in IRNs. In those cases there were relatively few concerns per submission, suggesting relatively isolated and narrow issues, rather than a more widespread lack of quality within the submissions.

Issues identified as red-rated points in IRNs

- Familiarisation costs
- Insufficient justification of assumptions

Good practice example

The 'abolition of short service refunds in occupational pension schemes' validation assessment was well drafted and clearly structured. In particular, the Department provided a clear narrative of the policy development process, highlighting how the latest data fed into the policy and appraisal processes. The IA also provided clear explanation of the assumptions used in its analysis.

Actions for highest performing departments

- ***Mentor system*** - as DEFRA, HSE and DWP are higher performing departments, they could consider becoming mentors of poorer performing departments, if there is enthusiasm on both sides for such a system. The RPC understands, however, that the introduction of a mentoring system will depend on departments' resource constraints.

Departments with average performance

Department for Business, Energy and Industrial Strategy

The department for Business, Energy and Industrial Strategy (BEIS) is the largest regulating department in Whitehall, responsible for 24% of all the submissions seen by the RPC in 2016. It was formed following the merger of the Department for Business, Innovation and Skills and the Department of Energy and Climate Change (DECC). BEIS has managed to achieve 76% fit for purpose ratings at first submission, which is above the Whitehall average. As BEIS submit a high volume of measures to the RPC, this translates to 18 proposals that received IRNs at first submission.

Common issues identified as red-rated points in IRNs

- Insufficient justification of assumptions
- Missing costs/lack of clarity in EANDCB calculations
- Familiarisation costs

Good practice example

The 'Reports on Payment Practices Regulations 2017' IA was clearly argued and well-evidenced, dealing clearly and effectively with one of the more challenging elements of the practical application of the better regulation framework, in relation to the treatment of direct and indirect effects.

Department for Culture, Media and Sport

The department's performance across the year reflects the government wide average, with around 30% of submissions receiving not fit for purpose ratings at first submission, resulting in IRNs. One case received a red-rated opinion following an IRN. As with wider departmental performance, there was a degree of declining performance across the year. This trend appears to have been driven by some of the time pressures associated with legislative timetables.

Common issues identified as red-rated points in IRNs

- Missing costs
- BIT classification
- Range of sources of evidence and assumptions

Department of Health

The department's percentage of fit for purpose ratings is slightly below the cross-Whitehall average. However, we note that this is based on a relatively small sample size – 12 submissions during 2016. It should be noted that three of the four not fit for purpose submissions included two or more red-rated points each. Given the sample size, the RPC has not been able to provide a good practice example. The RPC recommends that DH continues to arrange pre-submission meetings for significant IAs. The department has made full use of these meetings in the past year.

Common issues identified as red-rated points in IRNs

- Insufficient justification of assumptions
- Insufficient evidence to support estimates
- Lack of clarity in the IA

Department for Transport

The department's percentage of fit for purpose ratings lies below the departmental average, at 65%. DfT's submissions have received a relatively significant proportion of all IRNs issued by the RPC this year (17 out of a total of 87 IRNs), often with a couple of areas of concern per submission. One case received a red-rated opinion following an IRN. Yet there has been an improvement in the quality of submissions in the second half of the year, reflecting work within the department to provide clearer support and tools to policy teams.

Common issues identified as red-rated points in IRNs

- SaMBA
- Calculation of the EANDCB
- Missing costs
- Lack of evidence to support unjustified assumptions

Good practice example

The IA on 'extending the scope of compulsory motor insurance' dealt clearly and effectively with a complex and potentially confusing EU regulatory proposal. This included explaining a legally complicated counterfactual. The presentation of the counterfactual had been developed further by the department following early

engagement with the RPC, and demonstrates the benefits of early engagement on complex proposals.

Actions for departments with average performance

- *Engagement with the IRN process* - we believe that more engagement with the initial review process would benefit a number of departments. We recommend post-IRN meetings for policy teams and careful consideration of the red-rated points within IRNs when teams work on resubmitting cases. The RPC will also aim to provide within IRNs specific links to relevant sections of its guidance.
- *Workshops on methodological matters* – the RPC will offer workshops on specific areas. For example, SaMBA workshops will outline good practice for conducting small and micro business assessments.
- *Examples of IAs* - the RPC plans to compile examples of high quality IAs to assist policy teams writing assessments. Examples of high quality sections of IAs may also be valuable, for example, a section containing robust analysis of familiarisation costs.

Lower performing departments

Department for Communities and Local Government

Over the reporting period, DCLG had a higher proportion of submissions receiving a not fit for purpose rating on first submission than many other government departments. The RPC notes, however, that in the second half of the year there was a significant improvement in DCLG's performance, with all their submissions receiving fit for purpose opinions. Red-rated submissions generally contain issues in only one or two areas, rather than raising a range of concerns, though these have tended to be relatively significant single issues. Furthermore, DCLG has published an appraisal guide explaining the economic framework and assumptions and metrics used in the economic appraisal of DCLG policies. The RPC welcomes these changes.

Common issues identified as red-rated points in IRNs

- Insufficient justification of assumptions
- Missing costs

Good practice example

The 'extending of the mandatory licensing of Houses in Multiple Occupation (HMOs)' consultation stage IA provided a detailed assessment of the expected impacts, including providing more quantification of impacts than is usual in consultation stage IAs.

Home Office

A significant proportion of Home Office cases scrutinised by the RPC have included red-rated issues – six out of fifteen cases were considered not fit for purpose as first submitted¹⁴, and therefore received IRNs. One case received a red-rated opinion

¹⁴ It should be noted that four of these IAs related to the Investigatory Powers Bill, to which the RPC responded as a whole.

following an IRN. However, the department is engaging with the RPC earlier in the policy-development process to identify potential areas of difficulty.

Common issues identified as red-rated points in IRNs

- Assessment of costs to business
- SaMBA

Good practice example

The 'Criminal Finances Bill - power to obtain further information' final stage IA provided a well-evidenced unit cost assumption, using information from a range of sources including consultations and an independent study. The IA also included useful sensitivity analysis, exploring the potential effects on business impacts if the department's key assumption deviated from its best estimate. As the appraisal had to use a proxy variable to estimate the impacts, the additional assurance provided by the use of sensitivity analysis was welcomed by the RPC.

HM Treasury

The Treasury is the only department to have more than one case that, following its response to RPC concerns contained within an IRN, were not improved sufficiently to warrant a fit for purpose opinion. Across government during 2016 there were seven such cases, of which three were from the Treasury. As a result, the RPC has not been able to provide a good practice example. The RPC notes that the Treasury has been particularly affected by the changes to the framework relating to NQRPs, as a large proportion of their submissions are NQRPs rather than QRPs. The RPC aims to work closely with the BRU to improve understanding and communication between both parties.

Common issues identified as red-rated points in IRNs

- SaMBA
- Calculation of the EANDCB
- Insufficient justification of assumptions
- BIT classification

Actions for lower performing departments

The actions introduced above for departments with average performance, and:

- **surgeries** - the RPC feels that some departments would benefit from RPC and BRE surgeries. These would be targeted towards policy teams at the outset of the IA process. The RPC would offer advice on the appraisal process, application of the framework, methodological issues and the level of analysis expected;
- **feedback loop with senior analysts/chief economists** – to highlight specific, recurring weaknesses and areas for improvement;
- **annotated examples of IAs** – we also plan to provide annotated examples of submissions that highlight areas in need of improvement and detail how to develop these areas; and
- **mentor system** - if there is demand, the RPC would like to implement a system that pairs better performing departments with those that have areas for improvement. Mentors would be able to give advice and share good practice from the perspective of their department. The RPC understands, however, that the

introduction of a mentoring system will depend on departments' resource constraints.

Departments with small samples

Department for Education

The RPC has seen relatively few submissions from the Department, and as such it is difficult to draw many conclusions or themes from the red rated points. There are, however, a couple of areas that could be improved which in subsequent submissions could be sufficient to have a material impact on the figures, and hence lead to red-ratings. Given the small sample size, the RPC has not been able to identify a good practice example.

Issues identified as red-rated points in IRNs

- Lack of clarity in the IA
- Insufficient assessment of options

Ministry of Justice

The RPC has also considered relatively few submissions from the Ministry of Justice. One case received an IRN at first submission, and the rest were rated fit for purpose. Given the small sample size, the RPC has not been able to provide a good practice example. However, a consistent theme across the department's assessments was that there were some minor mistakes and omissions from the calculations of the EANDCB.

Actions for departments with small samples

- ***Mentor system*** – departments that produce few IAs may benefit from being paired with other departments that regularly submit assessments to the RPC. The RPC understands, however, that the introduction of a mentoring system will depend on departments' resource constraints.
- ***Pre-submission meetings*** - the RPC recommends that these departments arrange pre-submission meetings for significant IAs to discuss potential problems and methodology issues.

6. Departmental performance – post implementation reviews

Over the past year the RPC has seen a limited number of PIRs – 28 during 2016, of which 17 related to EU measures that have statutory review clauses. By the end of this parliament we are expecting to see 348 statutory reviews. During the previous parliament there were a further 45 measures that had significant impacts on business but that did not include statutory review clauses. Given the importance of learning from significant policy proposals the RPC believes that these measures should be reviewed with a level of rigour commensurate with their impact. Departments that have submitted PIRs for RPC scrutiny have gained insights and learning that will be valuable for future reviews, and their internal monitoring and evaluation processes. Yet it is clear that departments are finding it challenging to produce PIRs according to the framework and are not undertaking PIRs as intended, to the planned timescales.

A significant proportion (86%) of cases seen to date have been rated fit for purpose. However, the cases seen have been relatively low impact and accordingly have light touch analysis. Although a relatively high proportion of PIRs seen by the RPC were rated fit for purpose, the RPC has not seen many ‘good’ PIRs.

Department	Number of submissions	Total expected volume during the parliament
Department for Transport	10	93
Regulators ¹⁵	6	32
Department for Business, Energy and Industrial Strategy (inc. ex-BIS and ex-DECC)	4	59
Department for Environment, Food and Rural Affairs	4	87
Department for Culture, Media and Sport	1	4
Department of Health	1	17
Department for International Trade	1 ¹⁶	0
HM Treasury	1	28
Department for Communities and Local Government	0	9
Cabinet Office	0	1
Department for Education	0	3
Department for Work and Pensions	0	5
HM Revenue & Customs	0	1

¹⁵ See Annex 2 for the list of relevant regulators

¹⁶ The RPC did not expect to see this PIR.

Home Office	0	6
Ministry of Defence	0	1
Ministry of Justice	0	2
Total	28	348

Types of cases

Annual net impact (£m)	Number of submissions
Under +/- 1	19
Between +/- 1 and +/- 10	5
Over +/- 10 ¹⁷	4
Total	28

Recommendation	Number of submissions
Renew	22
Amend	5
Expire (allow sunset clause to take effect in 2018)	1
Total	28

Origin	Number of submissions
EU	17
Domestic	10
International	1
Grand Total	28

Common red-rated points

- ***RPC unable to judge whether the regulation has achieved its objectives:*** unclear explanation of original intentions (e.g. European Electronic Communications Regulatory Framework and The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended)).
- ***Issues with the use of evidence for evaluating the measure's impacts:*** lack of discussion of the evidence or justification of the ***proportionality*** of the department's approach. (e.g. The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended)).

¹⁷ The Control of Asbestos Regulations 2012, the Postal Services Act 2011 (Parts 3 and 4), the Undertakings for Collective Investment in Transferable Securities Regulations 2011 and The Vehicle Drivers (Certificate of Professional Competence) Regulations 2007

- ***Lack of evidence to support initial assumptions or to justify recommendations*** (e.g. The Energy Information Regulations 2011).

Areas for improvement

- ***Low survey responses*** and limited discussion on how departments have adjusted for this (e.g. The Merchant Shipping (Port State Control) Regulations 2011).
- ***More evidence from industry stakeholders/bodies in assessing whether actual initial expected costs were in line with expectations*** (e.g. The Undertakings for Collective Investment in Transferable Securities Regulations 2011).
- ***Overall clarity of submissions*** could be improved, to aid stakeholders and decision-makers in understanding whether objectives have been met.

Positive examples

- ***Proportionate approach based on scale of the regulation*** (e.g. The Plastic Kitchenware (Conditions on Imports from China) (England) Regulations 2011).
- ***Gathering data from a range of stakeholders*** including main industry associations and the variety of businesses affected; referring to these responses in conclusions. (e.g. The Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997; The Vehicle Drivers (Certificate of Professional Competence) Regulations 2007).
- ***For EU measures, the Department sought information from other member states*** regarding implementation and meeting the regulatory requirements. (e.g. EU oil stocking directive).
- ***Clear justification of recommendations*** (e.g. Part 3 of The Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005).
- ***Comparison of overall costs and benefits on a relatively large measure*** (e.g. The Control of Asbestos Regulations 2012).
- ***Assessment of the accuracy of the assumptions made in the original IA for a relatively large measure*** (e.g. the Postal Services Act 2011 (parts 3 and 4)).

Recommendations to departments on delivering better PIRs, and proposed RPC actions

- The PAC report on better regulation highlighted that departments often fail to plan for evaluation when introducing regulatory measures. The RPC will work with BRE to ensure that departments include sufficient monitoring and evaluation plans in impact assessments, and subsequently follow these plans.
- The RPC will highlight in its opinions the importance of planning reviews of measures and especially monitoring and evaluation, and will comment on review plans provided in impact assessments.
- The RPC recommends that departments consider how they could improve their consultation response rates for PIRs, and will draw out best practice from departments such as HSE where consultation plans are especially strong.
- The RPC will publish new guidance on proportionality, which should improve departments' understanding of what evidence is required in a fit-for-purpose PIR.

7. Overall regulator performance

The following analysis is based on RPC opinions issued on regulator submissions during 2016. The RPC has commented on 33 regulator submissions, of which 19 were opinions on qualifying regulatory provisions (QRPs) and 14 were on non-qualifying regulatory provisions (NQRPs).

At this stage, we estimate that we have seen only 8% of the submissions from regulators that we expect to see¹⁸ before the June 2017 BIT reporting deadline. We are expecting to see in the region of 310 QRP submissions¹⁹. Given the low number of submissions to date, the data analysis and commentary below is presented at an aggregate level. The findings at this stage are based on what we have seen already, and the picture could change significantly once we begin to scrutinise more submissions.

Both the RPC and BRE continue to receive requests from regulators for more guidance and support, which suggests that regulators are still learning about the requirements of the BIT. Many regulators, however, have been attending workshops and training run by BRE and the RPC, and using supporting guidance when writing BIT assessments.

Quality of regulator submissions to date

- Of the 19 QRP submissions, 17 (89%) were fit for purpose as first submitted.
- Of the 14 NQRP submissions, only 8 (57%) were fit for purpose as first submitted – although this may be because NQRP submissions are a new requirement under the framework. As a result, the standards required for NQRPs have developed since the changes were made to the framework. More recent NQRP submissions have been of higher quality²⁰, as regulators have learned from experience, and the RPC has clarified its standards.

Rating/submission type	QRP(%)	NQRP(%)
Fit for purpose as first submitted (green-rated)	89	57
Not fit for purpose as first submitted (red-rated)	11	43

QRP submissions:

While the fit for purpose ratings for QRP submissions are high, it is important to understand that this is in the context of a ‘soft launch’ for regulators whereby the RPC has been providing additional support, including pre-submission meetings for low impact measures and informal advice and support. In the future, as the workload increases, the RPC’s ability to work as closely with regulators will decline.

¹⁸ Internal caseload forecasting based on evidence provided by regulators. We estimate that we should receive around 310 QRPs and 69 NQRPs annually.

²⁰ Though we note that the requirements placed on regulator submissions are slightly less stringent than those placed on departmental submissions.

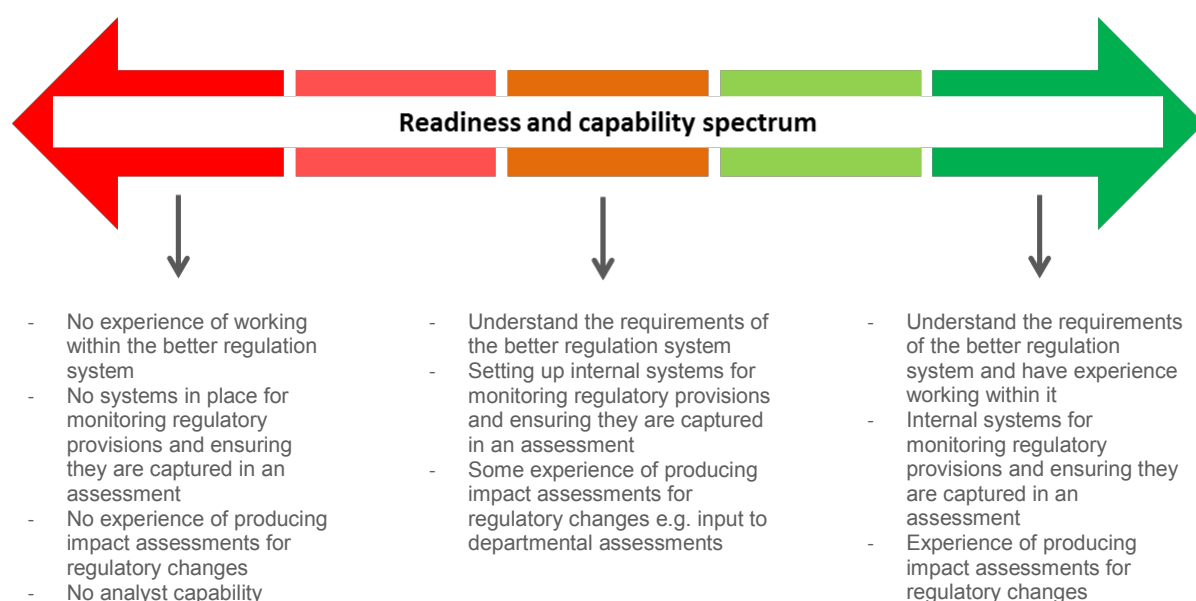
Furthermore, this conclusion is based on a fairly small sample. It could be that these submissions are the more straightforward cases that regulators have completed more quickly. The majority of the QRP submissions we have received to date (58%) covered measures with either no net impact or net impacts which round to zero (the BIT requires figures to be rounded to the nearest £0.1m).

NQRP submissions:

NQRP submissions have a poor fit for purpose rating overall. However, this is in the context of a number of early first submissions, before some good practice in relation to NQRP summaries was developed and shared. The more recent NQRP summaries have been of a higher quality.

Commentary on regulator capability

The regulators in scope of the BIT vary considerably in scale, scope and nature. For example, to illustrate this variance, the Foods Standards Agency and the Health and Safety Executive have historically been treated as ‘departments’ for the purposes of the One-in, Two-out account and have a lot of experience in writing impact assessments. Similarly, the Financial Conduct Authority has historically presented cost-benefit analysis for its proposals and has been able to build on this experience in developing impact assessments. In contrast, other regulators, such as the Office for Rail and Road, have recently submitted to the RPC their first BIT assessments.



Given finite resources, the RPC’s engagement and capability plan for regulators seeks to be flexible enough to address the range of needs of regulators at various ends of the readiness and capability spectrum

The RPC has consulted regulators on the key areas of support that the RPC could provide, and is focussed on addressing these specific areas in the first instance.

What is the current support for regulators?

As noted above, both the RPC and BRE have been working with regulators to ensure that they understand the requirements that come with being in scope of the business impact target. Amongst other things, the RPC offers:

- a regular update slot and Q&A session at BRE's monthly regulator workshops;
- jointly deliver, with BRE, BIT assessment training courses;
- participation in the regulator appraisal subgroup;
- the RPC secretariat offers introductory meetings with regulators;
- the RPC chairman has met a number of the regulator chairmen and CEOs;
- pre-submission meetings;
- the RPC secretariat offers to review methodology notes and NQRP classifications in draft; and
- the RPC secretariat responds to ad hoc queries submitted to the Regulatory Enquiries inbox, such as whether a measure will qualify for the BIT.

We commit to providing these resources whilst new regulators familiarise themselves with the process. In the long-term, however, this approach may not be sustainable and the RPC will take a proportionate approach to supporting regulators.

There is also a number of regulator specific resources available on the RPC website and portal:

- RPC guidance for regulators;
- RPC contact details for regulators.

RPC-identified challenges/issues to be aware of

It is useful to flag some areas where we increasingly expect there to be challenges, or of which regulators should be aware. These are:

- Assessments relating to the implementation of measures that have been covered in IAs for departments.
- Appraising the potential benefits of targeted guidance (not just looking at the familiarisation costs, but considering the regulatory impact of guidance).
- NQRP summaries – now that the committee has seen a number of these they are starting to form an expectation about what a 'good' NQRP summary looks like.
- Stakeholder exhaustion and issues in encouraging stakeholders to provide evidence in response to consultations.

RPC plans for engagement and building capability in 2017

It is important to highlight that the RPC is expecting around 300 additional submissions from regulators before the end of March 2017. This is a significant increase in our caseload, and will limit the ability of the RPC to provide much of the additional support required by regulators in the first half of the year.

For this reason, some of the proposed activities may not commence until after the June 2017 BIT reporting deadlines have passed. RPC priorities for working with regulators are as follows:

Short-term:

- Ensure that regulators feel able and ready to complete and submit BIT assessments and NQRP summaries by mid-April 2017 (final deadline).
- Ensure that regulators submit quality BIT assessments and NQRP summaries as far as possible, with good 'fit for purpose as first submitted' rating.

Medium-term:

- Help to embed knowledge and capability within regulators by providing guidance and information as required.
- Help regulators to build and improve upon their evidence base to make future BIT assessments more straightforward.
- Help maintain a high 'fit for purpose as first submitted' rating.

Longer-term

- Efficient and less resource intensive completion of assessments;
- Maintain good 'fit for purpose' ratings with less effort and less resource.

Future engagement and building capability

As noted above, we consulted regulators on what specific engagement and capability building activities would be of most use to them to ensure that any RPC plan is aligned as closely as possible to their needs²¹.

RPC short-term building capability actions:

- ***Facilitate a buddy system*** – where a regulator is struggling with a particular issue, we will try to signpost it to a regulator that has more experience or has dealt with a similar issue. This differs from the mentoring system described above for Departments in that we expect the engagement to be shorter-term and more strongly focused on a single issue.
- A move away from broad guidance trying to address overall topics and focus more on ***one-to-one support*** (there are constraints on the resource available to do this) via an open question surgery that will run alongside BRE's monthly workshops.
- Flag regularly ***common red-rated issues*** and how to avoid them.
- Work with BRE to ***improve communication*** with regulators.
- ***Disseminate good practice examples*** - provide advice on what good practice currently looks like, and draw on examples of submissions that are good (subject to agreement from relevant regulators).

²¹ Given that there are 69 regulators, it is clear that the RPC cannot satisfy all of their individual needs at this time

8. Validated impacts of regulatory changes

Measures that have come into force during the BIT annual reporting period May – Dec 2016

Currently there is no requirement for departments to inform the RPC when a measure comes into force. Responsibility for ensuring completeness of the business impact target belongs to the Better Regulation Executive. However, as part of the RPC's case tracking we will identify when cases, for which an opinion has been issued, have come into force.

Through using publicly available official information, as well as our internal database; we are in the process of developing a system of tracking when measures come into force, as well as other metrics, more robustly. We aim to develop a system that tracks where measures are in the legislative process, and whether they require RPC scrutiny. This can then be used for analysis in future RPC reporting.

In this reporting period we are aware of 47 measures that have come into force. 35 of these were qualifying regulatory provisions and 12 were non-qualifying. The Government will confirm the status of the business impact target account, and the RPC will provide the validation of figures that contribute to this account.

During this reporting period, we have been asked to validate one regulatory provision and one change to guidance²² that correct errors in the implementation of policy from the previous parliament, where those errors mean the analysis at the time of introduction did not fully cover the policy proposal (for example where the errors were not appraised properly in the first place because they were not part of the policy).

In our view, the scoring of the benefits from such corrections undermines the credibility of the BIT, as it could create the perception that there has been more deregulation/beneficial regulation than is the case. As a result of methodological changes and in particular the inclusion of regulators' activities within the BIT, it is already the case that the accounts for the last two parliaments cannot be added together to provide an overall picture of the effects of regulation on business. We will set out in detail all such measures and their impact on the BIT in our annual reports.

The most significant validated qualifying regulatory provisions that have come into force are:

Aligning phased increases in auto-enrolment pensions - EANDCB of -£512 million (time limited measure for two years)

²² *Heat networks scope guidance 2016* (which clarifies that Houses of Multiple Occupation are not in scope of the regulations on heat networks), and *The Pensions Act 2014 (Contributions Equivalent Premium) (Consequential Provision) and (Savings) (Amendment) Order 2016* (which corrects an error that would have required CEP payments to be made for a number of pension scheme members who were not intended to be captured by the requirements)

Current legislation requires employers to pay minimum contributions for eligible employees who remain automatically enrolled into a pension scheme. The minimum contribution rate for employers is currently set at one per cent of qualifying earnings. This is due to rise to two per cent in October 2017 and three per cent in October 2018. The proposal is to align the timetable for increasing minimum contributions with the start of the tax year. Planned increases in October 2017 and October 2018 will be postponed until April 2018 and April 2019, respectively.

Speeding up cheque payments (cheque imaging) – EANDCB of -£103.8 million

The measure is to remove the right of a bank to demand that it is presented with a physical cheque before deciding whether to honour it. Removing this right would allow banks to render an electronic image of a cheque as equivalent to the original paper instrument for the purpose of presentment- thereby allowing banks to accelerate the cheque clearing process.

Extending and simplifying the Primary Authority scheme – EANDCB of -£25.8 million

The Primary Authority scheme enables businesses to have a single source of advice and point of contact for their local regulatory system. The measure will either simplify or remove some of the eligibility criteria for the scheme, opening it to a wider range of businesses. This will make it easier for businesses operating in a single local authority area to receive tailored advice and for smaller businesses to obtain advice through coordinating bodies (such as trade associations).

The RPC is aware of 12 non-qualifying regulatory provisions that have come into force, the most significant are:

EU directive on non-financial reporting - EANDCB of £11.6 million

The measure is to transpose into UK regulations the EU directive on non-financial reporting. The directive places additional requirements, in relation to anti-bribery and diversity reporting, on large quoted and unquoted companies with more than 500 employees.

EU audit and reporting - EANDCB of £24.7 million

The measure transposes into UK regulations an amended EU directive on statutory audits of annual and consolidated accounts. The measure contains qualifying and non-qualifying elements

Update on measures from the previous BIT reporting period

At the time of the last BIT report (June 2016), there were 20 measures included that were not validated by the RPC. Of those 20 measures, three have since been validated.

Department	Measure	RPC-validated BIT score - £mil
BIS	Bank Accounts for Bankrupts	Green (EANDCB: £0.0 million)

DECC	Enforcement of Energy Efficiency Directive (Heat networks)	Green (EANDCB: £90.7 million)
DfT	The Vehicle Drivers (Certificate of Professional Competence)(Amendment) Regulations 2015	Confirmed and validated (NQRP)

However, there are still 17 measures that are yet to be validated. These must be validated within the current BIT reporting period, as departments have a statutory obligation to attain validation of these measures.

Department	Measure
DCLG	Permitted development rights for the change of use of offices, light industrial buildings, and launderettes
DECC	Smart metering: Advanced meter exemption end-date
	Further content for the Smart Energy Code and associated licence conditions (a GB industry code)
	Electricity and Gas (Standards of Performance) (Suppliers) Regulations 2015
	Maximising Economic Recovery of Offshore UK Petroleum: Strategy
HO	Guidance on the use of Human Materials in Animals
	The Harm Benefit Analysis Process
	Use, Keeping Alive and Re-use
	Re-homing and Setting Free of Animals
Defra	Reform of Defra Guidance
	Smarter Data
DH	The Health and Social Care (Safety and Quality) Act 2015 (Commencement No. 1 and Transitory Provision) Regulations 2015
CO	Charities (Protection and Social Investment) Bill
DfT	Safety of Navigation: Offshore Renewable Energy Installations (OREIs) - Guidance on UK Navigational Practice, Safety and Emergency Response.
	Street Works: the 2007 permit scheme regulations as amended in 2015
	Department for Transport (C) Guidance
	Marine and Coastguard Guidance

Annexes

1. Members of the Regulatory Policy Committee

- Michael Gibbons CBE (Chairman)
- Jonathan Cave
- Alexander Ehmann
- Nicole Kar
- Jeremy Mayhew
- Martin Traynor OBE
- Sarah Veale CBE
- Ken Warwick

2. Regulators in scope of the BIT

Statutory (under consideration to be brought into scope under Enterprise Bill)

Architects Registration Board

Assay Offices (Sheffield, Birmingham, London, Edinburgh)

British Hallmarking Council

Care Quality Commission

Charity Commission for England and Wales

Civil Aviation Authority

Coal Authority

Commissioners of Irish Lights (in relation to their regulatory activity in Northern Ireland)

Registrar of Companies (England and Wales), Registrar of Companies (Scotland)

Competition and Markets Authority

Equality and Human Rights Commission

Environment Agency

Financial Conduct Authority

Financial Reporting Council

Food Standards Agency

Forestry Commissioners

Gambling Commission

Gangmasters and Labour Abuse Authority

Groceries Code Adjudicator

Health and Safety Executive

Higher Education Funding Council for England

Historic Buildings and Monuments Commission for England

Homes and Communities Agency

Human Fertilisation and Embryology Authority

Human Tissue Authority

Information Commissioner

Marine Management Organisation

Natural England

Northern Lighthouse Board

Office of Communications

Office of the Immigration Services Commissioner

Office for Fair Access

Office for Nuclear Regulation
Office for Standards in Education, Children's Services and Skills
Office of Qualifications and Examinations Regulation
Office of Rail and Road
Office of the Regulator of Community Interest Companies
Office of Gas and Electricity Markets
Oil and Gas Authority
Payment Systems Regulator
Pensions Regulator
Security Industry Authority
Sports Grounds Safety Authority
Traffic Commissioners for Great Britain
Trinity House Lighthouse Services
Water Services Regulation Authority

Non-statutory (already in scope under SBEE Act 2015)

Animal and Plant Health Agency
Animals in Science Regulation Unit
Claims Management Regulation Unit
Drinking Water Inspectorate
Driver and Vehicle Standards Agency
DVLA
Employment Agency Standards Inspectorate
Fish Health Inspectorate, CEFAS
Insolvency Service
Intellectual Property Office
Land Registry
Maritime and Coastguard Agency
Medicines and Healthcare Products Regulatory Agency
National Measurement and Regulation Office
Rural Payments Agency
Vehicle Certification Agency
Veterinary Medicines Directorate

3. List of large measures (EANDCB over +/- £10m) – statutory review

Measures with statutory review clauses

	Department	Measure	EANDCB
1	DWP	The Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010; The Employers' Duties (Implementation) Regulations 2010; The Employers' Duties (Registration and Compliance) Regulations 2010; The Employers' Duties (Implementation) (Amendment) Regulations 2010	£2,699.80
2	DfT	The Vehicle Drivers (Certificates of Professional Competence) (Amendment) Regulations 2013	-£23.94
3	DWP	Construction (Design and Management) Regulations 2015	-£19.60
4	DWP	The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012	£18.00
5	DCLG	The Energy Performance of Buildings (England and Wales) Regulations 2012	-£13.20
6	BIS	Working (Part 8, Children and Families Bill) - to extend the right to request flexible working to all employees	£10.30

Measures without statutory review clauses

	Department	Measure	EANDCB
1	DWP	Private pensions uprating	-£3,342.00
2	DECC	Energy Company Obligation	-£1,265.00
3	DECC	Green Deal and accompanying the Energy Company Obligation (ECO1)	£1,265.00
4	DECC	ECO 1	-£1,265.00
5	DECC	ECO 2	£661.00
6	BIS	The Companies and Limited Liability Partnerships (Accounts and Audit Exemptions and Change of Accounting Framework) Regulations 2012	-£304.26
7	DEFRA	Simplification of the contaminated land regime.	-£132.00
8	DWP	The Employers' Duties (Implementation) (Amendment) Regulations 2012	-£130.96
9	DCLG	The Review of Local Technical Housing Standards	-£96.20
10	HMT	FCA cap on the cost of Payday Loans	£91.30
11	BIS	Collective Redundancies - To reduce gold-plating of the EU Collective Redundancies Directive	-£66.43
12	DECC	Automatic access rights to underground land	-£65.09
13	DfT	Increasing the agricultural tractor and trailer speed and combination weight limits.	-£57.00
14	DECC	Petroleum Model Clauses (Amendment) Order 2014	-£45.80
15	DECC	Smart Metering (Smart Energy Code delivered in a number of regulatory tranches over considered period)	£36.00
16	DCMS	The Categories of Gaming Machine (Amendment) Regulations 2014	-£34.00
17	HMT	EU Transparency Directive (TD) (early implementation of the extractive country by country reporting requirements)	£33.60
18	HO	The Scrap Metal Dealers Act 2013	£30.40

19	BIS	The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011	-£29.20
20	DfT	Removal of the requirement to return Insurance Certificates if a policy is cancelled mid- term	-£28.69
21	DEFRA	Agricultural Wages Board	-£26.30
22	DWP	The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2011	-£26.20
23	HO	Reform of the student immigration system (Tier 4)	£25.50
24	BIS	The Copyright, Designs and Patents Act 1988 (Amendment) Regulations 2014 (Archive and preservation)	-£24.40
25	DCLG	The Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2013 [amendment of Section 106 appeal procedure]	-£24.00
26	DfT	The Vehicle Drivers (Certificates of Professional Competence) (Amendment) Regulations 2013	-£23.94
27	HO	Protection of Freedoms Act 2012 – (c. 9) Schedule 9 – Consequential amendments Part 4 – Vehicles left on land (CHAPTER 2 Vehicles left on land)	£21.73
28	BIS	The Companies Act 2006 (Amendment of Part 25) Regulations 2013	-£19.20
29	DWP	Charges in qualifying A-E qualifying schemes	£18.80
30	DCMS	Gaming Machines Circumstances of Use Regulations 2015	£17.00
31	BIS	The Financial Services Act 2012 (Consumer Credit) Order 2013	£16.00
32	HMT	The Financial Services Act 2012 (Consumer Credit) Order 2013	£16.00
33	HO	Alcohol Licensing Measures	£16.00
34	DfT	Master Workboat less than 500 Gross Tonnage Certificate of Competency	-£14.88
35	DH	Tobacco Advertising and Promotion (Display) (England) Regulations	£14.79
36	DCLG	The Energy Performance of Buildings (England and Wales) Regulations 2012	-£13.20
37	BIS	Shared Parental Leave	£12.69
38	DfT	Raising the speed limit for HGVs over 7.5t on single carriageway roads	-£11.83
39	DCLG	The Building Regulations (Amendment) Regulations 2012 [amendment to Part P (Electrical safety in dwellings)]	-£11.80
40	BIS	The Co-ordination of Regulatory Enforcement (Enforcement Action) (Amendment) Order 2014 - extension of Primary Authority	-£11.30
41	MoJ	Whiplash	£11.89
42	HMT	The Prospectus Regulations 2011	-£11.00
43	DWP	The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013	-£10.70
44	BIS	Working (Part 8, Children and Families Bill) - to extend the right to request flexible working to all employees	£10.30
45	HMT	Mutual Societies (Electronic Communications) Order	-£10.20

4. List of validated measures in scope of the BIT

Measure	EANDCB (qualifying regulatory provision, £ million)	EANDCB (non-qualifying regulatory provision, £ million)	BIT score
Tackling exploitation in the labour market	0.0	-	0.0
Compulsory audit of data brokers	-	-	-
Amendment to the Detergents Regulations 2010	-	0.0	-
EU directive on non-financial reporting	-	11.6	-
The Education (Master's Degree Loans) Regulations 2016	1.9	-	9.5
Postgraduate master's loan enabling regulations	-	-	-
12 month exemption of EU licensed rail passenger services from a provision of the Consumer Rights Act 2015	-	-	-
Amending the Cremation (England and Wales) Regulations 2008 - infant cremations	0.0	-	0.0
The Criminal Justice Act 1988 (Offensive Weapons) (Amendment) Order 2016 (Zombie knives)	0.1	-	0.5
Aligning the phased-increase in minimum automatic enrolment contributions with the start of the tax year	-512.0	-	-
Amendments to the Private Water Supplies Regulations 2009	0.0	0.0	1024.0
Changes to Education (Pupil Registration) (England) Regulations 2006	0.7	-	0.0
IRN (20 June) Amendment to the National Minimum Wage Regulations 2016 - increase in national minimum wage rates	-	0.0	3.5
The Open Internet Access (EU Regulation) Regulations 2016	-	0.0	-
EU Market Abuse Regulation	0.0	0.0	-
Nuisance calls and caller line identification	0.0	-	0.0
Pubs Code etc. Regulations	-0.1	-	0.0
Delivering a compliance opportunity Child Support Agency clients	0.0	-	-0.5
Electronic Communications Code	0.0	-	0.0
A new fee structure for official receiver services	-	-	-
Designation Of Statutory Harbour Authorities With The Power To Give Harbour Directions	0.0	-	0.0
The Insolvency Rules 2016	-5.7	-	-28.5
EU Audit Regulation and Directive	0.0	24.7	0.0
Dangerous Goods in Harbour Areas Regulations 2016 (Review of Dangerous Substances in Harbour Areas Regulations 1987 (DSHAR))	0.0	-	0.0
Air Navigation Order review	-0.2	-	-1.0
Companies House Fees Regulation	0.0	-	0.0
New Legislative Framework - transposition of related EU	-	16.9	-

directives for eight industrial sectors: simple pressure vehicles; electromagnetic compatibility; non-automatic weighing instruments; measuring instruments; lifts and their safety components; ATEX; low voltage; pressure equipment; directives			
Compulsory purchase reform - Phase 2	0.0	-	0.0
Level of Nuclear Third Party Liability	0.0	-	0.0
Insolvency Red Tape Challenge Package	-12.0	-	-60.0
Cheque Imaging	-103.8	-	-519.0
Transposition of Recast Marine Equipment Directive (2014/90/EU)	-0.1	0.0	-0.5
Riot Compensation Bill	2.6	-	13.0
UKCS Environmental Regulations: Fees and Charges	-	-	-
Repeal of section 52 of the Copyright, Designs and Patents Act 1988: revised transitional arrangements and related legislative changes	0.0	-	0.0
Broadband cost reduction directive	-	0.0	-
Food for Specific Groups	0.0	-	0.0
Immigration Bill: tackling existing current accounts held by illegal migrants	0.2	-	1.0
Simplification and expansion of the Primary Authority scheme	-25.8	-	-129.0
Extension of the Business Impact Target	0.6	-	3.0
Increases to the limits of liabilities under the IMO Convention on Limitation of Liability for Maritime Claims	0.0	0.1	0.0
Introduction of a statutory notification scheme for imported firewood into England and Scotland	0.0	-	0.0
The Control of Electromagnetic Fields at Work Regulations 2016	-	1.7	-
Preventing misuse of the term 'apprenticeships' in relation to unauthorised training	0.0	-	0.0
Trade Union Bill	-2.6	-	-13.0