

Business and Regulatory Impact Assessment

December 2022

To ensure consistency of BRIAs across the Scottish Government, **please do not amend the titles or layout of the template.**

If you've never completed a BRIA before it's worthwhile to take 5 minutes to have a look over these best practice examples of BRIAs.

Full guidance on what your BRIA should contain can be found in the accompanying toolkit.

Partial/Final (delete as appropriate) Business and Regulatory Impact Assessment Title of Proposal

Title of Proposal

This section should contain only the title of the piece of legislation/policy/regulation you are proposing.

Purpose and Intended Effect

- **Background**
Describe the existing situation and whether there is currently a policy framework in place addressing the issue.
- **Objective**
Give a description of what the proposal is trying to achieve and how it fits with Scottish and UK policy.
- **Rationale for Government intervention**
Explain why the SG is making this proposal and how it contributes to the objectives of the National Performance Framework (provide a list if necessary) and purpose.

Consultation

- **Within Government**
List the Government agencies, directorates and enforcement bodies that you have consulted and explain how their input supported the formulation of the policy proposals.
- **Public Consultation**
For partial stage BRIAs - give details of any informal consultation carried out prior to publication of the formal consultation and include details of how long the formal consultation will run for.

For final stage BRIAs – update the partial BRIA with the public consultation results, any related and subsequent developments to the proposal and any impact on the decision being taken from these results.

- **Business**

Provide details of the 6-12 businesses you have had face-to-face discussions with – numbers, names where appropriate, size, sector and locations along with what form your engagement took. The results of this consultation form the main part of the Scottish Firms Impact Test section.

If you plan to complete this stage during the public consultation period give details of how you will go about this.

Options

Provide a list and a brief description of each of the options you are considering. This should include non-regulatory options and the 'Do Nothing' option must be one of the options you consider.

Sectors and Groups Affected

List all the sectors and groups likely to be affected and give details of how they will be affected by each of the options.

Benefits

Give details of all benefits associated with each option you are considering.

Costs

Give details of all costs (additional and savings) associated with each option you are considering. This should, where applicable, include non-monetary costs.

Regulatory and EU Alignment Impacts

The regulatory context within which Scottish Government policy is developed changed on 31 December 2020 when the UK left the EU single market. This section requires you to consider what, if any, impacts the proposed measure will have on the following regulatory features related to leaving the EU: intra-UK trade, international trade and the Scottish Government's EU alignment policy.

Intra-UK Trade

Is this measure likely to impact on intra-UK trade? (Yes/No).

If yes, please provide a description and assessment of the impacts.

In doing so, you must consider:

- whether, and in what way, the provisions (particularly Parts 1-3) of the United Kingdom Internal Market Act 2020 are relevant to the measure – including the implications of the Act for planned policy and any associated impacts on Scottish businesses, people, and policy outcomes (such as relate to aims around the environment or public health for example);
- the nature and impact of policy divergence across UK nations likely to result from the introduction of the measure; and

- whether the measure falls within the scope of an existing Common Framework agreement.

For further guidance on the Scottish Government approach to the United Kingdom Internal Market Act 2020 and Common Frameworks contact the team in Constitution and Cabinet Directorate (IMAFrameworksTeam@gov.scot).

International Trade

Is this measure likely to impact on international trade and investment? (Yes/No)

If yes, please provide a description and assessment of the rationale.

In doing so, you should consider:

- Does this measure have the potential to affect imports or exports of a specific good or service, or groups of goods or services?
- Does this measure have the potential to affect trade flows with one or more countries?
- Does this measure include different requirements for domestic and foreign businesses?
 - e.g. are imported and locally produced goods/services treated equally?
 - e.g. are any particular countries disadvantaged compared to others?
- If so, is the basis for different treatment anything other than it enables foreign businesses to operate on a level playing field in Scotland?

Where appropriate, you should also consider how the options under consideration relate to relevant international standards, including the reasons if not following relevant international standards.

Please contact WTO Compliance Enquiries (wto@gov.scot) within the Directorate for International Trade and Investment (DITI) for advice on potential notification responsibilities you may have under WTO agreements if an impact on trade is identified, and for further guidance on identifying international standards.

EU Alignment

Is this measure likely to impact on the Scottish government's policy to maintain alignment with the EU? Yes/No

If yes, you should consider the following:

- the Scottish Government's commitment to maintain and advance the high standards that Scotland shares with the EU;
- access to EU markets for people, goods, and services; and
- any potential implications for EU alignment associated with the United Kingdom Internal Market Act 2020 or Common Framework agreements.

For further advice on alignment please contact the Directorate for External Affairs (EUAlignmentmailbox@gov.scot) – You should allow 10 working days for a response.

Record the results of any relevant assessment in this section.

Scottish Firms Impact Test

Provide a full analysis here of your face-to-face discussions with business giving details of the questions you asked, responses and how business engagement fed into the development of the proposal.

Competition Assessment

Explain here whether your proposals will have an impact on competition ensuring you provide evidence to back up any statements you make.

An effective market is one where businesses, large and small, are able to compete to deliver services and products to consumers. Competitive markets drive innovation, productivity, sustainable and inclusive economic growth along with providing consumers with a choice of goods and services. Government policies can often have unintended consequences for the market, which can then impact on businesses and consumers. Equally, competition can be used to improve the quality of goods and services. The four Competition and Markets Authority (CMA) competition assessment questions given below can be used as an initial assessment of competition. In doing so, it should be possible to identify whether the proposal falls into one of the areas likely to require detailed consideration. A competition concern may be identified if at least one of these conditions is met.

- Will the measure directly or indirectly limit the number or range of suppliers?
- Will the measure limit the ability of suppliers to compete?
- Will the measure limit suppliers' incentives to compete vigorously?
- Will the measure limit the choices and information available to consumers?

It should be noted that the Scottish Government's definition of supplier and consumer includes providers and users of public services.

If the answer to any of these questions is yes, then a more in-depth assessment of the likely impact may be required. Advice on completing an assessment can be found in the [CMA guidance](#). You should include the questions and your answers within your BRIA to provide evidence about the nature of potential competition impacts.

Consumer Assessment

Explain here whether your proposals will have an impact on consumers ensuring you provide evidence to back up any statements you make.

The Scottish Government definition of a consumer is "anyone who buys goods or digital content, or uses goods or services either in the private or public sector, now or in the future".

When considering the impact of policies, the effect on consumers whose circumstances make them more vulnerable should be given particular weight. In general, there will be a need to carry out a more in-depth assessment if the answer to any of the following questions is yes:

- Does the policy affect the quality, availability or price of any goods or services in a market?
- Does the policy affect the essential services market, such as energy or water?
- Does the policy involve storage or increased use of consumer data?
- Does the policy increase opportunities for unscrupulous suppliers to target consumers?
- Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?
- Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

Test Run of Business Forms

If your proposals are likely to bring in any new forms for business etc to complete then you must include a commitment here to test run the forms with those who will be using them to ensure that they are easy to use.

If no new forms will be introduced then a line to say that will suffice here.

Digital Impact Test

Changes to policy, regulation or legislation can have unintended consequences in circumstances where the impacts of technology and technological advances on the current and future delivery and intent of the measure in question are not fully considered.

The digital impact test requires officials to consider whether the changes being made are still relevant or might be applied more effectively should business/government processes change – e.g. such as services moving online.

Explain here the consideration you have given to ensuring that your proposal is consistent with the increasing shift of economic, social and governmental interactions online. For example:

- Does the measure take account of changing digital technologies and markets?
- Will the measure be applicable in a digital/online context?

- Is there a possibility the measures could be circumvented by digital / online transactions?
- Alternatively will the measure **only** be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?
- If the measure can be applied in an offline **and** online environment will this in itself have any adverse impact on incumbent operators?

Legal Aid Impact Test

BRIAs relating to all proposed regulations in Scotland that could give rise to increased use of legal processes or create new rights or responsibilities should give particular attention to possible impacts on the legal aid fund.

If you are working on policy you must consider what implications it may have on fulfilling individuals' right to access to justice through availability of legal aid and possible expenditure from the legal aid fund. Such impacts are likely if your policy will create a new procedure or right of appeal to a court or tribunal, any change in such a procedure or right of appeal, or any change of policy or practice which may lead people to consult a solicitor. Consideration should also be given to whether the policy will result in additional people seeking legal assistance or being taken through the courts. If an impact is identified, some kind of estimate of the additional numbers should be given.

In order to fully convey the background and policy intentions along with the draft BRIA, please include a copy of the related Bill and/or related strategy and consultation documents. Please note that your information will be shared with the Scottish Legal Aid Board in order to complete the legal aid impact test.

If having read the guidance you still require advice, please contact the Access to Justice Team (legalaidtrawl@gov.scot) – **You should allow 10 working days for a response.** Record the results of your discussion with the Access to Justice Team in this section.

Enforcement, Sanctions and Monitoring

Provide details on how the options will be monitored and enforced and by whom. Describe how compliance will be monitored and what sanctions there will be for non-compliance.

Implementation and Delivery Plan

How will the proposal be implemented and in what timescale?

Post-implementation Review

When and how will a review of whether the legislation is still fit for purpose take place? If no set date for review is planned then you must include a commitment to review within 10 years.

Summary and Recommendation

Which option is being recommended and why? Refer to analysis of the costs and benefits in reaching the decision. Summarise, using the table below, the information gathered for each option.

- **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1		
2		
3		
4		

Declaration and Publication

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non-departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication. Use appropriate text from choices below:

- **Sign-off for Partial BRIAs:**

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

- **Sign-off for Final BRIAs:**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Minister's name

Minister's title

Scottish Government Contact point:



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