National Audit Office

Report
by the Comptroller
and Auditor General

Department for Business, Innovation & Skills
and Cabinet Office

The Business Impact Target: cutting the cost of regulation

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National Audit Office

Department for Business, Innovation & Skills
and Cabinet Office

The Business Impact Target: cutting the cost of regulation

Report by the Comptroller and Auditor General

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Comptroller and Auditor General
National Audit Office

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This report examines the value for money of the government's approach to reducing regulatory costs to business, focusing on the work of central government bodies.

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Contents

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Key facts

-£10bn

target reduction in regulatory costs to business over the course of this Parliament

-£0.9bn

government estimate of reduced net cost to business of regulatory decisions made so far this Parliament that **do** qualify as part of its target

+£8.3bn

government estimate of increased net cost to business of regulatory decisions made so far this Parliament that **do not** qualify as part of its target

£10 billion	estimate by the previous government of reduction in costs to business achieved during the 2010–2015 Parliament
90%	of total expected reductions in costs during 2010–2015 Parliament were achieved through only 10 regulatory decisions
2	in scope regulatory decisions made during the 2010–2015 Parliament that have been evaluated after implementation and independently verified by June 2016
51%	of businesses think the level of regulation in the UK is an obstacle to success
46%	of small businesses identified tax administration, which is not within the scope of the government's Business Impact Target, as a burdensome area of compliance
9	departmental Better Regulation Units (out of 14) are not very or not at all confident that they will meet their deregulation budget

Summary

1 Regulation has many purposes, including protecting consumers and the environment, promoting competition and supporting economic growth. However, businesses incur significant costs in complying with regulations. This can act as a barrier to competition in markets and reduce productivity. Our 2014 survey of business perceptions, published jointly with the Department for Business, Innovation & Skills, found that 51% of businesses saw the level of regulation in the UK as an obstacle to business success. The government aims to reduce the cost of regulation for businesses, the voluntary sector and community bodies in order to free up business resources and boost productivity and growth. Since the late 1980s, successive governments have had policies to improve the quality of regulation and reduce its impact on business. By international standards, regulatory costs in the UK are low.

2 The previous government estimated that it reduced regulatory costs for businesses by £10 billion during the 2010–2015 Parliament. This is equivalent to an average annual saving of around £400 for each UK business. Over 90% of this reduction was due to 10 changes, including changing the inflation index used to increase pension benefits, reducing audit requirements for small companies, and streamlining the guidance relating to contaminated land.

3 The Small Business, Enterprise and Employment Act 2015 requires the government to set a target for the economic impact on business of regulatory decisions made during the course of each Parliament. In its 2015 manifesto, the Conservative Party committed to reducing regulatory costs by £10 billion between 2015 and 2020. This commitment was formalised in the Business Impact Target (the Target) in March 2016, with the aim of encouraging public bodies to minimise the costs that their regulatory decisions place on businesses.

4 The Better Regulation Executive (BRE), a joint Department for Business, Innovation & Skills and Cabinet Office unit, is responsible for developing and implementing a framework for achieving the Target. Departments and regulators are responsible for making regulatory decisions to achieve the Target. At the policy planning stage, HM Treasury guidance requires departments to complete impact assessments that contain estimates of the annual costs and benefits of the preferred policy option. The BRE provides additional guidance on how to calculate costs and benefits to business. The Regulatory Policy Committee (RPC), an advisory non-departmental public body, validates departments' estimates of costs and benefits to business.

5 In this report, we examine:

- the scope of the Target and how it relates to business experience (Part Two);
- the BRE's approach to achieving the Target (Part Three); and
- the robustness of systems to estimate and evaluate the impacts of regulatory decisions (Part Four).

Key findings

The scale and scope of the Business Impact Target

6 **The government does not know how much cost businesses incur as a result of its existing regulations.** This means that it cannot know how ambitious its target for reducing regulatory costs is. Many departments have only a partial understanding of how the existing 'stock' of regulations for which they and regulators are responsible affects businesses, and of where burdens could most easily be reduced. While some departments are working to improve analysis of their stocks of regulation, five of the 14 departments with regulatory responsibility within the scope of the Target told us they have no plans to quantify existing regulations (paragraphs 3.4 and 3.5).

7 **The Target does not and is not designed to reflect all administrative and regulatory costs to business.** As well as measures within the scope of the Target, businesses face costs from factors including:

- tax administration, covered by the HM Revenue & Customs programme to reduce the annual cost of tax administration by £400 million by the end of this Parliament. Nearly half (46%) of small businesses said that tax administration was a burdensome area of compliance;
- European Union (EU) regulation, covered by the European Commission's REFIT programme. Of the 951 regulations validated by the RPC during the last Parliament, 297 (31%) originated in the EU; and
- fees, charges, self-regulation and co-regulation.

There is no overall picture of how these costs affect businesses. Government statements do not always make clear the limitations in the Target's scope (paragraphs 2.3, 2.4 and 2.7 to 2.11).

8 **The £8.3 billion of expected costs imposed on business so far this Parliament that are not included in the scope of the Target greatly exceed the £0.9 billion that are.** Almost half (46%) of the 951 regulatory decisions made during the last Parliament did not count towards estimated savings to business of £10 billion. For this Parliament, ministers have decided to exclude several important recent regulatory provisions from the Target, notably the National Living Wage, which is expected to add £4.1 billion of costs to business. The government announced the introduction of the National Living Wage at summer Budget 2015, along with changes to business taxation. Ministers decided that, because the impact of the National Living Wage on businesses was offset by reductions in corporation tax and National Insurance, it should be excluded from the Target. However, we consider that this approach leaves the government open to claims of 'cherry-picking' the measures that it includes (paragraphs 2.5 and 2.6).

Achieving the Business Impact Target

9 **By agreeing individual deregulatory budgets with departments, the BRE has encouraged departments to take an active role in reducing regulatory costs.** The agreed individual budgets total to £15.8 billion, much more than the overall Target. This is to provide greater challenge to departments, while recognising that some departments may fall short of their budgets. Officials said that individual budgets have raised the profile of regulatory issues within their departments. However, some departments told us that their budgets were unrealistic because many of the easier options for reducing regulatory costs have already been taken. Nine of the 14 departmental Better Regulation Units involved were not very or not at all confident that they would be able to meet their budgets. Three departments have not yet agreed their budgets (paragraphs 3.3, 3.6 and 3.7).

10 **The government does not ensure the wider societal costs and benefits of regulation are adequately considered.** Businesses are concerned about the cost of regulation, but some stakeholders have raised concerns that deregulation could have harmful wider effects. Seven of the 14 departments involved told us that there were conflicts between deregulation and their overall policy objectives. Departments are expected to consider potential wider costs and benefits when making regulatory decisions, but the RPC found that departments did so rigorously in only a third of the impact assessments it examined in 2014. The RPC is unable to rate an impact assessment as unfit for purpose on the grounds of inadequate consideration of wider impacts (paragraphs 3.15 to 3.18).

11 **The BRE recently launched a review of the efficiency of the better regulation system, including the costs to departments and regulators of complying with its processes.** Some departments commented on the level of bureaucracy associated with the BRE's rules, and told us that their complexity diverts resources away from genuine deregulatory activity. Since 2010, the BRE has not assessed how impact assessments are used to make regulatory decisions, or whether they result in better policymaking. We estimate that departments' Better Regulation Units cost £2.3 million per year and the BRE and RPC together cost £4.1 million in 2015-16. These estimates do not include costs incurred by departmental policy teams or regulators (paragraphs 3.19 to 3.22).

Estimating and evaluating impacts

12 **There are known weaknesses in the government's measure of regulatory costs, which could significantly reduce its effectiveness in driving reductions in cost.** Businesses and departments often do not understand the measure or the complex rules that determine which costs and benefits count towards it. The measure draws a distinction between direct and indirect impacts that has only partial grounding in business experience or economic principles. As a result, the measure does not sufficiently support policymakers to reduce costs on businesses (paragraphs 4.2 to 4.6).

13 **The government and the RPC have established robust processes to ensure that the method for calculating expected business costs and benefits is applied correctly.** We examined 10 recent impact assessments accompanying regulatory decisions, and found that all of them included clear breakdowns of expected costs and benefits to business. The RPC's approach to validating the expected impacts of regulatory changes is thorough and comprehensive, and has increased the transparency of impact assessments (paragraphs 4.7 to 4.10).

14 **Although HM Treasury guidance says that departments should monitor the ongoing impact of their regulatory decisions, they rarely do so.** This means that departments could miss opportunities to adapt policies in ways that would help businesses. Even where departments do monitor actual impacts on business, the BRE does not report the results of this monitoring or update progress recorded towards the Target as new evidence emerges. The BRE told us that it thought doing so would allow departments to update estimates selectively to increase their chances of meeting their budgets (paragraphs 4.11 to 4.13).

15 **Lack of evaluation means that the government cannot know the real impact of its efforts on business and does not learn lessons from previous interventions.** Since 2010, the BRE has advised departments to carry out post-implementation reviews to assess whether expected costs and benefits were realised. According to BRE guidance, departments should review regulatory decisions within five years of implementation. Of the 83 in-scope regulatory decisions made by departments in 2011, only two reviews have been completed and independently assessed, while a further five have been scheduled. Departments frequently fail to plan for evaluation when making regulatory decisions; of the 10 impact assessments from this Parliament that we examined, none included plans for how departments would carry out post-implementation reviews (paragraphs 4.14 and 4.15).

Conclusion on value for money

16 Within its relatively narrow constraints, the BRE has done good work in raising the profile, across Whitehall, of regulatory costs imposed on business. But the government's measure excludes over £8 billion in costs to businesses during this Parliament so far, many times greater than the £0.9 billion of savings it includes. Limitations in the approach means the scope of the Target is open to manipulation and may not reflect a realistic business-centred view of regulatory costs. Moreover, departments do not do enough to appraise the wider impacts of their decisions, or to evaluate their effects. This harms the credibility of claimed savings and reduces opportunities to learn from past experience. Until robust evidence to show that the government's efforts are improving regulation overall is available, the government will not be in a position to demonstrate that its efforts are providing value for money.

Recommendations

17 Departments and regulators, with the support of the BRE, should:

a **Improve their understanding of the effects of existing regulations on businesses.** Departments should know the costs and benefits of their existing regulations, and the BRE should do more to help departments to share different approaches to measuring their impacts. This would help departments and regulators to prioritise which regulations to amend or remove and provide a better evidence base for setting future departmental budgets.

b **Improve monitoring and evaluation of the impacts of key regulatory decisions.** The BRE should develop its guidance to encourage departments to plan evaluations at the policy development stage and monitor ongoing impacts on business and wider society. The government should expand the RPC's role to assessing whether impact assessments contain adequate monitoring and evaluation plans.

c **Demonstrate detailed consideration of the wider social impacts of key regulatory decisions in impact assessments.** This would help the government to make trade-offs between deregulation and other policy objectives. The RPC should be enabled to declare an impact assessment unfit for purpose on the grounds of insufficient consideration of such wider impacts.

18 The BRE and departments such as HM Revenue & Customs that work closely with businesses, should:

d **Work together to ensure that the government's approach to deregulation reflects businesses' overall experience.** They should take a strategic approach to increase understanding of the interactions between different types of burden, and enable better prioritisation of the government's efforts. Building on its previous reviews, the BRE should commission an independent review of its measure of regulatory costs, assessing whether an alternative approach could provide a better breakdown of different types of impact on businesses. In public statements, the government should make clear that the current Target does not include the full range of regulatory decisions that affect businesses.

19 The BRE should:

e **As currently planned, review the total costs to departments and regulators of its approach to reducing regulatory costs.** The BRE cannot currently provide assurance that its framework is making best use of departments' and regulators' limited resources. Given that most regulatory decisions have only a minor effect on businesses, the government could substantially increase the impact of its work by focusing its efforts on the most important decisions.

f **Evaluate the overall performance of the Target in achieving the government's objectives once sufficient evidence is available.** This would inform decisions about how the government's approach to reducing the costs of regulation should evolve, and make it easier for future governments to set appropriate targets.

Part One

Background

The role and costs of regulation

1.1 Regulations are rules or guidance that regulated entities must comply with. Potential penalties for non-compliance include withdrawal of licences, fines and even imprisonment. Regulation plays a central role in helping the government to achieve its policy objectives, including protecting consumers and the environment, promoting competition and supporting economic growth. By increasing consumer confidence in the quality of the products they buy, regulation can be crucial in enabling markets to operate successfully. However, businesses incur significant costs in complying with regulation, which can act as a barrier to competition and reduce productivity.[1] In 2005, the Better Regulation Task Force estimated that regulation cost the UK economy around £100 billion each year. Policymakers should weigh up the benefits and costs of regulation when deciding how best to achieve policy objectives, and also consider whether alternatives to regulation could produce better outcomes.[2]

1.2 Businesses consistently identify regulation as an important source of costs:

- Our 2014 survey of business perceptions, published jointly with the Department for Business, Innovation & Skills (BIS), noted that 51% of businesses found the UK's level of regulation to be "an obstacle to business success".[3]
- A 2015 survey by PricewaterhouseCoopers and the Confederation of British Industry found that financial sector firms most commonly stated that "reducing the cost of regulatory compliance" should be the top priority for the government.[4]
- A 2015 survey by the National Farmers Union found that 66% of its members felt that regulation would most likely have a negative impact on their businesses.[5]

1 In this report, we use the term 'business' to refer to businesses and voluntary and community bodies.
2 National Audit Office, *A Short Guide to Regulation,* July 2015 and National Audit Office, *Using alternatives to regulation to achieve policy objectives,* June 2014.
3 National Audit Office and Department for Business, Innovation & Skills, *Business Perceptions Survey 2014*, May 2014.
4 PricewaterhouseCoopers, *Financial service firms want government to reduce cost of regulatory compliance – CBI/PWC*, June 2015.
5 National Farmers Union, *Annual Farmer Confidence Survey*, October 2015.

1.3 Businesses face many different types of regulation as they produce, market and sell their products. These include requirements on product and employee safety, on how employees are recruited and paid, on how products are described and marketed and on how consumers can gain compensation if things go wrong. The sources of these regulations vary widely: they include the European Union, the UK government, local government, sector regulators and self-regulatory industry bodies.

Past government efforts to reduce the cost of regulation

1.4 Since the late 1980s, successive UK governments have adopted policies to improve the quality of regulation and reduce associated costs. By international standards, regulatory costs in the UK are low. According to the Organisation for Economic Cooperation and Development (OECD), in 2013, UK product market regulation was the second least restrictive among developed economies.[6] In 2012, a report commissioned by BIS concluded that "the UK is a highly deregulated economy when compared to other OECD countries", and that further reductions in product market regulation were likely to have a positive impact on growth.[7] Between 2009 and 2014, the proportion of businesses that saw the level of UK regulation as an obstacle to business success fell from 62% to 51%.[8]

1.5 The previous government claimed that it reduced regulatory costs to business by £10 billion during the 2010-15 Parliament, based on validated estimates of the expected impacts of its regulatory decisions. This is equivalent to an average annual saving of around £400 for each UK business. Over 90% of the reduction was due to 10 changes, including changing the inflation index used to increase pension benefits, reducing audit requirements for small companies, and streamlining the guidance relating to contaminated land. The previous government stated that it removed or changed over 3,000 regulations as a result of its Red Tape Challenge, which encouraged business and the general public to challenge the government to get rid of burdensome regulations.

1.6 Business groups have been broadly positive about governments' efforts to reduce the cost of regulation. For instance, in 2014 the Federation of Small Businesses said that "we believe the Government's Better Regulation agenda is beginning to show results by delivering improvements in terms of both the quantity and quality of regulation that is emerging from Government". It called on the government to go "faster and further along this trajectory".[9]

6 I Koske, R Bitetti, I Wanner and E Sutherland, *The 2013 update of the OECD product market regulation indicators: policy insights for OECD and non-OECD countries*, OECD Economics Department Working Papers, March 2015.

7 Frontier Economics, *The impact of regulation on growth: a report prepared for the Department for Business, Innovation & Skills*, May 2012.

8 National Audit Office, *Complying with regulation – Business Perceptions Survey 2009*, October 2009 and National Audit Office and Department for Business, Innovation & Skills, *Business Perceptions Survey 2014*, May 2014. There were some methodological changes between 2009 and 2014. For example, tax law was removed from the survey from 2012 onwards.

9 Federation of Small Businesses, *Regulatory Reform Committee Inquiry into Better Regulation – Written evidence submitted by the Federation of Small Businesses*, July 2014.

This government's approach to reducing the cost of regulation

1.7 The government has made reducing the costs to business of regulation and administration a central part of its economic policymaking. Its approach has three main components:

- The Small Business, Enterprise and Employment Act 2015 requires each government to set a target in respect of the economic impact on business of regulatory decisions made during the course of each Parliament. Governments must also report their performance against this target. Following the Conservative Party's 2015 manifesto goal of cutting £10 billion of red tape, in March 2016 the government formally committed to reduce regulatory costs by £10 billion between 2015 and 2020. The commitment, known as the Business Impact Target (the Target), aims to encourage public bodies to minimise the costs that their regulatory decisions impose on businesses. For each regulation, five years' worth of net direct costs or savings to business are counted towards the Target, regardless of when in the Parliament it comes into force.[10]

- The government has sought to encourage reductions in the costs incurred by business as a result of European Union regulation. It has supported the European Commission's REFIT programme, which has the goal of making EU law lighter, simpler and less costly.

- HM Revenue & Customs has a target to reduce the annual cost of tax administration to businesses by £400 million by 2019-20.

1.8 In this report, we focus on the Business Impact Target. We do not assess the government's other initiatives to reduce costs, but we do examine how these are coordinated with the Target.

Roles and responsibilities

1.9 There are many different bodies involved in achieving the Target (**Figure 1** overleaf). The Better Regulation Executive (BRE), which reports jointly to ministers in BIS and the Cabinet Office, is responsible for developing and implementing a framework for achieving the Target. The Reducing Regulation Cabinet sub-Committee provides strategic oversight of the government's regulatory framework. Ministers are responsible for deciding the scale of the Target and which regulatory decisions should be included in its scope.

10 Unless the regulation is in force for less than five years.

Figure 1

Key government bodies involved in achieving the Business Impact Target

Government body	Role
Better Regulation Executive	Unit reporting to BIS and Cabinet Office ministers that leads deregulation across government
Departments' and regulators' policy teams	Expected to make regulatory decisions to cut the costs of regulation for businesses
Better Regulation Unit	Individual departmental teams responsible for promoting principles of better regulation and advising departmental policymakers
Regulatory Policy Committee	Independent verification body responsible for providing external challenge of the evidence and analysis presented in impact assessments
Reducing Regulation Cabinet sub-Committee	A cabinet sub-committee established to take strategic oversight of the government's regulatory framework

Source: National Audit Office analysis of the Better Regulation Framework Manual

1.10 Departments and regulators are responsible for making regulatory decisions in order to achieve the Target. The BRE has agreed individual budgets with departments for reductions in regulatory costs, and departments must introduce £3 of savings to business for every £1 of cost introduced by new legislation under the "one-in, three-out" rule.[11] The government sees regulation as a last resort, and departments are expected to demonstrate that they cannot achieve satisfactory outcomes through alternative approaches. For all regulatory decisions, at the policy planning stage HM Treasury guidance requires departments to complete impact assessments that estimate the annual costs and benefits of the preferred policy option. The BRE provides additional guidance on how to calculate costs and benefits to business. It also expects departments to carry out small and micro business assessments to assess options for mitigating costs on smaller firms. Within departments, Better Regulation Units advise policymakers on how to improve regulation and work towards their deregulation budget.

1.11 The Regulatory Policy Committee (RPC), an advisory non-departmental public body, scrutinises the evidence and analysis in impact assessments and validates the estimated costs and benefits to business. For regulations within the Target's scope, the BRE compiles validated costs and benefits to report progress towards the achievement of the Target in annual reports, the first of which was published in June 2016.

11 The rule applies to any new regulatory legislation not proposed in the Conservative Party's 2015 manifesto.

Scope of this report

1.12 In this report, we examine:

- the scope of the Target and how it relates to business experience (Part Two);
- the BRE's approach to achieving the Target (Part Three); and
- the robustness of systems to estimate and evaluate the impacts of regulatory decisions (Part Four).

1.13 Appendix One outlines our audit approach and Appendix Two our evidence base.

1.14 Appendix Three list categories of regulatory activity that ministers have decided to exclude from the scope of the Target.

1.15 We focus on how central government bodies act to reduce the costs of regulation through the Target and related approaches in previous Parliaments. We do not look at the work of individual departments in detail, though we do consider how their combined efforts affect overall outcomes.

Part Two

The scope of the Business Impact Target

2.1 In this part, we examine the scope of the Business Impact Target (the Target) and how it relates to business experience.

What the Target includes and excludes

2.2 The Small Business, Enterprise and Employment Act 2015 (the Act) specifies the scope of the Target. The government describes the objective of the Target as "to manage and control regulatory burdens on business which, in turn, frees up business resources to be used in more productive ways".[12] In this report, we therefore assess how the Target enables the management and control of burdens, including how it reflects those burdens. We also consider the transparency of the Target and how it is coordinated with other initiatives to reduce business burdens.

2.3 The Target is based on 'regulatory provisions' – statutory provisions that impose standards, set requirements or give guidance in relation to business activity, or relate to the securing of compliance with such standards, requirements or guidance. The Act excludes several types of provision from the Target, including those relating to:

- taxes, duties, levies or other charges;
- procurement; and
- grants or other financial assistance by or on behalf of a public authority.

Because it focuses on business impacts, regulations that affect only the public sector or individual citizens are also outside the Target's scope.

2.4 In addition to these statutory exclusions, the Act enables the Secretary of State to make further exclusions to determine the precise scope of the Target. So far, ministers have decided to exclude 15 more categories of regulatory activities from the scope of the Target. These include regulations originating in the European Union (EU), those relating to the delivery of large infrastructure projects, and the National Living Wage (see Appendix Three). Such exclusions mean that many regulatory activities that affect businesses are outside the Target's scope.

12 Department for Business, Innovation & Skills and Cabinet Office, *Extension of the Business Impact Target Impact Assessment*, August 2015.

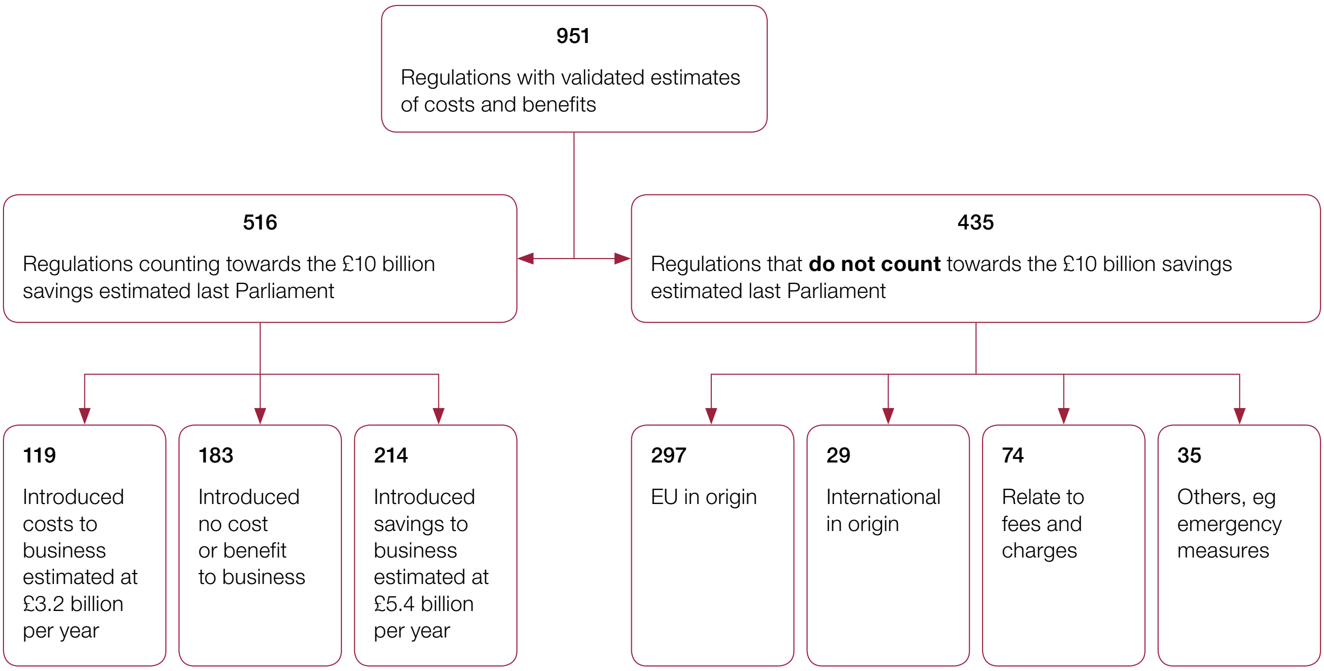
2.5 Under the 2010-15 Parliament, nearly half (46%) of the 951 regulations validated by the Regulatory Policy Committee (RPC) were not included in the government's claim that it had achieved savings of £10 billion (**Figure 2**). The RPC validated the government's estimates that these out-of-scope regulations were expected to impose around £2.8 billion of annual costs on businesses – more than the estimated annual savings to business from in-scope regulatory decisions of £2.2 billion. Of excluded regulations, around two-thirds (67%) originated in the EU; other important exclusions related to financial systemic risks, international agreements and fees and charges.

2.6 The value of exclusions has been even greater so far this Parliament. The government estimates that, since May 2015, it has achieved a net reduction in costs to business of £0.9 billion through regulatory decisions within the scope of the Target. But decisions outside the scope are expected to increase the net cost to business by £8.3 billion (**Figure 3** overleaf). Of this net increase, the National Living Wage is expected to add costs of £4.1 billion to business, and increases in the National Minimum Wage to add £3.1 billion of costs.[13]

Figure 2

Regulations introduced last Parliament and validated by the RPC

Nearly half of the government's regulatory decisions during the last Parliament did not count towards estimated savings to business of £10 billion



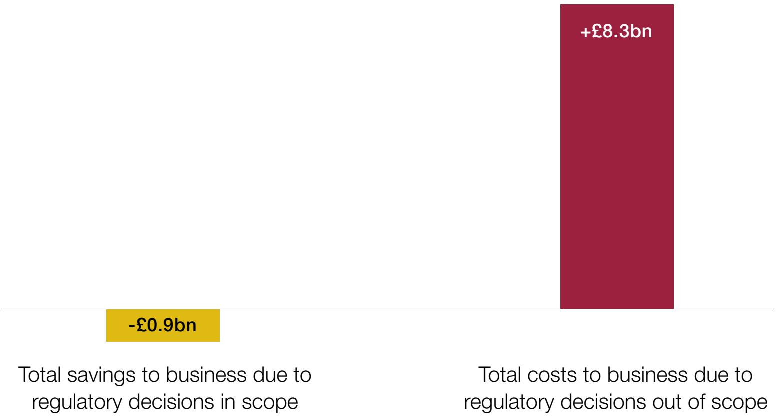
Source: Adapted from Regulatory Policy Committee, *Securing the evidence base for regulation: Regulatory Policy Committee scrutiny in the 2010 to 2015 Parliament*, March 2015

13 These estimates are based on the government's validated impact assessments, which only include the measures' expected impacts in 2016-17. Planned increases in the National Living Wage are likely to increase costs to business further in future years.

Figure 3

Estimated value of net business costs and savings introduced through regulatory decisions made this Parliament, to May 2016

Out of scope regulations have introduced significant costs to businesses during this Parliament



Source: National Audit Office analysis of Regulatory Policy Committee data

2.7 The government announced the introduction of the National Living Wage at summer Budget 2015, along with tax changes including reductions in corporation tax rates and the introduction of the apprenticeship levy. Ministers decided that, because the impact of the National Living Wage on businesses was offset by reductions in corporation tax and National Insurance, it should be excluded from the Target. However, we consider that this approach leaves the government open to claims that it has chosen to omit regulations which introduce significant costs to business.

2.8 The extent of exclusions may undermine the credibility of the Target with businesses, departments and other stakeholders. One department told us that "decisions around whether measures are in or out of scope can appear a bit random sometimes". Another felt that "some business activities that used to be in scope are now out of scope, so there is confusion as to whether all, some or none of an organisation's activities are in scope". The BRE told us that the Target is designed to encourage departments to make better regulatory decisions, so there would be no advantage in including measures originating in the EU, for example, because departments do not have discretion about whether to implement them. The government has sought to reduce the costs of such regulatory activity through its work with the European Commission and the European Council.

Business experience of costs

2.9 The Target is not intended to include all administrative and regulatory costs to business, and there are other government initiatives to reduce such costs. But it is the most prominent, and it is therefore important that it relates to business experience. Although the scope of the Target has been extended to include the activities of statutory regulators, it still does not reflect closely the compliance costs that businesses face. In a 2013 survey by the Federation of Small Businesses, 46% of businesses said that tax administration was a burdensome area of compliance, making it the single most frequently mentioned area (**Figure 4** overleaf). The Confederation of British Industry estimates that the National Living Wage and the apprenticeship levy will impose costs of £24.2 billion on businesses during this Parliament.[14] The Care Quality Commission told us that the providers it regulates report that the National Living Wage will impose significant costs on them, and that they also see the Care Quality Commission's fees as a source of regulatory costs. All of these measures are outside the scope of the Target.

2.10 Public statements do not always make clear the wide range of exclusions from the Target. For instance, in launching the Enterprise Bill, the government announced that it aimed to "cut red tape for businesses by at least £10 billion over the next five years", and did not mention any exclusions.[15]

2.11 As well as the Target, the government has several other initiatives to tackle costs on business, such as tax administration and regulations originating in the EU. However, there is no overall picture of how these costs affect UK businesses. This makes it difficult to coordinate deregulatory efforts around the experience of businesses, or to prioritise the areas that have the greatest effects. Both the Federation of Small Businesses and the British Chambers of Commerce have asked the government to bring tax administration within the remit of the Target and the RPC.

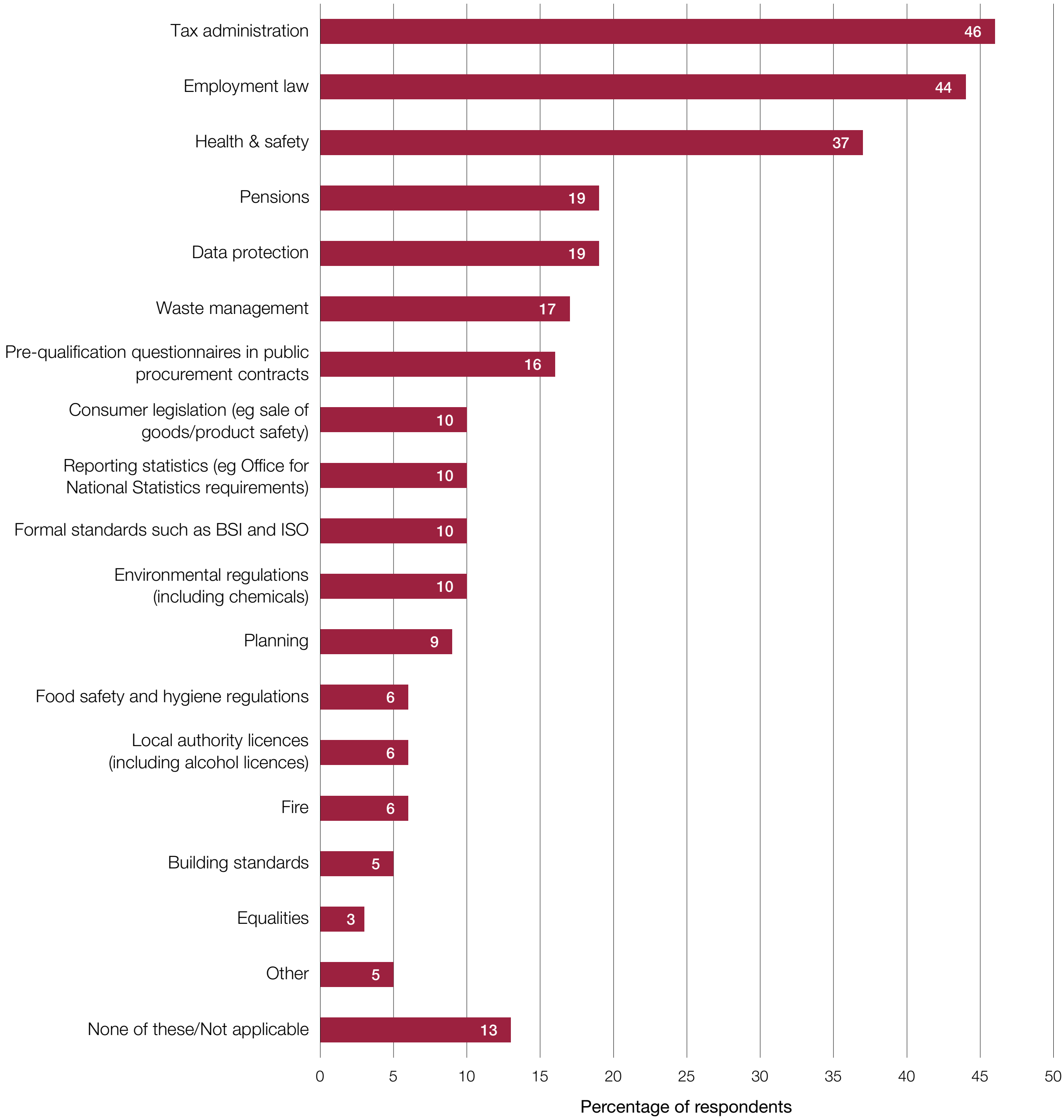
14 Confederation of British Industry, '£9 billion a year policy burden could weigh on businesses' ability to deliver jobs and investment – CBI Director-General', February 2016. Available at: www.cbi.org.uk

15 Department for Business, Innovation & Skills, 'Sajid Javid outlines ambitious Enterprise Bill', May 2015. Available at: www.gov.uk

Figure 4

Areas of compliance that originate in the UK which businesses find most burdensome

46% of businesses said that tax administration was a burdensome area of compliance; it is out of scope of the Target



Note

1 Total number of respondents was 1,946. Respondents could choose up to five areas of compliance which originate in the UK which they find burdensome.

Source: Federation of Small Businesses and Research by Design, *Research by Design report: Section 2 – Regulation*, October 2013

Part Three

Achieving the Business Impact Target

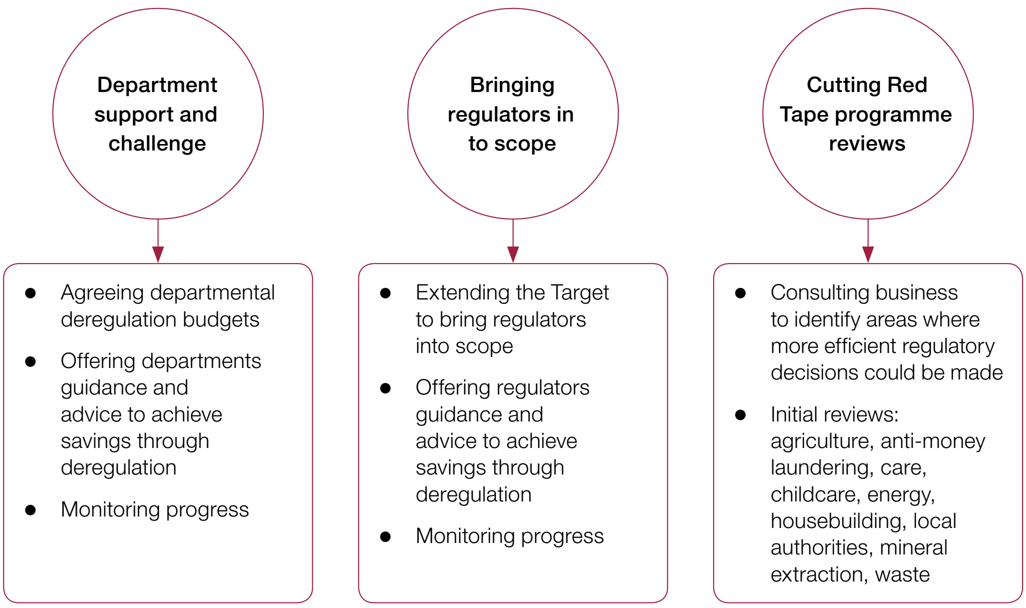
3.1 In this part, we examine:

- the Better Regulation Executive's (BRE's) approach to achieving the Business Impact Target (the Target);
- progress towards the Target;
- how wider social impacts are considered; and
- the administrative costs of the deregulatory regime.

The BRE's approach

3.2 We assess three key elements of the BRE's approach to achieving the Target (**Figure 5**).

Figure 5
Key elements of the BRE's approach



Source: National Audit Office, based on discussions with Better Regulation Executive

Supporting and challenging departments

3.3 The BRE has agreed individual budgets with departments to encourage departments to take ownership for reducing regulatory burdens on business. So far, the BRE has agreed budgets with 11 of the 14 departments with regulatory responsibility within scope of the Target.[16] The sum of the agreed individual budgets is £15.8 billion, much more than the size of the overall Target.[17] The BRE told us that the budgets are deliberately stretching to encourage departments to think ambitiously about their deregulation programmes, while recognising that some departments may fall short. Officials working in departmental Better Regulation Units told us that individual budgets have successfully raised the profile of regulatory issues within their departments. Three departments – the Department for Business, Innovation & Skills (BIS), the Department for Work & Pensions, and the Department for Environment, Food & Rural Affairs – account for over half of the overall Target (**Figure 6**).

3.4 The Red Tape Challenge helped the government to understand better the regulations that are currently in force. But many departments have only a partial understanding of the total costs and benefits to business of the regulations for which they and regulators are responsible and of the scope for reductions. This means that the government cannot know how ambitious its Target for reducing regulatory costs is. Some departments are working to improve analysis of their stocks of regulation. For instance, the Department for Environment, Food & Rural Affairs has compiled a comprehensive database of the legislation it has in force. However, five of the 14 departments with regulatory responsibility told us they have no plans to quantify existing regulations. One department told us that to do so "is a disproportionate use of analytical and policy resource".

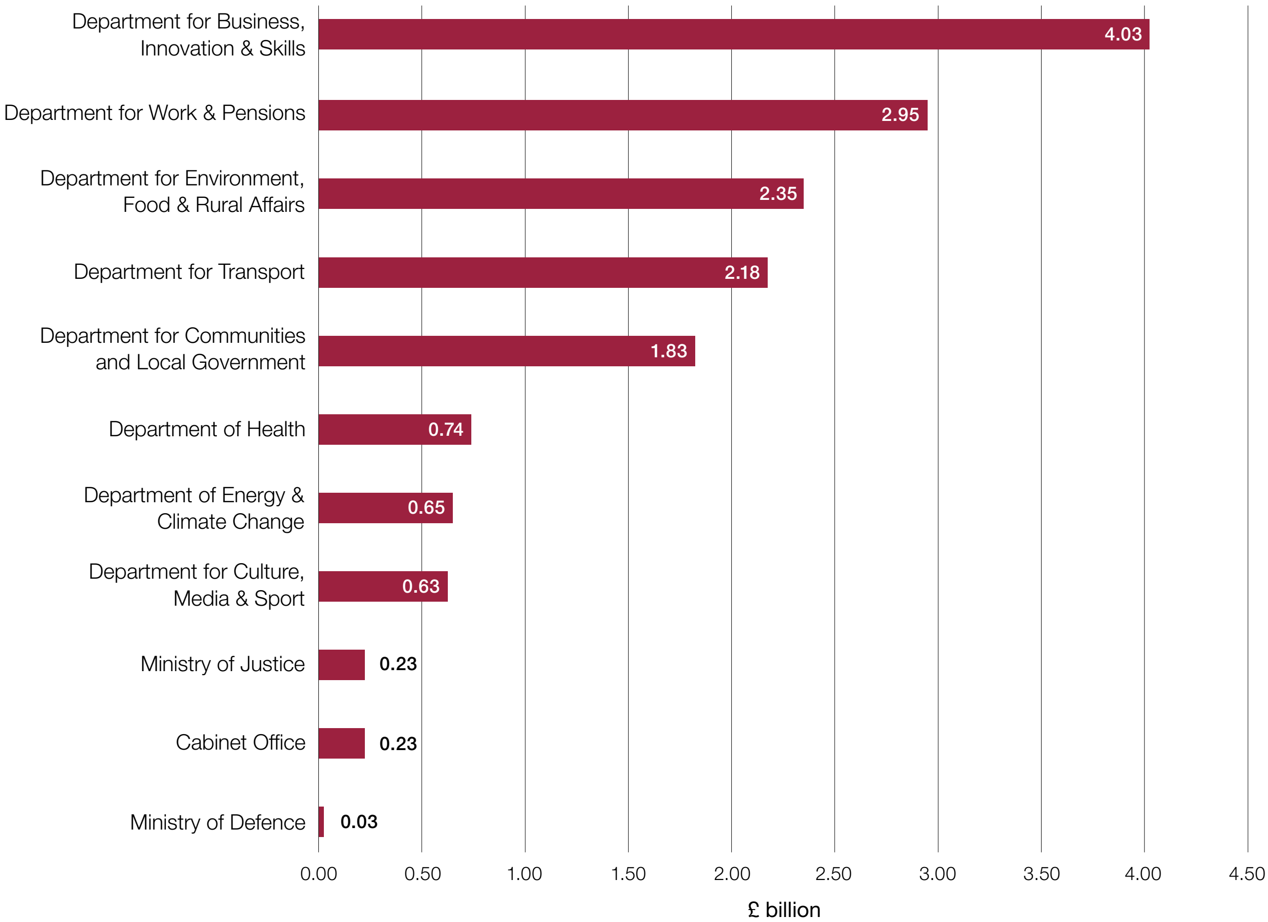
3.5 Departments' lack of understanding makes it hard for the BRE to determine where deregulatory choices can most easily be made; the BRE told us that departmental budgets were "specifically designed to avoid the need to calculate the size of the each department's stock". The BRE calculated the relative scale of budgets on the basis of what each department achieved during the 2010-15 Parliament, the size of regulators' enforcement budgets, estimates of administrative costs and the number of guidance documents regulators have published. It did not assess the costs and benefits of current levels of regulation in each department or consider where deregulation is most desirable. The BRE also consulted widely with departments on their budgets, including at ministerial level, and provided a detailed explanation of how the budgets had been calculated. Nonetheless, 12 of the 14 departmental Better Regulation Units thought that the BRE had not provided a clear explanation of how the budgets were determined.

16 The government describes these as departmental budgets rather than targets. However, we consider 'target' to be a more accurate description of their role, since they are not estimates of expected regulatory changes. We use the government's terminology for consistency with its approach.

17 The BRE agreed annual budgets with departments. We have presented the budgets here and in Figure 6 in terms of their contribution towards the Target, which is five times the annual budget. This is because for each qualifying regulation, five years of costs or savings to business are counted towards the Target. The BRE told departments that "the manifesto commitment of delivering £10 billion of savings to business will be secured by delivering £2 billion of savings by the end of this Parliament". For example, the Department for Communities and Local Government has an annual budget of £365 million net expected savings by December 2019. If achieved, this would realise £1.83 billion cumulative savings to business during the 2020–2025 Parliament.

Figure 6
Budgeted departmental contributions towards the Target, June 2016

Departmental budgets sum to 58% more than the size of the overall Target



Notes

1 As of June 2016, three departments had not agreed their deregulatory budgets: the Department for Education, the Home Office and HM Treasury.

2 See footnote 17 (page 22).

Source: National Audit Office analysis of Better Regulation Executive data

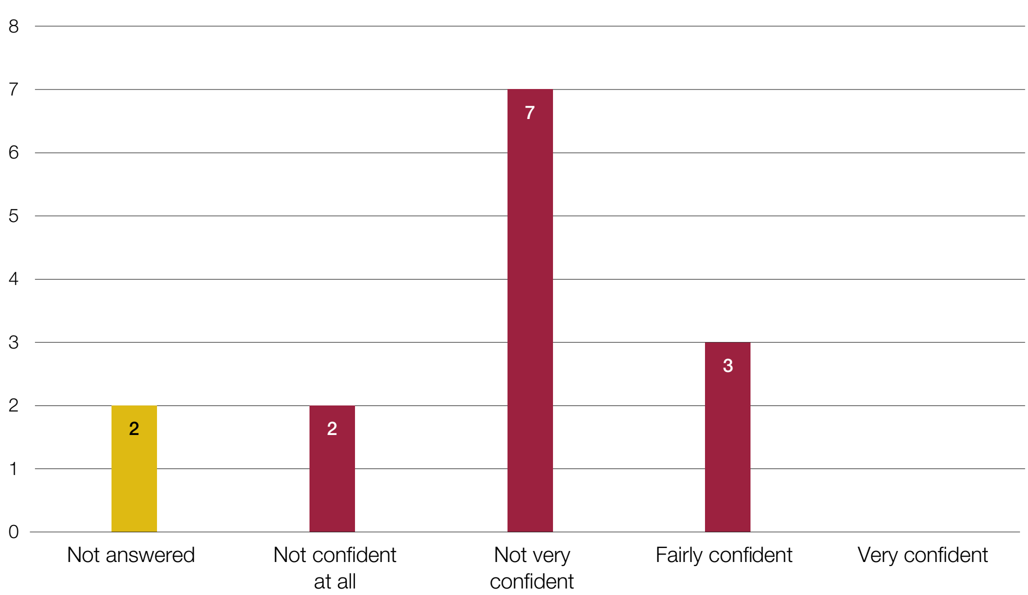
3.6 While the BRE intends individual budgets to incentivise deregulatory activity, it recognises that its information base is limited, and there is therefore a risk that some departments may have unrealistic budgets while others are more easily achievable. The Department for Environment, Food & Rural Affairs, for example, has already achieved almost half of its budget through a single measure, the requirement for large retailers to charge for single-use plastic bags. Conversely, nine of the 14 departmental Better Regulation Units were not very confident or not at all confident that they would be able to meet their budgets (**Figure 7**). The BRE told us that ministers will periodically review departmental progress against budgets and departments' efforts to identify regulatory savings, and may adjust the budgets as a result.

3.7 The BRE has limited levers to encourage departments to achieve their budgets, but does provide support and guidance, which most departmental Better Regulation Units said they find helpful (**Figure 8**). They were particularly positive about the support provided through dedicated engagement officers and the drop-in sessions for Better Regulation Units that the BRE hosts.

Figure 7

Departments' confidence in achieving deregulatory budget

Nine of the 14 departments were not very confident or not at all confident that they would be able to meet their deregulation budgets



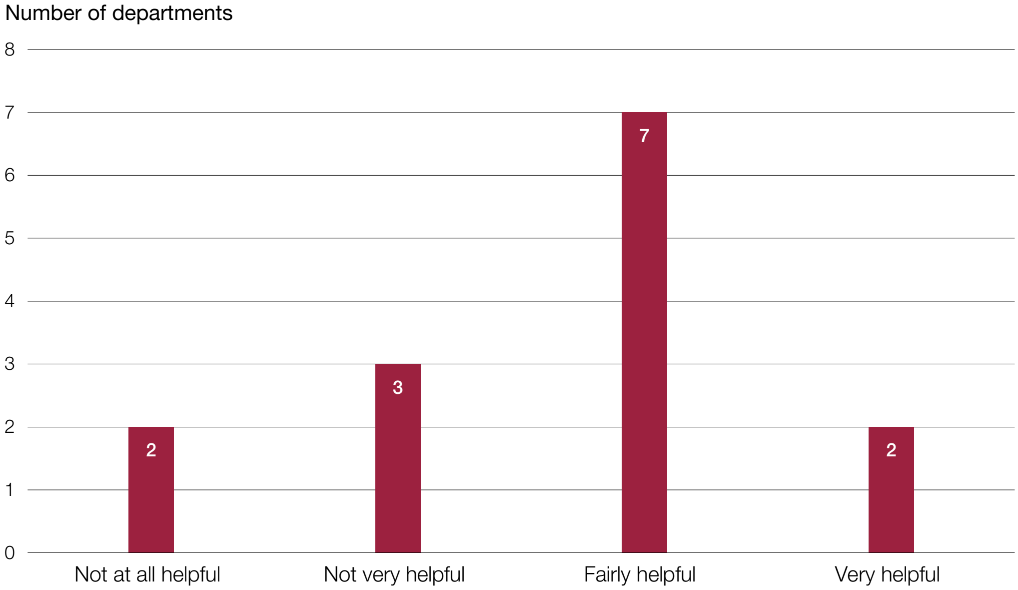
Note

1 All 14 departments with deregulatory budgets completed the survey.

Source: National Audit Office survey of Better Regulation Units

Figure 8
Helpfulness of the Better Regulation Executive's support and guidance

Nine of the 14 departments with deregulation budgets found the support of the Better Regulation Executive fairly or very helpful in meeting their budgets



Note
1 All 14 departments with deregulatory budgets completed the survey.

Source: National Audit Office survey of Better Regulation Units

Bringing regulators into scope of the Target

3.8 Under the Enterprise Act 2016, statutory regulators, such as the Health and Safety Executive and Ofcom, are now expected to make a significant contribution to achieving the Target. The government expects the inclusion of regulators to provide "a wider focus for the government to reduce regulatory burdens on businesses".[18] In agreeing departmental budgets, the BRE initially assumed that two-thirds of savings would come from enforcement and compliance. If this was applied across the agreed budgets, regulators would reduce the costs to business of their activities by about £10 billion. Because regulators are independent of government, they are not expected to achieve individual deregulatory budgets. Instead, their regulatory decisions are counted against their sponsoring departments' budgets. Each department is responsible for interactions with the regulators it sponsors.

18 Department for Business, Innovation & Skills, *Enterprise Bill: Extending the Business Impact Target*, May 2015.

3.9 Overall, the BRE has acted effectively to incorporate regulators within the scope of the Target to a tight timetable. However, during fieldwork regulators told us of several concerns about how they were being included within the Target, including:

- **Independence**

  Some regulators told us that they were worried that perceptions of their operational independence from government could suffer if, for instance, consumers or businesses thought that a regulatory decision had been influenced by the regulator's inclusion within the Target.

- **Tailoring of guidance**

  Regulators were less positive than departments about the BRE's guidance and support, which they thought did not currently reflect the capacity and experience of regulators.

- **Resource implications**

  Regulators were concerned that the requirement to carry out impact assessments retrospectively for every regulatory decision made since the start of this Parliament could require extra resources, at a time when they are trying to reduce their spending.

- **Achievability of cost reductions**

  Some of the activities of regulators, such as their pro-competition measures, are out of scope of the Target. This may make it particularly hard for them to achieve substantial reductions in the costs of their regulatory activities.

The BRE has taken action to tackle some of these issues, for instance by excluding regulator casework from the Target, adapting its guidance, organising seminars and setting up a website specifically for regulators. The BRE has also encouraged regulators to share suggestions and concerns about how the Target will operate.

Cutting Red Tape reviews

3.10 The BRE is carrying out “Cutting Red Tape” sector reviews, which look into whether legislation and its implementation in specific sectors can be simplified or improved. These build on two initiatives under the 2010-15 Parliament – the Cabinet Office and BIS’s Red Tape Challenge, and BIS’s Focus on Enforcement campaign.

3.11 The Cutting Red Tape programme aims to respond to the needs of business by examining regulation and its enforcement and implementation. The reviews take sectoral or thematic approaches to examining regulations. The government intends these reviews to provide a forum for businesses in the sectors under review to highlight areas where legislation, enforcement processes or reporting requirements are particularly burdensome. These reviews are helpful in identifying potential inefficiencies in regulation, and business representative groups have welcomed them.

3.12 The BRE aims to carry out up to 10 reviews a year. To date, it has announced nine sector reviews, of which three have been published, on waste, energy and care. The reviews include commitments to reduce costs. For example, the waste sector review contains 33 government commitments, such as producing business-focused guidance on the definition of waste and removing the requirement for registration of hazardous waste producers. The government plans to publish an update on its overall progress towards fulfilling its commitments in January 2017.

Progress towards the Target

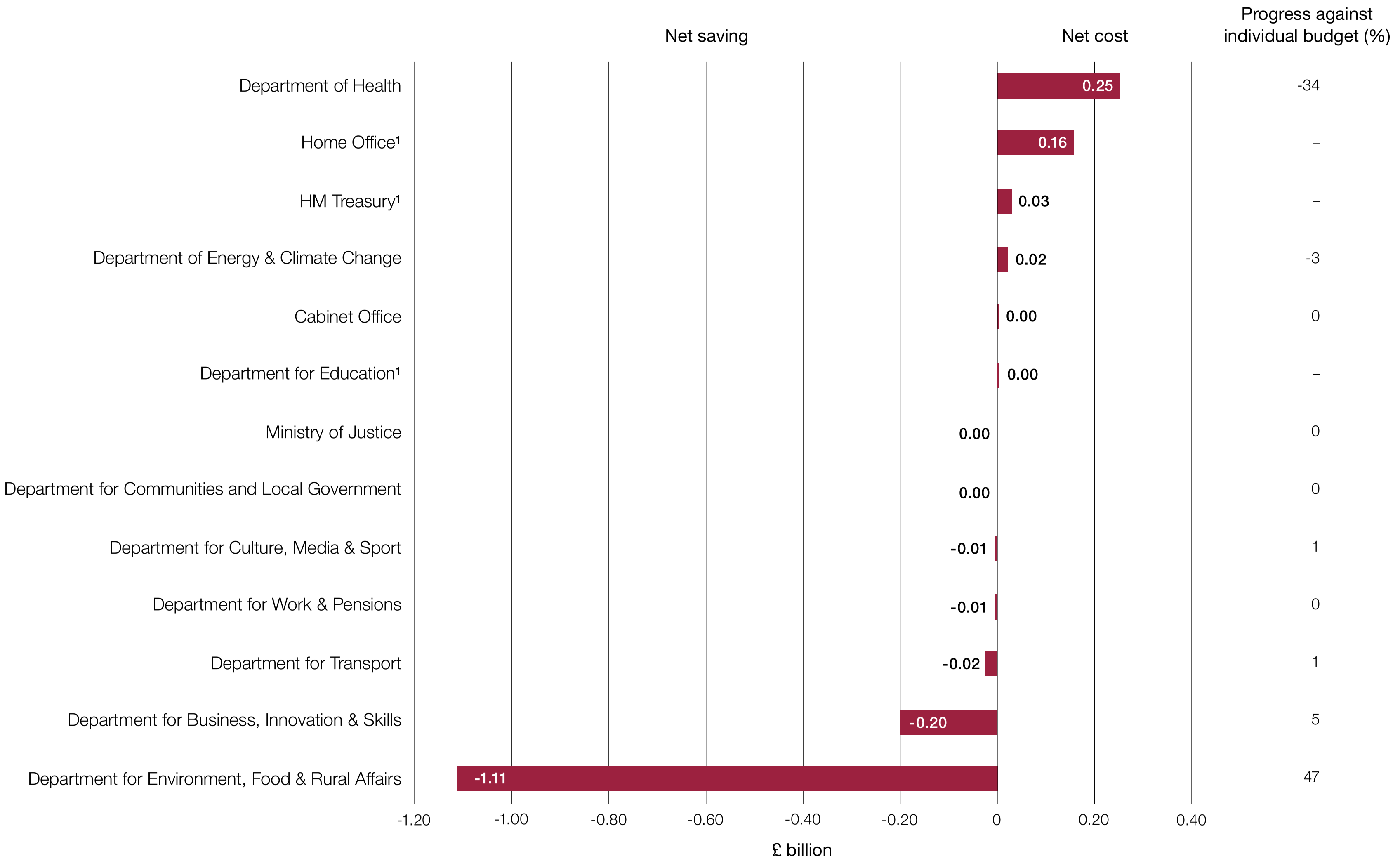
3.13 By the end of May 2016, departments had claimed a net reduction in costs of £0.9 billion (9%) against the £10 billion Target. This is made up of regulatory ‘ins’ (resulting in a net increase in the cost to business) of £0.7 billion, and regulatory ‘outs’ (resulting in a net reduction in the cost to business) of £1.6 billion. Two departments expect to have achieved substantial net reductions in business costs. Two expect the costs associated with their regulatory decisions to have significantly increased so far (**Figure 9** overleaf).

3.14 To date, only four of the 95 departmental regulatory decisions made since May 2015 have made a major contribution towards the Target. There are two regulatory ‘outs’ and two ‘ins’ with a net value of more than £100 million towards the Target (**Figure 10** on page 29).

Figure 9

Expected impacts of departmental regulatory decisions counting towards the Target to May 2016

The government estimates that it has reduced net costs to business by £0.9 billion through in-scope measures



Note

1 Those departments which have not yet agreed their individual budgets.

Source: National Audit Office analysis of data in Business Impact Target Annual Report

Figure 10

Most significant regulatory decisions contributing to the Target, to May 2016

Regulation	Department	Description	Primary elements of costs/benefits to business	Net contribution to Business Impact Target (£m)
Plastic carrier bags charge	Department for Environment, Food & Rural Affairs	Requires larger retailers to charge 5p for single-use plastic bags	Additional revenue resulting from sale of bags	-1,017
Continuity of essential supplies to insolvent businesses	Department for Business, Innovation & Skills	Prevents essential utility and IT suppliers from withdrawing supplies or demanding 'ransom' payments from insolvent businesses	Increased business rescue resulting in improved returns to unsecured creditors	-191
Creation of a blanket ban on new psychoactive substances in the UK	Home Office	Provides a regulatory framework to control the market for new psychoactive substances and prohibit the supply of all substances that have a psychoactive effect	Reduction in profits for sellers of psychoactive substances	+128
Standardised packaging of tobacco products	Department of Health	Introduces standardised packaging to discourage young people from taking up smoking and reduce consumption of tobacco products	Reduction in tobacco company profits	+242

Note

1 There are 91 other regulatory decisions estimated to have a net value of zero or below £100 million.

Source: National Audit Office analysis of impact assessments

Wider social impacts

3.15 HM Treasury and BRE guidance requires departments and regulators to assess the costs and benefits of regulatory decisions, including impacts on business and on wider society, and to quantify them where possible. This is particularly important given the government's drive to reduce the costs of regulation, which means that departments should only place costs on businesses where doing so will have the most beneficial effects for society as a whole.

3.16 However, departmental compliance with the requirement to assess wider social impacts is patchy. The RPC reported that, of the 271 impact assessments it scrutinised during 2014, only a third included robust calculations of expected wider social costs and benefits. For example, in 2014 the Department for Communities and Local Government introduced a regulation to 'simplify, rationalise and reduce the number of standards applicable to new homes'.[19] It estimated that this would save businesses £96 million per year. The impact assessment considered potential social impacts but did not monetise all of them. As part of its scrutiny process, the RPC can comment on the quality of calculations of wider impacts, but it is unable to judge an impact assessment to be unfit for purpose if the calculations are inadequate. In 2015, the RPC said that it considered that "this can, in some cases, send a misleading signal as to the overall robustness of the quality of the impact assessment".[20]

3.17 Some charities told us that the Target's focus on business impacts could lead departments or regulators to neglect social or environmental effects. One charity told us during fieldwork that "unfortunately, the costs and benefits of protecting and enhancing the natural environment are rarely given proper consideration". Another told us the framework encourages public bodies to make regulatory decisions with "no account taken of the wider benefit to society of such regulation". A House of Lords Select Committee report investigating the impact of the Equality Act 2010 on disabled people identified provisions of the Act that had been repealed to reduce business regulations. The Committee commented: "Many of the laws and practices which help disabled people require action from public authorities, employers and others. All too often the Government has characterised this as red tape, and made changes under the Red Tape Challenge which increase the problems of disabled people."[21]

3.18 Seven of the 14 departments involved believed that efforts to achieve the Target sometimes led to conflicts with other departmental policy objectives. One department said that "pressure to meet deregulatory targets had led to the department being blocked from bringing in regulation". The government's goal of rebalancing departmental priorities to take greater account of business costs involves an inherent tension between different objectives, but the government currently cannot know whether it has achieved the right balance.

19 Department for Communities and Local Government, *Housing Standards Review Final Implementation Review Impact Assessment*, March 2015. Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/418414/150327_-_HSR_IA_Final_Web_Version.pdf

20 Regulatory Policy Committee, *Securing the evidence base for regulation*, March 2015.

21 House of Lords Select Committee on the Equality Act 2010 and Disability, *The Equality Act 2010: the impact on disabled people*, Report of Session 2015-16, HC 117, March 2016.

Administrative costs of the deregulatory regime

3.19 The BRE recently launched a review of the efficiency of the better regulation system, including costs to departments and regulators of complying with its processes. The BRE cost £3.1 million in 2015-16, and the RPC £1 million. The RPC expects its workload, and potentially its costs, to increase substantially as a result of regulators being brought into the Target's scope and its role in assessing post-implementation reviews. Based on our survey, we estimate that the total cost of the activities of departmental Better Regulation Units is about £2.3 million per year.[22] However, this is not a full estimate of administrative costs, since it does not include costs incurred by departmental policy teams or by regulators.

3.20 The costs of individual departments' Better Regulation Units varied from an estimated £20,000 to nearly £500,000 (**Figure 11** overleaf).[23] There is a weak relationship between the size of a department's Better Regulation Unit and the scale of its deregulatory budget. For example, we estimate that, for each £1 million of deregulatory budget, one department spent around £41 per year, while another spent £788.

3.21 In response to our survey, several departments raised concerns that the costs they incur in meeting the BRE's rules do not contribute to the overall objective of reducing regulatory costs. One department claimed that "80% of the resource dedicated to delivering against our budget and the Business Impact Target goes directly on managing better regulation accounting". It said that it had to move resources away from valuable Cutting Red Tape reviews into a BRE-facing team to deal with expanded better regulation rules. Another department claimed that "Better Regulation Units are increasingly advising policy officials on how to navigate RPC clearance and how to score things against the Business Impact Target rather than investing time on deregulation."

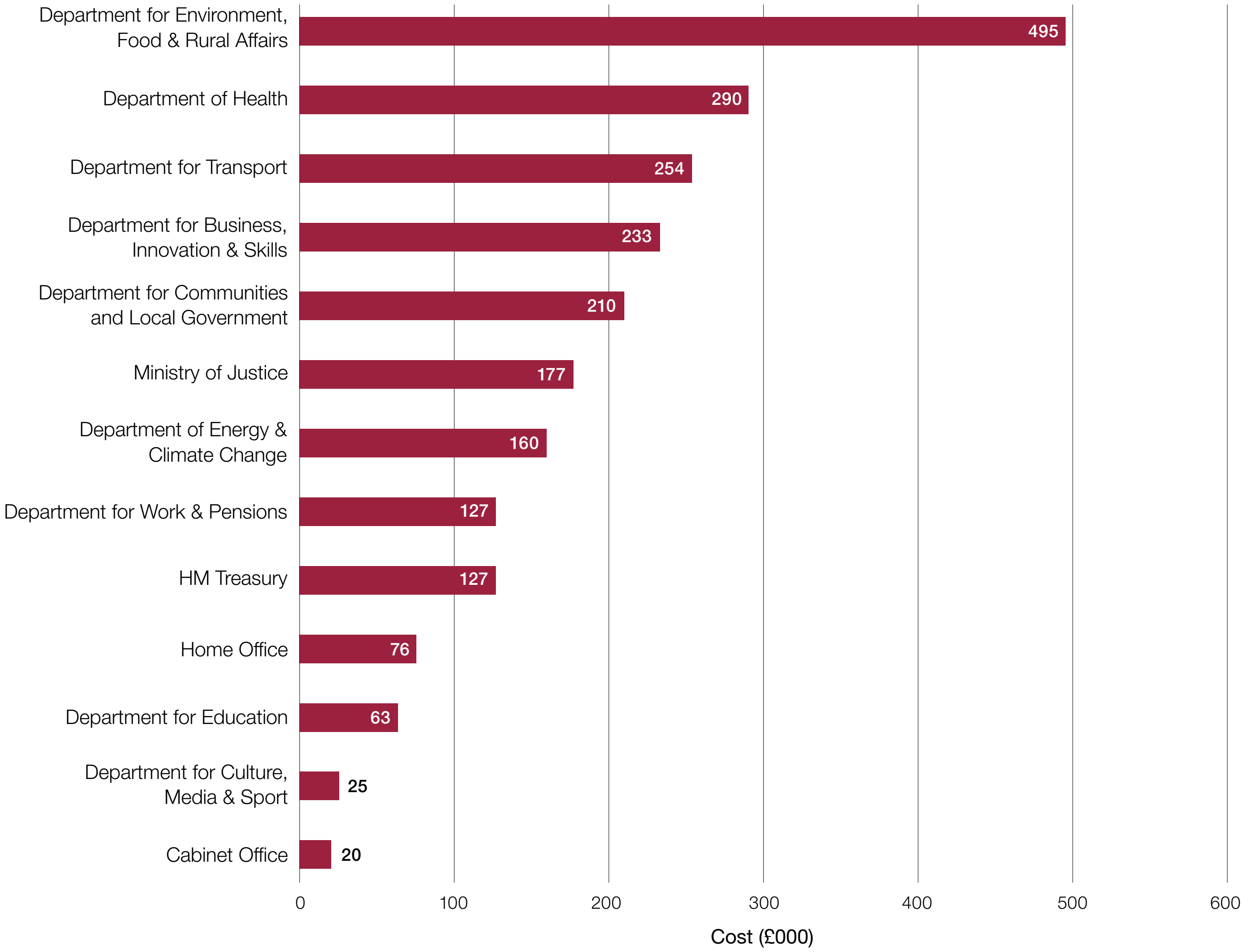
3.22 The BRE has carried out two reviews of the Better Regulation framework, in 2012 and 2015. The BRE has not assessed how impact assessments are used in formulating regulatory decisions, or whether they result in better policymaking; it told us that it used our previous work on these subjects. In May 2016, it began work to increase the efficiency of the better regulation system, including the work of departments, regulators, the RPC and the BRE.

22 See Appendix Two for details of this estimate.
23 This analysis excludes the Ministry of Defence which has a very small deregulatory budget and does not have a Better Regulation Unit.

Figure 11

Cost of Better Regulation Units, 1 April 2016

The annual costs of Better Regulation Units vary from £20,000 to nearly £500,000



Note

1 Some departmental Better Regulation Units cover the regulators that the department sponsors, while others do not. For instance, the Health and Safety Executive's Better Regulation Unit is separate from that of the Department for Work & Pensions and is not included in its costs. Departments also vary in how they allocate their functions between Better Regulation Units and analytical and policy teams.

Source: National Audit Office survey of Better Regulation Units

Part Four

Estimating and evaluating impacts

4.1 In this part, we assess the robustness of the government's systems to estimate, monitor and evaluate the costs of regulation to business.

Measuring progress towards the Target

4.2 The government's primary metric to assess progress against the Business Impact Target (the Target) is the equivalent annual net direct cost to business. This is a measure of the direct impact of a regulatory decision on business, where a direct impact is defined as "an impact that can be identified as resulting directly from the implementation or removal/simplification of the regulation". Departments are required to include an estimate of direct effects on businesses in impact assessments, and the Regulatory Policy Committee (RPC) then validates these estimates. Once the RPC gives an impact assessment a 'fit for purpose' rating, the impact assessment's estimated costs or savings to business then count against the Target. The amount recorded towards the Target is five times the annual amount, reflecting the duration of the Parliament, regardless of when the measure is introduced.[24]

4.3 Constructing a sound metric for regulatory costs is difficult, requiring consideration of factors such as clarity, rigour, relevance to business experience and simplicity. The Better Regulation Executive (BRE) told us that it had aimed to design a metric that set the right incentives for departments, was robust and was able to withstand scrutiny, rather than one that truly reflected the impact on business.

4.4 However, there are known weaknesses in the metric, which could significantly reduce its effectiveness in driving reductions in costs:

- The distinction between direct and indirect impacts has only partial grounding in business experience and economic principles. The focus on direct impacts could give a misleading picture of the effects of regulation, for instance when a regulation is important in promoting consumer confidence and enabling markets to operate effectively. The RPC told us that departments and regulators can find it difficult to understand the distinction, or to work out whether an impact should be classified as direct or indirect. The RPC has recently provided further guidance to departments on this question. We recognise that any reasonable metric will involve ambiguities and difficulties in interpretation, and that there can be trade-offs between clarity and relevance to business experience. But we are not convinced that the current metric achieves the best balance between such factors.

24 Unless the regulation is in force for less than five years.

- The concentration on a single metric does not draw distinctions between different types of burden, with sometimes counter-intuitive results. For instance, the Department for Environment, Food & Rural Affairs' regulation requiring larger retailers to charge for single-use plastic bags is counted as a reduction in regulatory costs. This is because the expected administrative costs of implementing the charge are outweighed by the reduction in costs from purchasing fewer bags.
- The metric is based on the impacts of individual regulatory decisions, rather than looking at systemic effects. Many businesses told us that the cumulative effect of regulations can be greater than the sum of their individual impacts, but the Target does not encourage departments to work together to understand such interactions.

4.5 Because of such weaknesses, the measure does not sufficiently support departments and regulators to make the best regulatory decisions to reduce business costs. Policymakers spend substantial amounts of time trying to understand the metric. One department told us that "the framework has become so bureaucratic and complex that few in Whitehall understand it". Complexity also means that commentators may mis-state claims about deregulation, for instance by not noting the extent of exclusions or the period covered.

4.6 The BRE has refined the measure over time, and reviewed elements of it in 2012 and 2015 along with economists from the Government Economic Service. The 2015 review noted that "the distinction between direct and indirect impacts is often not intuitive", and that the current metric "has a number of known perverse outcomes", but concluded that the alternative options it analysed did not have clear advantages over the established methodology.[25]

Validating the estimates of costs to business

4.7 The BRE and RPC have established robust processes for estimating and validating regulatory costs and benefits to business within the scope of the Target. The BRE provides guidance to policymakers to develop estimates of costs and benefits to business and the RPC scrutinises the evidence and analysis presented in impact assessments. The RPC's nine-step process includes using detailed questions and repeated stages of internal peer review. We found that the RPC's approach is thorough and comprehensive and has led to improvements in the transparency of the impact assessments that accompany proposed regulatory decisions. All of the impact assessments we examined from this Parliament included clear breakdowns of expected costs and benefits to business (**Figure 12**).

25 Better Regulation Executive, *Scope and Metrics Paper 3, setting the metric of the Target*, April 2015, (unpublished).

Figure 12
Robustness of the Regulatory Policy Committee scrutiny process

Regulation	Cost or saving to business (2014 prices)	Impact assessment shows and explains the costs/benefits to business?	Evidence of RPC scrutiny of costs/benefits to business?	Impact of the RPC scrutiny of final estimates of costs/benefits
Standardised tobacco packaging	Cost – £48.4m annually	Yes	Yes	Increase in estimated cost
Increase in National Minimum Wages rates – 2015	Cost – £38.8m for one year	Yes	Yes	No change
Creation of blanket ban on new psychoactive substances in the UK	Cost – £25.7m annually	Yes	Yes	Increase in estimated cost
Senior managers and certification regime: extension to foreign branches	Cost – £7.0m annually	Yes	Yes	No change
Tackling illegal immigration in privately rented accommodation	Cost – £5.6m annually	Yes	Yes	Increase in estimated cost
Plastic carrier bags charge	Saving – £203.4m annually	Yes	Yes	Increase in estimated benefit
Speeding up cheque payments: legislating for cheque imaging	Saving – £103.8m annually	Yes	Yes	No change
Continuity of essential supplies to insolvent businesses	Saving – £38.3m annually	Yes	Yes	Decrease in estimated benefit
Simplification and expansion of the Primary Authority Scheme	Saving – £25.8m annually	Yes	Yes	No change
Company filing requirements	Saving – £16.9m annually	Yes	Yes	Decrease in estimated benefit

Note

1 We reviewed the 10 regulatory decisions with the most significant costs and savings validated by the RPC between May 2015 and March 2016.

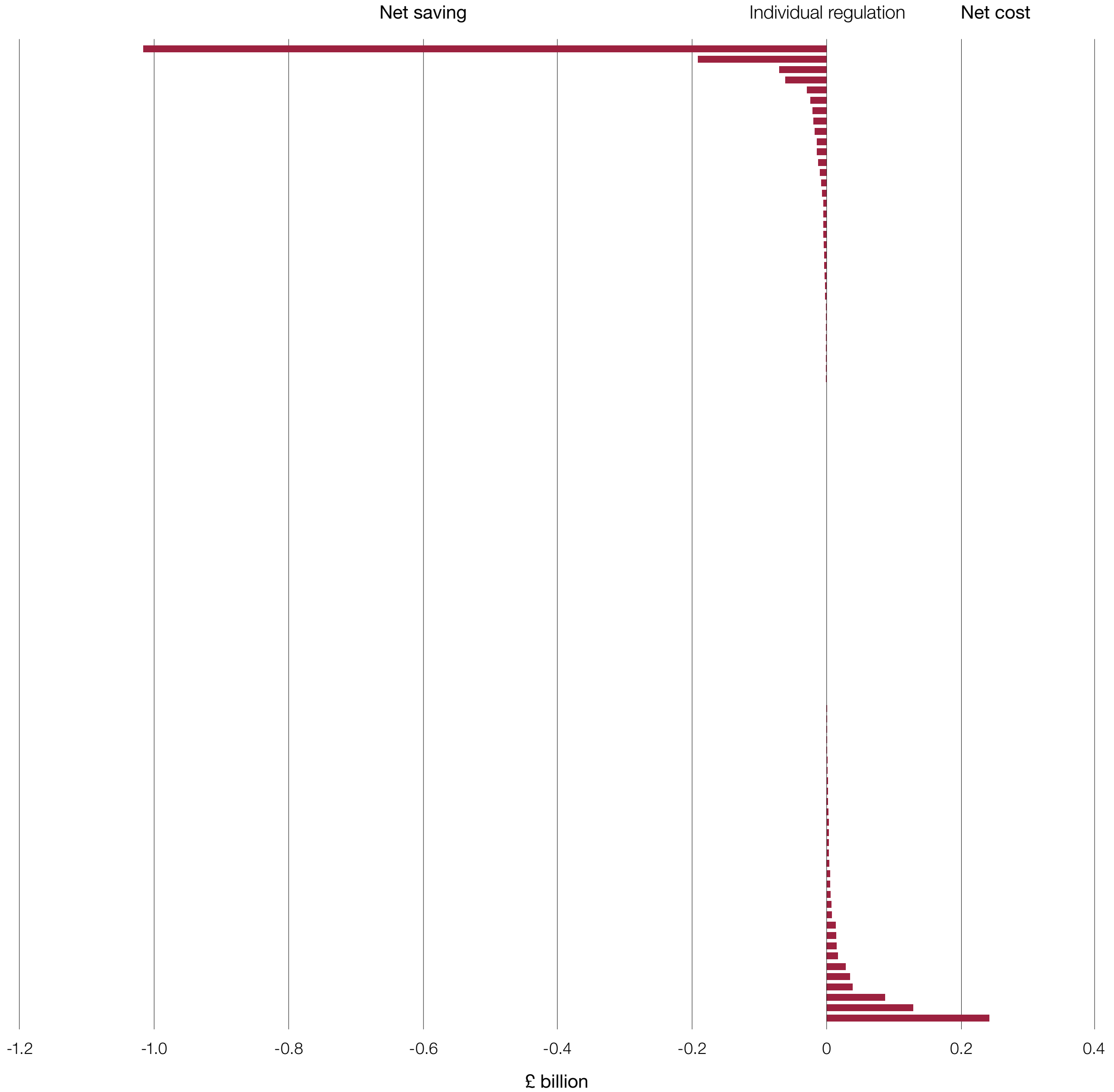
Source: National Audit Office analysis of Regulatory Policy Committee case folders

4.8 The RPC's system for recording its scrutiny process have improved since the last Parliament. It now stores all internal and external correspondence to evidence the scrutiny process for each impact assessment it analyses. The RPC's record-keeping during the last Parliament was mainly paper-based, and we were unable to verify its validation of the estimated impacts of previous regulatory decisions.

4.9 The RPC scrutinises all impact assessments for which the estimated gross annual cost or benefit to business is over £1 million. The RPC found that 70% of regulations introduced under the last Parliament were expected to lead to net costs or savings to business of less than £1 million annually (less than £5 million over the course of the Parliament). The 10 regulations that reduced regulatory costs the most accounted for over 90 per cent of total savings. The profile so far this Parliament is similar. A total of the 95 regulations that the RPC has validated 64 (67%) have a net impact (positive or negative) of less than £5 million (**Figure 13** overleaf).

Figure 13
Contribution to Target of regulations introduced since May 2015

Two-thirds of regulations introduced to date which count towards the target have a net impact of less than £5 million



Source: National Audit Office analysis of data in Business Impact Target Annual Report

4.10 The RPC and the BRE are jointly considering whether the scrutiny applied to regulations with smaller expected impacts is proportionate, but they have not yet decided on any change. Increasing the threshold for RPC validation would free up resources to scrutinise impact assessments submitted by statutory regulators. The BRE expects statutory regulators to submit around 450 impact assessments for validation in the next year. A more proportionate system could also enable departments and regulators to use more resources to monitor and evaluate key regulatory decisions.

Monitoring actual impacts on business

4.11 HM Treasury's Green Book guidance says that while a regulation is being implemented, policymakers should monitor the actual impact of the regulation on stakeholders. It describes monitoring as important in ensuring that the "outputs of a … policy remain consistent with changing government objectives" and "forecast costs and benefits are frequently reviewed".[26] Effective monitoring can also help improve the implementation of policy decisions. For instance, a department might decide to change how it implements a policy if it finds that its approach is imposing unexpected additional costs on businesses.

4.12 However, we found that in practice the government places little emphasis on monitoring the impacts of regulatory decisions. The BRE's 136-page Better Regulation Framework Manual contains only three sentences about the value of ongoing monitoring in a regulatory context. In line with government guidance, the BRE encourages departments to publish monitoring and evaluation plans to accompany impact assessments. We examined 10 impact assessments produced during this Parliament, and 10 produced under the last Parliament. We found that none of the impact assessments produced during this Parliament included monitoring and evaluation plans, and only five of those produced under the last Parliament.

4.13 Even where departments do monitor actual impacts on business, the BRE does not report the results of such monitoring or update progress recorded towards the Target as new evidence emerges. This means that reported progress may be based on outdated or incomplete information. The BRE told us that it thought ongoing reporting of impacts could allow departments to update estimated impacts only when business costs were lower than expected.

26 HM Treasury, *The Green Book: Appraisal and Evaluation in Central Government*, July 2011.

Evaluating actual impacts on business

4.14 We have repeatedly recommended that departments carry out more evaluations of the effects of their regulatory decisions (**Figure 14**). Partly as a result, since 2010 the BRE has advised departments to carry out post-implementation reviews to assess whether expected benefits and costs were realised. This advice was upgraded to a requirement in the Small Business, Enterprise and Employment Act 2015. Departments and regulators must now review the impact of a regulation after a specified period of time, usually five years. Regulatory decisions implemented through secondary legislation should typically include 'sunset' clauses, providing for their automatic expiry unless the government takes action to extend their lives. The Better Regulation Framework Manual states that post-implementation reviews should evaluate "whether implemented regulations are having the intended effect and whether they are implementing policy objectives efficiently". Policymakers should use the results of post-implementation reviews to decide whether to continue, amend or remove a regulation.

4.15 The BRE's increased focus on evaluation should in principle enhance understanding of regulatory impacts and encourage learning from previous interventions. However, the effects so far have been limited. Of the 83 in-scope regulatory decisions made by departments in 2011, only two reviews have been completed and independently assessed, while a further five have been scheduled.[27] Until more reviews are carried out, it is impossible to assess whether expected reductions in regulatory costs under the last Parliament have been achieved.

27 As of June 2016, the RPC has scrutinised 11 post-implementation reviews, two of which were for regulations introduced last Parliament that counted towards the government's estimate of savings to business.

Figure 14

Previous National Audit Office recommendations relating to the monitoring and evaluation of regulation

Previous National Audit Office findings and recommendations	Reference
"Departments should outline in the regulatory impact assessments how the regulation and its effects are to be measured and monitored, and describe the reviews and evaluations which will be used to judge how far the regulation is achieving defined objectives. They should also explain how information from monitoring and evaluation will be used to inform future policy making."	Evaluation of Regulatory Impact Assessments Compendium Report 2003-04
"Give greater emphasis and effort to the ex-post evaluation of regulation to ensure that it is fulfilling its original objectives."	Evaluation of Regulatory Impact Assessments 2005-06
"Departments need to ensure that regulatory impact assessments contain explicit statements on how and when post-implementation reviews will be conducted. In addition, departments should develop a systematic programme of reviews of regulations and assign responsibility for reporting results to Senior Management."	Evaluation of Regulatory Impact Assessments 2006-07
"Departments' plans should include monitoring of enough data to enable significant variations from expected results to be identified early, and specify review periods."	Assessing the Impact of Proposed New Policies 2010-11
"In 2007 we reported that there continued to be an unstructured and ad hoc approach to post-implementation review across all departments. Since then, we have found greater numbers of impact assessments include a statement of when a review should be conducted, although relatively few have been carried out to date."	The NAO's work on regulatory reform 2010-11
"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."	Submission of evidence: controls on regulation (2012)

Source: National Audit Office

Appendix One

Our audit approach

1 This study examined the Better Regulation Executive's (BRE's) approach to achieving the Business Impact Target (the Target). It assessed:

- the scope of the Target and how it relates to business experience;
- the BRE's approach to achieving the Target; and
- the robustness of systems to estimate and evaluate the impacts of regulatory decisions.

2 Our audit approach is summarised in **Figure 15**. Our evidence base is described in Appendix Two.

Figure 15
Our audit approach

The objective of government

The government aims to reduce the cost of regulation for business, freeing up business resources to increase productivity and economic growth.

How this will be achieved

As obliged by the Small Business, Enterprise and Employment Act 2015, better regulation ministers set the Business Impact Target to reduce regulatory costs to business by £10 billion. Departments and regulators are expected to make regulatory decisions to achieve the Target, following guidance and rules set out by the BRE. The Target sits alongside other government programmes to reduce business burdens.

Our study

We examined the value for money of the government's approach to reducing regulatory costs to business, focusing on the work of central government bodies.

Our evaluative criteria

Does the scope of the Business Impact Target help to manage and control business burdens, and does it reflect business experience?

Is the BRE's approach well-designed to achieve the Target efficiently while limiting negative side-effects?

Has the government established robust systems to estimate, monitor and evaluate the impacts of regulatory decisions?

Our evidence

(see Appendix Two for details)

Interviews with the Better Regulation Executive, Better Regulation Units, regulators, the Regulatory Policy Committee, business interest groups and academics.

Survey of Better Regulation Units and deregulation teams.

Call for evidence from businesses.

Review of Regulatory Policy Committee's scrutiny process by examining how it was applied to 20 sample regulatory decisions.

Literature review of relevant materials.

Our conclusions

Within its relatively narrow constraints, the BRE has done good work in raising the profile, across Whitehall, of regulatory costs imposed on business. But the government's measure excludes over £8 billion in costs to businesses during this Parliament so far, many times greater than the £0.9 billion of savings it includes. Limitations in the approach means the scope of the Target is open to manipulation and may not reflect a realistic business-centred view of regulatory costs. Moreover, departments do not do enough to appraise the wider impacts of their decisions, or to evaluate their effects. This harms the credibility of claimed savings and reduces opportunities to learn from past experience. Until robust evidence to show that the government's efforts are improving regulation overall is available, the government will not be in a position to demonstrate that its efforts are providing value for money.

Appendix Two

Our evidence base

1 Our independent conclusions on the quality and value for money of the Better Regulation Executive's (BRE's) approach to achieving the Business Impact Target (the Target) were reached following our analysis of evidence collected between December 2015 and June 2016. Our audit approach is outlined in Appendix One.

2 We examined the scope of the Business Impact Target and how it relates to business experience by collecting evidence through:

- interviews with the BRE about the evidence base for and objectives of the Target;
- a literature review of publicly available documents pertaining to the Target, its objectives and the extent to which it reflects regulatory costs;
- a call for evidence issued through our website asking businesses and voluntary and community bodies to detail their experience relating to the costs and benefits of regulations, the impact of regulation on their organisations and the extent to which departments and regulators consult their organisations when measuring and evaluating the actual impact of regulation. We received submissions from 33 respondents; and
- interviews with external stakeholders including departments; regulators; businesses and voluntary and community bodies; business interest groups; the Regulatory Policy Committee (RPC); academics from the London School of Economics and Queen Mary University of London; and the Organisation for Economic Cooperation and Development.

3 We examined the BRE's approach to achieving the Target by collecting evidence through:

- interviews with the BRE about its current approach to achieving the Target;
- interviews with a sample of departments. Staff from the Better Regulation Units of the five departments with the largest deregulation budgets were interviewed:
  - Department for Business, Innovation & Skills;
  - Department for Communities and Local Government;
  - Department for Environment, Food & Rural Affairs;
  - Department for Transport; and
  - Department for Work & Pensions.
- interviews with a sample of regulators – we interviewed the five regulators with the largest enforcement budgets in 2012-13: Care Quality Commission, Driver and Vehicle Standards Agency, Environment Agency, Health and Safety Executive; and Ofcom;
- online survey of all 14 departments with deregulation budgets. This survey was sent to departments' Better Regulation Units and deregulation teams and asked questions about resourcing, the support of the BRE, understanding of their departmental budgets and their stock of regulation. The 2016-17 cost of the Better Regulation Units was calculated based on the number of staff in each department working in the Units as of 1 April 2016. The median salary, taken from the Office for National Statistics' Civil Service Statistics Bulletin October 2015, was multiplied by the number of staff reported at each grade. Employers' national insurance and pension contributions were also calculated using the government's national insurance rates and average employers' pension contribution (21.1%) as of 1 April 2016. The estimates include overhead costs calculated at £9,750 per annum per full-time staff member based on the annual cost of rent, rates and maintenance costs per employee in the Department for Business, Innovation & Skills' London office as of 9 May 2016;
- interviews with external stakeholders (as above);
- the call for evidence from business and community and voluntary bodies (as above); and
- a literature review of publicly available and unpublished documents pertaining to the BRE's current and past approaches to achieving the deregulation agenda and the Target.

4 We assessed the robustness of systems to estimate and evaluate the impacts of regulatory decisions by collecting evidence through:

- an assessment of 20 sample regulations, 10 from this current Parliament and 10 implemented during the last Parliament (the five regulations that created the most significant costs and the most significant savings from each Parliament). RPC provided us with case folders containing internal and external correspondence entailed in scrutinising the sample impact assessments. Criteria examined were: whether the impact assessment clearly outlined the costs and savings to business of the proposed regulation; whether these costs and benefits were clearly explained; if there was clear evidence of RPC scrutiny of the analysis and evidence present in the case files; the impact of the RPC scrutiny on the final estimates of impact; and whether the impact assessment was accompanied by a post-implementation review plan;
- interviews with the RPC to understand its scrutiny process and to follow up on the findings of our review;
- interviews with the BRE to collect evidence on the rationale underpinning the systems as currently implemented;
- interviews with departments with the largest deregulation budgets (as above);
- interviews with a sample of regulators (as above);
- online survey of all 14 departments with deregulation budgets (as above);
- interviews with external stakeholders (as above);
- the call for evidence from business and voluntary and community bodies (as above); and
- a literature review of publicly available documents relating to the estimation, monitoring and evaluation of regulatory impact.

Appendix Three

Excluded categories of regulatory activity

Figure 16

Categories of regulatory activity that ministers have decided to exclude from the scope of the Target

Category	Example regulation
Regulation originating in the European Union (EU) or internationally as transposed in the UK (except 'gold-plating', a term referring to when policymakers impose rules which are beyond those called for in the EU or international regulation).	Introduction of sanctions and penalties to ensure no overall reduction in existing animal welfare standards at the time of slaughter.
Economic regulation (of natural monopolies).	Regulator introduces price controls and related service quality standards in a market.
Price controls (except for new controls or the removal of pre-existing controls).	Changes to the level of the Financial Conduct Authority's cap of payday lending.
Civil emergencies.	New legislation imposed to respond to an outbreak of foot and mouth disease.
Fines, penalties, redress and restitution.	Introduction of criminal sanctions.
Pro-competition (where these result in an increase in the net direct burden on businesses).	Improving access to small and medium enterprises' credit data to make it easier for newer lenders to assess loans to smaller businesses.
Delivering large infrastructure projects.	High Speed Rail Bill (when enacted).
Changes to the classification and scheduling of drugs under the Misuse of the Drugs Act 1971, or to the National Minimum Wage hourly rates, where these follow recommendations of the relevant independent advisory body.	Increase in the National Living Wage rates – 2015.
Systemic financial risk.	UK's biggest banks required to separate retail operations from investment arms.
National Living Wage.	Introducing the National Living Wage – 2015.
Changes to industry codes (except those arising from regulator action or new legislation).	Changes to market codes in the water, gas and electricity markets when these are not initiated by the regulator or called for through new regulation.

Figure 16 *continued*

Categories of regulatory activity that ministers have decided to exclude from the scope of the Target

Category	**Example regulation**
Regulator casework.	**Ad hoc requests for information made as part of an investigation.**
Regulator education, communication activities, promotional campaigns, factsheets, helplines.	**Information sheets that provide general information about the regulator.**
Regulator policy development.	**Formal and informal consultation with stakeholders.**
Regulator organisational and management change.	**Changes in the structure, governance, reporting, communications, employment or location of regulator.**

Note

1 Regulations shown in bold are hypothetical examples of exclusions that may apply.

Source: Better Regulation Framework Manual, National Audit Office analysis of Regulatory Policy Committee validations

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