

EXPLANATORY MEMORANDUM TO
THE BUSINESS IMPACT TARGET (RELEVANT REGULATORS) REGULATIONS
2017

2017 No. 344

1. Introduction

1.1 This explanatory memorandum has been prepared by The Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Under section 21 of the Small Business, Enterprise and Employment Act 2015 (SBEE Act), the Government has published a business impact target in respect of the economic impact of regulatory provisions on business and voluntary or community bodies (hereinafter referred to together as ‘business’). The target, published in a written Ministerial statement on 3 March 2016¹, is for a saving of £10bn to business from qualifying regulatory provisions that come into force or cease to be in force during this Parliament. To monitor progress towards this target, Secretaries of State are required to publish annual reports on the economic effect of qualifying regulatory provisions that have come into force or ceased to be in force.

2.2 Section 22(9) of the SBEE Act (as amended by the Enterprise Act 2016) gave the Secretary of State the power to specify regulators (relevant regulators) who will also be required to assess and report on the economic impact on business of changes to their regulatory policies and practices. The Business Impact Target (Relevant Regulators) Regulations 2017 (the Regulations) specify the ‘relevant regulators’ who will be made subject to these duties. These regulators must publish verified assessments of the economic impact of those changes, which will be incorporated into the Government’s annual reports outlining its performance against the business impact target.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 Under sections 21 to 27 of the SBEE Act, the Government must publish a business impact target and report on its progress towards achieving the target on an annual

¹ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-03/HCWS574/>

basis. The target applies to regulatory activity that qualifies against the target (qualifying regulatory provision).

- 4.2 A qualifying regulatory provision is a provision in an Act or secondary legislation or a provision which has effect by virtue of an exercise of a function by a UK Minister or a relevant regulator, which does not fall within any of the statutory or administrative exclusions. The statutory exclusions are contained within section 22 of the SBEE Act and the administrative exclusions are contained within the written Ministerial statement dated 3 March 2016.
- 4.3 Section 22 of the SBEE Act provides for exclusions relating to regulatory activities in respect of: tax, duty, levy and other charges; procurement; public grants and financial assistance; and temporary measures of less than 12 months
- 4.4 The Ministerial statement provides for additional exclusions relating to regulatory activities in respect of: the implementation of EU and international obligations (except gold-plating); the regulation of a network or system where the operator(s) are deemed to be a monopoly or to have significant market power; price controls; civil emergencies; fines, penalties, redress and restitution; pro-competition measures which result in a net burden on business; large infrastructure projects; changes to the classification and scheduling of drugs under the Misuse of Drugs Act 1971 and National Minimum Wage hourly rates, where these follow the recommendations of the relevant independent advisory body; systemic financial risk; industry codes; regulator case work; educational and communications activities and promotional campaigns by regulators; policy development by regulators; and organisational and management changes of regulators.
- 4.5 Section 24A of the SBEE Act (inserted by the Enterprise Act 2016) provides that the relevant regulators must publish certain 'required' documents annually. During the passage of the Bill, the Government introduced an amendment so that regulators are required to publish these documents rather than providing them to the Secretary of State to address regulators' concerns that inclusion within the business impact target would affect their independence².
- 4.6 The required documents are: a list of all new or amended qualifying regulatory provisions for which the regulator is responsible which have come into force or ceased to be in force in the reporting period; an assessment of the economic impact of these provisions on business activities which has been verified by the Independent Verification Body appointed under section 25 of the SBEE Act; and a summary of all new or amended regulatory provisions for which the regulator is responsible which do not qualify for the target and which have come into force or ceased to be in force in the reporting period. Information in the required documents will be included in the Government's reports on the business impact target.
- 4.7 Under sections 14(6) and (7) of the Enterprise Act 2016, relevant regulators brought within scope of the target by these regulations will be required to submit the required

² See amendment 19 in the Marshalled List of Amendments to be moved on Report in the House of Lords, 23 November 2015, available at <http://www.publications.parliament.uk/pa/bills/lbill/2015-2016/0071/amend/ml071-I.pdf>, and columns 759-761 of the House of Lords Official Report of 23 November 2015, available at <http://www.publications.parliament.uk/pa/ld201516/ldhansrd/lhan73.pdf>.

documents specifying the qualifying regulatory provisions that have come into force or ceased to be in force from 8 May 2015³.

- 4.8 Under section 24A(5) of the SBEE Act, relevant regulators will be required to have regard to the guidance issued by the Secretary of State in relation to the required documents.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument includes Scotland and Northern Ireland.

6. European Convention on Human Rights

- 6.1 The Parliamentary Under Secretary of State for Small Business Margot James MP has made the following statement regarding Human Rights:
- 6.2 “In my view the provisions of the Business Impact Target (Relevant Regulators) Regulations 2017 are compatible with the Convention rights.”

7. Policy background

- 7.1 Deregulation is central to the Government’s desire to make the UK the best place in the world to start and grow a business and a key part of its commitment to drive economic growth and boost productivity.
- 7.2 Administrative processes implemented since 2010 have encouraged a cultural shift in government departments to more proportionate and smarter regulation. The introduction of One-in, One-out and subsequently One-in, Two-out meant that for every change to legislation that resulted in one pound of extra regulatory burden on business, government had to find two pounds of regulatory savings for business.
- 7.3 The SBEE Act formalised this cultural shift in regulation in the form of the business impact target by placing a legislative obligation on future governments to set a target for the economic impact on business of changes in regulation. However, business consistently tells Government that the actions of regulators are at least as important as legislation. How regulators design, deliver and enforce their regulatory activities has a significant impact on business’s experience of regulation.
- 7.4 Requiring regulators to assess and report on the economic impact changes in their regulatory activities have on business, and to publish their assessments, will ensure transparency. Verification by the Regulatory Policy Committee (RPC)⁴ of regulators’ assessment of this economic impact ensures independent scrutiny of each assessment and the evidence base underpinning that assessment and reassures business of the credibility of the assessments. Having to produce and publish such assessments will demonstrate that regulators have assessed the impact on business of changes to their

³ See section 14(6) and (7) of the Enterprise Act 2016 and section 24A(3) of the Small Business, Enterprise and Employment Act 2015 (as inserted by section 14(4) of, and paragraph 4 of schedule 2 to, the Enterprise Act 2016).

⁴ The Regulatory Policy Committee provides independent verification of central government departments’ impact assessments for new regulatory and deregulatory proposals. As required by section 25 of the SBEE Act, it was appointed the independent body to verify these assessments by the Secretary of State on 21 July 2015 (see <https://www.gov.uk/government/news/regulatory-policy-committee-appointed-as-the-independent-body-verifying-the-costs-and-savings-of-changes-in-law>).

regulatory activities. Finally, as the impact of relevant regulators' changes in their activities will be included in the Government's £10 billion deregulatory target, the RPC verification supports the integrity of the Government's own annual report on its delivery of the business impact target.

- 7.5 This policy is one of two measures being taken forward by the Government to deliver its better regulation agenda. In addition to this instrument, Government will specify the regulatory functions to which section 108 of the Deregulation Act 2015 applies. Section 108 requires regulators to have regard to the desirability of the promotion of economic growth. These combined measures will contribute to lowering the regulatory burden for business in the UK.

8. Consultation outcome

- 8.1 A public consultation on the regulators to be brought within scope of the business impact target was held for five weeks between 11 February 2016 and 17 March 2016. The consultation also sought views on regulators and regulatory functions to be brought within scope of the growth duty and the small business appeals champion.
- 8.2 Of the 49 respondents to the consultation as a whole, some 45 responses were received on the question of which regulators should be brought within scope of the business impact target. These responses were from a broad cross-section of stakeholders including regulators, businesses and representative bodies. The majority of respondents were supportive of the proposal to bring the regulators specified in the consultation (who were referred to in the consultation as 'statutory regulators') within scope of the business impact target.
- 8.3 None of the respondents suggested regulators other than those proposed by the Government that should be brought within scope of the business impact target, although one respondent proposed that the Financial Conduct Authority's (FCA) mutuals team should be separately listed as within scope of the BIT. However, the FCA's mutuals team does not need to be separately listed because it will be brought within scope of the business impact target via the listing of the FCA.
- 8.4 Seven responses, six of which were from the regulators themselves, questioned the inclusion of specific regulators on the grounds that they had either never exercised their regulatory functions or that they were small and therefore would be less able to fulfil their obligations.
- 8.5 Some respondents shared broader concerns regarding the practical effect of bringing the statutory regulators within scope, namely that: the process for assessing the economic impact on business should be proportionate; implementation of the business impact target should not create delays in delivering changes to regulatory policy and guidance; and the business impact target should not interfere with the independence of statutory regulators.
- 8.6 Having considered the responses to the consultation, Government is satisfied that it is appropriate to bring the regulators listed in this instrument within scope of the business impact target. The test for whether a regulator should be brought within scope is whether, if their regulatory power is used, it would have an effect on business. Where regulators do not use their powers, inclusion within the business impact target places negligible burdens on them. In addition, the process for implementation has been specifically designed to ensure proportionality (for example, regulators will produce shorter assessments of impact than those produced by

government departments), flexibility (for example, where speed is of the essence for a regulator) and to respect the independence of regulators. Furthermore, in respect of the last point, during the passage of the Bill through Parliament, the Government introduced an amendment to specifically address regulators' concerns that inclusion within the business impact target would affect their independence.

- 8.7 A copy of the consultation paper, full impact assessment and the Government's response can be found at: <https://www.gov.uk/government/consultations/business-impact-target-growth-duty-and-small-business-appeals-champion>.

9. Guidance

- 9.1 The Secretary of State will issue statutory guidance to regulators to assist them with discharging their duties in respect of the business impact target which will be placed on the Department's website.

10. Impact

- 10.1 By relevant regulators routinely measuring and reporting on the economic impact of changes to their regulatory activities, and through thorough assessment of this impact, business and civil society organisations are expected to benefit from: a reduction in costs to comply with regulations; greater deregulatory savings delivered by regulators; and regulators that are incentivised to consider in more detail business needs when changing their policies. It is not possible, however, to monetise these benefits. Assuming relevant regulators effect the 50.4% cost recovery from business referred to above for their costs in fulfilling their new obligations, there is a cost to business of £1.000M in the first year, reducing to £0.636M, £0.599M and £0.562M in years 2, 3 and 4 and onwards respectively.
- 10.2 The impact on the public sector is a cost of £1.985M in the first year, reducing to £1.262M, £1.188M and £1.115M in years 2, 3 and 4 and onwards respectively. These costs are generated from the resource costs of relevant regulators having to: produce assessments of the economic impact on business of changes to their activities and having them verified by the Regulatory Policy Committee; produce summaries of changes to their activities that do not 'qualify' as within scope of the business impact target; and familiarise themselves with the policy and process. Assuming relevant regulators effect a 50.4% cost recovery from business, the best estimate available of the extent to which regulators would recover costs from business, the impact on the public sector is a cost of £0.985M in the first year, reducing to £0.626M, £0.589M and £0.553M in years 2, 3 and 4 and onwards respectively.
- 10.3 Voluntary and community bodies, as defined by section 27(5) of the SBEE Act, are expected to benefit alongside businesses, as per paragraph 10.1. The relevant regulators include a small number of bodies established by Royal Charter rather than by statute.
- 10.4 An impact assessment is submitted with this memorandum and is published alongside it on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses insofar as they are subject to the relevant regulators being brought within scope of the business impact target. Small businesses in particular are expected to benefit as outlined in

paragraph 10.2 given the disproportionate effect that unnecessarily burdensome regulation has on small businesses (which generally have less resource readily available for regulatory compliance).

12. Monitoring & review

- 12.1 The Department for Business, Energy and Industrial Strategy will undertake a review of this instrument within 5 years of implementation.

13. Contact

- 13.1 Paul Edens at the Department for Business, Energy and Industrial Strategy, telephone: 020 7215 0289 or email: paul.edens@bis.gsi.gov.uk, can answer any queries regarding the instrument.