

<b>Date:</b>	31 October 2002
<b>Time:</b>	9:00am - 12:30pm
<b>Venue:</b>	Committee Room 1, National Assembly for Wales, Cardiff Bay
<b>Title :</b>	BETTER REGULATION

### **Purpose of the Paper**

1. To facilitate a discussion on the Better Regulation Initiative in Wales.

### **Background**

2. Business in Wales operates mainly within a framework of UK legislation, as well as an increasing volume of European legislation (about half of major UK laws have some origin in Europe).
3. The UK Government is committed to Better Regulation. This involves legislating only where necessary, in the most efficient way and deregulating and simplifying existing legislation wherever possible.
4. The Government has set up the Regulatory Impact Unit in the Cabinet Office to work with UK Government Departments, agencies and regulators to help ensure that regulations are fair and effective. The Unit's work involves:
  - Promoting the principles of good regulation;
  - Identifying risk and assessing options to deal with it;
  - Supporting the Better Regulation Task Force;
  - Removing unnecessary, out-moded or over-burdensome legislation; and
  - Improving the assessment, drawing up and enforcement of regulation, taking into particular account the needs of small businesses.
5. Also, one of the key tasks of the DTI's Small Business Service is to help minimise the burden of regulation on small businesses.
6. Within Wales, the following measures have been taken to help build an economy where businesses can flourish.

### **Measures Taken in Wales to Date**

- **Concordats:** These are intended to govern the detailed administrative relationships between the Assembly and each Department, in particular on matters of mutual interest and where the parties have executive functions that overlap or bear on each other. Concordats - whether overarching or bilateral - are not legally binding but allow a co-ordinated, considered approach to matters that may, among other things, affect businesses.
- **Guidance on regulatory appraisals:** Section 65 of the Government of Wales Act requires regulatory appraisals to be prepared for general subordinate

legislation. The purpose of the appraisal is to assess the costs and benefits within Wales of complying with the proposed legislation. Revised guidance to all staff has just been issued and officials are now additionally asked to consider the competition impact of their proposals. A copy is attached for information at the Annex.

Where the proposed new regulation has an impact on business, the submission and regulatory appraisal must now be copied to the EDD Business Unit, who will monitor the effect of assembly regulations on businesses in Wales.

Undertaking a Regulatory Appraisal is the responsibility of the relevant policy Division and copies of any appraisals are published on the Assembly website, for example see [www.wales.gov.uk/subihealth/toc-e.htm#Reg](http://www.wales.gov.uk/subihealth/toc-e.htm#Reg).

- **Regulatory Reform Act:** Although the National Assembly for Wales cannot make a Regulatory Reform Order itself, the Act means that the consent of the National Assembly for Wales has to be obtained for any proposals that vary or remove a function that has been transferred to it. The Act requires this to be signified when the Order is about to be made. Some UK Departments have suggested that this can lead to last minute surprises and delays.

The Welsh Assembly Government will have been consulted on the detail at the early stage of policy development, but there is still a possibility that, after the committees have reported on a proposal, the Assembly plenary session could withhold its consent or that it could attach conditions. If that were to happen the UK Government would need to consider carefully whether to proceed with the order. There may need to be a further consultation; or the Order may need to be re-tabled. Alternatively, the Order may be dropped or confined to England only.

There is an emerging procedural arrangement that the Assembly will indicate its consent before the order is laid for 2<sup>nd</sup> stage scrutiny.

- **Local business partnerships:** Local business Partnerships aim to establish a forum for discussion on all areas of regulation and enforcement and provide a framework to help businesses comply with locally enforced regulations. Best Value reviews have highlighted partnerships as a positive way in which local authorities can engage with businesses on regulatory issues. However, there are only 3 active partnerships in Wales - in Cardiff, Ceredigion and Pembrokeshire.
- **Regulatory Reform Action Plan:** Following the enactment of the Regulatory Reform Act 2001, the UK Government produced a Regulatory Reform Action Plan. The plan is wide ranging, covering reform at all levels, across all sectors and by all routes. The Plan brings together proposals for change that will benefit businesses; charities and the voluntary sector; the wider public sector, including local authorities; and the individual citizen. The plan promises savings of £40 million across the UK. Only one specific measure related to Wales is included - the proposal to change the law on polls for Sunday Opening.

## **Consultation process:**

7. Section 115 of the GoWA requires consultation with business where Assembly policies are likely to have an impact on the functions or interests of business. Establishment of the Wales Social Partners Unit provides the Assembly with an additional resource to interact with the business community. The Assembly has also established fora for the Automotive, Aerospace and Electronics sectors. These have proved to be good conduits for the exchange of information to Assembly Government. A similar forum is planned for the financial sector.

## **Proposed Action for the Future**

- We will continue to measure the impact of new regulations via the Regulatory Appraisal process. The EDD Business Unit will monitor all new regulations that impact on business.
- Officials will revisit the Regulatory Reform Order process and make recommendations to the EDM.
- Annual reports will be presented to the Committee on Assembly subordinate orders that impact on business in Wales
- The Committee will be kept informed of the impact on Wales of the UK Government's Regulatory Reform Action Plan.
- Officials will work with the Small Business Service on the Start-up Resource Pack project. This pack will consolidate and simplify regulatory information for business start-ups in a user-friendly, authoritative and accessible format.
- We will continue to seek to influence the development of UK regulatory policy to ensure that Wales' interests are fully met.

## **Action for the Committee**

8. The Committee is invited to discuss the processes outlined in the paper and note the proposed actions for the future.

## **Contact Point**

9. Julie Hanley, EDD Business Unit ICM3

## **A GUIDE TO REGULATORY APPRAISALS**

### **What does this Guidance mean for you?**

1. If you are involved with Assembly subordinate legislation you need to consider whether regulatory appraisals are required. Generally, they are but we have clarified the exceptions and the decision flow chart at Annex 1 will help you reach a quick decision. This guidance contains advice on a new test that looks at the impact of a new regulation on competition and supersedes the guidance issued in July 1999.
2. Under section 65 of the Government of Wales Act, a Regulatory Appraisal normally needs to be prepared for Assembly general subordinate legislation. Procedures for making “Assembly Orders” are set out in Standing Order 22. The purpose of Regulatory Appraisals is to assess the likely costs and benefits within Wales of complying with such Orders. If the appraisal reveals that the compliance costs - to business or other interests - of a proposed Order are likely to be significant, then consultation with relevant interests is required (section 65(3)). The Regulatory Appraisal itself must be published before the draft Order is laid before the Assembly. The circumstances when appraisals are not required are set out in paragraph 7.
3. The Regulatory Appraisal procedure is relevant to the wider duties on the Assembly to have regard to the interests of local government and the voluntary sector, to promote sustainable development and equality of opportunity and to consult business in Wales. Thus a regulatory appraisal should consider these, both in the assessment of costs and benefits and in the manner in which consultation is carried out.

### **What is a Regulatory Appraisal?**

4. A Regulatory Appraisal is a short, structured document that is published with regulatory proposals for new or revised legislation. It briefly describes the issue that has given rise to the need for legislation and compares various possible options for dealing with that issue, including non-regulatory approaches. The costs and benefits of each option are identified and quantified as far as possible, to assist public debate about regulation. If costs to business are identified, then the impact on small businesses should be highlighted because regulations can often impose disproportionate burdens on them.
5. All appraisals should include a competition assessment to determine if the new legislation has a significant effect on competition in the market.
6. The degree of detail in a Regulatory Appraisal will vary depending on the scope and likely impact of the proposed Order. A brief explanatory statement may be all that is necessary. However, if a detailed Regulatory Appraisal is considered appropriate you may find the framework set out in Annex 2 below helpful.

## When Regulatory Appraisals Are Not Required

7. Under section 65(2) and Standing Order 22.3 a Regulatory Appraisal need not be undertaken if in the particular circumstances it is considered inappropriate or not reasonably practicable. The flow chart at Annex 1 will help you to decide. The relevant Assembly Minister is responsible for determining when such circumstances apply to particular draft Orders. In such circumstances, Divisions must be prepared, if challenged, to defend their recommendations not to produce an Appraisal. However, a Regulatory Appraisal would not normally be prepared in the following circumstances:
- (i) where the Order simply increases a statutory fee by a predetermined formula (for example, the rate of inflation);
  - (ii) for Commencement Orders bringing into force primary legislation;
  - (iii) where there is a risk of infraction proceedings being instituted for non-implementation or non-compliance with an EC Directive;
  - (iv) where the Order needs to be put in place quickly to deal with a public health or other emergency;
  - (v) where the Assembly Order must be made in order to flesh out the primary legislation e.g. the making of regulations specifying the membership and terms of appointment of members of a body established by the primary legislation. This exemption **does not** apply in cases where the power in the primary legislation is permissive i.e. the Assembly has a choice about whether to proceed. **Nor does it apply** when the Assembly is making the subordinate legislation that has a broad range of options e.g. a scheme covering say companies of over 250 employees or one going down to sole traders.

## When should a Regulatory Appraisal be Prepared?

8. The first steps toward preparing a regulatory appraisal should be undertaken as soon as the possibility of proposing new legislation arises. An appraisal is intended to help reach decisions on whether such legislation is required - not to explain or justify decisions already taken.

## Preparing a Regulatory Appraisal

9. In line with the wider duties placed on the Assembly, the impact of the draft Order on different sectors of the community in Wales will need to be assessed, as well as any effect in relation to sustainable development.
10. A single appraisal may be prepared to cover a number of related Orders that are being made at the same time.

11. A regulatory appraisal should include entries under the headings laid out in Annex 2. A section may be omitted if it is not relevant to your proposal. Useful further guidance on how to structure a Regulatory Appraisal is provided in the booklet “*Good Policy Making: A Guide to Regulatory Impact Assessment*” published by the Cabinet Office and available from the Better Regulation Unit.

### **Disapplication of Procedural Requirements (Executive Procedures)**

12. In accordance with section 67(1) and Standing Order 22.27, the Assembly Cabinet may determine that in particular circumstances it is not reasonably practicable for:

- the Assembly to comply with the consultation requirement in SO22.2;
- the Assembly to consider a report from the Legislation Committee relating to the Order, or to any regulatory appraisal relating to it.

### **Publication**

13. A final version of the appraisal should be published in English and in Welsh. A copy should be placed on the Assembly Internet and made available to any member of the public who requests it. The draft Order and the Regulatory Appraisal can then be laid before the Assembly.

14. If the proposed subordinate legislation impacts on business, charities or voluntary bodies, the submission, and the result of Competition filter, together with a copy of the regulatory appraisal (if one has been completed) **must** be copied to the EDD Business Unit Mailbox.

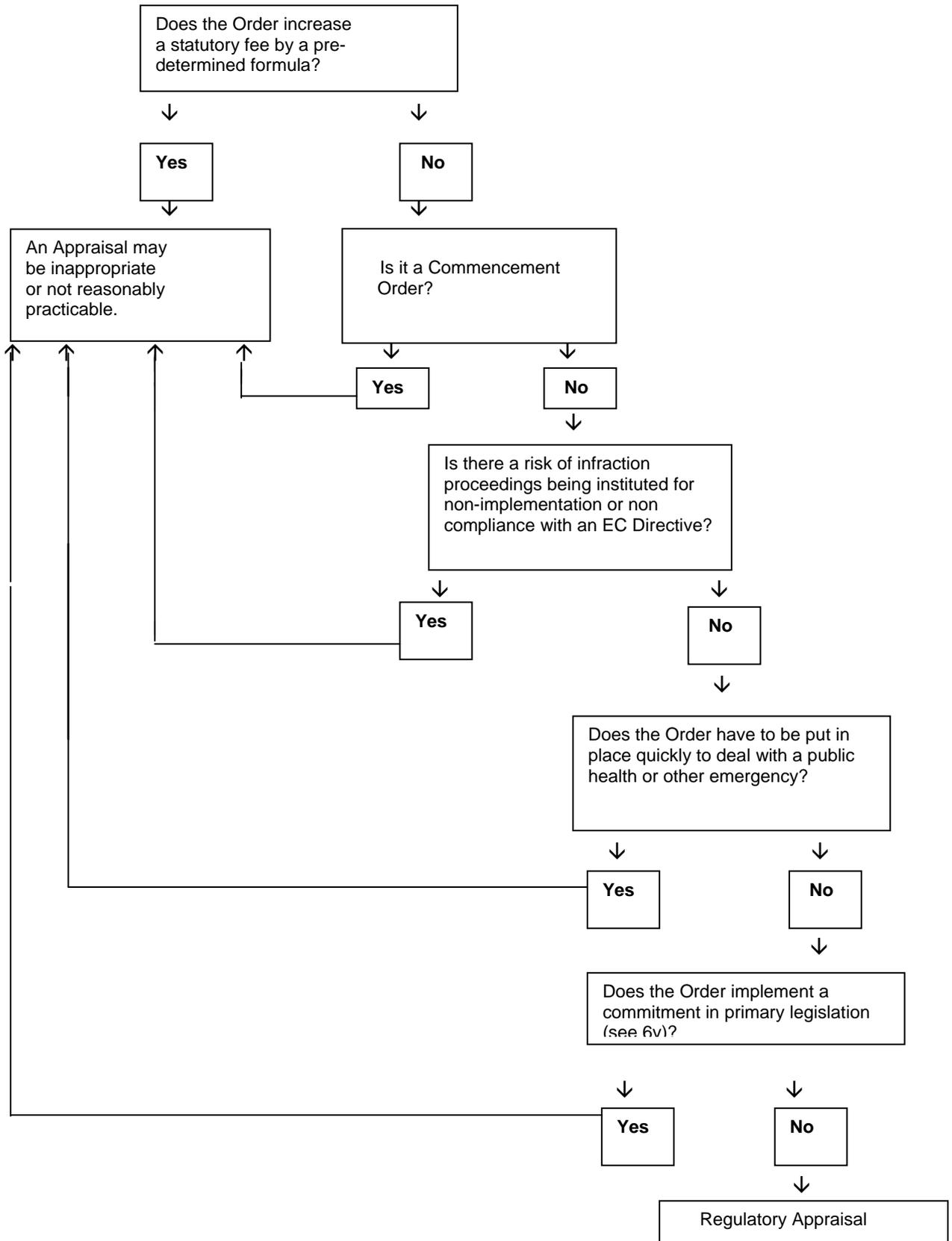
### **Review**

15. The operation of this guidance will be revised as necessary.

### **Enquiries**

16. Enquiries on this guidance should be directed to the EDD Business Unit Mailbox or call extension 3272.

Is a Regulatory Appraisal necessary?



## REGULATORY APPRAISAL CHECKLIST

- (i) **Purpose and intended effect of the measure** -specify the problem or issue the Order is seeking to address; describe, and where possible quantify, the scale of the issue. Identify who or what is affected. Provide a clear brief statement of the objectives. Where there are multiple objectives, these should be prioritised and any conflicts or trade-offs identified. In some cases, existing legislation or targets or EC Directives may dictate your objectives, if so they should be stated here.
- (ii) **Risk assessment** - identify what, risk or hazard, if any, the Order proposes to help address and the probability of harm occurring if no legislation is made.
- (iii) **Options** - identify the available options for dealing with the issue and briefly assess each. This might include the options of “do nothing” or “do minimum”. You may also wish to consider options that do not involve legislation, such as voluntary codes of practice. If your options are constrained by existing legislation or targets, EU Directives, or international agreements, you should mention these here. Keep an open mind about options and consider how the proposals fit in with existing requirements and obligations.

In considering the options you should take account of issues of equity or fairness, e.g. will the order impact differently on a particular group?

- (iv) **Benefits** - identify the benefits of each option and state who will benefit. Those benefiting may be a specific group of workers, consumers or society in general. You should also identify any indirect benefits.

Where possible quantify the benefits and express them in monetary terms. If legislation is designed to reduce risks, the benefits may be best thought of in terms of harms avoided.

- (v) **Costs** - identify the sectors or interests which are likely to be affected, and assess the direct and indirect costs of compliance to them. In estimating costs, both recurring costs (i.e.-additional annual costs) and non-recurring costs (one-off costs) should be covered, together with the assumptions on which the estimates are based. It may be appropriate to give a range of costs, depending on any uncertainties. Any impact on small businesses (under 50 employees) should be specifically assessed.

For each option, identify and (as far as possible) quantify any other additional costs, stating who or what will bear them. Additional costs may fall on, for example, consumers or the public in general. You will

also need to calculate the cost to government – including local government – of developing, monitoring and enforcing any regulatory option.

- (vi) **Competition Assessment** – This will need to be completed if the proposed legislation affects business, charities and/or the voluntary sector. You should apply the competition filter at Annex 3 to each policy option. This consists of 9 yes/no questions. It should be done as early as possible to help identify any effects, adverse or beneficial, on competition. If possible problems are identified you should contact EDD Business Unit for further advice.
- (vii) **Consultation** - Section 65(3)(a) of the Act requires “appropriate consultation” to be undertaken on the draft Order where compliance costs are considered to be significant. Describe the nature of any consultations undertaken in preparing the regulatory appraisal. Also, cover the consultation proposed if compliance costs are assessed as **significant** (see below) and its planned length. Following any consultation, the results should be included in the final version of the Regulatory Appraisal.
- (viii) **Significant Costs** -There is no precise legal definition of “significant costs” and it is a matter of judgement in the light of the particular circumstances. For example, a cost which is relatively small to a multi-national company may be significant to sole traders. The question of whether a cost is significant needs to be determined by the relevant Minister.
- (ix) **Review** - explain how the effect of the Order is to be monitored and whether it will be reviewed.
- (x) **Summary** - summarise who or what sector bears the costs and benefits identified and why the regulatory option embodied in the Order is considered the most effective means of addressing the issue.

**For further advice at any stage please contact EDD Business Unit.**

## The Competition Assessment

1. There are two stages to the Competition Assessment. The first is a quick filter that assesses whether there is a risk of a significant detrimental effect on competition. If the test results show that the risk is low (and there are no anticipated significant benefits for competition) you will only need to record the results of the filter test (including a brief description of any competition effects that are anticipated). If, on the other hand, the test results show that the risk is high you will need to contact EDD Business Unit for further advice on whether a detailed assessment and possible further action is needed.
2. You should consider the market that will be affected i.e. the firms that compete against one another to sell the same or similar products or services. A regulation or proposal may impact directly on just one sector or on several, and some regulations may have indirect effects on other, linked, sectors which either supply goods or services to the affected sectors or buy products from them. (e.g. the recreational craft directive affects the engines needed for boats used for leisure purposes. Within this though there are two distinct markets: engine manufactures that make standard engines, and boat builders who modify them for use on leisure boats.) Some regulations impact almost universally on a very wide range of sectors (e.g. the national minimum wage).
3. For a meaningful competition assessment you must ensure that affected markets are correctly identified. Help and /or advice can also be obtained from the OFT, which has published guidance on markets, entitled "Market definition" (OFT403) *[insert weblink]*.

### The competition filter test

4. This has nine straightforward questions. Where the regulation is likely to have an impact directly on more than one sector (whether directly or indirectly) the competition filter test should be carried out for each sector affected. Where a regulation might impact on many sectors, you will need to identify those sectors that might be affected to the greatest extent. Please contact EDD Business Unit for further advice.
5. The competition filter test is set out below, together with points to consider in answering the questions. Further detail is contained in the OFT's published Guidelines for Competition Assessment (OFT 355) together with examples and references *[insert weblink]*.

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?	
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	
<b>Q8:</b> Is the sector characterised by rapid technological change?	
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	

6. Each “yes” answer indicates a possible competition concern.
- “Yes” answers to less than half the questions suggest that the regulation is unlikely to have a significant detrimental effect on competition. As new information comes to light, this result should be re-affirmed by re-applying the filter test.
  - “Yes” answers to more than half of the questions indicate that there is some risk that the regulation may have a significant effect on competition and a detailed assessment is necessary. Please contact EDD Business Unit for further advice.

### Questions 1 to 3: the market

7. Where there are a few large firms in the market, or it is difficult to establish a new firm, competition concerns are more likely.

#### **Question 4: substantially different effect on firms**

8. Will the costs fall differently on different firms? This is relevant where the costs of complying with a regulation are not proportional to output.

#### **Question 5: changes to market structure**

9. If regulations are likely to penalise certain firms, then this may affect whether those firms stay in business. This could then alter the number or size of firms in the market. The most likely case is where small firms are affected more than large ones are.
10. Consider whether firms that face a greater impact will be able to stay in the market given the additional costs they face. If they have to raise prices as a result of the regulation will customers move to other suppliers?

#### **Questions 6 and 7: penalising new suppliers**

11. Consider whether new suppliers to the market would be affected differently from existing suppliers. An example would be where new firms must meet higher standards immediately, while established firms have a longer period in which to meet them. This could make it harder for the new firms to compete. However, such an effect might be offset by new firms not having to face the costs of changing existing equipment and/or processes, or where existing suppliers have already, voluntarily, decided to carry out the actions required under the regulation.

#### **Question 8: technological change**

12. New technologies may advantage some companies over others who may be driven out of the market. Consider whether technological change will affect the number or size of firms in the market. Where only small changes in technology are happening continuously, this question should be answered “no”.

#### **Question 9: restrictions on suppliers**

13. Will the regulation stop suppliers providing products or services that they would otherwise provide? An example would be a regulation imposing minimum standards, thus preventing suppliers from selling lowest cost or quality options. Further examples would be regulations imposing price restrictions or restrictions on what firms use to make their products. If locations are restricted, customers may suffer, especially if there are local markets.

#### **Presenting the results of the competition filter test**

14. The findings of the competition filter test should be written up as part of the draft appraisal (and should also be included in the final appraisal if no detailed assessment is required). You should include a clear statement setting out whether there is likely to be any detrimental effects on competition, with reasoning and evidence presented to support this conclusion. If you anticipate

any beneficial effects, you should assess these and include them in the write-up. This will improve internal and external consultation and inform Ministers.

### **The detailed assessment**

15. The aim of the detailed assessment is to understand in more depth the potential competition impacts identified whilst carrying out the competition filter test. The Office of Fair Trading's (OFT) "Guidelines for Competition Assessment" (OFT 355 *[insert weblink]*) provide detailed guidance on how to approach the detailed assessment. The OFT publication "Market Definition" (OFT 403 *[insert weblink]*) provides guidance on how to identify the relevant markets. **Please contact EDD Business Unit for further advice before undertaking a detailed assessment.**