

RED TAPE: A FRESH APPROACH



BUSINESSES ARE SAGGING UNDER THE BURDEN OF FAR TOO MANY RULES AND REGULATIONS. DIGBY JONES OF THE CBI RECKONS IT'S TIME FOR POLICY-MAKERS TO CLEAR THE DECKS AND THINK AGAIN.

You would expect the Director General of the CBI to say that businesses are suffering from too much regulation, so I will not disappoint – businesses are suffering from too much regulation! It is not just the sheer volume, nor the so-called red tape or administrative burdens associated with regulation. It is all of that and more.

Businesses do not dispute what is often a valid case for regulation, or that simple, straightforward pure state regulation can sometimes be the best solution. But they are increasingly concerned with the scope and depth of regulation with which they have to comply and that political objectives are increasingly being met by regulating business. Regulations are made to protect consumers and the environment, to re-elect a government; sometimes they might even be designed with business in mind. Sources of this increasing burden of regulation include:

- an increasing number of rights arising from the work-life balance agenda. Many businesses are forced to pursue best practice by the current level of competition in the labour market. Those who are not complying may either be unaware or badly informed of best practice, or perhaps not in a position to afford it. Regulation is not the answer. It merely burdens those trying to offer better conditions with red tape and may put others out of business altogether;
- an increasing volume of red tape associated with basically good ideas. Tax credit administration and working time records, for instance. Business doing the government's work for it for free.... another stealth tax;
- expansion of policy areas affecting the business environment: health and safety regulations, where there are new areas under 'corporate social responsibility' and potentially harsher penalties for non-compliance;
- environmental regulations, which are continuously being revised and becoming more expansive;
- the 'new economy', which is creating opportunities for more regulation – and business falls victim of trial by media; corporate manslaughter' is now virtually always referred to as 'corporate killing' – found guilty before trial; and

- an increasing shift of power from government departments to specific regulators giving impetus to more regulatory change. The scope and depth of influence of the EU's legislative powers adds an extra dimension to the regulatory environment with which businesses in the UK are faced and regulators are omnipotent, unaccountable and expensive, rendering UK industries uncompetitive in the European context.

Some legislation is accepted as necessary, of course. For instance, basic health and safety. Some legislation may be good for business and/or the economy in the single market, creating a more balanced business environment. However, there are a number of other areas where the aims may be perfectly acceptable but where other options have not been considered and implementation is overly burdensome.

The CBI works consistently to reduce the burden that regulations may have on business. On behalf of our members – businesses of all types and sizes – we continuously strive to provide constructive input to policymakers, at all stages of the policy-making process. Wherever possible, in consultation with our members, suggestions are made which may help to alter the practical impact of a proposal or regulation.

What businesses want is a simple and straightforward regulatory environment. This would benefit businesses, their employees and their customers. The foundations for better policy-making are already out there, but we need to see some action. Policy-makers need to understand the context in which their 'minor' regulation fits. In an increasingly complex society, this is one of the biggest challenges for government.

COST TO BUSINESS AND CONSUMERS. Each new regulation brings with it a cost. Costs include the time to understand and comply with the regulations, so-called opportunity costs. Regulatory impact assessments estimate the cost of new regulations to business. Often, it is only after implementation that the true costs can be assessed. In November 2000, the CBI's *Cutting Through Red Tape* revealed a cost to business of a hefty £12.2bn as a result of major employment-related regulations introduced in the last parliament alone.

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The total cost of new regulations, including health and safety, environmental, tax compliance, as well as those in the pipeline coming from the UK and Brussels, will be far in excess of this figure. That's not to mention the cumulative impact of pre-existing regulation.

Businesses, while operating under similar conditions, are rarely exactly the same. Therefore, the costs of regulation they incur and their impact on the margin can vary greatly. Ultimately, by no means all the cost will be borne by businesses. Consumers pay the price for regulation, whether it is imposed directly or more subtly, such as the way in which regulatory risk can add to the cost of capital, forcing cutbacks in business investment which ultimately would have benefited the customer.

A NEW APPROACH TO REGULATION. We need to see a fresh approach to regulation and a wider recognition that problems cannot always be solved by it. There should be a systematic approach by policy-makers to regulation and the alternatives to pure state regulation:

- consider whether there really is a 'problem' in the first place;
- if there is a problem, think of the options that would best serve the objective. This includes doing nothing; either there are existing provisions or there may be little to gain from new measures. There needs to be a systemic change in government thinking. 'Doing nothing' and 'leaving alone' should be a cause of praise from time to time. People should seriously think about other options, such as better information for consumers or businesses, or so-called 'self'- or 'co' regulation, where business itself has a role in drawing up and enforcing standards;
- policy proposals of any nature should adhere to the principles of better regulation, set out below; and
- think about how the implementation and enforcement stages will be carried out and estimate as accurately as possible the true 'cost' of the provisions. A good look at implementation among our European competitors is instructive – the same Directive receives different treatment in different EU countries; the UK certainly enjoys gold-plated implementation – UK business and UK jobs pick up the bill.

A stable business environment is one in which businesses can plan in the knowledge that there will be no surprises in the future. The government has delivered this stability on the macro-economic stage – why not now with regulation? Reducing the burden of constant and often simultaneous change of regulations from different policy areas could help businesses to succeed. Finding administratively less burdensome ways to enforce change can also reduce the compliance costs to business.

The government is committed to reducing the burdens on business caused by red tape. The Regulatory Reform Act, passed in

April 2001, gives the power to amend or simplify legislation without an unduly onerous, lengthy process. It is a welcome move. Although caution must be applied because it can also impose burdens. Regulatory Reform Orders made under this Act will hopefully produce simpler, more coherent legislation.

One area that is already undergoing this process is simplification of regulations surrounding fire safety. There are currently 120 separate pieces of legislation which cover this area. We look forward to seeing many more areas of simplification.

APPLYING THE PRINCIPLES OF BETTER REGULATION. The Better Regulation Task Force drew up its *Principles of Good Regulation*¹. Accepted by policy-makers, but not always practised, the principles include transparency, accountability, proportionality, consistency and targeting.

The regulatory framework is more than just pure or traditional regulation. It includes different options, the taxation system, and the proliferation of new sources of regulation through the so-called soft law and new 'regulators'. Changes or extensions to the regulatory environment affect businesses in many ways. The impact of regulation can potentially affect market structures and competitiveness and the principles of better regulation should also be applied to this range of options.

Codes of practice are often introduced as the softer approach to regulation. As an alternative, they can be useful. However, codes that are designed ineffectively can be extremely burdensome. A recent example is the Draft Data Protection Code. This in its draft state, it is too long, does not draw the distinction between legal requirements and aspects of best practice. It is unrealistic for what employers can do and employee focused, which may be to the detriment of business objectives.

Furthermore, while large companies with human resources departments may be able to cope, this code fails to 'think small first', being extremely burdensome to smaller businesses. If the Code remains in its current form, the impact (whether intended or not) will be confusing for employers and impose additional, unnecessary costs.

VICTIMS OF TOO MUCH REGULATION? Are businesses suffering from too much regulation? Most certainly. Businesses suffer from policy-makers' failure to realise the overall burden that regulation imposes on them. Policy-makers can lack appreciation of both the imposition of poorly designed regulation and the complexity arising from the many sources that give rise to regulation in today's business environment.

The good news is that many of the most obvious weaknesses of the regulatory environment could be resolved by applying the principles of good regulation of thinking a little more holistically and regulating a little less.

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¹ The Better Regulation Task Force was established in 1997. It is made up of businesses of all shapes and sizes, who look at the aspects of regulatory environment. Independent from Government, they sit within the Cabinet Office Regulatory Impact Unit and have produced many reports on the regulatory environment.

The latest version of the *Principles of Good Regulation* (published in October 2000), are a revision of ones produced in 1997.

Copies can be found at www.cabinet-office.gov.uk/regulation/task.htm.