



National Audit Office

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Better Regulation Executive

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# Submission of evidence: controls on regulation

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Better Regulation Executive

# **Submission of evidence: controls on regulation**

The Better Regulation Executive is currently reviewing controls on regulation. This document is the National Audit Office's submission to that review. It is based on a combination of our previous work and new work with five case study departments earlier this year.

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# Summary

## Introduction

**1** The Better Regulation Executive is currently reviewing controls on regulation. This document is the National Audit Office's submission to that review. It is based on a combination of our previous work and new work with five case study departments earlier this year.

**2** Regulation is an important means of achieving many public benefits, but some regulation also brings with it additional costs. Successive governments have sought to control the burden of regulation on business and civil society organisations in order to encourage economic growth and development of the voluntary sector. Since their introduction in 1998 impact assessments have been one of the main tools deployed to achieve this objective. In 2009, the Regulatory Policy Committee was introduced to review and give opinions on impact assessments. The coalition government have introduced further controls on regulation since May 2010 which include: strengthening the role of the Regulatory Policy Committee; establishing a regulatory review subcommittee of Cabinet (Reducing Regulation Committee) which challenges the need for regulation; a 'One-in, One-out' policy for new regulations; sunset clauses meaning new regulation lapses by default; a moratorium on regulating start-up and micro-business; and the Red Tape Challenge – an initiative inviting business and public questioning of the need for existing regulations.

**3** Since 2010, the number of regulatory changes estimated to impose costs on businesses has fallen below the number estimated to yield savings. The net effect is a reduction in the estimated cost of regulation to business, although almost all of this is due to a single measure: allowing businesses to reduce the inflation uplift applied to their former employees' pensions. The Regulatory Policy Committee has reported an improvement in the quality of impact assessments it has reviewed, though there remains room for improvement both in departments' performance and in the process itself. In addition, there are some regulations affecting business, for example EU-derived measures, that are currently outside the scope of One-in, One-out.

4 In our report on *Delivering Regulatory Reform* we concluded that successful implementation of these new controls would require longer-term management of the flow of regulation, comparable with the arrangements for managing public expenditure.<sup>1</sup> Our review of Option Appraisal also found that there is scope to improve the quality of appraisals in a proportionate way, and increase their contribution to more cost-effective outcomes.<sup>2</sup>

5 This review considers the effectiveness of departmental processes to support controls on regulation in a manner analogous with processes to support controls on public spending. We examined the processes used by five case study departments: the Department for Business, Innovation and Skills; the Ministry of Justice; the Department for Work and Pensions; the Department for Environment, Food and Rural Affairs and the Department for Transport. We reviewed their support processes against a framework of regulatory management covering five areas we have previously highlighted as necessary for strong financial management in our Financial Management Maturity Model:<sup>3</sup>

- governance and leadership;
- planning;
- monitoring;
- decision-making; and
- performance reporting.

6 In 2012, the Better Regulation Executive began a review of the operation of government process to control the flow of new regulation. We have therefore presented our findings in the form of a submission of evidence for that review, and conclude by highlighting matters for consideration in the review arising from our work. We set out process maps for handling of impact assessments in our case study departments at Appendix One, and present our methodology at Appendix Two.

1 Comptroller and Auditor General, *Delivering Regulatory Reform*, Session 2010-11, HC 758, National Audit Office, February 2011.

2 National Audit Office, *Option Appraisal: making informed decisions in government*, May 2011.

3 National Audit Office, *Financial management maturity model 2010*, available at: [www.nao.org.uk](http://www.nao.org.uk)

## Findings

### Overall regulatory management

7 The case study departments have all demonstrated elements of the principles outlined above and strong practice has developed in some cases. There are some common aspects to the approaches adopted by departments but there are also significant differences, particularly in monitoring and performance reporting.

8 Overall, departments do not yet treat regulation as a resource, analogous to spend, that needs to be carefully managed to achieve their objectives. Instead the focus is currently on how to manage the flow of regulation not the overall burden. Whilst Red Tape Challenge does create an exception to this, its focus only covers one area of regulation at a time and not the complete stock.

### Governance and leadership

9 All of our case study departments demonstrate a level of senior management involvement in processes to support controls on regulation. Although the nature of this engagement varies, it primarily focuses on meeting the external requirements to justify new regulation rather than securing best value from the full range of regulatory inventions. Most departments have access to training through their Better Regulation Units though the amount of training provided was often thought by policy staff to be insufficient.

### Planning

10 Planning systems for regulatory interventions are reasonably well-suited to securing compliance with controls, but some interventions are not captured by planning systems at an early stage. Regulatory planning systems are not well integrated with main business planning mechanisms to facilitate choices between regulation and other delivery models.

### Monitoring

11 Only one of our case study departments – DEFRA – had calculated the costs and benefits of its stock of existing regulations.<sup>4</sup> Evaluation of outcomes from regulatory activity is not well developed through formal post-implementation reviews, but departments are utilising alternative means of evaluation.

4 Department for Environment, Food and Rural Affairs Better Regulation Team and Departmental Analysts, *The costs and benefits of Defra's regulatory stock – emerging findings from Defra's regulation assessment*, August 2011.



## Decision-making

**12** Departments have systems in place to inform and support consistent decision-making on proposed regulatory interventions. Those systems aim to assure the completeness and compliance of impact assessments with Better Regulation Executive guidance and Regulatory Policy Committee requirements. Some departments would welcome more readily available and/or consistent guidance on processes and requirements from the Better Regulation Executive.

## Performance reporting

**13** Performance reporting provides useful and accessible information to management, government, Parliament and the wider public on the quality of proposals for new regulation. Coverage of the outcomes of new regulation, or performance of the existing stock of regulation, is patchier but reflects limited monitoring and measuring rather than a failure to report measures in a useful way.

## Conclusions and areas for consideration

**14** The strong government drive to reduce the burden of regulation is occurring against a backdrop of an average 34 per cent cut in departmental administration budgets by 2014-15 under the 2010 spending review. The departmental resources available to pursue the deregulation agenda and to develop and implement policy initiatives are therefore limited and need to be used efficiently and focused where they add the most value. Our findings confirm that the conclusions of our previous work on option appraisal and delivering regulatory reform remain relevant, and against this context we would emphasise the following areas as meriting consideration:

- **Proportionality.** We recognise that even apparently small value regulatory changes require some scrutiny, both to avoid giving departments an incentive to understate the likely impact of proposals, and because such proposals may still create serious irritants for businesses. Nonetheless, almost all the economic impact of regulatory proposals derives from a small number of relatively high value proposals. The Better Regulation Executive should therefore consider, in consultation with the Regulatory Policy Committee, where appraisal and post-implementation review requirements could be streamlined for regulations with a small impact so that resources can be released for work on higher-value cases. Guidance should make clear when impact assessments are required and when they should be subject to scrutiny by Regulatory Policy and Reducing Regulation Committees.

- **Understanding costs of the existing stock of regulation.** The Red Tape Challenge provides a means for businesses and the public to contribute to improving regulation, while the One-in, One-out system provides an incentive for departments to search for opportunities to reduce costs. The Better Regulation Executive and departments should consider whether a more comprehensive understanding of which regulations impose the biggest costs would also help target effort on those areas with greatest potential for reducing the burden on business.
- **Ensuring transparent and proportionate post-implementation review.** The extent of formal post-implementation review remains limited. At the same time it is clear that departments are evaluating, or at least monitoring the impact of many regulations in other ways, although these may not be published and transparent. The Better Regulation Executive and departments should consider a more flexible framework for post-implementation reviews which positions them within a transparent overall evaluation strategy and seeks to make the best of limited evaluation resources.
- **Integrated planning.** Controls on regulation tend to be distinct processes outside a department's main business planning cycle – for example, there is no equivalent to the regular challenge of spending that is provided by periodic spending reviews and the annual budgetary cycle. Greater integration would allow regulation to be seen and managed as an alternative to spending, increase senior management engagement, and provide more structured scrutiny of the design and operation of regulation.
- **Alternatives to regulation, and non-regulatory measures impacting business.** In accordance with government policy, and as controls on new regulation bite, pursuit of alternatives to regulation such as voluntary codes, standards or protocols, is likely to be increasingly favoured by departments. However, even if not classified as regulations, such interventions can nonetheless result in businesses and others incurring compliance costs in the course of achieving the intended benefits. Departments should therefore still assess their likely costs and benefits, as they would for regulatory interventions, and be able to demonstrate that they represent cost-effective solutions to the issues they address.

# Part One

## Introduction

**1.1** Successive governments have sought to control the burden of regulation<sup>5</sup> on business and civil society organisations in order to encourage economic growth and development of the voluntary sector. While attempts to calculate the cost of regulation to UK businesses are inconsistent and often based on limited data, there is no doubt that the impact of regulation is large. In 2011, we found that estimates of the cost of the administration burden from regulation were around 3 to 4 per cent of GDP, while the policy costs were around 7 to 8 per cent of GDP.<sup>6</sup> Estimates of the benefits of regulation are similarly uncertain; but since regulations are generally introduced in the expectation that they will bring about benefits with a value worth more than their costs, the importance of regulation to the economic performance and well-being of the country is clear.

**1.2** The scale of costs and benefits arising from regulation means that the management and design of regulations and their enforcement is a key value-for-money issue. Successive governments have sought to achieve this through policies of better regulation or regulatory reform. One of the main components of these policies since 1998 has been the development of a system of impact assessments for proposals for new or amended regulation. In 2009, the Regulatory Policy Committee was introduced to review and give opinions on impact assessments. The government's 2010 Coalition Programme included several commitments to reform, and reducing regulation is an important component of the government's growth agenda. The coalition government has introduced new controls on regulation since May 2010:

- the Regulatory Policy Committee role has been strengthened to review and give opinions on impact assessments prior to the assessments being published;
- a regulatory review subcommittee of Cabinet (Reducing Regulation Committee) which challenges the need for regulation;
- 'One-in, One-out' policy for new regulation to control the net burden imposed on business;

<sup>5</sup> August 2011 Better Regulation Executive guidance defines a regulation as: A rule with which failure to comply would result in coming into conflict with the law or being ineligible for funding and other applied for schemes. This includes: EU regulations; Acts of Parliament; Statutory Instruments; rules, orders, schemes, regulations etc. made under statutory powers by Ministers or agencies; licences and permits issued under government authority; codes of practice with statutory force; guidance with statutory force; codes of practice, guidance, self-regulation, partnership agreements with government backing; approved codes of practice; bye-laws made by government.

<sup>6</sup> Comptroller and Auditor General, *Delivering Regulatory Reform*, Session 2010-11, HC 758, National Audit Office, February 2011.

- Sunset clauses in new regulations which mean they lapse after a specified period unless review justifies their perpetuation; and
- Red Tape Challenges putting the spotlight on different areas of regulation and inviting proposals for their simplification or removal.

**1.3** The National Audit Office has provided authoritative commentary on the progress of regulatory reform for many years. In 2001<sup>7</sup>, we published the first of eight reports on the impact assessments published by departments evaluating proposed new regulations. We have also reported on efforts to reduce the administrative burden of regulations, commissioned and published regular surveys of business perceptions of regulation, and contributed to a number of reviews of the inspection and enforcement activity of independent regulators.

**1.4** Most recently, in 2011 we published two reports:

- *Delivering regulatory reform*, February 2011.
- *Option Appraisal: Making informed decisions in government*, May 2011.

**1.5** Our February 2011 report recognised that the coalition government had clearly stated its belief that current levels of regulation were excessive, and reducing regulation for business was one of its key commitments. On 2 June 2010, the Department for Business, Innovation and Skills announced an action plan for reducing regulation with the aim of bringing an end to excessive regulation stifling business growth. Our report therefore focused both on the experience of the work done before the change of government in May 2010, and on the intentions of the changes made since then, and progress in implementing them.

**1.6** With the passage of time since February 2011, departments have been able to make further progress in implementing the changes introduced by the new government and to learn lessons in operating them. On the basis of fieldwork conducted in spring 2012, and on the basis of the controls in place at that time, this submission assesses the progress that has been made in regards to the processes in place to support the controls on regulation.

<sup>7</sup> Comptroller and Auditor General, *Better regulation: making good use of regulatory impact assessments*, Session 2001-02, HC 329, National Audit Office, November 2001.

**1.7** In our report on *Delivering Regulatory Reform* we concluded that successful implementation of the government's new controls would require longer-term management of the flow of regulation, comparable with the arrangements for managing public expenditure.<sup>8</sup> Accordingly, we carried out our assessment against a model of regulatory management covering five principles drawn on those we have previously highlighted as necessary for strong financial management:<sup>9</sup>

- Governance and leadership: processes allow leadership and direction to steer both the overall approach to regulation and decisions on individual regulatory interventions.
- Planning: processes anticipate forthcoming regulatory changes and both inform and are informed by department's main business planning systems and its strategic objectives.
- Monitoring: processes give visibility of the current stock of regulatory interventions, actual or estimated outcomes of enacted or proposed regulations, both individually and in aggregate.
- Decision-making: processes provide gate stages and review points for proposed and existing regulation engaging relevant individuals with good information on costs and benefits at key stages.
- Performance reporting: processes extract relevant metrics from monitoring and report them to relevant individuals against plans and targets.

In managing regulation we recognise that departments and agencies need to work within affordability constraints imposed by their resource budgets. This means that judgements on proportionality have to be applied both in terms of the level of effort to administer control systems themselves, and the depth and detail of analysis expected of sponsors of regulatory proposals flowing through the systems.

**1.8** Part Two of this submission reviews high level statistics on the flow of regulatory proposals and the systems and controls in place within five case study departments: the Department for Business, Innovation and Skills; the Ministry of Justice; the Department for Work and Pensions; the Department for Environment, Food and Rural Affairs; and the Department for Transport. Our submission is based on interviews with officials within the better regulation department, document review and sample testing of ten impact assessments in each department to verify the processes are operating as described.

<sup>8</sup> Comptroller and Auditor General, *Delivering regulatory reform*, Session 2010-11, HC 758, National Audit Office, February 2011.

<sup>9</sup> National Audit Office, *Financial management maturity model* 2010.

## Part Two

### Impact of the controls

**2.1** This Part reviews:

- High-level statistics on the flow of regulatory proposals and post-implementation reviews under the new control system.
- The processes being operated in our case study departments to manage their proposals and to achieve the quality standards required, assessed against the five principles of regulatory management set out in Part One.

**2.2** In this report we have used five case study departments with a range of regulatory interventions by volume and value (**Figure 1**) giving good coverage of the different scales of regulatory activity across Whitehall.

#### Figure 1

Numbers, costs and benefits of new regulatory interventions for case study departments: 2011

| Department   | Number of interventions with final impact assessments | Number of regulatory interventions with final impact assessments | Estimated costs of regulatory interventions <sup>1</sup><br>(£bn) | Estimated benefits of regulatory interventions <sup>1</sup><br>(£bn) |
|--|---|--|---|--|
| Department for Work and Pensions                   | 6   | 5  | 76.4  | 76.2   |
| Department for Business, Innovation and Skills     | 28  | 26   | 27.7  | 25.9   |
| Ministry of Justice                                | 9   | 7  | –   | –  |
| Department for Environment, Food and Rural Affairs | 41  | 40   | 6.5   | 12.2   |
| Department for Transport                           | 27  | 27   | 1.4   | 2.9  |

#### NOTE

<sup>1</sup> Some impact assessments did not state quantified costs and benefits. Costs and benefits are in Net Present Value terms using the price bases stated in the impact assessments.

Source: Better Regulation Executive impact assessment library for the calendar year 2011 providing data on final impact assessments added during that period

**2.3** All of the case study departments have put in place systems to support the new controls introduced by the government. Across the five departments a range of approaches have been taken and Appendix One provides maps for the processes we observed in each.

### The flow of proposals and reviews

**2.4** Impact assessments are required for all proposals for government intervention that are of a regulatory nature and have an impact on the private sector, civil society organisations and public services. Some interventions which are not of a regulatory nature but which nevertheless change costs for businesses, civil society, or public services may be treated for the purposes of controls as regulatory measures requiring impact assessments. Impact assessments for regulatory measures are reviewed by the Reducing Regulation Committee following scrutiny by the Regulatory Policy Committee at both consultation and final stages. The Committee issues opinions on the fitness for purpose of these impact assessments, and assessments which are fit for purpose are rated green or amber, with the latter including areas of concern which should be addressed before finalisation. Assessments which are considered not fit for purpose are rated red. The Committee has published a series of reports on its work. Its March 2012 report<sup>10</sup> noted that it had issued 582 opinions on impact assessments during 2011, made up of 465 first time submissions and 117 resubmissions. The Committee commented that it had observed some improvement in the quality of impact assessments during the first six months of 2011 (**Figure 2** overleaf), although the last six months showed little progress.

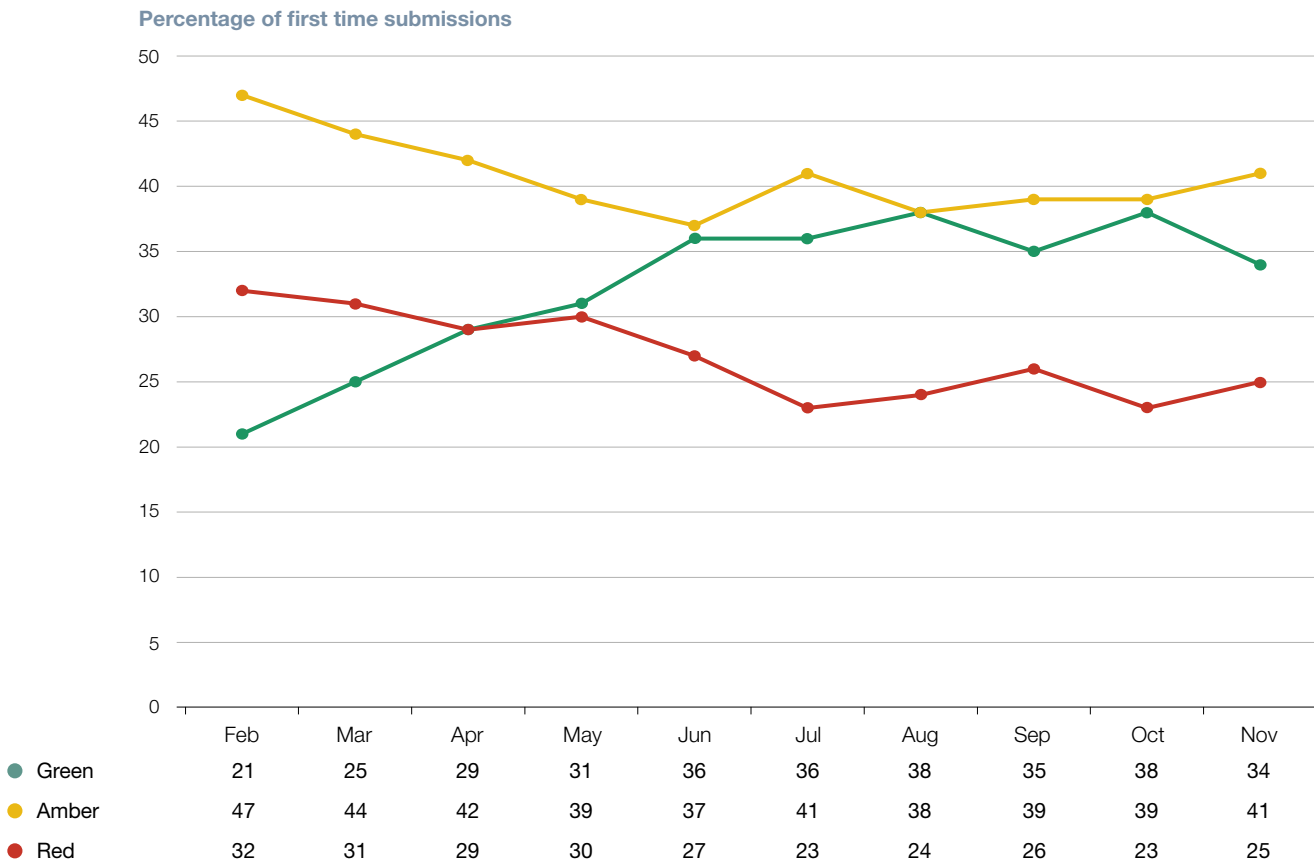
**2.5** In connection with the One-In, One-Out policy, the Department of Business Innovation and Skills has published three Statements of New Regulation looking forwards at each six-month period from January 2011. Key statistics include the number of INs – counting new measures that result in an increase in regulatory costs for business, and OUTs – measures that remove or recast an existing regulatory burden on business, reducing the costs to business. This statement provides businesses with a forward look of new regulation that government is planning to introduce, and to allow the business community to scrutinise the government's performance against its ambition not to add to the regulatory burdens on business.

**2.6** The most recent statement, issued in July 2012<sup>11</sup> reported that between January 2011 and December 2012, changes to regulation comprised 40 'INs', 77 'OUTs' and 68 with 'Zero Net Costs'. The number of new regulations imposing net costs to business (INs) rose from ten in the first six-month period to 15 in the most recent. Deregulation (OUTs) increased from eight in the first period to 31 in the most recent. Overall the estimated annual burden on business fell by £848 million, with £3,028 million of extra costs being offset by £3,876 of savings. One deregulatory measure accounted for £3,342 million of the savings: allowing businesses to reduce the inflation uplift applied to their former employees' pensions by only uprating them in line with the Consumer Prices Index rather than the generally higher Retail Prices Index.

<sup>10</sup> Regulatory Policy Committee, *Improving regulation, an independent report on the analysis supporting regulatory proposals, January to December 2011*, March 2012.

<sup>11</sup> HM Government, *One-in, One-out: fourth statement of new regulation*, July 2012.

**Figure 2**  
Regulatory Policy Committee opinions in 2011 (Green, Amber and Red)



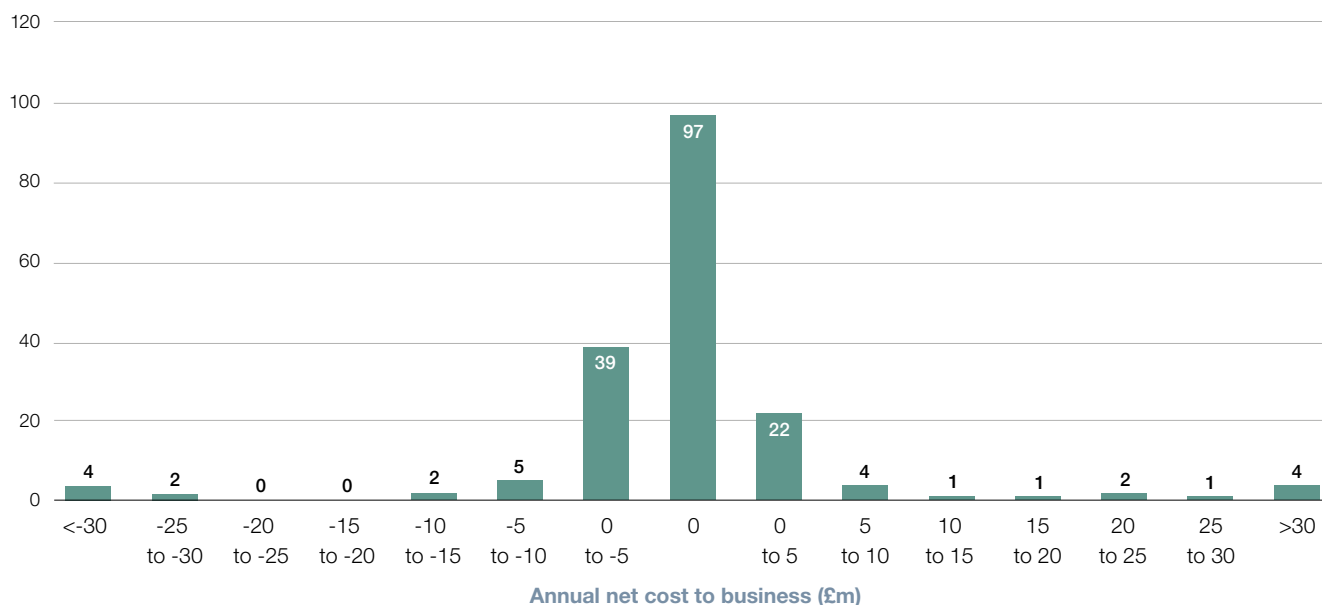
Source: Regulatory Policy Committee March 2012

**2.7** Analysis of the first four Statements of New Regulation shows that 158 of the 184 new regulations covered changed the net direct cost to business by less than £5 million per year each (**Figure 3**). Some measures with a small estimated net cost or saving to business will represent big increases in some costs offset by big savings in others. Nevertheless the broad picture suggests there is scope for focusing appraisal effort as regards the business burden on the relatively small number of new regulations with a significant impact on business costs. Some effort will nevertheless be required for all interventions to judge the order of magnitude of their effects on business, their overall costs and benefits, and to assess those with large impacts that are difficult to quantify.



**Figure 3**

Net direct costs and savings to business resulting from changes to regulations covered by One-In, One-Out policy

**Number of regulatory changes**

Source: National Audit Office analysis of Statements of New Regulation

**2.8** Some types of regulation are out of scope of the Regulatory Policy Committee's scrutiny, the One-In, One-Out process, or both. For example impact assessments for proposed EU regulation are scrutinised by the Committee but are outside the scope of One-In, One-Out. As a result, a significant proportion of new regulatory interventions are excluded from the One-In, One-Out control. The British Chambers of Commerce<sup>12</sup> calculated that 57 of the 135 impact assessments reviewed by the Committee in 2011 (42 per cent) were out of scope for One-In, One-Out. In addition, most proposals from independent regulators such as Ofcom, are subject to neither Committee scrutiny nor One-In, One-Out controls. The Regulatory Policy Committee reports<sup>13</sup> a very variable picture of performance across government bodies and departments in receiving 'fit-for-purpose' opinions. In 2011, 16 bodies and departments individually achieved between 0 per cent and 91 per cent 'fit-for-purpose' ratings. No department achieved 50 per cent Green ratings therefore there is clearly room for improvement across the board.

<sup>12</sup> British Chambers of Commerce, *Red tape challenged?* December 2011.

<sup>13</sup> Regulatory Policy Committee, *Improving regulation, an independent report on the analysis supporting regulatory proposals, January to December 2011*, March 2012.

**2.9** There is some evidence that departments see the Committee as a hurdle to overcome rather than a means of adding value to assessments. The British Chambers of Commerce (BCC) reported in its 2011 report *Red tape challenged?* that departments often could not evidence that they had implemented the RPC's recommendations – particularly in cases of amber-rated regulations.<sup>14</sup> In its 2012 report<sup>15</sup> the BCC reported progress, while still judging that departments were not always implementing RPC opinions particularly on amber-rated regulations. Our own discussions with staff across departments, including but also outside our case study departments, highlighted concerns that RPC opinions were often not proportionate, or focused on narrow issues that had little impact on the overall outcome. Concerns were also raised that the RPC was too slow to provide opinions and was sometimes unwilling to discuss issues in more detail.

### **Experience in the case study departments**

**2.10** The purpose of our review of the case study departments was to describe and assess the effectiveness of departments' processes in meeting the requirements of the new control systems introduced over the last 18 months, use of impact assessments, and assess the nature and scale of post-implementation reviews. Our work was largely qualitative in nature and focused especially on the processes developed by departments. Some of these processes were common to all the departments, for example when reflecting central requirements, but we also sought to identify examples of practices unique to particular departments from which others might learn.

### **Evaluation in terms of our principles**

#### Governance and leadership

**The Department's leadership should engage with systems to support controls on new regulation, both in terms of processing proposals effectively and encouraging alternatives to new regulation.**

#### **Board engagement**

**2.11** As required by the Cabinet Office all of our case study departments have board level champions for regulation. The board champion is tasked with supporting senior officials in ensuring that the principles of Better Regulation are reflected in departments' board level deliberations. The champion was supported by the Better Regulation Team in the five departments we reviewed. Four out of the five departments have increased senior management engagement in response to introduction of the Regulatory Policy Committee and the Reducing Regulatory Committee. This increased engagement provides evidence that the existence of the committees has raised the profile of controls on regulation within Whitehall. It is not yet clear whether this greater engagement is directed at challenging the need for regulation – and identifying alternatives – or refining justifications for new regulation to satisfy the committees' scrutiny.

<sup>14</sup> British Chambers of Commerce, *Red tape challenged?* December 2011.

<sup>15</sup> British Chambers of Commerce, *Red tape challenged?* July 2012.

**2.12** A review of case study departments' board minutes found no mention of the use, and effectiveness, of regulation apart from at the Department for Transport (**Figure 4**). The Department for Environment, Food and Rural Affairs does include a six-monthly report on better regulation in the management information pack submitted to its board.

### Other senior management engagement

**2.13** Below board level all departments had senior staff involved in their impact assessment processes. The engagement of senior staff varies between case study departments. Engagement by senior staff at a minimum focused on the scores for impact assessments given by Regulatory Policy Committee and how the Department was performing against the One-in, One-out requirement. The Chief Economist in each department also has final approval for all impact assessments. **Figure 5** sets out examples of where senior management has gone beyond this level of engagement.

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## Figure 4

### Case study: board engagement – Department for Transport

The Department for Transport board discussed the risk of adverse ratings from the Regulatory Policy Committee to achieving policy objectives. The board also discussed whether post-implementation reviews of particular regulations were necessary or if the resources in a time of spending constraint were better deployed on other activities. The discussions also covered whether the Department has sufficient resources to properly appraise new policies, deal with Red Tape Challenge responses and transpose new EU legislation effectively.

*Source: Review of Department board minutes*

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## Figure 5

### Case studies: other senior management engagement

Within the Department for Environment, Food and Rural Affairs the BRU has spent time working with Ministers to provide an insight into the role of Ministers in the regulatory process. In addition, Senior Responsible Owners sign off all impact assessments in their policy areas to ensure that all the steps in the Department's control process have been completed. No impact assessment goes to the Regulatory Policy Committee without the Senior Responsible Owner's approval. Senior staff also have quarterly presentations on topics such as the One-in, One-out position, progress on Red Tape Challenge, where different interventions are on the policy cycle and Regulatory Policy Committee decisions.

The Department for Business, Innovation and Skills' senior management team receives quarterly updates on the impact assessment submissions made and the Regulatory Policy Committee's opinion on their fitness for purpose. There is a Better Regulation Champion in each policy group, acting as a liaison point for the BRU, checking their policy team's understanding of procedures and requirements, gathering information on future policy interventions and assisting their teams in complying with controls.

At the Department for Work and Pensions the senior management also monitors the Regulatory Policy Committee fit-for-purpose scores and Reducing Regulatory Committee clearance.

*Source: National Audit Office interviews with Department officials and document review*

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**2.14** Four of the five case study departments reported increased senior management engagement in response to introduction of the Regulatory Policy and Reducing Regulation Committees. It is not yet clear whether this greater engagement is directed at challenging the need for regulation – and identifying alternatives – or refining justifications for new regulation to satisfy the committees’ scrutiny. One case study department told us that there is a greater understanding amongst Ministers that new controls on regulation can impact on timelines for implementing policies. This was cited as a key driver for increased senior staff interest.

### Support from Better Regulation Units

**2.15** Each case study department has a Better Regulation Unit or team (BRU) who are experts on regulatory control systems. All units in case study departments have recently experienced or are about to undergo restructuring at the time of our fieldwork. These changes took different forms:

- Department for Business, Innovation and Skills: staffing in the BRU has been reduced by two posts;
- Ministry of Justice: the BRU has moved from the Legal Policy Team to the Chief Economist’s Directorate (focus on analytical content);
- Department for Work and Pensions and Department for Environment, Food and Rural Affairs: the BRUs are being moved to report to the Legislative Strategy and Strategy divisions of their respective Departments (refocus on aligning with Departments strategy); and
- Department for Transport: the BRU has moved to the Department’s General Counsel’s Office which provides assurance across a wide range of subject matter and functions, including legal advice and cross-cutting policy.

**2.16** The reasons for these changes vary and include the need to accommodate reductions in departmental budgets as well as adaptation to the new systems for regulatory controls. **Figure 6** provides an example of the changing role of the BRU in the Department for Business, Innovation and Skills.

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### Figure 6

#### Case study: the changing role of the Better Regulation Unit – Department for Business, Innovation and Skills

The main roles of the Department’s Better Regulation Unit to date have been advice and information gathering. They are currently in the process of changing the way the unit operates to make departmental staff think differently about regulation and consider a wider spectrum of options, including not regulating when designing policies.

Initiatives include the role of the economist moving from identifying and analysing systemic problems in the impact assessments (which are delegated to the assistant economist) to designing solutions and delivering training across the office.

They have moved focus from that of challenging the analytical content to that of changing the behaviour of their policy staff.

*Source: National Audit Office interviews with Department officials*

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### Training and networking

**2.17** The Better Regulation Executive provides an opportunity for all Better Regulation Units to meet and network on a regular basis, as well as training. Better Regulation Units in four of the five case study departments were in turn providing training to staff in their departments. In some cases this was just half a day and our interviews with policy staff indicated they felt this was not sufficient to embed understanding of control requirements in the design stage. The Department for Environment, Food and Rural Affairs, Department for Transport and Department for Business, Innovation and Skills shared training materials on a regular basis to improve the quality of material available. An example of the type of training offered is set out in **Figure 7**.

### Planning

**Planning over the totality of the Department's regulatory impact should be integrated into the Department's strategy and overall planning processes. When assessing the Department's overall objectives the use of regulations to achieve these should be clear.**

### Planning workflow

**2.18** Each case study department has developed some form of tracking system to:

- track regulatory inventions;
- record the Regulatory Policy Committee opinion;
- record if an 'Out' is necessary to offset the new regulation and if this has been found; and
- monitor the department's One-In, One-Out balance.

These tracking systems were consistently used to provide data for Statements of New Regulation which are prepared via submissions from departments to the Better Regulation Executive.

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## Figure 7

### Case studies: training and networking

The Better Regulation Unit at the Department for Business, Innovation and Skills has delivered training on the impact assessment process for the last three years and in October 2011, a new half-a-day module was launched. The focus of the training is on the impact assessment process, analytical thinking and better regulation framework. The course is run on an on-demand basis. The Department is proactive in its approach to training and meets with policy teams to discuss their training needs. They have also developed some training material on post-implementation reviews; although this has not yet been deployed.

The Department for Transport has a Better Regulation Reference Group comprised of policy leads representing all parts of the department including its agencies that is used to disseminate and help implement better regulation across the Department.

*Source: National Audit Office Interviews with Department officials*

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**2.19** The tracking systems used by departments were generally based on databases of upcoming interventions for the next six months or beyond, and were maintained by the Better Regulation Unit. The Department for Environment, Food and Rural Affairs had developed the most advanced monitoring system to provide the tools they need to ensure they can plan interventions and make informed decisions (**Figure 8**).

**2.20** We believe that early adoption and/or customisation of a system such as DEFRA's may not be proportionate in all cases, but does indicate the kind of system that could be adopted by departments with a major regulatory role to strengthen and improve access to information on regulatory interventions. Once established in those departments, extension to other departments may prove a low-cost and viable option.

### **Anticipating new regulatory impacts**

**2.21** The requirement for a Statement of New Regulation in connection with One-In, One-Out policy provides a degree of consistency in capturing imminent changes in regulation. The monitoring systems developed by case study departments allow them to assess the number and cost of new regulations in the coming six months and this data allows them to feed into the Statement. The data is gathered by the BRUs using information from policy teams in their departments.

**2.22** Each case study department seeks to log such items as soon as they are identified. This allows the Better Regulation Unit (BRU) to apply consistent judgements on what constitutes an intervention requiring an impact assessment, but relies on good and early communication between policy teams and the BRU. Some BRUs told us that some interventions had been notified to them only at the point they were due to be submitted to the Regulatory Policy Committee. As part of our review we reviewed a sample of ten impact assessments from each department to assess if they were going through the processes the departments had established. We found at least five examples where the Better Regulation Unit had impact assessments that were getting to the stage of being submitted to the Regulatory Policy Committee before the BRU was aware of them. This means that data upon which the BRU based its plans is incomplete. All the departments we reviewed were trying to improve the level of completeness of the data they received.

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## **Figure 8**

### Case study: Department for Environment, Food and Rural Affairs' regulatory management tool

The Department's Regulatory Management Tool builds on a former spreadsheet system to improve the capture, management and reporting of data on the flow of regulation. This has also improved the usability of the system and has enabled stronger controls. It records all measures due to come in between 18 and 24 months ahead and is accessible to policy officials who record and update data on their own measures.

Guidance is embedded in the application for those filling in data and sunset clauses and review dates are captured. Regulations can be prioritised in the system and Senior Report Officers can use it to generate reports. Output can be exported to Excel.

Department for Environment, Food and Rural Affairs has shared the application with other departments, for example Transport and Business, Innovation and Skills, to encourage wider adoption.

*Source: National Audit Office interviews with Department officials and document review*

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### Integration with business planning

**2.23** None of the case study departments had a plan or statement articulating how and when regulation was to be used to achieve its objectives. In addition to the lack of discussion at board level, we found there to be little focus given to assessing the total regulatory burden of the departments and whether regulation is being used effectively to secure the departmental objective. One department told us it considered the system was process driven and concentrated more on the methodology than the final result.

**2.24** Planning approaches of case study departments focus on ensuring compliance with Regulatory Policy Committee and One-in, One-out. Better Regulation Units were taking a role of reacting to find OUTs once a regulation that would count as an In was likely or ensuring that One-in, One-out balance was maintained. There was no clear position of what regulations were in place and which added the most value to the departments' objectives and which didn't. Only the Department for Environment, Food and Rural Affairs has undertaken a stock review of regulation,<sup>16</sup> splitting the burden on regulation by its key policy areas.

### Monitoring

**Departments should be able to measure the costs, benefits and other outcomes of their regulatory interventions. Departments should be able to prioritise which regulatory interventions they maintain and how they will use regulation in the future to achieve their policy objectives.**

### Monitoring outcomes

**2.25** In March 2010, the Better Regulation Executive issued guidance clarifying the relationship between post-implementation reviews, post-legislative scrutiny and policy evaluation.<sup>17</sup> Policy evaluation embraces both post-implementation reviews and post-legislative scrutiny for regulatory measures, as well as other alternative forms of evaluation. Post-implementation reviews may be conducted for any regulatory measure and would normally be published in the form of a review stage impact assessment. Post-legislative scrutiny is conducted only on Acts of Parliament and would normally be published as a Command Paper.

**2.26** The government guidance on sunseting of regulations includes advice on sunset reviews required by provisions in new regulations. It suggests these are scheduled to align with other review activities – including post-implementation reviews, post-legislative scrutiny, stock reviews and other forms of evaluation.

<sup>16</sup> Department for Environment, Food and Rural Affairs Better Regulation Team, *The Costs and Benefits of Defra's Regulatory Stock*, August 2011.

<sup>17</sup> Department for Business, Innovation and Skills, *Clarifying the relationship between policy evaluation, post-legislative scrutiny, and post-implementation review* – March 2010.

**2.27** Statutory sunset reviews of new regulation are not yet falling due. Until they do, post-implementation reviews remain the principal mechanism within the formal regulatory control regime for capturing the outcomes of new regulation. Our work for the House of Lords Merits of Statutory Instruments Committee<sup>18</sup> in 2009, which covered all departments, found that departments had committed to undertaking post-implementation reviews for 103 of the 229 statutory instruments surveyed but such reviews had only been carried out in 55 cases at the time of the survey. Departments nevertheless reported having undertaken some other form of evaluation for 99 of the statutory instruments surveyed, including 41 of those where a post-implementation review had also been performed. It is not known what proportion of the cases where an evaluation had been carried out, the conclusions were published, or whether any action resulted in terms of improvement to the regulation.

**2.28** Of our case study departments, only the Department for Business, Innovation and Skills, Department for Transport and Ministry of Justice had carried out recent formal post-implementation reviews; just one each in 2011. The Ministry of Justice told us that evaluations were more commonplace in providing evidence on impact. In light of the evidence of limited post-implementation reviews, we asked chief economists beyond our case study departments to describe the types of evaluation work which had been performed in their departments. The Food Standards Agency, Department of Energy and Climate Change, Department for Education, Office of Rail Regulation and Health and Safety Executive fed into this analysis. Their responses – together with evidence from our case study departments – show that evaluation is more extensive, if as yet less formalised, than would be implied by evidence from completed post-implementation reviews alone:

- Department for Environment, Food and Rural Affairs: since March 2011 the Department has had a Policy Evaluation Board which is putting together a list of evaluations completed to date; it also develops methodology on what a good evaluation should look like and will point out where post-implementation reviews would be useful.
- Department for Business, Innovation and Skills: the Department has a training module on post-implementation reviews and plans to deliver this training.
- Food Standards Agency: although the Agency has not undertaken any post-implementation reviews, it has carried out simplifications/consolidations of legislation. These have implicitly required the review of outcomes from existing regulations.

<sup>18</sup> House of Lord Merits Committee on Statutory Instruments, Briefing for National Audit Office, *Post-Implementation review of statutory instruments*: December 2009.



- Department of Energy and Climate Change: the Department has embedded evaluation into its policy delivery cycle, and has an evaluation board, chaired by the Department's Director of Analysis, with policy Directors and senior analysts around the table to champion, steer and challenge evaluation across the Department.

Departments will need to capture the information from these evaluations in a systematic manner if they are to contribute fully to effective management of regulation.

**2.29** The theme of proportionality came through strongly in departments' approaches to both controls on the stock of regulation and their approach to evaluation. Departments felt that the costs of stock review needed to be justified in proportion to the likely yield in terms of ability to adjust the regulatory burden. Similarly, departments were not convinced that mechanistic use of post-implementation reviews of new regulation was the best use of scarce evaluative resources, relative to targeted use of customised evaluations on high priority areas of activity.

**2.30** Our interviews found a lack of clarity within departments on whether the policy team, analysts or Better Regulation Unit should ensure post-implementation reviews occur when they were judged appropriate. There is a risk that no group feel it their obligation to drive post-implementation reviews.

### **The costs and benefits of the stock of regulation**

**2.31** The Cabinet Office's Red Tape Challenge initiative requires departments to identify all regulations in a particular category, and check the list with government stakeholders, before a new Challenge theme is launched. The initiative does not require departments to estimate the cost of those regulations, but consultation responses yield some, albeit unvalidated, qualitative assessment of their impacts.

**2.32** Of our case study departments, only the Department for Environment, Food and Rural Affairs has comprehensive estimates of the costs and benefits of its stock of regulation.<sup>19</sup> This was done through a formal stock review covering each of the Department's major policy areas. It identified 432 sets of regulations, with an estimated net cost to business of £3.6 billion per year and benefits to other parties (including consumers) of £6.8 billion per year. Many of the estimated costs and benefits were derived from final impact assessments of proposed regulations which may not have been followed up by post-implementation reviews. We consider this kind of extensive review is especially useful for the major regulatory departments. It needs to be tied to departments' objectives so that judgements can be made on priorities when responding to Red Tape Challenge or complying with One-in, One-out requirements.

<sup>19</sup> Department for Environment, Food and Rural Affairs Better Regulation Team, *The Costs and Benefits of Defra's Regulatory Stock*, August 2011.

## Decision-making

The Department understands what drives the costs and benefits of its regulatory intervention, and how it can influence or control those drivers. Decisions are supported by appraisal processes for all key regulatory decisions.

### Central government guidance

**2.33** The Better Regulation Executive (BRE) has promulgated principles of regulation adopted by the coalition government that state that regulation will only be used if alternatives are unavailable or significantly more costly. BRE has issued guidance on when impact assessments are required.<sup>20</sup> Despite this, we found that for certain interventions some departments remained uncertain whether an impact assessment was required or whether it needed to go to the Regulatory Policy Committee. All departments believed there was scope for improving the availability and consistency of advice from BRE to maximise the effectiveness of controls on regulation and the efficiency of departments' compliance efforts.

### Understanding drivers of costs and benefits

**2.34** Maximising the effectiveness and efficiency of regulatory interventions requires a clear understanding of what drives their costs and benefits. In our recent report on the quality of option appraisal across government<sup>21</sup> we found that there were inadequate levels of monetisation or major flaws in the analysis for 20 per cent of the impact assessments reviewed.

**2.35** In our last report on impact assessments<sup>22</sup> we examined the extent of quantification of options. From a sample of 50 assessments, 28 had quantified both the costs and the benefits of the preferred option, 15 had quantified only its costs, two had quantified only its benefits, and five had quantified neither its costs nor benefits. There was even less quantification of alternative options, with 39 of the sample assessments having no quantification of the costs or benefits of alternative options.

**2.36** Where costs and/or benefits had been quantified we found limitations in the evidence base itself, with only 43 per cent of assertions being linked to identified evidence sources. The low levels of quantification and lack of strong evidence in many assessments indicate the limitations on departments' understanding of what drives the costs and benefits of their regulatory interventions.

**2.37** Three previous NAO reports looked into impact assessments in more detail and reported similar messages. Our report on *Means Testing*<sup>23</sup> found that the range of impacts included in impact assessments by different departments with means-tested benefits varies significantly, and that the burden on claimants was rarely considered. Our report on the *Mortgage Rescue Scheme*<sup>24</sup> found the impact assessment was weakened by an imbalance of costs and benefits to all parties (benefits to some were included but not costs).

20 HM Government, *Impact assessment Guidance: When to do an impact assessment*. August 2011.

21 National Audit Office, *Option Appraisal: making informed decisions in government*, May 2011.

22 Comptroller and Auditor General, *Assessing the impact of proposed new policies*, Session 2010-11, HC 185 National Audit Office, July 2010.

23 Comptroller and Auditor General, *Means Testing*, Session 2010-2012, HC 1464, National Audit Office, September 2011.

24 Comptroller and Auditor General, *The Mortgage Rescue Scheme*, Session 2010-2012, HC 1030, National Audit Office, May 2011.

### Appraisal processes

**2.38** Impact assessments form the vehicle for appraisal of potential regulatory interventions. Our case study departments all had clear processes in place setting out how impact assessments should progress. They included the relevant stages that should be followed with the appropriate responsibilities and Appendix One provides details. With the exception of the policy incubation sessions cited by the Department for Business, Innovation and Skills, the processes focus on the processing of impact assessments rather than the formulation of options and alternatives. More than half of the officials who responded to our online survey of option appraisal in 2010 felt impact assessments did not have a pivotal role in spending policy and regulation.

**2.39** We assessed the processes in case study departments by reviewing the progress of a sample of impact assessments in each. In particular we reviewed whether:

- the Chief Economist, or equivalent, had seen and assured the quality of the appraisal contained in the final impact assessment before this was submitted to the Minister for sign-off;
- the final impact assessment had been reviewed by the Better Regulation Unit;
- the final impact assessment was submitted to the Regulatory Policy Committee; and
- the final impact assessment has been published in the impact assessment library maintained by the Better Regulation Executive.

**2.40** We found that review by Better Regulation Units occurred in all cases. Evidence of sign-off by economists was variable. In some departments, sign-off of some assessments by economists was deemed unnecessary due to the small size of their impact and was delegated to more junior economists. A small number of assessments were not published in the impact assessment library – which can limit the ability of external groups to challenge and understand the burdens in place. There were assessments without Regulatory Policy Committee opinions from Department for Transport; this was because they were for interventions which the committee considered were not regulatory in nature and therefore their opinion was not required.

**2.41** Better Regulation Units can provide a broad view of how impact assessments are likely to be perceived by external reviewers. At the Department for Environment, Food and Rural Affairs the Better Regulation Unit advises policy officials on use of language, bearing the reader in mind when drafting the impact assessment. They have raised policy teams' awareness of the roles of Ministers and the Regulatory Policy Committee in the scrutiny process.

**2.42** Three case study departments use peer review to assure their decision-making on the adequacy of impact assessments. At the Department for Business, Innovation and Skills significant impact assessments are peer reviewed (**Figure 9**). At the Department for Environment, Food and Rural Affairs the policy team send impact assessments to economists or external experts for peer review prior to submission to the Chief Economist (who provides final assurance in all departments). The Department for Transport Better Regulation Unit also sends impact assessments to economists for peer review. The Ministry of Justice's Better Regulation Team are considering peer review in the future.

**2.43** The involvement of Better Regulation Units in review of impact assessments was primarily to ensure that the necessary components – costs, benefits, options, risk and sensitivity analysis – were included in the assessment. The BRUs themselves are not best placed to advise on the substance of those components, which is the objective of policy analysts and economists. At the Department for Business, Innovation and Skills the BRU is trying to improve policy teams' understanding of the process and quality standards, in such a way that its economists can focus on the quality of the analysis within assessments.

## Performance reporting

**Reports such as annual accounts and business plans contain integrated regulatory performance information. These reports should be tailored to the needs of both internal and external users.**

## Transparency of stock and flow of regulation

**2.44** The Regulatory Policy Committee reports regularly on its opinions on impact assessments for new regulations. This provides transparency for departments, Ministers, Parliament and the wider public. The information is accessible in the form of 'red', 'amber' and 'green' ratings for impact assessments, shown for individual assessments, departments, and across government. With effect from April 2012, departments are obliged to publish the final stage Regulatory Policy Committee opinion at the same time as they publish the impact assessment.

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### Figure 9

#### Case study: Department for Business, Innovation and Skills peer review

Impact assessments indicating a cost to business above £50 million per year and/or sensitive policies or primary legislation go through a peer review process. The peers are volunteer economists who are available to scrutinise the impact assessments either in meetings or through correspondence. Subsequently, once the policy officials have considered the comments received from the economists, the impact assessment goes to the Chief Economist for sign-off.

Findings from the peer review are shared across all groups, especially if issues encountered are systematic. This takes the form of training opportunities for economists on Regulatory Policy Committee processes and analytical issues, and seminars by the Committee secretariat on quality of proposals, common problems and how to approach the clearance process effectively. Good quality impact assessments are publicised and an 'impact assessment of the month' promotes good practice and shows examples of how difficult issues can be addressed.

*Source: National Audit Office interviews with Department officials*

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**2.45** The Better Regulation Executive maintains a library of final impact assessments for new regulations, collated from submissions by individual departments. This provides further transparency and a publicly searchable database extending back before establishment of the Regulatory Policy Committee. The library does not consistently capture all final assessments, although some missing assessments are for interventions which were not taken forward following consideration by the Regulatory Policy or Reducing Regulation Committees (**Figure 10** overleaf). The committee listed opinions on final impact assessments for 69 interventions from our case study departments in its third report covering January to June 2011. In August 2012, 16 of these were not on the impact assessment library, though six of these were available elsewhere on the web. Although not designed for this purpose, the library captured a reasonable proportion of consultation assessments. In August 2012, the library held assessments for 38 of the 65 interventions assessed by the committee at consultation stage between January and June 2011.

**2.46** While aspects of new regulation are regularly reported, the absence of monitoring of the stock of regulation means that it cannot be consistently reported upon. The Department for Environment, Food and Rural Affairs published its assessment of the costs and benefits of its stock of regulation on its website but other case study departments do not currently have such information to publish which limits transparency in this area.

#### **Annual accounts and other public data**

**2.47** The 2011 Public Expenditure System (PES) requires all departments to include the following information in annual reports:

- One-in, One-out: provide balance of Ins and Outs (net cost to business) over the past year;
- Regulatory Policy Committee: outline the number of positive and negative RPC opinions received at each point in the policy process;
- Stock reviews: outline the progress of regulatory stock reviews;
- Alternatives to regulation: provide examples of where departments have, or are planning to, implement an alternative to regulation; and
- EU regulations: provide examples of where the department has i) used evidence to shape EU policy and ii) tackled an issue of gold-plating.

All the case study departments we reviewed had provided this information in the annual reports for 2010-11.

**2.48** The Statements of New Regulation for One-in One-out described above provide visibility of progress on this initiative. Departments submit reports on how they are doing to the Better Regulation Executive which collates the data and publish many of the original data sheets on government's public data portal: [data.gov.uk](http://data.gov.uk). Nevertheless, the fact that the initiative covers only changes to regulatory burdens, and burdens from EU regulation are out of scope, means that the Statements provide only a partial picture.

**Figure 10**

Availability of final impact assessments for interventions with opinions given by Regulatory Policy Committee (RPC) January to June 2011

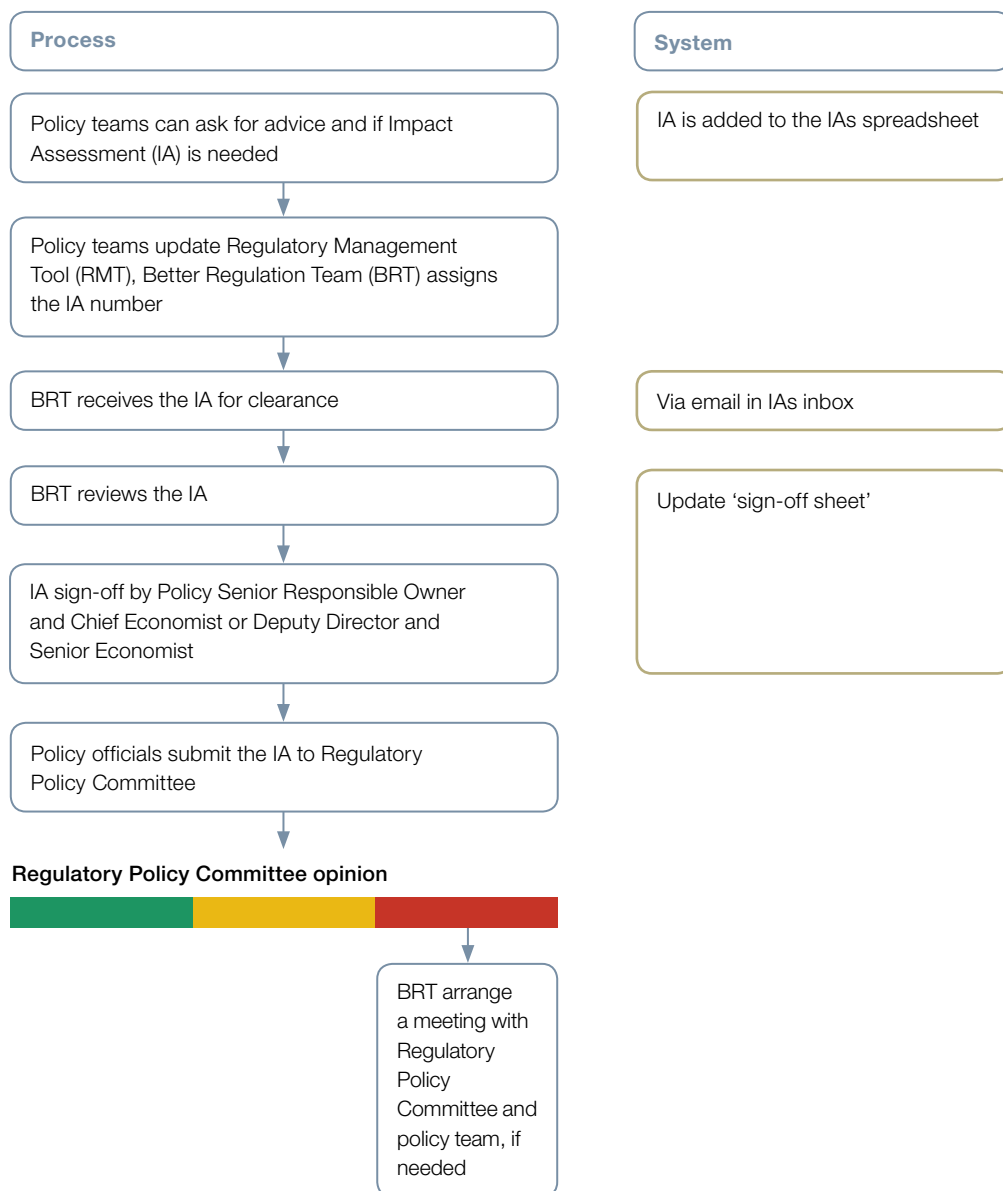
| <b>Department</b>                                  | <b>Interventions with final impact assessment opinions listed in RPC third report</b> | <b>Number of these interventions with final impact assessments in BRE online library</b> | <b>Number of these interventions with final impact assessments not in BRE library but on Department or legislation websites</b> | <b>Number of these interventions with final impact assessments not yet available online</b> |
|--|---|--|---|---|
| Department for Work and Pensions                   | 1   | 1  | 0   | 0   |
| Department for Business, Innovation and Skills     | 17  | 12   | 2   | 3   |
| Ministry of Justice                                | 4   | 2  | 2   | 0   |
| Department for Environment, Food and Rural Affairs | 23  | 18   | 1   | 4   |
| Department for Transport                           | 24  | 20   | 1   | 3   |
| <b>Total</b>                                       | <b>69</b>   | <b>53</b>  | <b>6</b>  | <b>10</b>   |

Source: National Audit Office analysis of impact assessment library and other online sources

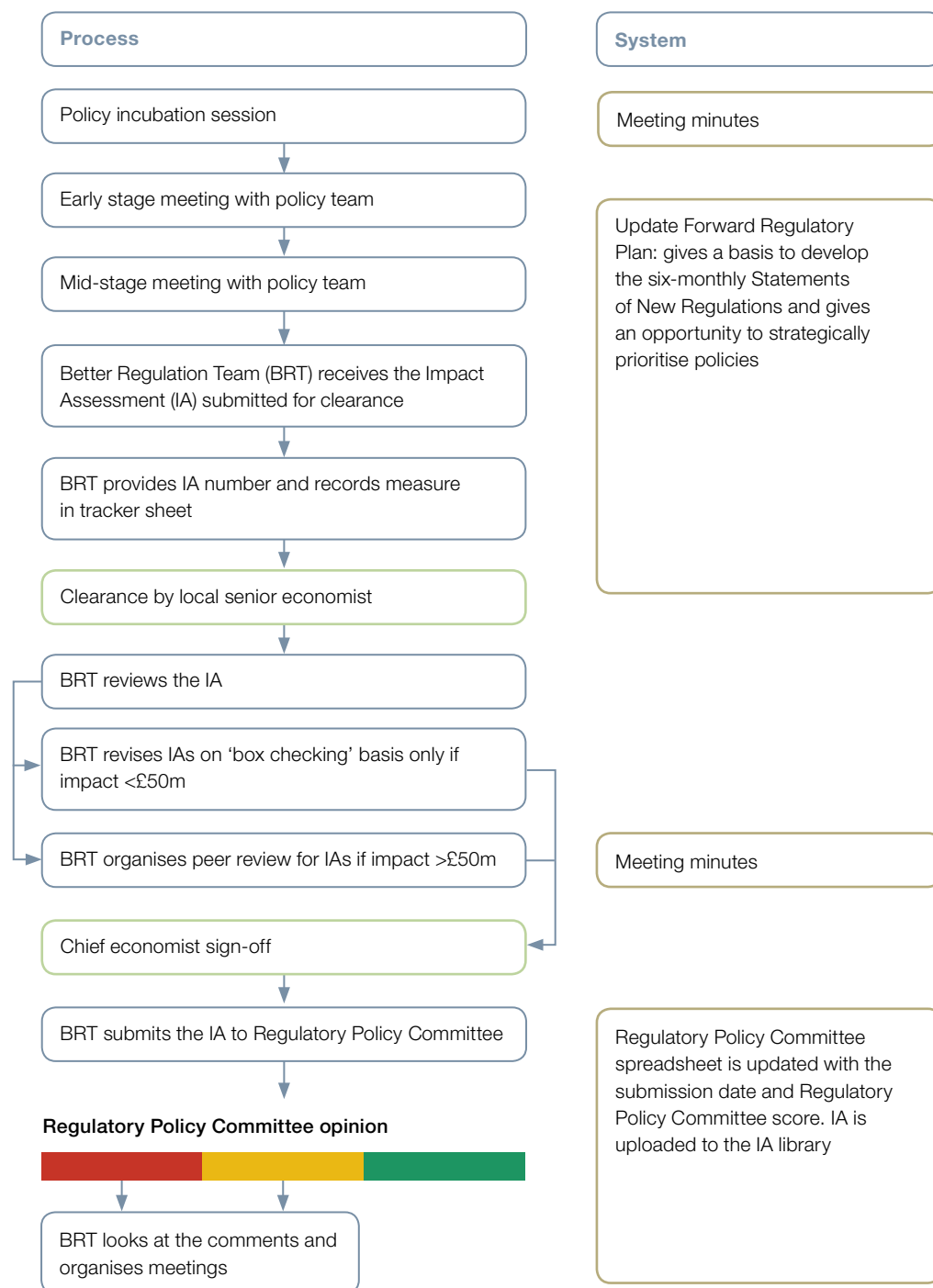
# Appendix One

## Impact assessment process maps for case study departments

**Figure 11**  
Department for Environment, Food and Rural Affairs



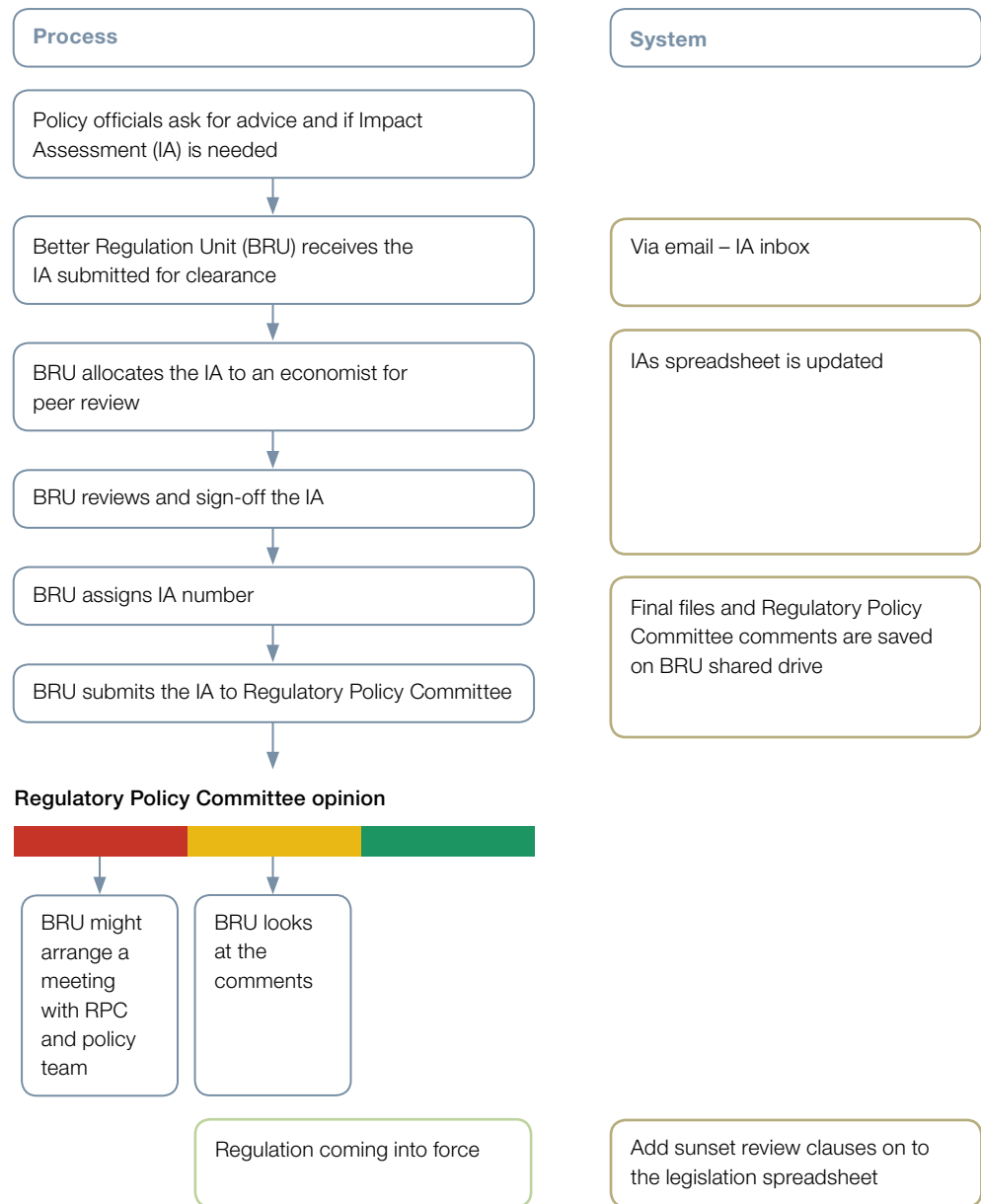
**Figure 12**  
Department for Business, Innovation and Skills



Source: Department for Business, Innovation and Skills

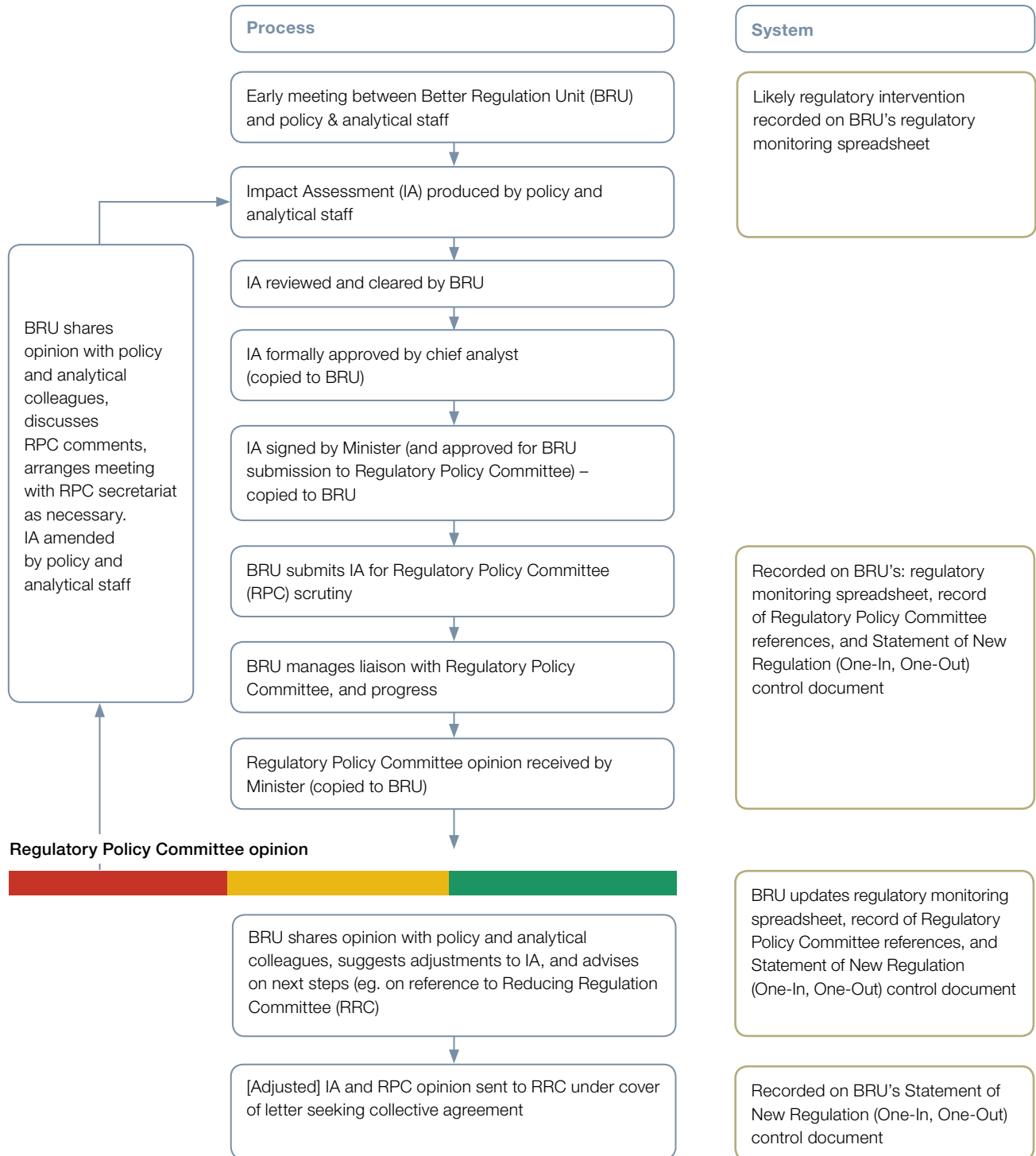


**Figure 13**  
Department for Transport



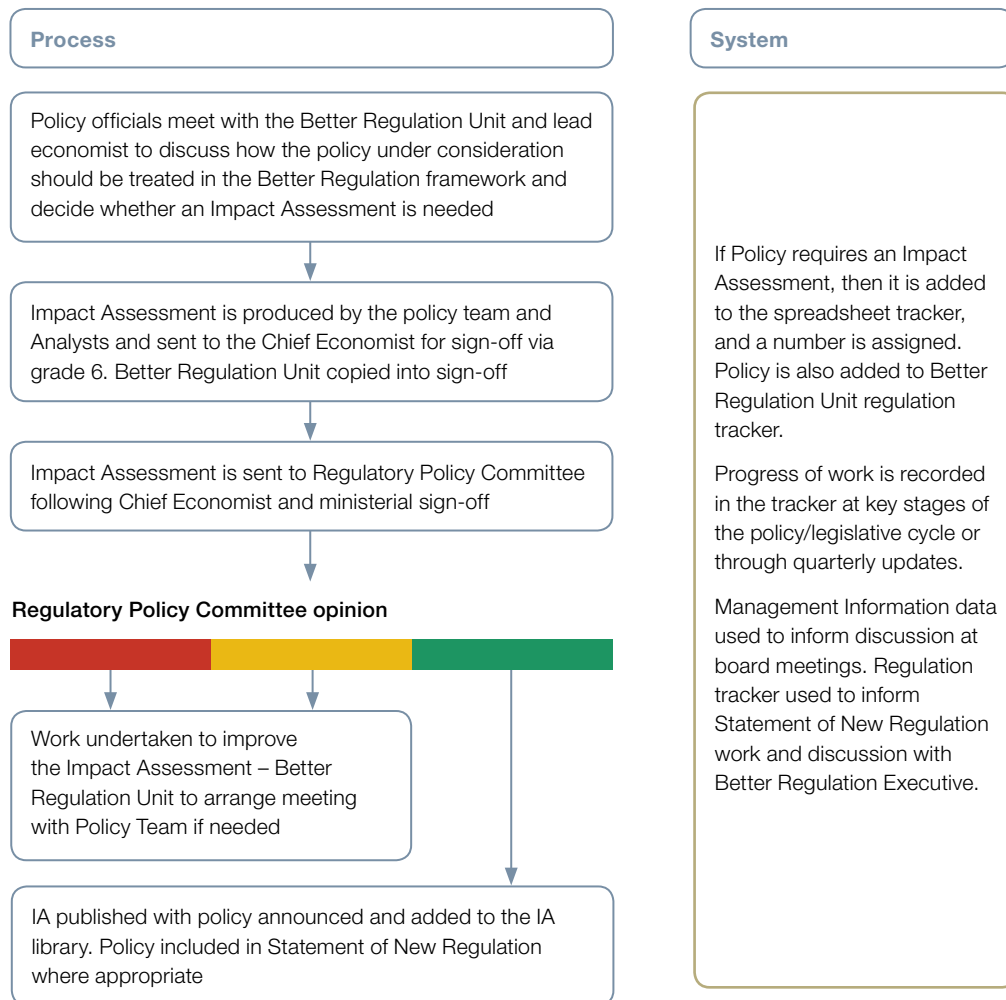
Source: Department for Transport

**Figure 14**  
Department for Work and Pensions



Source: Department for Work and Pensions

**Figure 15**  
Ministry of Justice



Source: Ministry of Justice



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