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The One-in, One-out Methodology

Introduction

1. This note provides officials with methodological guidance to operate the new One-in, One-out (OIOO) Rule. It is based on the OIOO framework agreed by the Reducing Regulation sub-Committee (RRC).¹
2. The underlying OIOO methodology builds on the Green Book² and the Impact Assessment (IA) Toolkit.³ The evidence base for OIOO (INs and OUTs) will be provided by Impact Assessments.

Overview of OIOO

3. The **objectives** of the OIOO policy are to:
 - bear down on the cost and volume of regulation in the economy; and
 - encourage departments to implement regulation only as a last resort, having first considered the use of non-regulatory alternatives.
4. The **key headlines** for the OIOO Rule are that:
 - the initial scope of OIOO includes any new UK legislation which imposes a direct annual net cost on business or civil society organisations (IN);⁴
 - for any direct net cost imposed on business and civil society organisations, departments must identify and remove existing regulations with an equivalent value (OUT);
 - departments will be asked to identify compensatory OUTs at the same time that INs are cleared by the Reducing Regulation sub-Committee (RRC). Measures for which OUTs have not been identified will normally be delayed; and
 - departments are expected to put in place plans leading to the commencement of OUTs as soon as possible.
5. To ensure the smooth operation of the OIOO Rule, officials need to think about identifying OUTs early in the policy making process.⁵
6. Costs will no longer be separated into administration burdens and policy costs.⁶ Departments will be required to report on direct net costs to business and civil society organisations.

Reducing Regulation sub-Committee

7. The RRC⁷ has responsibility for enforcing the OIOO Rule.

¹ The RRC is a Cabinet sub-Committee: <http://www.cabinetoffice.gov.uk/government-business/cabinet-secretariat.aspx>

² http://www.hm-treasury.gov.uk/d/green_book_complete.pdf

³ <http://www.bis.gov.uk/ia>

⁴ Civil society organisations include charities, voluntary organisations and social enterprises.

⁵ Departments should conduct a review of their existing regulatory stock in order to identify potential OUTs.

⁶ Previously under the Administrative Burdens Reduction Programme, a distinction was made between administrative burdens and policy costs.

8. All requests for clearance that propose a new regulatory (IN) or deregulatory measure (OUT) should be submitted to the RRC⁸, in parallel with the submission to the main policy committee.

Regulatory Policy Committee

9. The Regulatory Policy Committee (RPC) is an independent body appointed to validate all Impact Assessments.
10. Departments/agencies are required to submit their regulatory Impact Assessments to the RPC for an opinion, in advance of writing to the RRC for clearance.

Accountability

11. Accountability for ensuring the Coalition Government meets its OIOO obligations rests with Ministers and Permanent Secretaries of the individual regulating departments.

Which organisations are in scope of OIOO?

12. Organisations in scope include:

- Whitehall departments and other central government organisations; and
- agencies that are part of central government i.e. executive agencies, such as Companies House.

What is in scope of OIOO?

13. For the purposes of OIOO, regulation is defined as:

*“a rule or guidance with which failure to comply would result in the regulated entity or person coming into conflict with the law or being ineligible for continued funding, grants and other applied for schemes. This can be summarised as all measures with legal force imposed by central government and other schemes operated by central government”.*⁹

14. Initially, OIOO will apply only to UK regulation that impacts on business and civil society organisations.

15. The following sources of regulation are in scope for OIOO:

- statutory instruments;
- codes of practice and self-regulation which are backed by statutory force;
- guidance issued under statutory powers; and
- by-laws made by central government.

⁷ The RRC clears all regulatory and deregulatory proposals, including those outside the scope of OIOO.

⁸ An IA should be provided to the RRC at each stage when policy clearance is sought (typically prior to public consultation and prior to final clearance).

⁹ <http://bis.ecgroup.net/Search.aspx?LocID=&col=PublishedDate&sort=desc> 'Measuring Administrative Costs: UK Standard Cost Model Manual' published 29 September 2005

What is out-of-scope of OIOO?

16. Measures that are out-of-scope of the OIOO Rule, include:

- i. **regulation that does not impact on business or civil society organisations;**
- ii. **European Union Regulations, Decisions and Directives;**¹⁰
- iii. **international agreements and obligations;**¹¹
- iv. **tax - central and local;**
- v. **tax administration** - this is being taken forward separately by the Office for Tax Simplification and is therefore out-of-scope of OIOO;
- vi. **civil emergencies regulation** - those measures which would be classified as an emergency under the Civil Contingencies Act 2004. This Act forms the basis of the COBRA powers to deal with emergency situations in the UK (e.g. a foot and mouth outbreak);¹²
- vii. **spending decisions** - including benefits, grants and subsidies;
- viii. **specific enforcement action** - individual enforcement or inspection activities, or actions to ensure compliance with regulations;
- ix. **finances and penalties** - even if levied on a regulated entity for non-compliance with a regulation;
- x. **fees and charges** - except where they result from an expansion or reduction in the level of regulatory activity;
- xi. **contractual obligations** - costs associated with obligations on business and civil society organisations which result from negotiating or entering into contractual arrangements with government and public sector organisations;
- xii. **court or tribunal cases** - where the conclusion of a court or tribunal case has resulted in a change in the interpretation of a regulation;¹³
- xiii. **environmental tax** - environmental measures which have been classified by the Office for National Statistics as environmental tax;

¹⁰ Refer to paragraphs 22 & 23 on EU below

¹¹ Refer to paragraph 24 on International Agreements.

¹² The **Department for Transport** issues responses to public emergencies under a number of Acts. Only temporary public emergency measures (up to 12 months in duration) where there exists an imminent or occurring harm which would result in serious damage to human welfare/environment (see 1(1) (a) of Civil Contingencies Act 2004) and which fall under the following legislation will be deemed out-of-scope of OIOO: Aviation Security Act 1982, Channel Tunnel Act 1987, Aviation and Maritime Security Act 1990, Railways Act 1993, and the Air Navigation Order 2009.

If the **Food Standards Authority** declares a temporary emergency (up to 12 months in duration) where there exists an imminent or occurring harm which would result in *serious damage to human welfare/environment* (see 1(1) (a) of Civil Contingencies Act 2004), then this should be considered out-of-scope of OIOO.

¹³ The court/tribunal ruling is an expression of what the legislation means. It is not imposing a new burden because it is what the legislation means from when it was made even if in practice people thought it meant something else and as a result of the court ruling have to change their procedures or such like.

- xiv. **financial systemic risk**¹⁴- measures which deal with issues falling under the OECD (2004)¹⁵ definition of financial systemic risk. However, the OIOO Rule does apply to all other areas of financial services regulation, including financial crime regulation (such as anti-money-laundering) and conduct of business regulation; and
- xv. regulations that have a temporary and short lifespan i.e. up to 12 months and include an automatic sunset clause.

How to count an IN or an OUT?

- 17. **INs** - an IN is defined as a regulation whose direct incremental economic cost to business and civil society organisations exceeds its direct incremental economic benefit to business and civil society organisations.
- 18. **OUTs** - an OUT is defined as a deregulatory measure whose direct incremental economic benefit to business and civil society organisations exceeds its direct incremental economic cost to business and civil society organisations.
- 19. OUTs can be sourced from:
 - existing regulations which are removed completely; or
 - existing regulations which are recast in order to reduce burdens.

Attributing costs to primary legislation

- 20. The costs of regulations made in the exercise of statutory powers should be scored when they are implemented (usually in secondary legislation).

Banking system for OUTs

- 21. Departments scoring OUTs by implementing deregulatory measures can 'bank' these against future INs. Where departments are unable to find their own OUTs, they should monetise their full stock of regulation, come before the RRC and explain why sufficient OUTs cannot be found within the department. They may also use OUTs from elsewhere in Whitehall if the RRC agrees.

How are EU measures treated under OIOO?

- 22. **INs:** EU Measures (Regulations, Decisions and Directives) will not be considered as an IN, except in the case of:
 - gold-plating: where a department implements a Directive so that it goes beyond the minimum requirements, resulting in increased costs to business and civil society organisations; or
 - failure to derogate: where a department introduces an EU Regulation and (i) fails to take available derogations which would reduce costs to business and

¹⁴ As a general principle where it is believed a crisis can be averted through introduction of a regulatory measure then there may be grounds to not apply the OIOO Rule to such a measure.

¹⁵ The risk that the inability of one institution to meet its obligations when due will cause other institutions to be unable to meet their obligations when due. Such a failure may cause significant liquidity or credit problems and, as a result, could threaten the stability of or confidence in markets.

civil society organisations or (ii) uses a derogation which imposes increased costs on business and civil society organisations.

23. **OUTs:** OUTs can be sourced from:

- the removal of gold-plating from an existing regulation; or
- the voluntary curtailment of a derogation that imposes costs on business and civil society organisations ahead of its maximum expiry term. In this case, the OUT scored will be on a pro rata basis. So, for example, if a ten year derogation which imposes costs on business and civil society organisations is used and a department voluntarily ends this after five years, it can claim 50% of the costs of that derogation to business and civil society organisations as an OUT.

24. International agreements and obligations: these should be treated in the same manner as EU measures when calculating INs and OUTs. "Gold-plating" will result in an IN and a recast resulting in reduced costs to business and civil society organisations will be treated as an OUT.

What is the role of Impact Assessments?

25. The introduction of new regulations (INs) and removal of existing regulations (OUTs) are both government interventions and require their own separate Impact Assessments (one for the IN and one for each compensatory OUT).¹⁶

Sunsetting Regulations

26. Where a regulation includes a sunset clause, the effect is that the regulation will expire on a certain date unless action is taken to renew it.

27. For detailed information on sunseting regulations, you should refer to the document entitled "Sunsetting Regulations - Guidance".¹⁷

28. When completing the Impact Assessments for measures which include a sunset clause, departments should continue to select the most appropriate appraisal period to estimate the costs/benefits. Unless departments expect that the regulation will not be renewed, the appraisal period should run beyond the expiry date.

29. Once the sunseting expiry date is reached, the measure will be treated as follows under OIOO:

- renew the measure - no OIOO implication;
- amend the measure – an IN will be served if the amendments result in increased costs to business and civil society organisations, or an OUT if the

¹⁶ More than one OUT measure may be required to cover the corresponding IN (so that IN and OUTs are broadly equivalent in net cost to business).

¹⁷ <http://www.bis.gov.uk/policies/better-regulation/better-regulation-executive/reducing-regulation-made-simple/reviewing-existing-regulations/pirs-and-sunset-reviews>

amendments result in reduced costs to business and civil society organisations;

- allow the measure to expire - the appropriate time-based OUT will be given to the department based on the value of the original IN; (e.g. if the Impact Assessment was calculated across 12 years but the measure expires after 7, then the remaining 5 years' worth of the OUT will be credited to the department.

Technical details

Unit of costs

30. OIOO will take account of both transitional and annually recurring costs and benefits to business and civil society organisations.

31. OIOO will be based on the equivalent annual net cost to business (EANCB).¹⁸

Direct costs and benefits

32. OIOO is based on direct costs and benefits on business and civil society organisations only. Direct impacts are those that can be identified as resulting directly from the implementation or removal/simplification of the regulation.¹⁹

Discount rate and value base

33. The discount rate used to estimate present values of impacts will follow HM Treasury Green Book guidance.²⁰

Price and Present Value Base Year²¹

34. 2009 will be the price base year. 2010 will be the present value base year for the OIOO Rule.

35. Quantified and monetised impacts within Impact Assessments will be based on the most appropriate price base year (in constant prices).

36. Departments will then inflate / deflate the numbers (based on HMT's GDP deflator series)²² within Impact Assessments, to the price base year to produce consistent data to measure delivery against OIOO.

Compliance

37. Departments should assume 100% compliance with a regulation (unless there is evidence of the contrary) when planning to introduce a regulation (IN). They should

¹⁸ See detail in the Technical Annex

¹⁹ A first order cost/benefit occurs as a direct effect of the regulation. If the effect happens after something else happening first (as a result of the regulation) it is considered a second order effect.

²⁰ [http://www.hm-treasury.gov.uk/d/2\(4\).pdf](http://www.hm-treasury.gov.uk/d/2(4).pdf)

²¹ Price Base Year: The year chosen for the constant price presentation of the estimates. Present value (PV) base year is the year in which the impacts over time are valued, i.e. the year to which the future impacts are discounted. This is normally the year in which the estimates are undertaken or policy decisions taken.

²² http://www.hm-treasury.gov.uk/data_gdp_index.htm

strive to reflect actual levels of compliance when planning to remove a regulation (OUT).²³

Wage rates

38. Departments should use the most appropriate wage rates to estimate the INs and OUTs. These should be consistent with the price base used in the Impact Assessments, and at rates which external commentators can recognise as realistic. As explained above, the estimated costs / savings are then deflated / inflated to 2009 price level.

Exchange rate issues

39. OIOO will operate in UK GBP (£) and IAs should be calculated and adjusted accordingly, using UK data wherever possible. In addition, all cost estimates should be based on the impact to the UK economy.

40. The use of evidence denominated in an alternative currency should be minimised e.g. proxy data for an industry or sector in another country because UK data does not exist or because this is an industry standard.

41. In those instances where regulation does affect international trading or currency exchange activities these variances should be accounted for fully throughout the Impact Assessments process. For any currency adjustments, departments should use the most appropriate rate.²⁴

Population

42. Credibility of the OIOO Rule depends on departments using appropriate data, which external commentators can recognise as realistic on the size of population affected by the regulatory measure. Where it is not clear if an entity should be included in the population, the Better Regulation Executive should be consulted for agreement.

²³ <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/10-901-impact-assessment-toolkit.pdf>

²⁴ In the absence of a better value, departments should use a three year average exchange rate from the Bank of England, taking the most recent three financial years into account.

Annex 1 – Calculating EANCB

43. INs and OUTs under OIOO will be calculated using **Equivalent Annual Net Cost to Business (EANCB)**.
44. The EANCB of a regulation is defined as the annualised value of the present value of net costs to business and civil society organisations. This includes both annually recurring net costs and net transitional costs that occur as a result of the regulation being introduced / removed / simplified.
45. Equivalent annual cost / benefit is a standard method used in finance to compare (repeatable) projects with different appraisal periods.
46. The information required to calculate the EANCB is captured on the IAs. Where a measure includes more than one discount rate, please refer to the BRE EANCB Calculator. EANCB is calculated as follows:

One discount rate (Green Book - time period less than or equal to 31)

$$EANCB = \frac{PVNCB}{a_{t,r}}$$

Where $a_{t,r}$ is the annuity rate given by:

$$a_{t,r} = \frac{1+r}{r} \left[1 - \frac{1}{(1+r)^t} \right]$$

Where:

Present Value of Net Costs to Business	PVNCB
Time period used in the calculation of the NPV	t
Discount rate	r
Annuity Rate	$a_{t,r}$
Equivalent Annual Net Cost to Business	EANCB

Time periods

47. The PVNCB and EANCB should be estimated over the same time period. So for example, if an OUT had a present value of £300m over 30 years, it would be equivalent to an IN over the same time period on both the PVNCB and EANCB measures.

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