

Business and Regulatory Impact Assessment: Toolkit

December 2022

Business and Regulatory Impact Assessment: Toolkit

This toolkit provides guidance and information on how to complete a Business and Regulatory Impact Assessment (BRIA), covering each section of the [BRIA template](#). Where appropriate, hyperlinks are provided to navigate to detailed and specific step-by-step information.

BRIAs help to assess the likely costs, benefits and risks of any proposed primary or secondary legislation, voluntary regulation, codes of practice, policy changes or guidance that may have an impact on the public, private or third sector.

BRIAs should also take account of the five principles of better regulation – namely that regulation is transparent, accountable, proportionate, consistent and targeted where appropriate.

Why do I need to do a BRIA?

BRIAs help to assess the likely costs, benefits and risks of any proposed primary or secondary legislation, voluntary regulation, codes of practice, guidance, or policy changes that may have an impact on the public, private or third sector.



In general, we would always recommend and encourage the completion of a BRIA as best practice. The BRIA helps assess the impact of new legislation, as well as other changes such as voluntary guidance or policy changes, even where they do not necessarily present additional obvious burdens. In such cases it can either help confirm understanding that the impact will not change or identify and address unintended impacts which have not been identified. The content of a BRIA should be proportionate to the problem involved and the size of the proposal.



BRIAs should be approved by Ministers and published on the policy area's part of the Scottish Government website. If you do not feel there is a need to carry out a BRIA you should advise your Minister and seek Ministerial agreement.

The BRIA provides an understanding to interested parties of:

- why the government is proposing to intervene;
- options the government is considering, and which one is preferred;
- how and, to what extent, new policies may impact on them, on business and on Scotland's competitiveness;
- the estimated costs and benefits of proposed measures.

APS publish BRIAs on behalf of the Scottish Government.

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Title Of Proposal

Insert full title of proposal including any document reference.

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Purpose And Intended Effect

This section of the toolkit covers three elements: background; objectives and rationale for government intervention, and the five principles of Better Regulation.

- **What is the objective of the regulation?**
- **How does it fit with Scottish, UK policy?**

Background

Outline the existing situation and whether there is currently a policy framework in place addressing the issue.

Objective and Rationale

Any government intervention should have a clear rationale. It is important to articulate the rationale at the very earliest stage in the policy development process. Analysis of the market failure or other objectives should underpin the evidence base for policy development. It also provides a guide to the likely additional costs and benefits that may occur as a consequence of any proposed intervention. To begin this it is important to identify:

- the analytical support you will require and the external stakeholders who can be expected to support you, and working with them;
- the problem, its scale and the context in which it arises;
- evidence and nature of the problem; and
- the probability that it will occur and likely frequency.

Consideration of the rationale for the policy intervention should also be outcome-focused, taking account of the National Performance Framework and the [Government's National Strategy for Economic Transformation](#)

You should also consider whether there are alternatives to regulation, such as voluntary regulation and self-regulation. The Scottish Government takes account of the Scottish Retail Consortium's Framework for Government Sponsored Voluntary Regulation.

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Consultation

There are three distinct groups who you must consult with and record their input on the effect of the proposed legislation:

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.

Consultation documents should be accompanied by a partial BRIA to encourage comment by those the proposals may affect.

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 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 provide details of how you will go about this.

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Options

This section of the toolkit has 3 elements: option development; sectors and groups affected; costs and benefits. This is the one of the main analytical components of the BRIA, as it provides evidence to:

- compare the costs and benefits of policy options aimed at addressing the problem; and
- support your final policy recommendation and help determine whether the benefits from the policy options justify the costs.
- what are the options for doing this other than legislation i.e. voluntary regulation?
- why has each option been accepted or rejected?

Analytical colleagues will be able to provide detailed advice and technical support and should therefore be consulted at the earliest possible stage.

Option Development

At the early stages of policy development all the options should be identified, together with their potential for achieving the stated objectives. Options must be assessed against the status quo or 'do minimum' situation. This would help draw out the implications of no or minimal action and also act as a baseline against which to assess the other options. However, only genuine policy options should be described in this section of the BRIA.

For regulations that affect business, you should also consider alternative approaches (e.g. additional flexibilities or exemptions) for regulating small and micro-firms with fewer than 20 full time employees. In considering whether alternative approaches may be appropriate, ensure early and appropriate discussion with relevant businesses, consistent with the ethos of the BRIA. The Scottish Firms Impact Test contains more information on how to consult businesses and the types of issues to explore in assessing whether or not alternative approaches may be appropriate.

It is also important for non-regulatory options (for example service charters, quality marks and codes of practice) to be considered at the outset.

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Voluntary Regulation

Voluntary regulation is a mechanism that can be used within a regulatory framework as an alternative to statutory regulation, to achieve a particular outcome through a change in behaviour. It typically involves industry and/or professionals developing voluntary agreements or standards, pledges, codes of practice, certification and accreditation schemes, to regulate behaviour or standards to achieve a particular outcome. Government involvement may vary from no involvement to the measure being government-sponsored. Voluntary regulation provides an alternative to statutory regulation. It can be a more agile form of regulation in that it can be put in place faster, can be more flexible and adaptable to introduce and update, and requires a commitment from those involved.

Considerations

Non-regulatory options should always be considered at the outset of any policy development and a Business and Regulatory Impact Assessment completed to ensure the costs and benefits of each option are fully considered and compared. Liaison with other departments is also recommended to ensure consistency in any cross-cutting policy areas.

The principles of better regulation (that it should be transparent, consistent, proportionate, targeted and accountable) apply to all regulation – whether it be voluntary or statutory.

- an evidence based problem or objective
- a clear outcome
- a practical, proportionate and targeted proposal
- a Business and Regulatory Impact Assessment
- monitoring and Review
- application of the Better Regulation Principles

Sectors and Groups Affected

You should consider the impact of each option on different sectors and groups. The options under consideration may have beneficial impacts on some groups and negative impacts on others. It is important to be as specific as possible and to work with stakeholders to validate assumptions. All significant groups affected by the options should be considered – particularly businesses.

Use informal consultation at an early stage to help identify groups likely to be affected. Include groups that benefit as well as those that bear costs, including those affected directly and indirectly e.g. a policy to reduce pollution will have a direct effect on a polluter who has to behave differently, but may have an indirect effect on the general population in the longer term as pollution is reduced and the environment improves.

Identify where different options impact on different groups and consider whether the options change the distribution within and between groups.

Think about the impact on:

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- **Local Authorities** – the roles and responsibilities of local authorities are many and diverse, and include a range of regulatory roles. Early and ongoing engagement with [COSLA](#) and a range of local authorities is likely to be an essential element of developing options and assessing their relative impact.
- **Consumers / Competition Assessment** - when considering the impact of policies, the effect on the ability of businesses to compete in the market and what effect this might have on consumers should be considered. **Introducing competition in the delivery of your policy may add value to the policy.**

Consumers – considering the potential impact on consumers of any new initiative can prevent consumer protection issues arising after implementation, and support regulators and businesses to deliver improved outcomes for consumers as well as economic growth.

- **Regulators** – including, in particular, consideration of the impact on existing activities and performance, and the resource and skills implications of the various options.
- **Businesses** – see Scottish Firms Impact Assessment.
- **Organisations in the third sector** - policy options might also have an effect on the voluntary and charitable sectors. It is important that these are duly considered. Colleagues elsewhere in Government may already have links with these organisations so you might be able to use their contacts. Alternatively, contact organisations directly. The [Scottish Council for Voluntary Organisations](#) could be a useful starting point.

Costs and Benefits

All the potential benefits and costs of each option over and above the status quo or 'do minimum' option should be recorded in this section.

Describe all the costs and benefits of each option, compared with the status quo or 'do minimum' option. For each option, you should cover:

- the sectors and groups affected;
- whether there will be disproportionate impacts on particular groups or on the environment;
- as far as possible, monetary values.

As it is often difficult to predict accurately the exact costs and benefits you can use estimates and/or ranges. You should state whether these estimates/ranges represent extreme values or the most likely range of outcomes. Where there is uncertainty, make it clear and spell out any assumptions used to arrive at your estimates/ranges.

You should try to identify any related or overlapping regulations that already affect those organisations and individuals likely to be affected by your proposal in order to work out the impact of your proposal. Consider the cumulative effect each option

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may have and any interactions there may be with other regulations. You should spell out and test any assumptions, and provide references to any data sources or methodologies used.

Quantification

You must show costs and benefits as monetary values where this is possible. This will allow easier comparison between the costs and the benefits of each option. The direct costs – i.e. costs directly attributable to the policy or intervention of each option must be expressed as monetary values.

Where prices for goods and services are involved, finding monetary values is usually straightforward. In the absence of prices, you should, in consultation with economists, consider if monetary quantification using economic valuation techniques is possible. Analytical colleagues can also provide advice and guidance on other forms of quantification which could be used where appropriate. For example, number of lives saved, increased manpower requirements, changes in emission levels or new equipment needed. Such measures should allow options to be compared but may not allow the relative costs and benefits to be weighed up.

Analysing Benefits

It is just as important to identify and quantify the benefits of the policy as well as the costs. You can identify the benefits by thinking about the aim of the proposal and the risks being addressed.

Describe the process by which the changes in behaviour or activity, or the act of complying are expected to lead to achieving the goals.

Some benefits will be easier to estimate than others. Consult your economists for advice as early as possible about putting a monetary value on the benefits.

Examples of the types of techniques you can use include:

- time – you could use wages multiplied by the hours saved.
- the environment – you could use surveys that show people's willingness to pay (how much people would pay for a clean river, fresh air or a national park) or their willingness to accept (how much people would be prepared to accept in compensation for suffering from pollution).
- life/health – you could use estimates of the willingness to pay for a longer/healthier life.
- social benefits – you could use surveys, e.g. showing people's willingness to pay to have a more equal distribution of income; and again people's purchases might give some idea of people's values.
- training – you could use surveys of firms' increased revenue and productivity gains following training; or use analysis of the higher wages that trained staff can command.
- whether indirect benefits should be considered (e.g. changes in behaviour that can have additional effects, more firms setting up in business as a result of reduced hiring costs, or more people entering the labour market as a result of tax changes).

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Analysing Costs

Identify the costs by thinking about the aim of the proposal and what you will be requiring firms and consumers or the public sector to do.

Once you have identified the costs then you should **quantify** them wherever possible. Where there is uncertainty make it clear and spell out the assumptions you use to arrive at your estimates.

Some costs will be easier to estimate than others – e.g. increased labour costs. Ask your economists for advice **as early as possible**. Examples of the techniques you can use to put monetary value on the costs include:

- labour costs – (familiarisation with new legislation, training, new working practices, time spent taking inspectors around the firm etc.).
- cost of new equipment or new production processes – formal/informal consultation with those likely to be affected might provide the best data here.
- collecting information and providing proof of compliance – use labour costs, plus the cost of new equipment required to do this.
- cost of getting licences – these will involve estimating the fees plus administrative costs. Regulators and enforcement authorities should be able to help with providing estimates.
- cost of additional legal, accountancy or other consultancy advice – again consultation or colleagues' experience might be informative.
- indirect costs – i.e. costs not directly attributable to the intervention – may need to be considered. There may be changes in behaviour such as fewer firms setting up in business, reduced consumer choice, less competition between firms, less innovation etc.

Coverage of Costs and Benefits

In general, the analysis of costs and benefits will need to quantify only the first-round effects of proposed measures. For example, if a proposal requires firms in a particular industry to buy new safety equipment, the economic costs to society can be measured by the costs to the firms (both in money and extra management and training time) of buying and using the new equipment; and the benefits to society by the health benefits (measured as improvements to health quality and statistical lives saved).

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Regulatory And EU Alignment Impacts

The context within which Scottish Government policy is developed changed on 31 December 2020 when the UK left the EU single market. This section of the BRIA requires policy makers to consider the impact of the proposals on, and within this changed context. It specifically requires consideration of three distinct, but related regulatory factors related to leaving the EU: intra-UK trade, international trade and the Scottish Government's EU alignment policy.

Leaving the EU means that regulatory features that were relevant when we were part of the EU single market fell away upon exit, and the UK now has a new regulatory landscape. In addition, the Scottish Government has a commitment to maintain alignment with the European Union where this is possible and within Scotland's interest. This requires policy makers to understand and engage with this new context and its potentially complex interactions with devolved policy and devolved policy impacts.

Intra-UK Trade Impacts

The UK's exit from the EU single market on 31 December 2020, created a new regulatory landscape within which devolved policy operates. For internal ('intra') UK trade, two significant regulatory features were introduced:

- the United Kingdom Internal Market Act 2020; and
- Common Frameworks.

The United Kingdom Internal Market Act 2020

[The United Kingdom Internal Market Act 2020](#) came into force when the UK left the EU single market on 31 December 2020.

Consent was sought from the devolved legislatures to the legislation and no devolved legislature gave consent. The Scottish Parliament and the Senedd Cymru voted to withhold consent. The Scottish Government lodged a [legislative consent memorandum](#) advising against giving consent, in which it stated that the Act,

"...undermines both the devolution settlement and agreed processes that are already established to agree common frameworks and ways of working across the UK following EU exit."

The United Kingdom Internal Market Act 2020 contains provisions as follows:

- Part 1 introduces new market access principles of mutual recognition and non-discrimination for goods;
- Part 2 provides for market access for services (mutual recognition of authorisation requirements and non-discrimination of service providers);
- Part 3 introduces a new system for the mutual recognition of professional qualifications;

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- Part 4 provides for the creation of a new reporting, advising and monitoring function for the Competition and Markets Authority (CMA) by creating the Office for the Internal Market (OIM) within the body;
- Part 5 contains provisions relating to the Northern Ireland Protocol;
- Part 6 gives UK Ministers powers to spend directly in devolved policy areas;
- Part 7 reserves subsidy control; and
- Part 8 adds the Act to the list of protected enactments in Schedule 4 of the Scotland Act 1998.

Parts 1-2 of the Act should be considered in particular when developing policy that has potential market impact.

Part 1: Goods

The mutual recognition principle means that goods which have been produced, or imported into one part of the UK and which meet regulatory requirements in that part of the UK, may be sold in any other part of the UK, free from any relevant requirements that would otherwise apply to their sale in that other part.

The non-discrimination principle prohibits direct or indirect discrimination based on treating local and incoming goods differently.

These rules are subject to certain exclusions set out in the Act.

Where proposals introduce or change legislation that relates to the sale of goods, you should take appropriate advice and consider:

- whether the proposals will result in policy divergence between UK nations, and the nature and potential impacts of divergence;
- whether the market access principles of the Act are relevant and in what way they interact with the proposals, particularly in terms of policy effect, including whether there is an exclusion for the policy area within the Act; and
- whether there is a relevant Common Framework.

Part 2: Services

Service providers who are authorised to perform a service in one part of the UK may not need a separate authorisation to perform that service in another part. The non-discrimination provisions of this Part prevent direct and indirect discrimination against service providers located in another part of the UK.

These rules are subject to a number of exclusions set out in the Act.

Where the proposals relate to the provision of services, for example, an authorisation requirement for the provision of services, you should consider:

- whether the proposals will result in regulatory divergence between UK nations, and the nature and impacts of any divergence; and
- whether the mutual recognition and non-discrimination principles are relevant and in what way they interact with the proposals, particularly in terms of policy

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effect, including whether there is an exclusion for the policy area within the Act.

Part 3: Professional Qualifications

Part 3 provides for a system for the mutual recognition of certain professional qualifications that are regulated in law across the UK. It introduces an “automatic recognition” principle for a professional qualified in one part of the UK to be treated automatically as qualified in respect of that profession in another part of the UK, as well as setting out the situations where the automatic recognition principle does not apply.

Where proposals relate to regulation of professional qualifications you should consider:

- whether the proposals will result in regulatory divergence between UK nations, and the nature and impacts of any divergence; and
- whether the provisions of the Act are relevant and in what way they interact with the proposals, particularly in terms of policy effect, including whether there is an exclusion for the professional qualifications within the Act.

Contact

Please contact the team in the [Constitution and Cabinet Directorate](#) (IMAFrameworksTeam@gov.scot) if you need advice or support.

Common Frameworks

When considering intra-UK impacts and proposals, you should also establish whether the policy area is covered by one or more Common Framework(s).

The Common Frameworks programme was agreed by the four governments of the UK in 2017 to establish common approaches in some areas that were governed by EU law, and that are within areas of devolved competence. More information relating to the basis on which the programme was established and the principles underpinning Frameworks can be found in [the Joint Ministerial Committee \(EU Negotiations\) Communique of October 2017](#). Common Frameworks are the Scottish Government’s preferred means of managing post EU policy divergence across the UK, on the basis of progress by agreement and respect for devolution.

In 2021, [a process was developed](#) by the governments of the UK to consider exclusions to the UK Internal Market Act (2020) for agreements reached in Common Framework areas.

Where policy areas are covered by an existing Common Framework you should consider:

- as above for intra-UK trade impacts; and
- relevant impacts of agreements reached within Common Frameworks relating to managing policy divergence and any exclusions required to be agreed within a Common Framework, as per the agreed process linked to above.

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Contact

For further guidance on Common Frameworks, contact the team in the [Constitution and Cabinet Directorate \(IMAFrameworksTeam@gov.scot\)](mailto:IMAFrameworksTeam@gov.scot).

Assessment

In all cases you should record and evidence the intra-UK regulatory impacts and interactions.

International Trade

Following departure from the EU, the UK is responsible in its own right for remaining compliant with international obligations, including with respect to the World Trade Organization (WTO), and Free Trade Agreements. This obligation extends to devolved matters, meaning that new policy and regulations introduced by Scottish Ministers are potentially subject to legal challenge if they do not comply.

The purpose of these questions is to ensure that:

- a) policy makers are giving due consideration to the impacts that regulatory policy could have on international trade into, and out, of Scotland, and
- b) policy teams have factored the potential [notification responsibilities](#) that may arise from this into their timelines for policy development and legislation.

International Obligations

The WTO is the international body which establishes and manages the rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible. This is achieved through its overarching principles of non-discrimination between member states and transparency.

In order that the international trading environment remains stable and predictable, members are required to notify measures relevant to particular WTO Agreements. These include, but are not limited to, the following:

- **The Technical Barriers to Trade (TBT) Agreement** requires WTO members to notify in advance changes to technical regulations, standards and procedures for assessing standards conformity.
- **The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)** concerns the application of food safety and animal and plant health regulations. It requires members to notify measures taken to ensure food is safe for consumers, and to prevent the spread of pests or diseases among animals and plants.
- **Agreement on Subsidies and Countervailing Measures (SCM)** addresses the use of subsidies by governments that may have an impact on trade.

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- **The Government Procurement Agreement (GPA)** sets out the framework for government procurement of goods and services between WTO members, ensuring that suppliers of goods and services from other member states are treated no less favourably in securing government procurement than domestic suppliers.

There are other WTO Agreements which could have implications for Scotland's policy making, for example in agriculture, fisheries and services trade.

Each agreement contains specific requirements for notifying other WTO members of policy and regulatory changes, and criteria for determining whether a measure is notifiable. The reference or otherwise to international standards is a material factor.

Compliance with WTO obligations can also help to meet similar obligations under Good Regulatory Practice and Regulatory Cooperation (GRPRC), Technical Barriers to Trade (TBT) and Sanitary and PhytoSanitary (SPS) Chapters of Free Trade Agreements, such as the UK-EU Trade and Cooperation Agreement.

Impact on International Trade

Relevant changes to regulation that could affect trade and investment include:

- the ability of Scottish businesses to trade or provide services overseas, or
- the ability of overseas businesses to export to the Scotland or provide services to Scotland
- foreign investors/companies operating in Scotland being impacted differently from UK-owned companies/investors
- the assets of foreign investors/companies being removed from them or substantially taken out of their control.

The ability of businesses to trade within Scotland would traditionally be captured within Business and Regulatory Impact Assessments (BRIA). However, the ability of overseas businesses to export to Scotland is a new aspect that policy makers will need to consider.

When answering this question, policy makers should consider the following:

Considerations for assessing impacts on international trade

- A** Does this measure have the potential to affect imports or exports of a specific good or service, or groups of goods or services? Yes/No
- B** Does this measure have the potential to affect trade flows with one or more countries? Yes/No
- C** Does this measure include different requirements for domestic and foreign businesses?
 - i.e. are imported and locally produced goods/services treated equally?
 - i.e. are any particular countries disadvantaged compared to others?Yes/No

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- D** If the answer to C is yes, is the basis for different treatment anything other than it enables foreign businesses to operate on a level playing field in Scotland? Yes/No

Where you answer yes to any of the above questions, please provide a description and assessment of the rationale, and contact WTO Compliance Enquiries (wto@gov.scot) and SGLD to discuss potential notification responsibilities.

International Standards

Some WTO Agreements and FTAs encourage members to 'base' regulatory measures on **relevant** international standards, where they exist.

If a relevant international standard (or parts thereof) would support compliance with a measure that achieves a legitimate policy objective, policy makers are encouraged to consider using relevant international standards as a **basis** for the measure.

Please contact WTO Compliance Enquiries (wto@gov.scot) within the Directorate for International Trade and Investment (DITI) for further advice to complete the assessment, for advice on potential [notification responsibilities](#) under WTO agreements and for further guidance on identifying international standards.

EU Alignment

In this section you should consider if the measure is likely to impact on the Scottish Government's policy to maintain alignment with the EU.

Scotland's commitment to remain close to the EU means Scotland will continue to align with the EU where appropriate, and in a manner that contributes towards protecting and advancing standards across a range of policy areas.

Assessment

Your considerations should include:

- 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.

Implementation

You will also wish to consider how the policy in question will be implemented. The assumption is that a decision to align will be given effect via existing powers or primary legislation, however there may be times where such methods will not allow the Scottish Government to align or may not be the most effective or efficient method of doing so.

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In such cases, section 1(1) of the [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#) provides a regulation making power to maintain Scottish Ministers' ability to keep devolved Scots law aligned with EU law as it develops and where that is in Scotland's best interest.

[The Continuity Act policy statement](#) approved by Parliament on 8 June 2022, sets out the factors that Ministers must consider in making decisions in relation to EU alignment.

Contact

For further advice on alignment please contact the Directorate for External Affairs (EUAlignmentmailbox@gov.scot).

Scottish Firms Impact Test

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The options section of the toolkit stresses the need to consider the impact on different sectors and groups and to work with stakeholders to validate assumptions – particularly businesses. This section of the toolkit addresses the key challenge of thinking and gathering evidence about the impact on specific industries, firm types and businesses of different sizes.

- **Will it have an impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world?**
- **How many businesses and what sectors is it likely to impact on?**
- **What is the likely cost or benefit to business?**

In assessing business impact you should:

- remember that many business sectors have representative organisations, e.g. Scottish Financial Enterprise, Scottish Engineering, Scottish Manufacturing Advisory Service, that will be willing to help you complete your BRIA. A range of other business organisations may also have an interest, including CBI (Scotland), the Federation of Small Business (Scotland), the Scottish Chambers of Commerce, the Institute of Directors (Scotland), and the Scottish Council Development Industry.
- Make clear where impacts will or could be different for different parts of an industry, (e.g. banks and building societies, rather than financial advisers), or different parts of a supply chain (e.g. manufacturers, rather than wholesalers or retailers).
- Always consult the STUC and/or relevant trade unions.
- SIC codes (or 'Standard Industrial Classification' codes) are a widely recognised means of classifying business establishments by their type of economic activity. By using these codes you can ensure clarity. An index of the SIC codes can be found by consulting the [UK Standard Industrial Classification of Economic Activities](#).

However, a core element of the BRIA approach is that you should identify and consult 6-12 businesses – of varying sizes and sectors as appropriate likely to be affected by the policy proposals being developed in order to quality assure any separate assessment of what the likely cost or benefit to business will be. In broad terms this will involve discussing what the legislation might or will do and what that might mean to the business. With each business work out the impact and cost to the business both in monetary and other terms.

Impact on Small Businesses

You must look in particular at the impact on micro and small businesses¹. The assessment of the impact on small business should therefore include consideration of the following issues:

¹ Small businesses have less than 50 employees, micro businesses have less than 10 employees.

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- the variation in the regulatory burden between a self-employed, micro, small, medium and a large business;
- whether compliance flexibility options could assist a micro, small, medium business to meet the requirements of the proposal;
- the distribution of benefits of the proposal between a self-employed, micro, small, medium business;
- the extent of compliance by a self-employed, micro, small, or medium business versus large business; and
- the relative impact on a self-employed, micro, small, or medium business of penalties for non-compliance – for example, by expressing costs as a percentage of turnover.

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Competition Assessment

In addition to looking at the impact on individual firms, it is important to consider the impact that a regulation or policy might have on competition between firms. Where regulations restrict competition – for example by making it harder for new firms to enter a market – this can increase costs for consumers in these markets.

Alternatively, regulations or policy can be designed to increase competition within the market. A competitive 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 economic growth and provide consumers with a choice of goods and services. These costs and opportunities need to be factored into the overall impact assessment.

The overall aim of the competition assessment is to find a policy approach which encourages competition within the market, subject to achieving the wider policy objectives.

The main elements of the competition assessment are:

- identifying the relevant markets, products or services which might be affected by a policy
- identifying possible restrictions on competition in these markets resulting from the policy proposals, by answering the following questions:
 - 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?

A competition concern may be identified if at least one of these conditions is met. You should include the questions and your answers within your BRIA.

The Competitions and Market Authority (CMA) provides guidance on carrying out competition assessments, and can provide informal advice in particularly complex cases.

Economist colleagues can also provide assistance in answering whether the proposals are likely to prevent, restrict or distort competition in any of the affected markets.

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Consumer Assessment

The options section of the toolkit stresses the need to consider the impact on the consumer. This section of the toolkit addresses the key challenge of thinking and gathering evidence about the impact on consumers of specific industries, firm types and businesses of different sizes.

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”.

This goes beyond the traditional idea of a consumer as someone who buys goods from the high street. As a result, consumer interests will be impacted by policies across the Scottish Government, even though it might not be immediately obvious that their interests should be considered. In general, there will be an impact from policy on consumers if the quality, availability or price of goods or services in a market are likely to be affected. There may also be indirect consequences, such as increased opportunities for third parties to take advantage of government initiatives to target consumers whose circumstances make them more vulnerable, or added complexity in a market, which could lead to information asymmetries or make it more difficult for consumers to understand their rights. This in turn can negatively impact businesses that want to obey the rules, either through loss of consumer trust in a sector, or through loss of opportunities should unscrupulous businesses take advantage of consumer protection weaknesses in government policy.

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?

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Test Run Of Business Forms

All new forms introduced as a result of Scottish Government legislation must also be test run as early as possible with appropriate businesses, business organisations etc. to ensure they are clear, simple and easy to complete. It can be useful to get business/business organisations to help in the development process, *however there is a firm commitment to consult an appropriate sample of 6-12 business likely to be affected by the proposal.* In completing this section of the impact assessment template, provide details of any new forms being introduced. Explain how they were developed, what input business etc. had in their development and the results of the test run.

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Digital Impact Test

The options section of the toolkit stresses the need to consider the impact on advances in technology and the impact this may have on future delivery. This section of the toolkit addresses the key challenge of thinking and gathering evidence about the impact of technology on specific industries, firm types and businesses of different sizes.

Digital Impact Test

Changes to policy, regulation or legislation can often have unintended consequences, should government fail to consider advances in technology and the impact this may have on future delivery.

The digital impact test requires officials to consider whether the changes being made can still be applied effectively should business/government processes changes – 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?

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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 (legalaidrawl@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.

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Enforcement, Sanctions And Monitoring

This section of the BRIA should describe in appropriate detail how you propose to enforce and monitor compliance and impact for each of the options.

When considering enforcement options, you should:

- engage fully with local authorities and COSLA, relevant existing regulators (and their sponsor teams) and the Public Service Reform Directorate;
- have regard to the [Crerar Review](#) and the [Government's response](#).

You will also have to develop effective monitoring mechanisms to assess compliance and whether (and to what extent) your policy (and associated regulatory interventions) is meeting the original objective.

Therefore this section of the template should:

- describe your proposed monitoring process for **each** option in the impact assessment, using SMART (Specific, Measurable, Achievable, Relevant and Timebound) criteria.
- take into account existing monitoring mechanisms – you may be able to use them but, if not, bear in mind that those also affected by other policies may face multiple monitoring activities.
- assess compliance against the overall policy objective and delivery success measures. Be clear about what will be counted as compliance and what will not.
- outline who will be responsible for monitoring each option. Think about the cost for those being regulated of compliance and monitoring and whether this will have a disproportionate impact on some groups.
- describe the frequency of monitoring and how it will be reported.
- consider setting up a feedback mechanism for recording any complaints from those affected by the proposals, to inform future policymaking.

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Implementation and Delivery Plan

At all stages of BRIA completion – as with policy development - you need to think about implementation and delivery.

- **How will the legislation be put together and how will it achieve its objective?**
- **Consider who will implement and enforce it and how are they being involved in the creation/consultation process?**

In this section you should outline implementation and delivery plans covering the main issues for each option. These are likely to refer back to earlier sections and might include:

- ownership – e.g. who is responsible for implementation and who will make decisions?
- the aims of implementation – focus on the policy objective and outcomes considered necessary, including success criteria;
- timetable for implementation – key decision points and milestones, specifying where flexibility may or may not exist;
- identification of stakeholders – who will be involved in implementation and who may be more widely affected?
- communication strategy – including allowing for early warning to those who will be affected, especially small businesses and other organisations;
- consider risk management for the delivery and implementation of each option.
- consider how implementation will fit within existing initiatives, including those by other government departments and inspection agencies, and aggregated burdens.

As part of developing the delivery plan you should also recognise the need for a formal post-implementation review *within* 10 years of regulations coming into force, and make arrangements for relevant data capture and for the review.

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Post-implementation review

As part of finalising monitoring arrangements you should also recognise the need for a formal post-implementation review within 10 years of regulations coming into force. This review should establish whether implemented regulations are having the intended effect and whether they are implementing policy objectives efficiently. It is not intended to review the effects of the policy itself or to determine whether the intended policy is still desirable - although there may be merit in considering those too. You should use the final BRIA as the starting point for this work, given that it should establish a baseline and include the success criteria against which you will assess the effectiveness of the policy in delivering the objective.

All Scottish Government legislation that impacts upon businesses is subject to review against the final BRIA within 10 years, although directorates are free to review regulations at any earlier point if this coincides with a pre-programmed review.

Key issues for review should include whether:

- the policy objective has been met.
- impacts have been as expected, including the costs and benefits.
- views of stakeholders regarding implementation of the policy and whether there have been any unforeseen unintended consequences.
- compliance levels indicate that the enforcement regime is effective – perhaps it could now be lighter touch or more risk based.
- the basis of the review – it could be statutory (forming part of the legislation) or there could be a political commitment to review.
- criteria for modifying or replacing the policy if it does not achieve its objectives; or whether Government intervention is still required or not.
- the five principles of better regulation are evident in delivery and outcomes.

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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 provided in the template, the information gathered for each option.

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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 the choices provided whether you are completing a partial or final BRIA. Please delete the option you are not using.

Five hard copies of any published BRIA should be sent to the Scottish Parliament Information Centre (SPICe) and an electronic copy sent to their collections team. Where appropriate, one copy each should be sent to the following:

- the lead committee
- Delegated Powers and Law Reform Committee
- Parliament Legal Advisors

You should publish your signed BRIA on gov.scot using APS.

Business and Regulatory Impact Assessment: Toolkit

Frequently Asked Questions

General questions:

Why do I need to complete a Business and Regulatory Impact Assessment (BRIA)?

The Scottish Government is committed to consulting with all parties potentially affected by proposals for new regulation, or where any regulation is being changed significantly. All policy changes, whether European or domestic, which may have an impact upon business, charities, the voluntary sector, or indeed public bodies, should be accompanied by a BRIA. In fact, we would always recommend and encourage the completion of a BRIA as best practice. The BRIA helps assess the impact of new legislation, as well as other changes such as voluntary guidance or policy changes, even where they do not necessarily present additional obvious burdens. In such cases it can either help confirm understanding that the impact will not change or identify and address unintended impacts which have not been identified. The content of a BRIA should be proportionate to the problem involved and the size of the proposal.

What is the purpose of a BRIA?

The BRIA helps policy makers to think through and analyse the costs and benefits of the proposed legislation. It also ensures that any potential effects on business, particularly small enterprises, are taken into account before regulations are made.

When should I produce a BRIA?

A BRIA is a continuous *process* to help you fully think through the consequences of possible and actual Government interventions: from the early stages of identifying a policy challenge, through the development of policy options, public consultation and final decision-making, and on to the review of implementation. When review leads to the identification of new policy challenges (perhaps arising from unintended consequences of the intervention itself), the process begins again.

Is a BRIA required for a de-regulatory or voluntary measure?

Yes. BRIAs should be carried out for any piece of legislation or regulation, whether mandatory or voluntary, and are still appropriate even where the proposals will reduce regulatory burdens or costs on business. In such cases, the BRIA can help confirm your understanding, or identify and address any unidentified impacts or concerns.

Business and Regulatory Impact Assessment: Toolkit

Consultation/engagement questions:

At what stage should I consult with business?

You should start your dialogue with businesses as early as possible. Your engagement with businesses should be recorded in the partial impact assessment which should be part of the consultation document.

How do I identify businesses to consult with?

You should consider any business contacts you or policy colleagues (including OCEA colleagues) working in a similar area already engage with. Trade Associations and business organisations should also be able to provide advice on appropriate contacts. The UK Government's Department for Business, Energy and Industrial Strategy can also help identify suitable companies to consult with.

Do the businesses consulted need to be named in the BRIA?

There is no specific requirement to name them but you should include general information which explains the details of who you consulted with, and the feedback received. You should be as transparent as possible. It is advisable to discuss this with the businesses when you meet with them.

How many companies should I engage with?

The BRIA requires you to engage with 6-12 business who are expected to be affected by the proposal. You should consider the characteristics of the businesses likely to be affected i.e. size, sector, ownership, geographical distribution, to ensure that your sample is representative.

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Consumer questions:

What is a Consumer?

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

A consumer may also be known as or referred to as:

- Client
- Customer
- Passenger
- Patient
- Pupil
- Service user
- Shopper
- Student
- Tenant
- User

When using this definition it is worth noting that a consumer may not directly purchase the good or services themselves – this is particularly the case in public services.

Digital questions:

What would be a digital impact?

A digital impact would be one of the following:

- A. The proposed change is to be delivered in an ‘analogue’ way**, for example it may be a check that requires physical forms filled in by hand and posted. Services and interactions are increasingly moving online. The impact of your change could mean that it would need to be revisited, at cost, at a later stage when services move online.
- B. The proposed change is to be delivered in an only digital way** i.e. via a website – an online transaction – this would have an impact on those without access or capability to get online and may have a cost for both Government and the business or individual to support them to a stage where they can get online.
- C. Should a change only apply in Scotland or according to Scots law**, you must consider online transactions that may originate from outside of Scotland – how would the change be enforced?
- D. Should a change include age restrictions** – consideration would need to be considered around enforcement, roles and responsibilities in an online transaction process.

This list is not exhaustive however it gives an understanding of digital issues to consider.

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Why do I need to consider digital / technological delivery and related issues?

Digital technologies are a central part of everyday life now. Consumers and customers expect easy, digital services. The explosion of smartphone use, online services and transactions both private (like banking) or public (like road tax) and innovative new markets and platforms like Uber and Amazon have changed the way in which we live work and operate. **If we do not consider digital / technological advances** and their effect on or fit with our policies and regulations, then there is a risk of changes being made which quickly become unfit for purpose, and which may require revisiting and amending at a later date and at cost.



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80435-975-4 (web only)

Published by The Scottish Government, December 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1153402 (12/22)

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