

 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Reforms to Judicial Review	
Lead Department/Agency	Ministry of Justice	
Stage	Final	
IA number	MoJ 210	
Origin	Domestic	
Expected date of implementation (and SNR number)	SNR 8	
Date submitted to RPC	13/01//2014	
RPC Opinion date and reference	31/01/2014	RPC13-MOJ-1855(4)
Overall Assessment	GREEN	
<p>RPC comments</p> <p>The IA is fit for purpose. The issues raised in our previous opinion (07/01/2014) have been adequately addressed. In particular, for the purpose of One-in, Two-out, the IA now provides monetised estimates for the full range of direct costs to business. In addition, the small and micro business assessment (SaMBA) has now been updated and strengthened.</p>		
<p>Background (extracts from IA)</p> <p>What is the problem under consideration? Why is government intervention necessary?</p> <p><i>“The number of Judicial Review (JR) applications has more than doubled in the past 10 years. The Government is concerned that a large number of these claims are weak or frivolous and that financial incentives currently do not discourage claimants from bringing weak cases. Unsuccessful JRs may disproportionately frustrate and delay the implementation of government policy including infrastructure and construction projects that contribute towards economic growth.”</i></p> <p>What are the policy objectives and the intended effects?</p> <p><i>“The policy objective is to reduce the incidence of weak JRs and to support the quicker resolution of JRs by providing better balanced financial incentives. In this way, this should ensure that the right balance is struck between reducing the burdens on public services, and protecting access to justice and the rule of law.”</i></p>		
<p>Comments on the robustness of the OITO assessment</p> <p>The IA says that it is a regulatory proposal that would impose an equivalent annual net cost to business of £0.02 million (an ‘IN’). This is consistent with the current Better Regulation Framework Manual (paragraph 1.9.10) and provides a reasonable assessment of the likely impacts.</p> <p>The IA also now highlights that, in line with the Better Regulation Framework Manual (paragraph 1.9.32), indirect impacts are those subsequent effects that</p>		

occur as a result of the direct impacts. On this basis, *“the benefits to business of a reduced volume of JRs and of quicker resolution of JRs have been classified as indirect benefits”* and are therefore not included within the EANCB (paragraph 2.73). As a result, the EANCB is estimated to be a cost of £0.02 million.

Comments on the robustness of the Small & Micro Business Assessment (SaMBA)

The proposals regulate business and are intended to come into force after 1 April 2014 and therefore the SaMBA is applicable.

The SaMBA is sufficient. The Department has updated the SaMBA following the Committee's previous opinion.

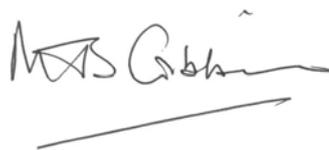
Following consultation, the Department explains that *“The extent to which small businesses (up to 49 employees) and micro businesses (up to 10 employees) might be affected differentially by the reforms was explored during the consultation period. In light of this the proposed mitigating actions were reviewed”* (paragraph A1).

The Department has set out that it has no reason to believe that *“...small businesses would be affected significantly by the reforms, and we do not consider that they would be disproportionately affected. Guidance and information should be produced to help mitigate the impacts on small and micro businesses. Changes to the policy proposals themselves as a result of consultation should also be beneficial for small and micro businesses.”* (paragraph A11). The Department adds that under all proposals *“...small businesses/organisations that stand to gain from the quicker implementation of public bodies' decisions, or less uncertainty about their implementation, would benefit if fewer JRs are brought following this change. These benefits to small businesses may relate to quicker resolution of planning decisions where they are contractors for the project's delivery”* (paragraph A12).

Quality of the analysis and evidence presented in the IA

The Department has addressed the issues raised in our previous opinion (07/01/2014). In particular, for the purpose of One-in, Two-out, the IA now provides monetised estimates for the full range of direct costs to business. This includes situations where claimants would pay defendants' legal costs, when defendants are successful. Claimants may also incur costs from securing less protection from Protective Cost Orders (PCOs). The total annual net costs to business and civil society organisations – which are estimated to represent 2.5 per cent of claimants, interveners and non-parties – is estimated to be around £26,000 (paragraph 2.70). This translates to an equivalent annual net cost to business of £0.02 million.

Signed



Michael Gibbons, Chairman