

News story: Michael Gibbons, Chair of the RPC talks robust scrutiny

The Government will shortly report on its plans to make the Better Regulation system more efficient for Whitehall Departments, as it promised in response to the PAC's report of 12 October 2016. Continuous improvement of the regulatory framework is, of course, important – but as the RPC noted in our six-monthly report, efficiency should not be conflated with a reduction in quality-assurance of the policy process, nor with a narrow focus on the Business Impact Target.

Indeed, both the PAC and the NAO expressed very strong support for the work of the RPC, and did not propose any reduction in its independent scrutiny at an early stage. The RPC's discussions with leading business groups and other major stakeholders including the CBI, the BCC, the EEF, the IoD, the FSB, and the TUC, confirm that our existing role is strongly supported – especially at this time, when the major regulatory changes associated with Brexit are being considered and therefore regulation as a priority issue for business and Parliament is moving back up the agenda. We therefore feel it is important to retain a focus on appropriate scrutiny at an early stage.

Because late-stage validation is legally mandated under the SBEE Act, past reviews of the system have tended to focus it more and more tightly on the Business Impact Target (BIT) and the requirements of the Act. It is easy to see the higher-value early-stage scrutiny as an easy target for efficiency savings – to the detriment of the system as a whole. But there are a number of examples where we are told that the scrutiny of the RPC at consultation stage has driven changes in approach as a result of better consideration of the evidence and impacts. That, in our view, is how the system should work, and we would argue strongly for a system where scrutiny is focused at an early stage, rather than on pure validation of BIT figures.

The RPC agrees wholeheartedly with the principle of proportionality – Departmental efforts and our scrutiny should both be focused on the most significant and controversial regulations; but our efforts should be proportionate to the actual impact of the measure rather than the BIT impact. To continue to focus the efforts of Whitehall on the narrow confines of the business impact target (BIT) is to miss the point badly, and under the current framework a validation impact assessment, can – and often does – focus purely on the BIT rather than the true impacts of regulation. In addition, it typically does not consider the feasibility of alternatives to regulation, nor trade-offs between different impacts across multiple options, nor impacts on the smallest businesses. The Small and Micro Business Assessment, carried out at a stage when policy is being formed, is seen as a valuable contribution which support small business. Early scrutiny rather than pro-forma validation after decisions are made is key to ensuring these points are properly explored.

Examples of measures which could be excluded from broad, early, effective

scrutiny under a system focused only on the BIT and the requirements of the SBEE Act include:

- measures which have significant societal impacts, but do not have large quantifiable direct impacts on business e.g. Trade Union measures or gender pay gap reporting
- measures with large impacts which net off to a small overall figure such as MoT test regulations
- measures where the impacts are large but unquantifiable e.g. counter-terrorism measures; regulations around space and satellite market development; laws around the use of autonomous vehicles.

Exempting such measures from proper scrutiny would also create an incentive for Departments to declare that they cannot assess impacts fully – a move away from the improvements in quality of appraisal we have seen since 2010. We know, from discussions spanning several years with stakeholders, that such exclusions would be seen by them as a clear reduction in transparent and independent scrutiny at this vital time.

Another area where we would urge caution is the quality-assurance of evidence underpinning measures which the Government has chosen to exclude from the BIT. In the past, these have included the National Living Wage, National Minimum Wage, and large measures around systemic financial risk, where the Government is making significant decisions and should do so based on strong evidence. They are also measures where Parliament, businesses, and civil society organisations have had a strong interest in ensuring that the Government presents that evidence.

Whilst the RPC supports continued review of the framework, we will argue for a system where eligibility for light-touch scrutiny ensures that measures which fall into the categories listed above, are novel or contentious, or impact any one group particularly, should remain in scope of full, early quality assurance by the RPC. In addition, we would suggest that the same approach should apply to Non Qualifying Regulatory Provisions which would ensure that measures such as the National Living Wage, National Minimum Wage, and large measures around systemic financial risk would receive an appropriately robust level of scrutiny.

Whilst we agree that Departments' efforts and our scrutiny around post-implementation review should focus on the largest measures, we remain very concerned that many of these reviews, regardless of size of impact, are not, in practice, being carried out. This, along with an improvement in the monitoring and evaluation planning, was something the PAC made clear in their recommendations.

The Government has made significant progress over the past five years on tackling the deregulatory agenda, and as a consequence has won a measure of

confidence from the business community and civil society. Now, especially in the context of Brexit, is not the time to jeopardise that trust; we should focus on real quality-assurance of major measures when significant regulatory change is ahead.