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BUSINESS PERCEPTIONS OF REGULATORY BURDEN

Submitted to:

UK Department for Business, Innovation and Skills

May 2012

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CONTENTS

KEY FINDINGS	6
EXECUTIVE SUMMARY	7
1. INTRODUCTION	13
2. THEORETICAL CHANNELS FOR DISSEMINATION OF REGULATORY INFORMATION	14
2.1 Sources of regulatory burden	14
2.2 Channels of communication for regulation	17
2.3 Models of regulation as a social process	20
2.4 Life-cycle model of regulatory communication	23
3. CASE STUDIES OF COMMUNICATION OF REGULATORY REQUIREMENTS	26
3.1 Information sources for Business Regulations	27
3.2 The Employment Red Tape Challenge	32
3.3 The Health and Safety Red Tape Challenge	35
3.4 The Equalities Act	38
3.5 The EU Agency Workers Directive	45
3.6 Case Studies - Conclusions	52
4. EVIDENCE FROM BUSINESS PERCEPTION SURVEYS	57
4.1 Data sources on regulatory costs and regulatory burden	58
4.2 What are the trends in surveys of business perceptions of burden?	59
4.4 Which sectors appear to experience greatest burden?	67
4.5 Which aspects of regulation seem most burdensome?	70
4.6 Lessons from the business surveys: summary of key points	72
5. INTERNATIONAL COMPARISONS OF REGULATORY COMMUNICATION	74
5.1 Choice of comparator countries	74
5.2 OECD Evaluation of the UK Regulatory Regime 2010	76
5.3 How do other countries manage pressure from business groups?	78
5.4 What experience is there in developing systematic consultation?	79
5.5 Are there good examples of coordination of information?	80
5.6 How do other countries manage expectations?	81

5.7	How do other countries use e-government in regulation?	82
5.8	Are there examples of consolidated registers of regulations?	82
6.	BUSINESS PERCEPTIONS OF REGULATORY BURDEN: CONCLUSION	84
6.1	Key Findings	84
6.2	Implications for Regulatory Communication in the UK	91
	APPENDIX: Country comparison table on regulatory consultation and communications	93
A	REFERENCES	101
B	POLICY LITERATURE	108

TABLES

Table	Title	Page
2.1	SME trusted sources of information (rank order)	19
3.1	Sources of information for business regulations	28
3.2	Headline sources of regulatory information	29
3.3	Business regulation support	30
3.4a	The Red Tape Challenge – media commentary by issue area	54
3.4b	The Equalities Act 2010 – media commentary by issue area	55
3.4c	The EU Agency Workers Directive 2011 – media commentary by issue area	56
4.1	Results from the NAO 2010 survey of business perception	58
4.2	World Bank “ease of doing business”	63
4.3	Time spent on compliance	69
5.1	Country comparison league tables: rankings	74
5.2	Starting a business indicator: 2012	75

FIGURES

Figure	Title	Page
2.1	Forms of regulation	15
2.2	Definitions of regulatory burden	16
2.3	Kotler communication model	18
2.4	Schramm model of communication	20
2.5	Recipient information processing	22
2.6	Communication model of the regulatory life-cycle	25
4.1	NAO Business perception survey: 2007-2010	60
4.2	BCC Barometer	61
4.3	World Economic Forum “Global Competitiveness report”	62
4.4	Time spent dealing with regulations (IoD)	64
4.5	Time spent on compliance by company size (FPB 2011)	64
4.6	“How friendly is the UK’s tax and regulatory environment?”	65
4.7	Is regulation an obstacle to your business’ success?	66
4.8	Comparison of time spent on compliance 2009-11	66
4.9	Regulation as an obstacle to business success by sector	67
4.10	“How well informed do you feel about regulations which affect your business?”	68
4.11	Relative cost of internal administration and outsourcing of compliance	69
4.12	Time spent on compliance by industry (hours per month)	70
4.13	The parts of regulation that businesses thought were becoming more time-consuming	71
4.14	The perception of time cost and regulatory burden by sector	72

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BUSINESS PERCEPTIONS OF REGULATORY BURDEN

BUSINESS PERCEPTIONS OF REGULATORY BURDEN

KEY FINDINGS

- “Regulatory burden” cannot simply be equated to measureable costs. It embraces other aspects such as anxiety generated by the threat of litigation, uncertainty, the pace of change and sense of inequity.
- The perception of burden is influenced by the growing complexity of the regulatory landscape, with businesses finding it difficult to distinguish between regulation that originates from national government, international sources, industry self-regulation and business policies.
- Communication about regulation is a complex social process where consumers of the message (businesses) can become co-creators.
- An integrated approach to communication which engages a wide range of interested parties is consistent with the philosophy of open government. However, this can spread anxiety through a continuous sense of impending new burdens.
- There does not appear to be widespread misreporting of regulatory requirements, but most media noise does relate to negative aspects of regulatory or deregulatory proposals.
- Large deregulatory exercises can have the unintended consequence of increasing awareness of regulatory burden and therefore increasing perception of the burden.
- Increasing the pace of change associated with reform of regulation can be a source of regulatory burden.
- According to the OECD, the UK better regulation approach compares favourably to other countries, although businesses are a more influential lobby group and there is scope for improving the consultation process and how expectations regarding reduction in regulatory burden are managed.

EXECUTIVE SUMMARY

1. The purpose of this project is to explore business perceptions of regulatory burden and to investigate the characteristics of the social processes that influence these perceptions. The project seeks to understand the process of communication of regulatory change and to establish how, and to what extent, the nature of media coverage can affect business' perceptions of burden.
2. Recent political comment has drawn considerable attention to the perception of regulatory burden in the UK. This has been intensified by the economic downturn and its impacts on business growth and survival. The debate surrounding regulatory burden on business has also been conducted in the media spotlight. This not only reflects the views of business but can also exercise considerable influence over the strength of feeling about this issue.
3. The research methodology is designed to examine the general hypothesis that the manner in which regulatory changes are reported or communicated will tend to exaggerate the perception of regulatory burden on businesses. This assertion is tested using available evidence from existing research, supplemented by case studies and international comparisons based on secondary sources.

Objective 1: To identify the theoretical channels for information dissemination

4. This objective was addressed using a systematic review of existing academic and policy literature in relation to regulatory burden and the communication of regulatory requirements to business. It became apparent in conducting the literature review that identifying the "actual" regulatory burden against which to compare business perceptions is problematic.
5. In seeking to define terms, the literature reveals that "regulatory burden" is a broad concept that cannot simply be equated to cost. Burden embraces less easily quantifiable aspects such as the anxiety generated by the threat of litigation, uncertainty and the pace of change. It also includes the negative psychological effects on businesses of perceptions of equity.
6. The literature also shows that sources of regulatory burden extend well beyond the immediate effects of UK government legislation. The regulatory landscape is complex including international regulation, co-regulation and self-regulation. Surveys of business perception of regulatory burden available to us did not distinguish between these various categories of regulation.
7. Simple communication models tend to be fairly linear and do not fully reflect the complex social interaction that occurs over time as regulations are proposed, debated, challenged and enacted. The regulation dialogue is conducted in a very *open* social system where there are multiple channels of information, several senders and many recipients all seeking to "decode" the same (or similar)

8. A bespoke model has been defined that reflects the way in which regulatory debates evolve over time. The model assumes that business representatives are often involved in “co-production” of messages through extensive consultation. In addition, pre-existing regulation, former experiences and discussion generated by consultation exercises are presumed to create a “memory pool” of associated knowledge, thoughts and beliefs that condition how the new regulatory message is received.
9. The “efficiency” of communication will be affected by the way in which government (the sender) encodes the message, the “noise” generated by media channels as well as the way in which recipients are affected by the build-up of expectations over time.

Objective 2: To explore the different sources where businesses obtain information regarding regulatory obligations and to evaluate the veracity of these sources

10. The range of possible sources of regulatory information is considerable, and it is unlikely that businesses rely on any single source of information. Businesses are exposed to comment and debate surrounding regulation even at times when they are not actively seeking it. The literature review suggests that those sources that involve face-to-face contacts with relevant people are most often trusted by businesses.
11. In order to understand the impacts of these interactions on business perceptions of regulatory burden, a case study approach has been applied. Four case studies for this research were:
 - a. The Employment Red Tape Challenge
 - b. The Health and Safety Red Tape Challenge
 - c. The Equalities Act 2010
 - d. The EU Working Time Directive 2011.

The case study method applied in this research involves the use of secondary sources only. However, some inferences can be made regarding the significance of other forms of communication including face-to-face interactions by analysing the content of this printed media. Sources were selected in order to capture the range of headlines to which different audiences are exposed including tabloid and broadsheet readers, as well as BBC viewers and business groups involved in trade associations.

12. In all four case studies, simple “factual” reporting about the nature and purpose of regulation tends to be limited to websites and material derived from press releases on or close to, the day of announcement. Our investigation has not

13. The most persistent form of reporting that we have observed involves what appears to be negative comment that draws attention to unintended consequences. This type of reporting builds up an impression that regulations only partially achieve their purpose and this, in turn, adds fuel to business perception of *unnecessary* regulatory burden.
14. Reports on specific pieces of regulatory change usually appear over an extended period of time and are not just limited to the day of announcement. Some of the most critical and potentially distorted reporting tends to occur in advance of announcement and in the long tail of commentary that usually follows.
15. The case studies document very clear examples of the way in which comment stimulated by consultations and debates surrounding the decision-making process can generate considerable “media noise” and influence expectations.
16. The final announcement of regulatory changes will often be followed by an extended period of further “media noise” as the reactions of recipients and key influencers are variously reported. This tail of reactions can often involve reports of unfair (and often perverse) “unintended” consequences of regulatory change.

Objective 3: To assess the results from business perception surveys

17. As the case studies illustrate, surveys of business perceptions are generally conducted within a social and economic arena that is highly charged and often influenced by party politics and attitudes towards European integration. Various national and international bodies conduct surveys of businesses’ perceptions of regulatory burden.
18. With a few exceptions, the evidence from recent surveys in the UK points to a perceived increase in the burden associated with compliance with regulation. The IoD and the FPB both report increases in time spent on regulation.
19. It seems plausible to argue that increased perception of regulatory burden in the period since 2007 may have as much to do with squeezed profit margins as with actual regulatory costs. This is because regulatory costs are a significant fixed cost to businesses at a time when revenues for many are falling or uncertain.
20. Evidence appears to support the conclusion that smaller businesses experience greater regulatory burden than businesses in general. The costs of compliance fall more heavily on internal management time in smaller businesses.

21. There are also variations between sectors which partly reflects differences in business size structure. Government data appears to show that perceptions of high regulatory burden are more widespread in motor, agriculture, manufacturing and wholesale sectors but lowest in utilities, public administration, business and professional services.
22. There are also sectoral differences in the propensity to “buy-in” support for addressing regulatory requirements. Where scale economies enable this, internal administrative burden can be reduced. Arguably, increased outsourcing could increase perceived cost but simultaneously reduce the sense of burden.
23. The time spent dealing with the burden and potential burden of regulations has an opportunity cost. In the sectors where the majority of this burden is carried internally this will have a larger increase on the business burden of regulations than in sectors where the ‘burden’ is outsourced.
24. A high proportion of businesses believe that keeping up to date with changes and new regulations and the knock-on effects of having to update internal policy documents are aspects that are becoming more time-consuming. This offers some support to the hypothesis that increasing the pace of change associated with reform of regulation can actually be a source of regulatory burden in the short term.

Objective 4: To explore examples of international best practice in managing dissemination of regulatory requirements

25. An OECD review published in 2010 identifies many areas of strength in the UK regulatory environment. The approach to regulation is commended for its vigour, breadth and ambition. Progress with enforcement and ex-ante impact assessment in the UK is described as ground-breaking while policy towards Better Regulation is described as “strongly business oriented”.
26. The UK was an early adopter of the practice of common commencement dates twice a year and the Better Regulation Executive (BRE) operates good practice in proactive engagement with business media, business associations and third sector organisations. BRE is commended for requiring its staff to make regular visits to businesses in the course of the year to build relationships and highlight developments.
27. OECD reviews suggest that some countries appear to have much more systematic approaches to consultation with stakeholders on regulatory change and that this tends to prevent any one group from exerting too much influence over the process. More systematic approaches to dealing with business consultation also improve the quality of the dialogue.
28. Some countries are also more effective in coordinating communications across government departments. There are examples of both centralised and

29. Some governments appear to be more effective in managing expectations. Consultation is more systematic, transparent and less confrontational. The OECD reports that regulation is often better targeted and alternatives to formal regulation are more actively pursued.
30. There is considerable interest internationally in application of IT to business regulation. This seems to be more advanced in Australia, for example, and in the USA where interactive electronic tools are used by agencies to give advice to businesses about how to be compliant with federal requirements. The growth of one-stop shops on government services and many technology-driven mechanisms have, it is argued, reduced administrative burdens on businesses.
31. Consolidated registers of regulations are becoming more common in the comparator countries (New Zealand, Australia, Norway, USA). Legislation in force is made available from databases that can be accessed on-line. Websites are well-consolidated, easily accessible and stocked with national laws and regulations.

Implications for Regulatory Communication in the UK

32. It is important to distinguish between regulatory cost and burden. Regulatory burden is a wider phenomenon that embraces subjective feelings and perceptions of businesses regarding the impacts of regulation. Regulatory burden, therefore, is fundamentally about perception and not separate from it. Government initiatives should therefore not solely focus on reducing costs, but also on addressing other factors affecting burden.
33. Businesses may trust some sources more than others in terms of the detail of compliance, but their sense of burden will be affected by a multitude of sources working together. Identifying sources that they trust and working within these may increase awareness of compliance but not reduce feelings of burden.
34. There does not appear to be widespread misreporting of regulatory requirements. Rather, the most persistent noise relates to negative or unintended consequences. This fuels the sense of regulatory burden by suggesting that there are weaknesses in regulation.
35. Simplifying regulation may reduce the cost of compliance, but evidence suggests that this is unlikely to influence opinion surveys if this process leads to very rapid announcements of changes that provide opportunities for critics to focus on unintended consequences.

36. The UK system has breadth, ambition, strong focus on businesses and good practice in engaging with business associations and third sector organisations. Some comparator countries, however, appear to have developed more systematic approaches to communication and consultation with all stakeholders across the whole of the regulatory cycle and have improved coordination of communications with businesses.

BUSINESS PERCEPTIONS OF REGULATORY BURDEN

1. INTRODUCTION

The purpose of this project is to explore business perceptions of regulatory burden and to investigate the characteristics of the social processes that influence these perceptions. A key aspect of the project concerns the specific role of formal and informal communication in influencing business perceptions. There is a view that business perceptions of regulatory burden can be intensified and exaggerated by the way in which information is conveyed to business managers and business groups through the various media channels available. The project seeks to understand the process of communication of regulatory change and to establish how, and to what extent, the nature of media coverage can affect business perceptions of burden.

The investigation is structured around four objectives as follows:

Objective 1: To identify the theoretical channels for information dissemination

Objective 2: To explore the different sources where businesses obtain information regarding regulatory obligations and to evaluate the veracity of these sources

Objective 3: To assess the results from business perception surveys

Objective 4: To explore examples of international best practice in managing dissemination of regulatory requirements

Section two of the report addresses objective 1 by conducting a systematic search for literature concerning regulatory costs, perceptions of business burden and information dissemination. The key output from this section is a model of regulatory communication that seeks to represent the various stages in the life-cycle of legislation through debate, consultation and enactment. This model is used as a basis for interpreting four case studies of regulatory communication presented in section three. The purpose of these case studies is to test aspects of the model which portray the process as a highly complex and dynamic situation where business perceptions are shaped over time by successive announcements of regulatory change. The influence of media noise and recipient “scanning” are given particular attention.

Section four then builds on this analysis by reviewing the evidence from surveys of business perception within the UK. This is followed in section five by international comparisons in approaches to communication of regulatory requirements. Strengths and weaknesses of the UK approach are examined in contrast with comparator countries and an attempt is made to identify examples of good practice that might guide any improvements in the UK system. The project is then summarised and implications for current practice in regulatory communication are drawn out in section six.

2. THEORETICAL CHANNELS FOR DISSEMINATION OF REGULATORY INFORMATION

Recent political debates in the UK have drawn considerable attention to the costs associated with compliance with government regulations. This debate has tended to intensify as the economy has faltered and businesses face more difficult trading conditions and for many, tighter margins. While the present economic climate has undoubtedly intensified the debate surrounding regulatory burden, available academic and policy-related literature suggests that the term “regulatory burden” has many and varied connotations that need to be disentangled. There are also many different models of communication that seem relevant to different aspects of the regulatory life cycle. The purpose of this chapter, therefore, is to clarify the range of meanings that can be associated with the term regulatory burden and to identify models of communication that might provide a platform upon which to investigate particular case studies of regulatory communication.

2.1 Sources of regulatory burden

A systematic search of the academic and policy literature related to regulatory costs, perceptions of burden and information dissemination has been carried out. The literature generated by search terms is diverse covering research in different areas of regulation, business perceptions of regulation as well as communication and dissemination.

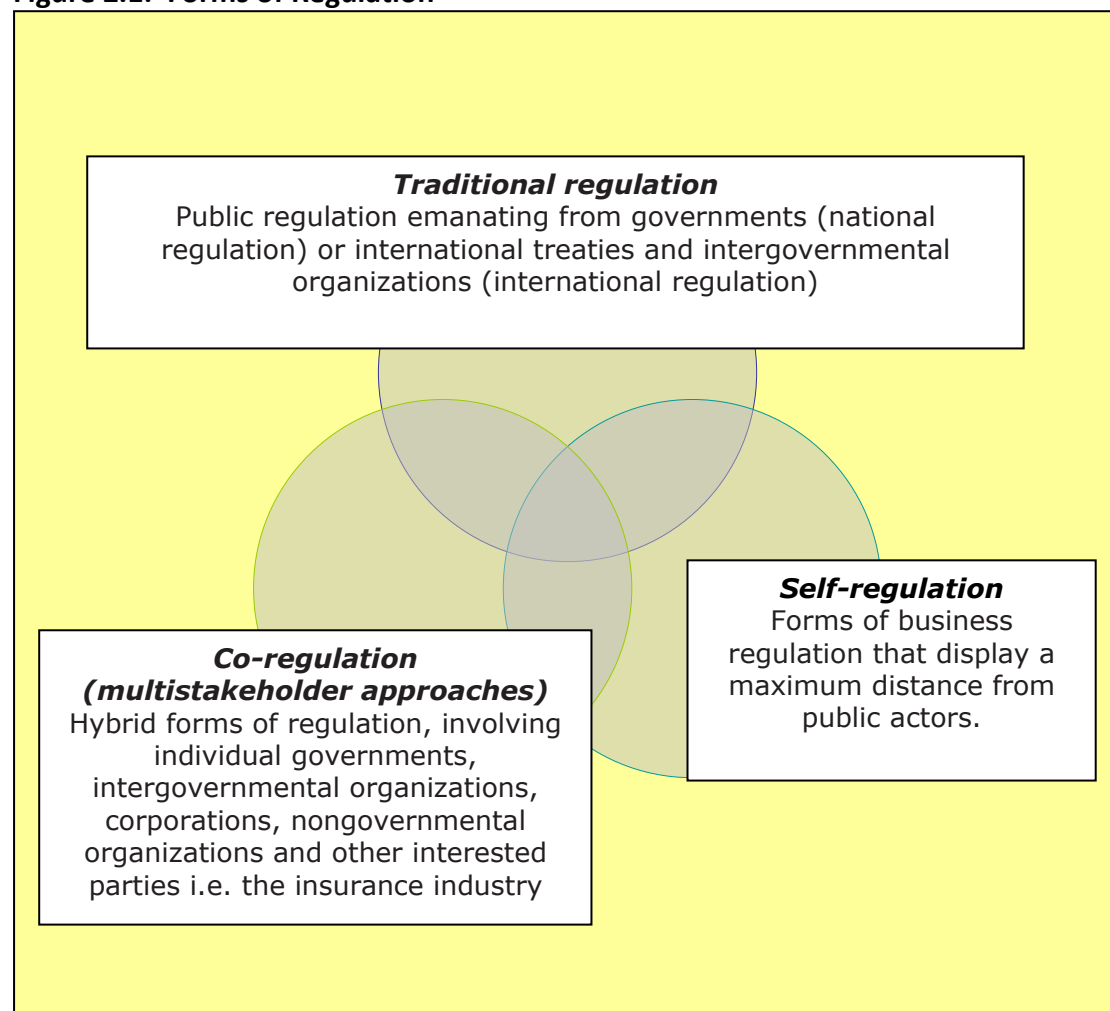
An initial review of this literature indicates that business perceptions will be influenced by a highly complex regulatory landscape. This extends beyond UK government legislation to include supranational regulation and hybrid forms of “co-regulation” involving combinations of individual governments, corporations and non-government organisations. The influence of global business regulation and co-regulation has been reviewed by Pattberg (2006) who also includes reference to voluntary codes and environmental agreements within and between corporations and the cascade effects of these requirements on supply chains. There is also a considerable literature on “self-regulation” within the broader context of corporate social responsibility (see for instance Yeoh 2007; Hess 2009; Arevalo 2010). Sources of regulation have proliferated from state to non-state sources (Hutter and Jones 2006).

This holistic view of the regulatory environment is reflected in definitions used in recent published research. In a study of compliance obstacles to competitiveness, Doyle (2007, p. 613), for instance, defines the business regulatory environment as related to “compliance both with laws and with voluntary codes, standards, guidelines and policies. The growing complexity of this regulatory landscape suggests that it may be difficult for businesses to distinguish between regulation that originates from national government, from international sources of regulation as well as compliance with rules associated with industry self-regulation” (see Figure 2.1).

This interaction between formal and informal regulatory processes is discussed by Parker et al (2009) in the context of environmental improvements within SMEs. These authors call for a holistic framework for stimulating business improvements where compulsory regulation is only one part of the intervention framework. Their analysis suggests, in fact, that formal regulation will be ineffective where it is the only form of intervention and perceived as a threat to business. Voluntary self-regulation may therefore not be an alternative to formal regulation but complementary to it and linked to business development and forms of financial support.

Notwithstanding attempts to simplify UK government regulation, the increased complexity of the regulatory landscape may have an overriding influence in heightening business perceptions of regulatory burden. (It is worth pointing out in this context that the National Audit Office (NAO) survey of regulatory burden does not distinguish between the impacts of different sources of regulatory compliance)¹.

Figure 2.1: Forms of Regulation



Source: Adapted from Pattberg (2006)

¹ National Audit Office Business Perception Survey (2010), Technical Report by FDS International. Question 18, for instance asks "Overall, has complying with regulation become less time consuming, more time consuming or stayed the same over the last twelve months?"

Halfteck (2008) provides further insight into the relationship between formal “rule-based” state regulatory requirements and industry and corporate self-regulation. He suggests that while state regulations are a direct burden on businesses, self-regulatory requirements can also be regarded as “state-induced”. Formal and observable legislation can be viewed as “the tip of an iceberg” that encompasses informal self-imposed rules generated in response to a perceived threat of regulation. Halfteck argues that legislators can make either explicit or implicit use of regulatory threat to induce the adoption of certain kinds of rules and behaviours through self-regulation. In these terms, it may not be unreasonable for businesses to regard self-regulation as an extension of state-induced regulatory burden.

This discussion of the “regulatory threat” draws attention to another aspect of “regulatory burden” that may be significant in understanding business perceptions. “Burden” is not synonymous with “cost”. A number of authors highlight the costs of regulation. In a study of SME retailers in the UK, Schmidt et al (2007) attempt to measure the burden of new legislation. Their survey shows that business growth and staffing arrangements can be obstructed by burdens that can be measured in terms of management time and information costs. However, the perception of regulatory burden can be intensified by uncertainty arising from the pace of regulatory change, anxieties created by the threat of non-compliance, unfairness in some forms of regulation as well as the moral pressures on businesses to adopt certain practices under pressure from various third parties including customers and business partners (Nielsen and Parker 2008).

Figure 2.2: Definitions of Regulatory Burden

Terms surrounding the word Burden
• Threat of being sued • Compensation culture • Civil action • Unreasonable outcomes • Growth prevention • Constant regulatory change • Cost of keeping up-to-date • Inconsistency • Confusion • Tidal wave of information • Loss of control • Unfair cost to smaller businesses per employee • Training • Overlapping accreditation • Non-productive bureaucracy • Cost of experts and consultants

The relationship between “burden” and “cost” is also highlighted by Gray (2008) who uses data from a quarterly survey of regulatory compliance and attitudes among 850

SMEs across all sectors in Britain. Business owners estimated that compliance with regulation “cost” an average of 5.4 hours per person per month, ranging from 9.7 hours for self-employed to 2.8 hours for small (10-24 employees) firms. However, this data does not capture the whole burden in terms of the experienced levels of anxiety created by uncertainty, complexity and the frequency of regulatory changes. Gray argues that these add to the perceived total burden and as a consequence, 61% of SMEs believed that regulation had increased during the period 2005-2008.

Along similar lines, Doyle (2007, p. 613) argues that the constraints on compliance with regulation are not solely related to the abundance of regulatory requirements but also because regulations are:

- Too difficult to understand
- Too fluid and ever-changing
- Too hard to find

This reinforces the point that the perception of regulatory burden can be intensified even when the volume of regulation has been reduced because of complexity, changeability and increased diversity of sources of regulation (harder to find).

2.2 Channels of communication for regulation

Comparatively little academic research has been conducted specifically on the communication of regulatory requirements. However, ideas can be drawn from the literature on communication and information dissemination which refers to various theoretical models of communication. Models of communication seek to represent flows of information from sender to receiver via various channels. The simplest form involves one-way communication where “an organisation works solely to disseminate information to audiences without regard for response” (Martinelli 2006).

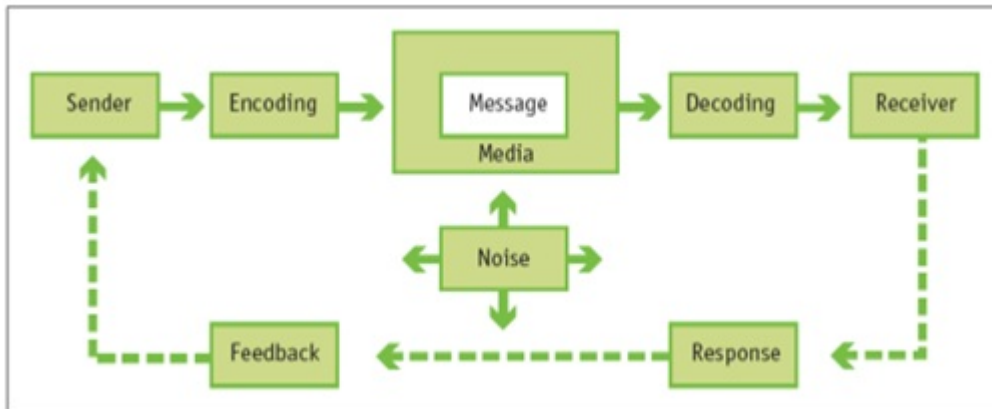
There are many simplified models that represent the way communications work in different contexts. Most such models extend or amplify those first proposed by Laswell (1948), Kotler (1967) and Schramm (1971). The simple linear model proposed by Kotler (see Figure 2.3) can be used to consider how “information failure” might occur in the context of government regulation. The sender (government) defines the message it intends to convey and “encodes” this information in order for it to be absorbed by the intended audience. This “coded” information is conveyed through selected media channels and then subjected to a “decoding” process as it is absorbed by recipients. Each stage in this process will be subject to outside noise and potential distortion (Flensburg 2009).

Assuming this simplified model, information failure can be associated with at least three aspects.

- Sender failure – wrong information, too much information, too little information, inappropriate use of media channels to reach intended recipients
- Channel inefficiencies – messages distorted, softened, intensified, confused

- Recipient failure – intended recipients inattentive, lack interest, fail to understand.

Figure 2.3: Kotler communication model (1967)



It is more common in the context of regulation, however, for communication to involve complex feedback loops where there is opportunity for extensive dialogue where receivers (or some receivers) are also partly involved in the design of the message. Regulatory changes are often “trailed” through discussion with business groups and consultations prior to enactment. The “field of experience” of sender and receiver therefore overlap and the communication is not a single event but an iterative process through time.

In the context of regulation, this dialogue also tends to be *asymmetric* in the sense that one relatively large organisation (government) is seeking to disseminate information to a diverse and potentially fragmented audience where different actors have very varied levels of prior knowledge. The dialogue is also conducted in a very *open* social system where there are multiple channels of information, several senders and many recipients all seeking to “decode” the same (or similar) information. This creates complexity for communication of regulatory requirements where recipients are exposed to a wide range of influencers besides the formal communication.

Target groups of businesses may be homogenous (impacted on equally by the communication/regulation) or, more commonly, heterogenous where many features may vary (large businesses versus SMEs; sector differences):

- Varied ability to receive and interpret information
- Varied impacts of the information (regulatory costs/implications)
- Varied ability to respond to the information/requirements
- Varied in their use of different communication channels

The “sender” may not be one organisation or department, but several in a network of individuals and organisations trying to convey the same (or similar or overlapping sets of) information. So senders may also vary in the:

- Understanding of what is being communicated

- Accuracy of information
- Ability to communicate clearly
- Channel of communication used

Channels of communication are becoming more complex and “interactive”:

- Face-to-face
- Telephone
- Personal letter
- Leaflet
- Website
- Published Media
- Other businesses (customers, suppliers, collaborators)
- Social networking

Table 2.1: SME trusted sources of information (rank order)

Rank	Hutter and Jones (2006)	Redmond and Walker (2009)	Yusoff (2011)	Hughes, O'Regan and Sims (2009)	Stone (2011)
Country	UK	Australia	Malaysia	UK	Australia
Study focus	Food regulation	Environmental education in SMEs	Information on business assistance to micro SMEs	Knowledge networks for SME manufacturers	SMEs
1	Environmental Health Officer	Regulatory body	Friends (57%)	Accountants	Face-to-face / audio-visual
2	Consumers	Business network	Related agency officials (16%)	World wide web	Telephone
3	Food Standards Agency	Industry association	Newspapers (9%)	Employees	Email / web based
4	The Stationery Office	Scientist	Television (6%)	Suppliers	Personal docs (letters)
5	Media	Trade association	Radio (1%)	Customers	Impersonal docs (bulletin)
6	Insurance	Federal government		Other firms	Numeric documents
7	Lawyers	Professional consultant		Professional intuitions	
8	Pressure Group/NGO	State/local government		Business support agencies	
9		Small business professionals		Academic institutions	
10		Industry magazine			

Source: based on information abstracted from Hutter & Jones (2006); Redmond & Walker (2009), Hughes, O'Regan & Sims (2009) and Yusoff (2011)

An understanding of the relative significance of these various channels of communication for SMEs in the retailing sector is provided by the work of Schmidt et al (2007). In their study of retail establishments in five market towns, business owners were asked to rank those in terms of use. Most common sources of information on regulation are provided by regulatory visits, telephone helplines,

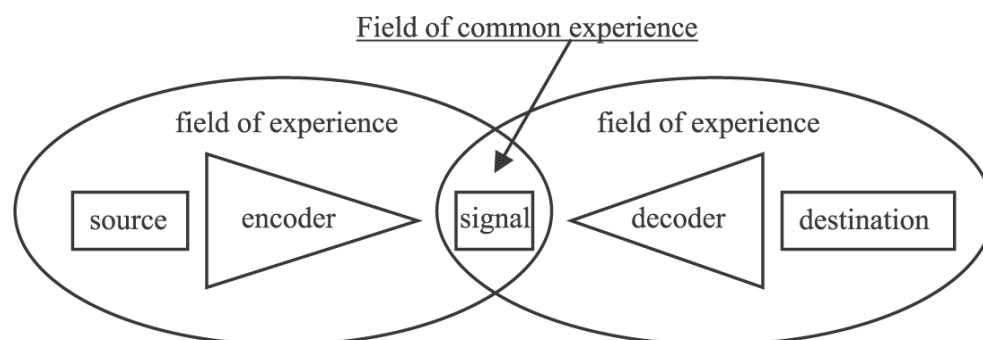
leaflets and the press rather than internet sources. It is significant to note that interactions involving personal interaction are most valued and trusted. This conclusion is also supported by studies in Australia where small business managers express a preference for direct forms of contact with their own accountants and the “richness of verbal communication” (Stone 2011). This same conclusion is supported by research on health and safety regulation in small businesses in the UK. In a survey of 1,000 small enterprises, Baldock et al (2006) found that inspections on the part of regulatory officials were the most important influence on compliance and a vital source of reliable information.

2.3 Models of regulation as a social process

At a simple level, the communication of new regulatory requirements to businesses can largely be viewed as a “one way” process. The focus is in communicating why the regulation is being introduced and, more significantly how to comply. However, the way in which channels operate and recipients react can depend on prior knowledge and expectations generated by consultation exercises. The dissemination process is not isolated from this wider social process. Dissemination therefore ceases to be a one-off event but is best viewed as the final part of a complex process of interaction over a period of time. Communication, arguably, is about *managing a social process* rather than simply conveying information.

There are models of communication that seek to capture the interactive nature of communication and the possibility that a few (or some) recipients of information may also be partly involved in the design of the message or at least have some influence over the development of the message. This basic principle is embodied in the work of Schramm (1971) (Figure 2.4) who suggested that senders and recipients of messages usually occupy overlapping “fields of experience” and therefore the message (or signal) is partly co-produced. This thought appears to resonate with what is known of the cycles of communication that occur within regulatory systems. “Consumers” of the message (businesses) can become “creators” of the message in the process of consultation of regulatory change.

Figure 2.4: Schramm Model of Communication



The stages in this social process have been described by Doyle (2007) in a study based on in-depth interviews with 44 senior managers in both multinational and

medium-sized companies. *“A typical legislative imperative begins as a mooted policy change and progresses with discussion and opinion of legislative and advisory and interest groups. Amendments are suggested to numerous drafts until the law is enacted. Following on, there may be further amendments, corrections, consolidations, and even repeal and replacement. Management of the compliance imperative lifecycle requires an in-depth knowledge of this “production process” about which enterprises are often unaware”* (P. 615).

Doyle implies that businesses are mostly unaware of this “regulatory production process” but other literature suggests that this can vary considerably. The relationship between consultation and subsequent dissemination of a regulatory change has been discussed in the context of environmental policy. Wibeck (2009) distinguishes between a **separation model** where complexities and options are first debated by a narrow group of experts and informants (which reflects the arguments of Doyle). Only certain agreed outcomes are disseminated to the public or all businesses. This is contrasted, however, with the **integration model** where a wider range of interested parties are engaged in a prior consultation that is open and inclusive.

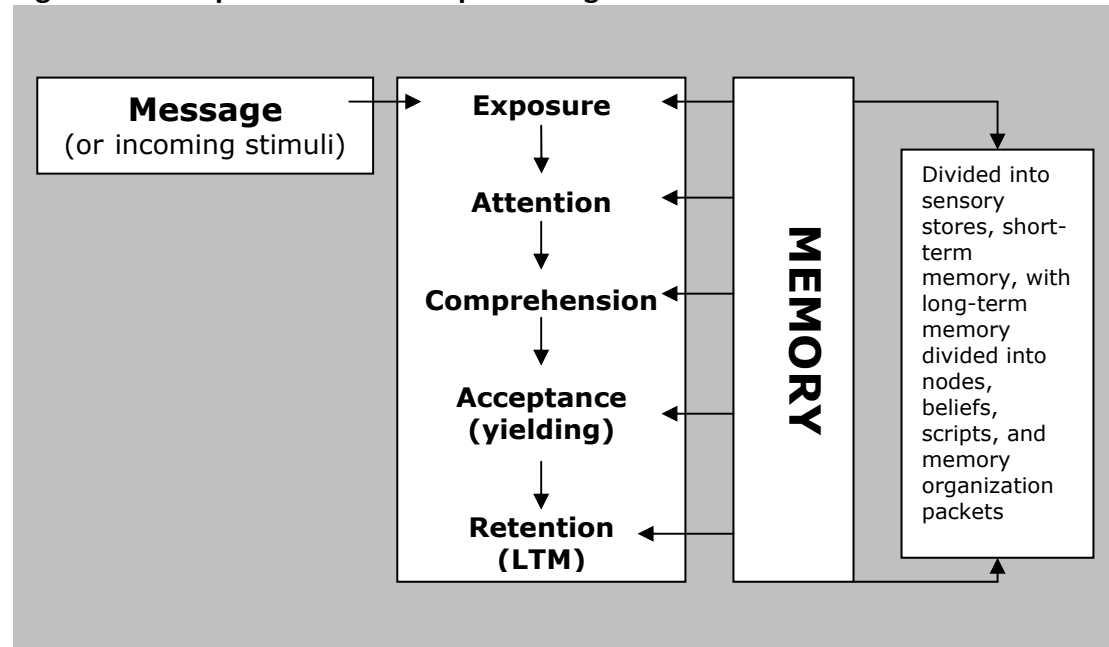
There are advantages and disadvantages in these two approaches. The integration model appeals to current sentiments surrounding inclusivity and debates concerning open government. However, open consultation can spread anxiety through a continuous sense of impending new burdens which may fuel perception of regulatory burden. Consultations also involve levels of uncertainty as options for action are debated which can result in confusion about government intentions. Businesses are then expected to distil from the various options discussed the final agreed outcome which may include, as discussed earlier, the possibility of no regulation or self-regulation. In theory, continuous widespread and detailed consultation on *reducing* regulatory burden can have the effect of *intensifying* the perception of regulatory burden.

Another consequence of the adoption of wide consultation in regulatory reform is that the recipients of the message (businesses, the media and the public) accumulate knowledge of possible government intentions over time which generates expectations and these expectations will influence the way in which final announcements of regulatory changes are subsequently received. The process may well commence with an “inner circle” of businesses and organisations that may filter possible outcomes to a wider group. This consultation period is commonly marked by uncertainty and discussion of a range of options that includes the possibility of no regulation at all. However, this process is influenced by the past experience of those involved and overlaid by other changes taking place in parallel at various stages of development, so there is prior knowledge and expectation built into this process which can affect the response to the outcomes.

Schultz & Kitchen (2000, p.45) suggest that each new “piece of information” or “message” is added to an existing (and imperfect) stock of knowledge stored in individual and collective memory. Recipients vary in their level of exposure to the

new information, their level of attention, comprehension, acceptance and retention. Applying this to the arena of business regulation suggests that pre-existing regulation, former experiences and discussion generated by consultation exercises will create a “memory pool” of associated knowledge, thoughts and beliefs that condition how the new regulatory message is received.

Figure 2.5: Recipient information processing



Source: Schultz & Kitchen (2000, p. 45)

These social or interactive models suggest that attempts to influence or to improve the ability of government to communicate the underlying logic and technicalities of regulatory requirements depends on managing ongoing relationships with prominent business stakeholders and the wider business community. There is a strong element of “game theory” in this process as businesses also seek to “manage” their relationship with government and regulators. From the perspective of businesses, particularly larger ones, the benefits of being proactive in managing the regulatory environment are becoming more widely recognised. In these terms, businesses are certainly not passive recipients of messages but many actively engage in the social processes that generate regulation.

The increasingly proactive nature of business engagement with regulation has been highlighted in recent literature and there is evidence in recent government initiatives,² for example ‘Improving Outcomes from Health and Safety’ and ‘The Benefits of Regulation’³. Rossi (2010) for instance, argues that companies can use a positive attitude towards compliance to generate competitive advantages. Executives, she argues, that view regulation largely in operational terms will inevitably view compliance as a cost to be minimised. As an alternative view, however, a “strong compliance department should feature in the corporate strategy

² <http://www.bis.gov.uk/files/file47324.pdf>

³ <http://www.berr.gov.uk/files/file53236.pdf>

as a plus, as an opportunity to be exploited and as a unique source of competitive advantage for the firm” (p. 825). “Compliance innovators” generate vital business intelligence particularly in industries where regulation shapes the main relationships between customers, suppliers and competitors. For some large firms, it is their business to understand and seek to influence regulation, especially where regulatory decisions define the size and shape of markets.

This strategic response of some large firms to engagement with regulators is discussed by Beardsley et al (2006) who argue that regulation has entered a “new era” in terms of global reach and complexity. They report findings from the September 2008 McKinsey Quarterly Survey of 1,500 executives which shows that regulators are viewed as the most significant source of political and social pressure facing companies. Regulators are viewed as a far more significant source of socio-political pressure than consumers, the media or shareholders. Strategies to “communicate with” regulators display a range of options from “arms length” to “collaborative partnership” with “constructive engagement” in the middle ground. These proactive strategies for engagement with regulators suggest that **government cannot always determine how and when it communicates with businesses**. Larger companies in particular can choose either to communicate minimally through regulatory departments or to seek to forge links directly at senior level to enhance market intelligence and regulatory influence.

Large companies in highly regulated industries may well adopt proactive strategies to engage with regulators, but lack of resources will often limit the possibilities for many small and medium-sized enterprises. There may well, therefore, be a divide between larger “information rich” businesses that are frequently consulted and can therefore anticipate regulatory changes and the majority of SMEs that are mainly reactive and dependent upon associations, business networks and consultants for accurate information on regulatory requirements.

2.4 Life-cycle model of regulatory communication

The review of the literature has identified some useful ideas and models that reflect different aspects of the regulatory communications process. Theories that depict communication of regulatory requirements as a social process seem particularly relevant. The distinction between “separation” and “integration” models of communication seems applicable to the consultation stage while the idea that knowledge of regulation accumulates, with varying degrees of accuracy and attentiveness, in a collective business memory also seems pertinent. There does not appear to be a single “off-the-shelf” model of communication that adequately represents these various characteristics of the regulatory cycle.

To address these issues, an attempt has been made to construct a bespoke model that brings together these various aspects of communication in the context of regulation. Figure 2.6 illustrates three phases in the communication life-cycle (T1, T2, T3).

T1: Pre-consultation

The wider socio-political, technical, environmental and commercial environments impinge upon interactions between government and “influencers” that include key business stakeholders and representative groups and associations. Through various formal and informal channels, government actions that might affect the business community, including regulatory change are distilled. At this stage, these ideas may, or may not be discussed in the media but some of these debates may filter through networks within the business community.

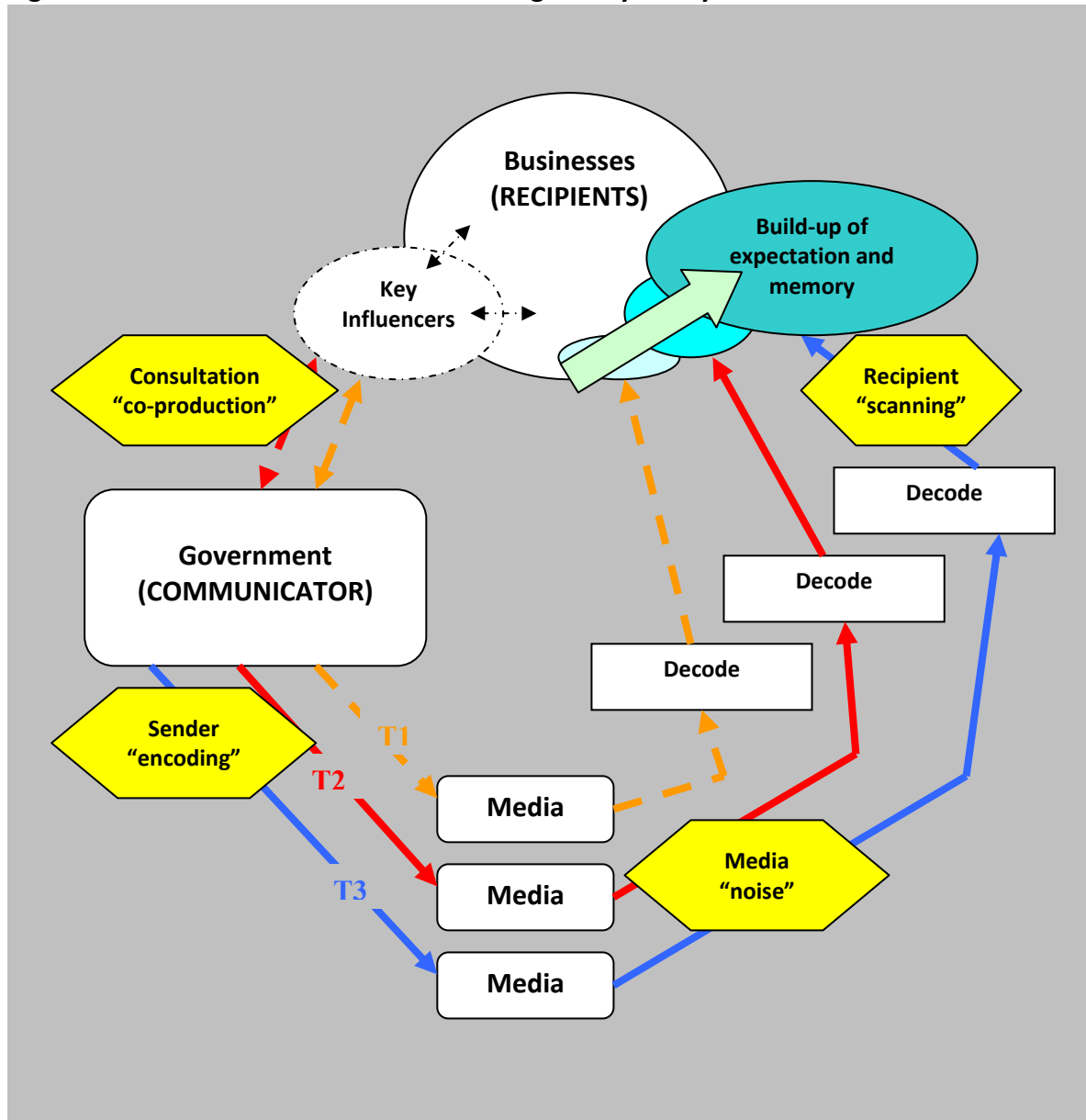
T2: Consultation stage

Some of the ideas may culminate in specific proposals for regulatory change. Inattention to the quality and consistency of communication with key influencers can, even at this early stage, lay the seeds of “information failure”, possibly leading to mixed or contradictory messages being conveyed through the business community. This process by which misinformation or confused messages spread may be intensified through the influence of the media. Information failures at this stage could arise from many processes including consultation “co-production”, sender “encoding”, media “noise” as well as recipient “scanning”.

T3: Regulation Stage

After necessary debates, challenges and corresponding negotiation and adjustments, some proposals will progress to statute and final communication of regulatory change. Communication of the new requirements will be subject to the same array of potential information failures but will also be influenced by the events and interactions that have occurred in previous stages. The way in which messages are received will also be affected by the multiplicity of such processes occurring simultaneously affecting different aspects of the regulatory environment. The model depicts this as an accumulation of memories built up from debates during consultation that leads to certain expectations. The model implies that it is partly against these expectations that businesses will judge the likely impacts of regulatory changes.

Figure 2.6: Communication model of the regulatory life-cycle



T1: Pre-consultation stage

T2: Consultation stage

T3: Regulation stage

3. CASE STUDIES OF COMMUNICATION OF REGULATORY REQUIREMENTS

A key aim of this research is to explore why there are differences between business perceptions of regulation and objective reality. The model of communication developed in section 2 illustrates the ways in which information regarding regulatory requirements is commonly conveyed to businesses. This process is portrayed as a highly complex and dynamic situation where business opinion is shaped over time in a series of overlapping communications related to proposals and final announcements of regulatory change. Four areas within this communication life-cycle are identified as possible sources of intensified anxiety over regulatory burden within the business community. These are associated with the following processes:

- Consultation “co-production” of regulatory changes with key stakeholders
- Sender “encoding” of complex proposals and changes to multiple recipients
- Media “noise” in reporting changes and proposals
- Recipient “scanning” of information sources.

This section examines these processes through the lens of media reports associated with regulatory announcements from government. This method of enquiry focuses most evidently on the influence of media “noise” on the transmission of information. However, it is not limited to this aspect as media reports act as “windows” through which many processes in the cycle of communication can be observed. A more resource intensive method could have been used involving a wider range of media including face-to-face interviews. However, analysis of a limited range of media reports does provide a resource-efficient approach to capture the broad picture.

Recipients (businesses) can sometimes generate media reports as they pro-actively (or are invited to) respond to government announcements. Businesses are therefore, in some instances, “co-producers” of media images which might inform our understanding of the process of recipient “scanning”. Similarly, media reports cover consultation stages as well as final announcements. Since the announcement of the Red Tape challenge, there has arguably been much greater coverage in the media of government intentions for future regulatory changes. Recent media reports, therefore, may also provide insights into the ways in which widespread consultation or “co-production” of regulatory change might affect business perceptions of regulatory burden.

In the context of the model, then, what can we hypothesise about the pattern of reporting of regulatory change in the media? The model suggests the following:

- That reports on specific pieces of regulatory change will appear over an extended period of time and not just limited to the day of announcement.
- That comment prior to announcement (T1 and T2) stimulated by consultations and debates surrounding the decision-making process will generate “media noise” and influence expectations

- That the final announcement of regulatory change (T3) will be followed by an extended period of further “media noise” as the reactions of recipients and key influencers are variously reported
- That this extended media coverage, and the content of that coverage, will tend to heighten and reinforce existing perceptions of regulatory burden on business.

The analysis considers first the overall information landscape that businesses must navigate in order to obtain information on regulatory requirements. It is immediately apparent that there is a myriad of different information sources which businesses could access to obtain guidance regarding regulatory obligations. To provide a focus, the analysis identifies specific regulatory announcements in the form of 4 case studies⁴. In each case, an attempt is made to track reporting from point of origin (official press release) through the media and trade associations. This information is analysed in relation to our information model (figure 2.6). Analysis will consider the reporting rhetoric, imagery, tone and symbols as well as factual content.

3.1 Information sources for Business Regulations

The current range of sources of information on regulatory requirements available to businesses is considerable (Table 3.1). These include information obtained direct from government, briefings provided by trade bodies and business organisations, advice obtained from professional service providers (e.g. accountants, solicitors) as well as reports disseminated through traditional media alongside an ever-expanding virtual world of websites, forums, blogs and social networks.

⁴ Two from the RED TAPE Challenge, The Equalities Act 2010 and The EU Agency Workers Directive 2011

Table 3.1 Sources of Information for Businesses

Sources of Information:
Virtual: via Search Engines ‘Google’, ‘Bing’, ‘Yahoo’ etc. Websites, Forums, Blogs, Linked In, Facebook, Twitter
Media: • Newspapers • TV News Reports • TV Programming (Soaps; Documentaries: Business programmes) • Business Magazines
Government Bodies: • BIS plus various industry specific Government Departments • Business Link Website
Chamber of Commerce
Trade Associations: (min of 1600 in UK)
Professional Services: Accountants, Solicitors
ACAS
Citizens Advice Bureau
Universities
Peer Groups
Suppliers
Banks

In this technologically advanced age, business choices of communications can be complex and yet our means of access to key information can be relatively simple and immediate. These advantages, however, are counterbalanced by increased levels of uncertainty and variation in reliability associated with the use of such electronic media.

Table 3.2 suggests some of the difficulties businesses may have in judging the veracity of different online sources which include consultants offering fee-paying services, professional bodies, trade organisations as well as local and national government. Table 3.3 shows an equivalent search outcome for “business regulation support UK”.

Table 3.2: Headline sources of regulatory information

Source:	Type:	Free/Charged (purpose)
www.bizhelp24.com/law http://www.out-law.com	Professional Legal	Charged (e-commerce legality and business consultancy delivered through business briefing documents...legal news and guidance)
www.accountancyage.com	Professional Accountancy	Charged
www.hse.gov.uk/legislation/links.htm www.businesslink.gov.uk/bdotg/action/home www.businesslink.gov.uk/bdotg/action/ruLand ing www.bis.gov.uk www.everythingregulation.org.uk http://www.lbro.org.uk/docs/supporting-businesses-towards-recovery.pdf http://webarchive.nationalarchives.gov.uk/+http://www.bis.gov.uk/files/file53100.pdf www.environment-agency.gov.uk/business/regulation	Government	Free Free (information, support, compliance) Free (updates) Free Free at point of delivery. Free PDF (2009) Free PDF (2009) aimed at service industry. Free
http://www.npt-business.co.uk/default.aspx?page=6528 (Neath Port Talbot Council Borough Council)	Local Government/ Council	Free (signposting of information)
www.fsa.gov.uk/pages/Doing/Regulated/newcob/index.shtml	Trade Body	Free (supervision)
http://en.wikipedia.org/wiki/Regulatory_compliance	Other	

Table 3.3: Business regulation support

Type:	Source:	Free/Charged (purpose)
Professional	http://www.jmw.co.uk/services-for-business/business-crime-regulation (JMW, Manchester Solicitors)	Charged
Government	www.business.scotland.gov.uk/bdotg/action/detail	Free (Scottish Regulation)
	www.food.gov.uk/foodindustry/regulation/hygleg/.../sfbb/	Free (Food Safety)
	http://www.environment-agency.gov.uk/netregs	Free (Plain English guidance on environmental regulations)
Trade Body	www.fpb.org/page/619/Regulation.htm http://www.fsb.org.uk/News.aspx?loc=pressroom&rec=7052	Membership (lobbying) Membership (lobbying)
Others	http://businesscasestudies.co.uk/case-studies/by-topic (The Times 100 Business Case Studies) www.business-regulation-solutions.co.uk (Greater Manchester Chamber of Commerce) www.kingston.gov.uk/business/business_regulations.htm (the Royal Borough of Kingston upon Thames)	
Media	www.guardian.co.uk/business/.../small-business-regulation-nick-clegg	

The information gleaned from this exercise and the extended exercise of searching with a variety of key terms which a business owner may use, highlights the complexity in finding a comprehensive single source of trustworthy information. A number of key issues were encountered:

- Difficulties in identifying which sources were relevant to the UK
- Proliferation of ‘regulatory consultants’ acting as experts in terms of adherence to regulation
- The lack of Trade Associations present in the first few pages
- The abundance of BLOG sites where people comment from personal experience rather than robust information
- Difficulty in targeting websites relevant to the particular characteristics of the business (e.g. established business or new start-up; particular products or services)

As we have identified earlier, there are many sources of information, the internet being just one. The process of communication involves what seems on paper to be a simple process of encoding a message and a receiver decoding that message, but issues arise from the “noise” surrounding the message and lack of shared meaning between the sender and the receiver (Kotler, 1967). In order to track this “media noise” we identified four pieces of regulatory change and will use them as case studies to track the way in which information on regulatory change is disseminated.

The rationale for the choice of cases is based upon providing a balance of both deregulatory and regulatory measures, EU and domestic. The first two cases were chosen from the current Government deregulation campaign, The Red Tape Challenge, which aims to ‘*massively reduce the number of rules, laws and regulations*

*in order to allow business to grow..... with over 21,000 statutory rules and regulations currently enforced in this country, we need to bring the number down and the overall burden down fast.*⁵ The government has been explicit in its intent, the rhetoric clear and decisive; in order for business to grow, the amount of regulation and overall burden must come down. So our first two cases studies are:

- The Employment Red Tape Challenge
- The Health and Safety Red Tape Challenge

The other two cases follow a domestic and an EU regulatory measure which are:

- The Equalities Act 2010
- The EU Working Time Directive 2011

The choices of media were selected on the basis of readership as well as diversity. We therefore selected The Sun and The Daily Mail, the two most popular papers by readership numbers in the UK with in excess of 7 million and 4 million daily readers, respectively (National Readership Survey, 2010). The Times was selected as the broadsheet with in excess of 1.5 million readers (National Readership Survey, 2010). The BBC was selected as a contrasting broadcasting service and finally a selection of representative Trade Associations were chosen.

The media has tended to respond to the Red Tape Challenge as a whole rather than to individual challenges. So while media coverage has been extensive overall, there have been relatively few comments on the case studies that were specific to individual challenges. This is reflected in the varied range of media reports used in the analysis of different challenges. With this in mind, the following case studies offer a proportionate representation of the media noise around the given challenges.

The Red Tape Challenge cases represent the consultation process or the T1/T2 stages within our communication model of the regulatory life cycle and as such they haven't built up the same level of noise or memory as the more mature T3 regulation cycles represented by the Equalities Act and the Agency Workers Regulations. This difference in media noise density is reflected in the selection of media used in the case study reports.

⁵Cameron, 2012 <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index>.

3.2 The Employment Red Tape Challenge

The UK Coalition Government launched the Red Tape Challenge website in April 2011 with a commitment to consult widely on the need to reduce the regulatory burden on businesses. “Every few weeks, the Government will publish all the regulations in one specific sector or industry and ask the public to tell us what’s working and what’s not, what can be simplified and what can be scrapped. Once we’ve received your feedback Ministers will have three months to work out which regulations should be kept and why⁶”. Employment Law was placed in the Red Tape Challenge website spotlight during October 2011 and received over 2200 comments. The outcome stated that of the 159 regulations examined, over 40 percent were to be merged, simplified or scrapped⁷.

BIS:

Official BIS Press Release: 23 Nov 2011

Reforms to job laws to help business. Vince Cable outlines the most radical reform to the employment law system for decades. As part of the Government’s plan for growth and the Red Tape Challenge, Business Secretary Vince Cable has proposed cutting unnecessary demands on business while safeguarding workers’ rights.....

This was supported by postings on several government web sites including BIS, HSE, Directgov, Business Link, Companies House and Defra. Postings were also made on the number 10 web site and MPs’ personal websites.⁸

So how did this official government communication translate in the media? Commentary in *The Daily Mail* didn’t appear until 29th November and was merged with the Health and Safety deregulation information which was officially announced on the 28th November by the Department of Work and Pensions (DWP). Coverage gave prominence to the key message of government concerning the need to “revitalise business”, “cut red tape” and “challenge a culture of employment tribunals.” The headline reiterated the Chancellor’s strapline that there is a need at the moment to give priority to “consider the health and safety of the economy”. While some critique is included (National Trust anxieties about relaxed planning laws), the coverage makes copious use of quotes from the press release, including the headline itself.

⁶ <http://www.number10.gov.uk/news/red-tape-challenge/>

⁷ <http://www.bis.gov.uk/news/topstories/2011/Nov/reforms-to-job-laws-to-help-business>

⁸ Google search ‘red tape challenge employment’ first three pages

The Daily Mail:

'We need to consider the health and safety of the economy': Chancellor promises to cut business red tape and end tribunal culture

By [James White](#) Last updated at 5:22 PM on 29th November 2011

George Osborne today promised to revitalise business by cutting red tape and ending a culture of employment tribunals.

The Chancellor said he would also press ahead with plans to reform planning laws to aid business development.

He also promised to look at ways that employees could be fired without them being able to claim unfair dismissal - a move long desired by small businesses.....

Reports appeared in *The Sun* on the day of the official press release (23 Nov 2011). Some attention was given, to the issues related to the Red Tape Challenge itself (reducing regulatory burden and economic recovery). However, headline attention was given to the possible effects of some of the changes which give employers greater freedom to dismiss workers (Jobs rights blitz). These messages were reinforced with reference to the “slackers” and “weeding out deadwood” in the text.

The Sun:

Jobs rights blitz

Workshy targeted in dole blitz SCROUNGERS will be targeted in crackdown after half refused to take on voluntary work

A HUGE overhaul of workers' rights will be unveiled today in a bid to persuade bosses to start hiring again. Business Secretary Vince Cable will announce a blitz on employment tribunals that firms insist are strangling them with red tape.

Other measures include "protected conversations" where bosses can give slackers frank appraisals without the fear of being sued. The government will also look at cutting the 90-day consultation on redundancies to as low as 30 days.

The Times also focused headline attention on the issue of workers' rights and the fact that changes will make “hiring and firing” an easier task for employers. There is recognition that this is intended to unblock parts of the economy but underlying cynicism suggests that the motivation may have more to do with satisfying Conservative MPs within the Coalition. The tone of the piece is “serious” with quotes from an array of conservative MPs and the Confederation of British Industry (CBI).

The Times:

Employees' rights cut in plan for easier hiring and firing

[Anushka Asthana](#), [Roland Watson](#)

Last updated November 23 2011 12:01AM

Vince Cable will promise today to make it easier for employers to hire, manage and dismiss staff under “radical” measures to scale back workers' rights.

The Business Secretary will pledge to overhaul employment tribunals in favour of businesses and make it easier to carry out collective redundancies. He will also pave the way for new rules that will allow bosses to have more frank discussions with workers nearing retirement.

The BBC adopted a similar approach with a headline concentrated on the issue of “eroding employee rights” and expressed the view that “this will not fix Britain’s [economic] problems”. It is clear from this commentary that, in the minds of some sections of the media, the politicisation of this issue (“mollifying the right wing”) has drawn attention away from the purpose of the Red Tape Challenge in terms of reducing regulatory burden.

The BBC⁹:

Eroding employee rights will not fix Britain's problems

Wednesday 23 November 2011

With the Prime Minister tempted by the idea of watering down employee rights, it is a relief that he has Liberal Democrat colleagues in government to oppose him.

Ahead of next week's set-piece Autumn Statement, David Cameron is casting around for eye-catching policies that will both boost economic growth and be seen to do so. In desperation, he is erring towards venture capitalist Adrian Beecroft's recommendation that "unfair dismissal" be replaced by "compensated no-fault dismissal" with no recourse to a tribunal.

Such a move might mollify the right-wing business lobby for whom employment rights have totemic status. But there is little evidence it would result in any meaningful economic improvement. Worse still, it would be unacceptably open to abuse – an egregiously retrograde step for Britain's labour market. It can only be hoped the Liberal Democrats win the argument.

This perspective was trailed by an item that appeared on the BBC website ahead of the official press release and gave a commentary from the perspective of solicitors. The author argued that changes to employment tribunals will make little difference to economic improvement and that the gains in terms of reducing red tape will be “illusory” (photograph of stacks of files). The tone is sceptical and regarded as “eye-catching” for political purposes.

The BBC:

Will employment tribunal changes make much difference?

Money Talk by Martin Edwards Weightmans solicitors 5th October 2011

Finally, the reaction of business groups was fairly muted. Several businesses' websites offered a breakdown of this red tape challenge; these were mainly from professional bodies representing the HR sector and individual legal firms. The Federation of Small Business (FSB) made no press release in relation to Employment or Health and Safety.....but on the 29th November there was a response to the Autumn Statement. The tone was generally supportive in welcoming the statement as a step in the right direction although this was a reaction mainly to the seed enterprise investment scheme and the credit easing scheme. The overhaul of the employment tribunal scheme, however, was welcomed but linked to a request for consistency in translating policy intention into tangible action. The report made no mention of the Health and Safety Red Tape initiative.

⁹ This commentary piece appeared within their opinion section and provided a link to <http://www.independent.co.uk/news/uk/politics/camersons-war-on-employment-rights-6266355.html>

The selection of responses to the Employment Red Tape Challenge illustrates a number of issues surrounding “media noise”. It shows, first, how press releases issued by BIS can be preceded by comments in the media that influence expectations (see the sequence within the BBC) and followed by a trail of comments that amplify certain aspects. Coverage on the day of announcement can be influenced strongly by BIS official press releases but “noise” can develop in subsequent coverage as the implication of announced changes are subject to political comment and stakeholder scrutiny.

This case also shows how overlapping announcements of changes can blur the distinction between different pieces of legislation. Business and the media are not always clear on the exact source of regulations affecting, for instance, requirements for Employment and Health and Safety.

3.3 The Health and Safety Red Tape Challenge

Health and Safety was placed in the Red Tape Challenge website spotlight from 30 June to 21 July 2011, the HSE continued to monitor comments up to 28 July and received 651 comments compared to the 2200 comments on the Employment Red Tape Challenge. The outcome stated that The Government plans to begin a major cut back of health and safety red tape as early as January 2012 and intends to have removed the first rules from the statute book within a few months. The initial launch was supported by various web postings from the HSE and BIS.

The comments received from the Red Tape Challenge up to July 2011 were fed into Professor Lofstedt’s report of 28 November 2011.¹⁰ The press release from the DWP on the Lofstedt report prompted media responses to the Red Tape Challenge on Health and Safety.

DWP:

Official Health and Safety Announcement 28th Nov 2011

Grayling: report calls for one million self employed to be exempt from health and safety law

28 November 2011

The Government has announced plans to begin a major cut back of health and safety red tape as early as January. It will begin an immediate consultation on the abolition of large numbers of health and safety regulations and intends to have removed the first rules from the statute book within a few months.....

So how did this official government communication translate in the media? Commentary in *The Daily Mail* appeared at the same time as its reaction to the Employment Red Tape Challenge and their use of the official press release was used in the previous section. The report did refer to the burden of EU health and safety regulations and offered several examples where health and safety was a ‘laughing stock’. Reports also appeared in *The Sun* on the 28 November with the headline “Elf ‘n’ safety axe” quoting the Employment Minister, Professor Lofstedt, a think tank

¹⁰ <http://www.redtapechallenge.cabinetoffice.gov.uk/2011/12/health-and-safety-announcement>

(Civitas) and the IoD. The report focused on the shift of responsibility for health and safety from business towards employees. The article in *The Sun* covered more than the impact of health and safety, it stressed that the impact of equalities regulations was £1 billion a year on business and suggested that the new laws could make it harder for disadvantaged workers to find work.

The Daily Mail:

Firms to be freed from elf 'n' safety red tape in bid to release us from nanny state

By Daniel Martin Last updated at 7:48 AM on 28th November 2011 (The Daily Mail)

Ministers will today unveil plans to overhaul Britain's 'nannying' health and safety culture which has held business back for decades

The Sun:

Elf 'n' safety axe

By KEVIN SCHOFIELD

Published: 28 Nov 2011 (The Sun)

BONKERS health and safety laws which tie up small firms in red tape are to be axed, it emerged last night.

A report published today will say the regulations cost the country £14billion a year — and serve no useful purpose.

Firms currently have to adhere to 200 different directives. Employment minister Chris Grayling wants to reduce that by almost half.

As the official release of the Lofstedt report was a day before the Chancellor's Autumn statement, *The Times* included commentary on the release within a piece on the statement. Its tone was positive, reflecting small businesses' welcome for the Government's renewed commitment to reduce the cost of health and safety. This was followed two days later in *The Times* (Nov 30 2011) by a case study on the impact of health and safety regulations on the construction sector. The report welcomed the cut in health and safety rules but did stress the perceived lack of help offered to medium-sized business compared to small businesses. On the release day, the BBC¹¹ painted the government as the body taking on the excessive burden of health and safety using phrases such as 'roots out needless bureaucracy'.

The Times:

Osborne is rising to his biggest challenge

David Wighton 28 Nov 2011

Small businesses will also welcome the Government's renewed commitment to easing employment rules and reducing the cost of health and safety regulations. These are just the sort of supply-side reforms being urged by thoughtful government supporters such as Andrew Tyrie, chairman of the Commons Treasury committee.

Perhaps Mr Osborne's biggest challenge tomorrow will be to get the right balance between realism

¹¹ http://www.bbc.co.uk/news/uk-politics-15919238#story_continues_1

and confidence.

The BBC:

Consultation on scrapping health and safety rules

Employment Minister Chris Grayling said the emphasis would be on personal responsibility

BBC Website 28 Nov 2011

Unlike the Red Tape Challenge on employment, this release did not appear to raise any immediate reaction from business groups apart from a response from some local branches of the British Chambers of Commerce. It appears that in general the business groups responded to the 'Red Tape Challenge' as a whole rather than to this individual part. Compared to the Red Tape Challenge on employment, only a few businesses' websites offered a breakdown of this red tape challenge; these were mainly from sector specific bodies representing the food manufacturing industry, property development and dentists.

The selection of responses to the Health and Safety Red Tape Challenge illustrates similar issues in 'media noise' to the responses to the Employment Red Tape Challenge. The timing of the release coinciding with a politically bigger story of the Chancellor's Autumn Statement may have been the reason why this story was absorbed into the 'bigger picture'. This may explain the lower responses for the Health and Safety Challenge or it may be that the Employment Challenge attracted the attention of more interested stakeholders. There appears to be general acceptance from the media that this was a positive move, however phrases such as 'challenge' 'in bid to' suggest that they are waiting for results before they pass final judgement.

The comparatively fewer acts of 'sender encoding' by various official bodies compared to the Red Tape Challenge Employment appears to have produced comparatively fewer 'sender encoding' from business support bodies and may have resulted in a comparatively lower level of media noise than the other Red tape Challenge case study.

Overall, our first two case studies suggest that the "Red Tape Challenge" has led to a much wider public debate over future changes in regulation than has perhaps been customary. This public debate builds on previous consultation programmes such as 'Common Sense Common Safety'¹² and 'Good Health and Safety, Good for Everyone'¹³ carried out by the Health and Safety Executive. In terms of our understanding of models of communication therefore, this implies a shift towards a more "integrated" model where consultation is inclusive and not restricted simply to a narrow range of stakeholders. Arguably, the range of potential "influencers" on the process of "message co-production" has increased significantly and attracted

¹² http://www.cabinetoffice.gov.uk/sites/default/files/resources/402906_CommonSense_acc.pdf

¹³ <http://www.dwp.gov.uk/docs/good-health-and-safety.pdf>

significant political comment at the pre-consultation stage in policy development. The prominence given to regulatory burden and its link to economic recovery has inevitably drawn media attention towards these issues.

3.4 The Equalities Act

Our third case study provides a useful contrast to the Red Tape Challenge in that it concerns a specific piece of legislation – the Equalities Act - that came into force on 1st October 2010. The timing of this Act means that our case study is able to track comment on a specific aspect of regulation over a period of time including the preparation prior to announcement and the subsequent “tail” of comment in the media. An official press release was issued from the Home Office on 1 October 2010. The statement draws particular attention to the promotion of equal pay for men and women including measures intended to prevent pay secrecy which hides unfair differences. Alongside this, it is noted that the Act will make “the law simpler by bringing together nine pieces of legislation under a single banner”. The Act, therefore, was not specifically targeted on workplace issues but covered all aspects of discrimination in public life on the basis of age, disability, gender identity, marriage or civil partnership, pregnancy, race, religion, sex and sexual orientation.

Home Office announcement:

Equality Act: Four decades after the "Made in Dagenham" pioneers, employees get a new weapon in the fight for equal pay

01 October 2010 00:01
Home Office (National)



On the day a new film is released that tells the story of how a group of 1960s women fought for equal pay, today's workers have won new rights that will help to stamp out pay discrimination.

Most provisions of the 2010 Equality Act take effect from today (1 October), including a measure to stop pay secrecy clauses being used to hide unfair differences between what men and women are paid.

The change in the law coincides with the release of "Made in Dagenham," a British film about the women of the Ford assembly plant in East London who, in 1968, launched a campaign to demand equal pay. Their actions led to the creation of the 1970 Equal Pay Act.

Around 90 per cent of the Act comes into force today, making the law simpler by bringing together nine pieces of legislation under a single banner.....

This launch was supported by various other official sources. ACAS published an 18 page guide.¹⁴ This was an easy to refer to document with clear guidelines. Page 2 offered a clear guide of changes and what's new in the act (this page highlighted the harassment by a third party as new). The Government Equalities Office published a

¹⁴ <http://www.acas.org.uk/CHttpHandler.ashx?id=2833&p=0>

12 page useful document¹⁵ entitled 'A Quick Start Guide to using Positive Action in Recruitment and Promotion'. Business Link¹⁶ offered several pages on business issues related to the Equalities Act with signposting to other official documents. The TUC, in July 2010, published a 22-page document on the impact of the act from the employee perspective.¹⁷ Lastly, the Citizens Advice webpage¹⁸ offered general guidance to the public on the act and implications on discrimination: *'If you have one or more of these protected characteristics, it is also now against the law to treat you the same as everyone else if this treatment will put you at a disadvantage.'*

A 320-page official guide to Equality and Human Rights¹⁹ published in January 2011 with all the implications for everyone affected by the Act, pp. 119-131 offers clear guidance on the obligations of employers. It was noted that for a large employer, this would require modification of their procedures. There was recognition that small employers may have more informal practices and fewer written policies. However, it was stressed that *"no employer is exempt from these duties because of size"* (p. 24).

So how did this official government communication translate in the media? *The Daily Mail* reported on the Act on the 3 October 2010 acknowledging it as a simplification of the current laws. This piece was informed by several legal and insurance experts. In its summary, there was offered a special deal to *The Daily Mail* readers on the insurance firms' regulatory protection service. The headline draws attention more to the negative impacts on business ("firms warned") rather than the rights of individual people. Two weeks later, *The Daily Mail* published an article that picked up a particular point of detail that relates to an unintended consequence that school meetings in evenings might be considered "sexist" under the Act by discriminating against women with young children.

The Daily Mail:

Firms warned on Equalities Act arrival

By Helen Loveless, Mail on Sunday Enterprise Editor

Last updated at 3:00 PM on 3rd October 2010

Companies could face a wave of new employment claims from staff after the introduction last week of the Equality Act.

Claims: The Equalities Act could bring more sex discrimination claims.

The Act is meant to strengthen and simplify existing laws covering discrimination, whether on grounds of age, race or gender.

The Daily Mail:

School meetings in evening 'are sexist', says equalities quango

By Luke Salkeld

¹⁵ <http://www.york.ac.uk/admin/eo/Positive%20Action%20in%20Recruitment%20and%20Promotion%20Guide%201.pdf>

¹⁶ <http://www.businesslink.gov.uk/bdotg/action/detail?itemId=1073792011&type=RESOURCES>

¹⁷ <http://www.tuc.org.uk/equality/tuc-18199-f0.pdf>

¹⁸

http://www.adviceguide.org.uk/index/your_rights/discrimination_index_ew/equality_act_2010_discrimination_and_your_rights.htmv

¹⁹ http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employercode.pdf

Last updated at 7:14 PM on 18th October 2010

Schools and local councils could be guilty of discrimination against women if they hold parents' or public meetings in the evening because mothers might be at home putting their children to bed.

The Sun did not react to the Act until December 2011. The spur for engagement came through comments from the head of the Equality and Human Rights Commission who is reported to have described some of the Human Rights Laws as "thoroughly bonkers". These remarks related to another "unintended consequence" of the law which, it was argued, could be used as a shield to protect the identity of illegal immigrants, criminals and paedophiles.

The Sun:

Human Rights laws' use is 'barmy' Britain's equality supremo Trevor Phillips critical

By GRAEME WILSON

Published: 12 Dec 2011

BRITAIN'S equality supremo yesterday blasted the "thoroughly bonkers" way human rights laws are being used.

In contrast, *The Times* pre-empted the official launch of the Act with a direct attack on the spirit of the Act on the 3rd October 2010. This explicitly focused on the implications for employers in managing the workplace where requirements were described as "Stalinist". This was followed by an article on the cost to the economy of 'the equality zealots' on the 27th November 2011.

The Times:

Equality notion lets Stalin into the workplace

Harriet Harman's berserk Equality Act is an example of how faux-left wishful thinking transforms itself very quickly into Stalinism.

The Sunday Times Published: 3 October 2010

The Times:

Beware, the equality zealots are unfair and cost us millions

If people knew how much the equalities industry costs the country, they would question whether we can afford it and whether it does any good.

Minette Marrin Published: 27 November 2011

It is almost self-evident that most people in this country approve of equality, whatever they mean by it. If so, it follows that most people probably approve pretty much, insofar as they think about it, of equalities legislation.

Reflecting the differing impacts of the Act on different sectors of society, the BBC news website offered several stories on the 1 October 2010. There were 5 stories reflecting different reactions to the Act from employee and employer perspectives. This included an article that criticised equalities regulation for being too costly on

businesses. This was followed up on the 8 October 2010²⁰ with an article supported by practicing solicitors who highlighted two key points “Protection from harassment has been further extended so that the employer can be held liable for harassment by a third party, such as a customer or contractor” and “Tribunals will be able to make recommendations that benefit the whole workforce.” The report also underlined the time this Act had taken to come to fruition by concluding “The long-awaited Act follows more than four years of reviews, discussions and consultations.”

The BBC:

1 October 2010 Last updated at 14:17

What does the Equality Act mean in practice?

The new legislation is designed to help tackle pay inequality.

Related Stories

- [New equality rights in workplace](#)
- [The new Equality Act and you](#)

The new Equality Act has come into force, targeting discrimination across a range of issues such as age, disability and pay.

The BBC:

8 October 2010 Last updated at 16:05

The new Equality Act and you

Money Talk by Amy Richardson and Cathy Hoar Adams and Remers solicitors

Many people could be affected by the new rules

[Continue reading the main story](#)

Related Stories

- [New equality rights in workplace](#)
- [Did they really make a difference?](#)

It has been hailed as a landmark move to harmonise discrimination legislation and to strengthen the law to support progress on equality.

It is significant to note at this point that criticism of the Act after its announcement led to some significant modifications to the legislation. Also, it should be noted that the Act was drafted largely under a Labour administration but enacted during the period of office of the present Coalition which had committed itself publicly to reducing regulatory burdens on businesses.

The BBC reported on these various amendments to the Act including the shelving of the ‘equality duties’ on councils²¹ (17 November 2010) and relaxing the pay disclosure part of the act²² (2 December 2010). This was accompanied by reports of comments from the coalition government “*We want to move away from the arrogant notion that government knows best, to one where government empowers individuals, businesses and communities to make change happen,*” as well as opposing views from the union representatives “*The government fails the fairness test and is stripping down its commitment to equality.*” A comment from a legal

²⁰ <http://www.bbc.co.uk/news/business-11453052>

²¹ <http://www.bbc.co.uk/news/uk-politics-11771302>

²² <http://www.bbc.co.uk/news/business-11900104>

expert concludes that *it is clear that the government has given priority to the overall economic recovery, by reducing employers' administrative burdens.*"

The period following the initial announcement was followed significantly by a trail of media reports that picked up on points of detail and consequences of the Act for behaviour and practice in business; this reflects the findings from BERR (2009, Chapter 3) that highlighted the media's focus on negative perceived impacts of Health and Safety regulations. The following list of items tracked through the BBC website gives an indication of the wide-ranging nature of this public debate:

The impact on the hospitality trade with regard to sexual orientation:

- 14 Dec 2010²³ 'Court defers judgement on gay couple's B&B refusal'
- 18 Jan 2011²⁴ 'Bristol gay couple win Cornwall B&B bed ban case'
- 21 April 2011²⁵ 'Brighton hotel accused of turning away lesbian couple'
- 8 November 2011²⁶ 'Christian hotel owners begin gay couple ruling appeal' (a follow on from the 14 Dec 2010 story)
- 4 March 2012²⁷ 'Equality laws 'need to protect all lifestyles' (a follow on from the 14 Dec 2010 story)

The possible impact on the energy sector with regard to age discrimination (at the moment this part of the Act only covers employment and education):

- 4 Dec 2010²⁸ 'Concerns raised over access to online fuel tariffs' (raised the issue that most people not using the cheaper online fuel tariffs were elderly and therefore this was a form of discrimination)

The possible impact on ethnic business groups:

- 16 Dec 2010²⁹ 'Caste discrimination in the UK could be outlawed'

The impact on the hospitality, retail and transport industries with regard to disability:

- 10 Jan 2011³⁰ 'RNID survey finds shop hearing loops 'not usable'
- 11 Jan 2011³¹ 'Guide dog access row at Devon hotel'
- 6 July 2011³² 'Blind Dave Heeley wins taxi dog ban equality case'
- 26 August 2011³³ 'Dangerous' pavements a hazard for wheelchair and scooter users'
- 1 March 2012³⁴ 'Oxfordshire disabled woman unable to board buses'

The impact on banks and the sports industry with regard to race:

²³ <http://www.bbc.co.uk/news/uk-england-bristol-11989828>

²⁴ <http://www.bbc.co.uk/news/uk-england-bristol-12214368>

²⁵ <http://www.bbc.co.uk/news/uk-england-sussex-13162935>

²⁶ <http://www.bbc.co.uk/news/uk-england-cornwall-15639005>

²⁷ <http://www.bbc.co.uk/news/uk-england-17247062>

²⁸ <http://www.bbc.co.uk/news/business-11918496>

²⁹ <http://www.bbc.co.uk/news/uk-12011112>

³⁰ <http://www.bbc.co.uk/news/uk-scotland-12143360>

³¹ <http://www.bbc.co.uk/news/uk-england-devon-12150229>

³² <http://www.bbc.co.uk/news/uk-england-birmingham-14047510>

³³ <http://www.bbc.co.uk/news/uk-england-14678316>

³⁴ <http://www.bbc.co.uk/news/uk-england-oxfordshire-17217602>

- 24 Nov 2011³⁵ 'Nick Clegg targets racial 'ceiling' in banks and sport'

The impact on the public sector with regard to various characteristics listed in the Equality Act 2010. These will have an effect on funds available to support businesses:

- 25 Feb 2011³⁶ 'Stoke-on-Trent council to cut 710 jobs'
- 10 Nov 2011³⁷ 'Brent Library closures: Council 'shirked duties'
- 16 Nov 2011³⁸ 'Library closures were unlawful, says High Court judge'
- 8 Feb 2012³⁹ 'Yorkshire hospitals interpreter costs soar'

Compared to the Red Tape Challenge case studies, the Equality Act received copious comments on various business groups' websites. The groups broadly welcomed the Act at its onset but then tended to publicly criticise parts of its implementation or interpretation.

Prior to the launch of the Act, the British Chambers of Commerce alerted its members to the impending effects on business (30 Sep 2010⁴⁰). *"British business owners have been told to prepare for the impact of the Equality Act, due to come into force on Friday October 1. Companies of all sizes will be affected by the legislation, which has been more than five years in the making, as it will raise a range of practical points for employers to consider to avoid the risks of discrimination claims by employees."*

This was followed by a more assertive warning issued in a press release on the 1st October 2010⁴¹. This included a strong reference to the regulatory burden and one assessment on the net cost to business: *"The British Chambers of Commerce (BCC) has raised concerns about the amount of employment red tape due to be implemented between 2010 and 2014, arguing that UK businesses need the freedom and flexibility to create as many jobs as possible during the economic recovery. The warning comes as a raft of new legislation becomes law today (Friday), including two changes which will have a particular impact on business. The Equality Act 2010 has a one off net cost to business of £189.2 million"*.

The Forum of Private Business news release on the 16th April⁴² picked up on the issue of complexity and lack of clarity concerning what businesses need to do to comply with the Act: *The non-statutory guidance on the Act has been drawn up by the Equality and Human Rights Commission (EHRC). It is supposed to be clear and simple enough for all businesses to understand. But with the document stretching to more than 300 pages, and with just six months to go before the Act comes into force in October, the Forum is concerned that many small businesses will struggle to make*

³⁵ <http://www.bbc.co.uk/news/uk-politics-15868844>

³⁶ <http://www.bbc.co.uk/news/uk-england-stoke-staffordshire-12576310>

³⁷ <http://www.bbc.co.uk/news/uk-england-stoke-staffordshire-12576310>

³⁸ <http://www.bbc.co.uk/news/uk-england-15752432>

³⁹ <http://www.bbc.co.uk/news/uk-england-16868007>

⁴⁰ <http://www.britishchambers.org.uk/business-news/employers-may-be-taken-by-surprise-by-equality-act.html> (30 Sep 2010)

⁴¹ http://www.britishchambers.org.uk/zones/policy/press-releases_1/coalition-presses-ahead-with-more-employment-legislation.html (1 Oct 2010)

⁴² http://www.fpb.org/news/2320/Equality_Act_guidance_may_leave_small_firms_confused_Forum_warns.htm

sense of their new obligations. The Federation of Small Businesses has also developed a web page to offer immediate advice on the Equalities Act and a link to the Business Link SW page on the Equalities Act.⁴³ The Institute of Directors magazine ran an article on the Equalities Act in October in which it welcomed the Act.⁴⁴ There was no obvious reaction to the Act on the CBI website.

The Equalities Act also drew attention from various advisors and consultants offering business support in complying with the Act. As noted earlier in this chapter, the existence of many commercial organisations adds considerably to the level of “noise” surrounding dissemination of information of regulatory requirements. As an example, Personnel Today (part of the Reed Business Information Group)⁴⁵ highlighted the delay to the dual discrimination provision which would have added to the business burden. The site then offered links to other upcoming law that will affect HR and personnel activities. Smarta.com⁴⁶ listed “12 worries” for small businesses from the Act.

The selection of responses to the Equalities Act illustrates a build up of “media noise” as the Act goes through various levels of consultation, enactment and subsequent modifications. It shows how the official press releases can be preceded by discussions in the media on the impending impact of legislation and how subsequent amendments to the Act added to varying degrees of confusion over what is included and excluded and what is required in order to comply. Some of this noise is evidently magnified by various commercial firms that are selling services based on new legislative requirements or protection against the ‘compensation culture’ described by Lord Young (2010)⁴⁷.

This case illustrates the challenge that surrounds the design of official press releases that seek to convey the essence of complex and multifaceted legislation particularly where modifications to legislation follow on closely from the initial announcement of intentions. Media coverage of an array of unforeseen consequences of the Act can add to the perceived burden on specific industrial sectors. The ‘sender encoding’ of various parts of government and the various encoding of other business support agencies may also create different emphases within the announcements of legislation that can generate “mixed messages” in terms of media headlines.

The willingness of the government of the day to modify the legislation in response to criticisms may well have encouraged lobbyists to promote their stance on the negative impacts of the Act leading to what could be interpreted as ‘consultation co-production’ in terms of our model of information dissemination. From the business perspective, their exposure to such a wide range of information flows over an extended period of time in changeable circumstances clearly illustrates the degree of overload that can take place as they engage in the process of ‘recipient scanning’. It

⁴³ <http://www.fsb.org.uk/151/assets/1010equalityactupdate.pdf>

⁴⁴ http://www.director.co.uk/magazine/2010/9_October/equality-act_64_02.html (Oct 2010 IoD)

⁴⁵ <http://www.personneltoday.com/articles/2011/02/16/57366/equality-act-2010-dual-discrimination-provisions-delayed.html>

⁴⁶ [http://www.smarta.com/advice/legal/employment-law/the-equality-act-\(october-1-2010\)-need-to-know-for-small-businesses](http://www.smarta.com/advice/legal/employment-law/the-equality-act-(october-1-2010)-need-to-know-for-small-businesses)

⁴⁷ http://www.cabinetoffice.gov.uk/sites/default/files/resources/402906_CommonSense_acc.pdf

is hard not to conclude that wide ranging debates surrounding the implications of legislative changes for individual business will not intensify a sense of regulatory burden.

3.5 The EU Agency Workers Directive

Our fourth case study concerns the Department for Business, Innovation and Skills (BIS) consultations in 2009 on the implementation of the EU Directive on conditions for temporary (agency) workers – Directive 2008/104/EC - more usually known as the “Agency Workers Directive”. EU Member States had until 5 December 2011 to implement this Directive. BIS proposed to implement on the basis of the CBI/TUC agreement of May 2008 which allowed for equal treatment to apply after a temporary agency worker has been in a given job for 12 weeks. In doing so, the key objectives were to ensure appropriate protection for temporary agency workers whilst maintaining a flexible labour market. The second consultation on draft regulations, closed on 11 December 2009.

The BIS official press release was issued on 6 May 2011 and focused on published guidance to help employers prepare for the introduction of new regulations associated with the employment rights of agency workers. The announcement also made reference to the period of consultation involving the CBI and TUC but admitted that some employers’ concerns could not be met. The key message from government is that everything was done to try to protect employer flexibility.

The press release presents the situation that led to the introduction of the regulations dating back to the 2008 social agreement between the CBI and TUC and subsequent statute in January 2010. It is interesting to note that the press release emphasises that government has “looked carefully at the possibility of amending the Regulations to address employers’ concerns” but that they “could not do so without putting the 12 week qualifying period at risk.” This reference back to a previous consultation phase illustrates a number of aspects of our communication model, including the build-up of expectations in the business community through the various stages in legislation and the way in which media messages evolve out of social and political interaction between government and key influencers in the business community (co-production).

BIS Official press release:

Agency Workers Regulations guidance published

06 May 2011 09:45

Department for Business, Innovation and Skills (National)



The Government has today published guidance to help employers and the recruitment sector prepare for the introduction of the Agency Workers Regulations.

The guidance, which has been produced in partnership with a wide range of businesses, trade unions and recruitment agency representatives, will help hirers and agencies understand the requirements of the Regulations. Separate guidance for agency workers will be published shortly.

The Regulations implement the EU Agency Workers Directive as agreed in 2008 following social partner agreement between the CBI and TUC. These will come into force in the UK on 1 October 2011. They will give agency workers the right to the same basic employment and working conditions as if

they had been recruited directly by the hirer - if and when they complete a 12 week qualifying period in a job....

"The Agency Workers Regulations have been on the statute book since January 2010 and followed negotiations between the CBI and TUC. We looked carefully at the possibility of amending the Regulations to address employers' concerns but were forced to conclude that we could not do so without putting the 12 week qualifying period at risk. This qualification period is something that is a key flexibility that we know is vital to business.....

..... Limiting bureaucracy and uncertainty will ensure that it continues to benefit businesses and job-seekers.....

The Government is committed to stopping the deluge of regulation that is restricting businesses and wants to be the first Government in history to reduce the burden of regulation over its lifetime.....

So how did this official government communication translate in the media? What is interesting in this case is that these anticipated changes to employment law had been subject to considerable media debate prior to the announcement. The Daily Mail, for instance, had reported on the build up to the regulation as far back as 2008. These reports were strongly opposed to the regulation on the grounds that it would restrict employers' use of agency workers and limit flexibility in the labour market.

However, it is notable that the headlines refer consistently to the rule changes as EU directives. The headline on 9 June 2008 reads *"Business fury at EU bid to extend employment rights to agency workers"*. This was followed on 2nd September 2008 by *"Two-thirds of employers will use fewer or NO agency workers under proposed EU directive."*⁴⁸ This tone persisted as the regulation came closer, encouraged in part by the coalition government which wished to avoid any blame by explicitly passing responsibility for the regulations to Europe *"New EU rules on jobs 'can't be challenged' says Cable as he admits agency workers' law will hit economy"* (20 September 2011).⁴⁹

By the eve of the Conservative Party Conference in 2011, The Daily Mail had linked reporting on this directive to the Red Tape Challenge. The headline quoted David Cameron's commitment *"to slash red tape and 'get to grips' with employment in a drive to boost growth"* (The Daily Mail 01 Oct 2011).⁵⁰ The article itself, however, expressed some scepticism about the ability to deliver on this promise, suggesting that it "may ring hollow for some businesses, which face several new regulations agreed in recent years and coming into force today. Temporary agency workers will gain full workplace rights after 12 weeks, and an end to the default retirement age will allow staff to keep working into their 70s or even their 80s." It is significant to note that in this particular report, no reference is made to the EU as the source of these changes.

⁴⁸ <http://www.dailymail.co.uk/news/article-1051590/Two-thirds-employers-use-fewer-NO-agency-workers-proposed-EU-directive.html#ixzz1ngQccEe8>

⁴⁹ <http://www.dailymail.co.uk/news/article-2039814/Vince-Cable-admits-new-EU-agency-workers-law-hit-economy.html#ixzz1ngRgtajY>

⁵⁰ <http://www.dailymail.co.uk/news/article-2043974/Cameron-vow-slash-red-tape-grips-employment-drive-boost-growth.html>

The Daily Mail:

Third of bosses will sack temporary staff because of new EU employment law

Rule means they would get same pay as permanent staff after three months at a firm.

By Leon Watson

Last updated at 9:43 AM on 10th January 2012

A third of employers will start sacking temporary staff so they don't have to pay them the same as permanent workers under EU law, a survey revealed today.

Research suggests many short-term employees will have their employment terminated before completing 12-week trial periods.

The first round of job losses is expected to hit workers this month, after the new rules came into force in October.

Coverage of this directive in *The Sun* also started well before it became UK Law. Again, the tone is critical of the legislation and clearly identifies the EU as the perpetrator. On 21 May 2008, for instance, *The Sun* highlighted the plight of many small businesses that would be “hammered by disastrous laws granting equal rights to temps”⁵¹. The Law was described in derisory terms as “the brain child of the EU” but the then Labour government was presented as implicated in the change in a “compromise stitch up with the EU”. This particular comment highlights the fact that it may not always be possible for UK government to disassociate itself from perceived regulatory burden generated by the EU.

The Sun:

Small business temp pay blow

GEORGE PASCOE-WATSON Political Editor Published: 21 May 2008

MILLIONS of small firms were last night hammered by “disastrous” laws granting equal rights to temps. Bosses warned the move – the brain-child of the EU – will destroy the backbone of Britain’s economy.

Firms will be forced to give 1.4 million agency workers the same rights as permanent staff after just 12 weeks in the job.

Prime Minister Gordon Brown ordered the change in a compromise stitch-up with the EU.

The directive release date coincided with the eve of the Tory Party conference. As a consequence, the introduction of the EU Agency Workers Directive was overshadowed by coverage of George Osborne’s plans to “rid bosses of crippling legal red tape” by introducing measures to prevent new workers from taking employers to industrial tribunals for unfair dismissal until after two years of service (1 October 2011)⁵².

⁵¹<http://www.thesun.co.uk/sol/homepage/news/1188686/Businesses-warn-temp-pay-laws-harm-economy.html>

⁵² <http://www.thesun.co.uk/sol/homepage/news/politics/3847683/Chancellor-George-Osborne-strikes-back.html>

The Sun:

Chancellor George Osborne strikes back

- ☑ He'll fight unions head-on
- ☑ Red tape axe boosts jobs
- ☑ He hails Sunemployment

By TOM NEWTON DUNN, Political Editor Last Updated: 15 Nov 2011

GEORGE Osborne today triggers a head-on clash with unions in an all-out battle to create jobs. The Chancellor is cutting new workers' rights in a highly controversial move.

But Mr Osborne said it is vital to rid bosses of crippling legal red tape to help them provide "many thousands" of urgently needed new positions.

It is part of his determined bid to answer a growing barrage of criticism that he does not know how to kickstart Britain's stalled economy.

Mr Osborne unveiled his shock tactics in an interview with The Sun ahead of the opening of the Tory Party conference tomorrow. He will block new workers from taking bosses to industrial tribunals for unfair dismissal until after two years of service — it currently stands at one year

Unlike *The Sun* and *The Daily Mail*, *The Times* ran an article specifically on the directive at its launch on 1 October 2011. Scanning the headlines, the conflicting messages received on that day are quite striking. While The Sun announces that "*Red Tape Axe boosts jobs*", The Times contradicts this with "*triple whammy of new employment rules*". The article explicitly distinguishes between the increased costs on businesses associated with the impact of the measures themselves in addition to the regulatory burden in terms of increased administration.

The Times:

Employers count cost of triple whammy of new employment rules

Robert Lea Industrial Editor

The Times October 1 2011 12:01AM

Industry leaders are saying "enough is enough" after British business was hit this weekend with a triple batch of red tape, which they fear is just the start of a raft of new regulations and costs.

From today, temps are to be given the same workplace rights as permanent staff; it is illegal to tell people aged 65 and older that they must retire on grounds of age; and the national minimum wage has risen to above £6 an hour for the first time.

The moves are expected to raise significantly the cost of doing business at a time when companies are facing an increase in regulatory burdens.

The BBC ran a series of stories on the build up to the directive.

'*EU Stalemate on workers rights (5 Dec 2007)*'⁵³ reported disagreement on the directive in EU member states.

⁵³ <http://news.bbc.co.uk/1/hi/business/7128221.stm>

*'ASDA suppliers strike deal over agency workers (4 March 2010)'*⁵⁴ reported on ASDA's meat and poultry suppliers paying the same rate to agency staff as ordinary staff, this was seen as anticipation of the directive.

*'Are working hours being cut to save jobs (16 March 2010)'*⁵⁵ which further considered the impact of the directive.

In October 2011, The BBC, like The Sun and The Daily Mail, concentrated on the Conservative Party conference rather than the launch of the EU Directive. However, in a downbeat article that appeared on 30th September (*'Landale online: Cameron's tricky task'*)⁵⁶, The BBC's Deputy Political Editor referred to the *"gloom of a financial crisis in the Eurozone and a stalling economy at home"* as preamble to an analysis of the problems facing the Prime Minister. These include, it is argued, dealing with many Conservative MPs' disappointment over what is perceived as lack of action in addressing issues in Europe. The paper states *"Let us not forget that the EU's agency workers' directive comes into force this week."*

Compared to other changes in business regulation, this directive appears to have drawn more widespread reactions from business groups. On the 17 March 2010, the CBI website uploaded a guide on how to handle the forthcoming regulations.⁵⁷ The article also commented that the Government estimates that the cost to business of the agency workers regulations will be £2bn per year and costs will rise by around 10% across the agency sector. The CBI website also highlighted the lobbying that it had been involved in regarding this directive⁵⁸.

Representing smaller businesses, the FSB began to comment on the impending directive as early as June 2008.⁵⁹ In advance of a meeting of EU employment ministers in Luxembourg, the FSB warned the UK government not to *"take us back to the 1970s"* by signing up to what it believed to be *"damaging"* employment legislation that included both the Agency Workers and Working Time Directives.

It is interesting to note that the way in which this particular debate evolved includes references back to previous events and assurances, indicative of the idea of *"memory build-up"* included in our model of communication. A statement made by the FSB in May 2011⁶⁰ referred back to previous assurances made by ministers: *"Earlier this year, on March 18, the Government said that it would create an exemption from new domestic regulation for firms with fewer than 10 employees. But only a few weeks later on April 6, they implemented three large and burdensome regulatory changes to employment legislation - with no exemption for micro firms. Any confidence created by the exemption was greatly reduced by the Government's failure to halt these changes"*.

⁵⁴ <http://news.bbc.co.uk/1/hi/business/8549798.stm>

⁵⁵ <http://news.bbc.co.uk/1/hi/business/8560936.stm>

⁵⁶ <http://www.bbc.co.uk/news/uk-politics-15127677>

⁵⁷ <http://www.cbi.org.uk/media-centre/news-articles/2010/03/intelligence-first-agency-workers-directive> (17 March 2010)

⁵⁸ <http://www.cbi.org.uk/business-issues/employment/in-focus/eu-employment-law> (accessed 07.03.12)

⁵⁹ <http://www.fsb.org.uk/news.aspx?REC=4643&re=policy/news.asp> (June 2008)

⁶⁰ <http://www.fsb.org.uk/policy/images/the%20burden%20of%20regulation%20-%20may%202011.pdf> (May 2011)

In contradiction to government rhetoric on reducing Red Tape, therefore, the FSB coverage of these issues clearly feeds an expectation that regulatory burdens *from all sources* are increasing and not decreasing. *“Over the next few years businesses are set to face even more regulatory change in areas such as pensions, flexible working and changes in maternity and paternity laws. This is in addition to changes coming from Europe, which includes the Agency Worker’s Directive which is expected to cost business a staggering one off cost of £40m.”*

The British Chambers of Commerce started their coverage on this issue on the 15 October 2009. At this stage, it was still hoped that *“many small businesses will now be exempt from Agency Workers Directive”*.⁶¹ This was followed by an update on 12 September 2011⁶² with reference to David Cameron’s attempts to seek *“confidential legal advice on temporary worker laws.”* Members are reminded that *“the new law, which is due to give agency employees who have been employed for at least 12 weeks the same rights as full-time workers to pay, holiday and maternity leave, could cost British businesses £2 billion a year.”*

The Institute of Directors also started commenting on the directive at an early stage in October 2010 by referring to the ‘gold plating’ of the agency directives⁶³. Their commentary picks up on issues that also concerned the FSB regarding the extent to which the Directive should apply to businesses of all sizes. In May 2011, in an article in its magazine, the IoD prepared its members for the directive⁶⁴. *“New rules safeguarding the rights of temporary workers come into effect in the autumn. Are employers prepared for the legislation and will they benefit?”*

Government is gold-plating Agency Workers Directive, says IoD

Dated: 19 October 2010

Commenting on Employment Minister Ed Davey’s plan to ignore business concerns about the Agency Workers Directive and press ahead with implementation on the same lines as the last government, Alistair Tebbit, IoD spokesman, said:

“The Government talks up its pro-enterprise agenda and then we see its regulatory policy in practice. Ministers have gold-plated this regulation, pure and simple. A 12 week exemption is all very well for big companies, but there is no requirement at all in the EU directive for the vast majority of small and medium-sized firms to be caught by the new regulations. This has been confirmed to the IoD by the European Commission, and consistently ignored by ministers. The interests of entrepreneurs, small businesses and, ultimately, the UK’s flexible labour market have been sacrificed to preserve a deal between multinationals and trade unions.....

The directive also drew comments from specific trade bodies. The British Hospitality Association, for instance, gave an overview of the implications of the regulations on

⁶¹ http://www.britishchambers.org.uk/zones/policy/press-releases_1/many-small-businesses-will-now-be-exempt-from-agency-workers-directive.html (15 Oct 2009)

⁶² <http://www.britishchambers.org.uk/business-news/pm-seeks-confidential-legal-advice-on-temporary-worker-laws.html> (12 Sep 2011)

⁶³ <http://press.ioD.com/2010/10/19/government-is-gold-plating-agency-workers-directive-says-ioD> (IOD Oct 2009)

⁶⁴ http://www.director.co.uk/MAGAZINE/2011/5_May/temporary-workers_64_09.html (May 2011)

employing agency staff for its membership.⁶⁵ The Caterer and Hotel Keeper Association offered a checklist for its members on the proposed regulations.⁶⁶ It offered the following advice: *If you wish to avoid giving agency workers equal rights, you will have to monitor the length of their contracts to ensure that they do not exceed 12 weeks in the same role. BEWARE! Greater cost for employers in ensuring compliance. Greater administrative burden in keeping records and providing them to agencies.* The Recruitment Agency also encouraged its members and businesses to lobby on the fine detail of the regulation before it became statute for the UK.⁶⁷

The directive attracted more interest from regulatory support businesses than the Equalities Act. As one example, searching Google using the phrase 'Agency Workers Directive' gave a link to a 2002 press release from Lawspeed, a recruitment law specialist, *"The DTI has suggested that the total cost to agencies will be between £80 and £194 million and the cost for clients between £239 and £387 million, although no quantitative estimate has been made as to the costs of the proposed directive to payroll companies. Many of the figures quoted in the DTI's Regulatory Impact Assessment have been questioned and there is a distinct lack of objective data regarding the temporary work sector both in the UK and the EU."*⁶⁸ This Google search highlights the issue with web-based information. Further investigation of the site offered several references to the 2010 regulations but a busy business owner using the web as a regulatory information source may not have searched that far.

The directive also featured on various blog sites. Some expressed negative views: <http://www.ukbusinessforums.co.uk/forums/showthread.php?t=192536> (Jab 2011); <http://realbusiness.co.uk/news/cameron-to-take-a-stand-against-eus-agency-workers-directive> (Sept 2011 Part of Caspian Media); <http://www.taxpayersalliance.com/eu/2011/08/agency-workers-eu-directive-shows-coalition-growth.html> (Aug 2011 campaigners for lower taxes).

However, there was some less critical comment also: <http://www.leftfootforward.org/2011/11/remember-how-the-agency-workers-directive-was-going-to-take-500000-jobs-yeah-well> (Nov 2011 political blog for progressives) <http://spendmatters.co.uk/agency-workers-directive-good-news-procurement> (Blog site on spend management Oct 2011)

This case study of the EU Agency Workers Directive provides many insights into information dissemination and the processes that are likely to impinge upon business perceptions of regulatory burden. More than any case study, it illustrates the build up of "media noise" as the process progresses from consultation, through negotiation and final implementation on new regulation. In this instance, the process has built up over a long period of time (at least three years) and the debate

⁶⁵ <http://www.bha.org.uk/agency-directive-webinar> (Sept 2011 British Hospitality Association) <http://www.bha.org.uk/wp-content/uploads/2011/09/Agency-Workers-Regulations-BHA-Webinar1.ppt#256,1>, Agency Workers Regulations

⁶⁶ <http://www.caterersearch.com/Articles/04/06/2009/328071/eu-directive-on-agency-workers.htm> (June 2009 Caterer and Hotel Keeper bus assoc.)

⁶⁷ <http://www.recruitment-agency.eu/node/469> (2011 NO1 ranked European recruitment Agency)

⁶⁸ http://www.lawspeed.com/news/eu_agency_workers_directive.aspx 1 July 2002 Recruitment Law specialists

surrounding regulatory burden on business has been permeated by wider political debates concerning Britain's relationship with the EU and political debates on these issues within the present coalition government.

The directive also appears to have attracted attention from different segments of the business community including organisations representing both large and small businesses. The "media noise" appears to have been intensified by the ongoing consultation process for the adoption of EU directives into UK regulations. Also, this noise is magnified by various consulting groups who are selling their services based on new requirements produced by the directive. As in the case of the Equalities Act, the longevity of the debate is quite likely to have the effect of keeping regulatory impacts at the forefront of business consciousness. The case also illustrates how uncertainty surrounding the final detail of legislation (will it apply to small business?) can exacerbate businesses' feelings of unfairness and powerlessness which then fuels responses to business surveys on regulatory burden.

The case studies collectively provide evidence that business perceptions of regulatory burden are not restricted simply to administrative cost. The media comments surrounding regulatory burden encompass a much broader range of issues that includes anxieties about compensation claims, feeling of injustice, inconsistency and a sense of powerlessness.

3.6 Case Studies - Conclusions

What are the overall conclusions, then, that can be drawn from this descriptive analysis of media coverage of specific events in the regulatory cycle? The following points can be made regarding the general hypothesis drawn from the model of communication developed in chapter 2.

- Reports on specific pieces of regulatory change will appear over an extended period of time and are not just limited to the day of announcement.

In each case study, media reporting was by no means limited to the day of official announcements. Indeed, some of the most critical and potentially distorted reporting tends to occur in advance of an announcement and in the long tail of commentary that tends to follow behind. The influence of prior comment is most readily seen in the case study of Agency Workers Regulations which was trailed as a piece of legislation over a considerable period of time from 2008 to 2011. The most obvious example of the post-announcement "tail" of media commentary can be seen more readily in coverage of the Equality Act which was subject to media scrutiny between 2010 and 2012.

- Comment prior to announcement (T1 and T2) stimulated by consultations and debates surrounding the decision-making process will generate "media noise" and influence expectations.

The clearest instance of anticipation is provided by the introduction of the Agency Workers Regulation. Prior to enactment, the planned legislation received highly negative press coverage dating back to 2008. Headlines railed the plans by speaking of “business fury” and businesses being “hammered” by a “disastrous” law which will “destroy the backbone” of the British economy. All of these images are also wound up with anti-European sentiment which adds to the mix of emotions experienced by the business community. It is interesting to note, however, that on the day of enactment (1st October 2011) reactions to this particular change in legislation were overshadowed by events and statements that had wider political significance, not least David Cameron’s claim to “slash red tape” and “get to grips with employment”. This led to contradictory media messages on the day.

- The final announcement of regulatory change (T3) will be followed by an extended period of further “media noise” as the reactions of recipients and key influencers are variously reported.

Media noise, however, can be most intense following a particular announcement and the tail of comment can last a considerable period of time. The new Equality Act announced on 1st October 2010 was followed by an extended period of comment as the media picked up on reactions from businesses in different sectors. Over time also, the implications of regulations for specific events become apparent and many of these “unintended” consequences attract media attention due to their human interest tainted by a mixture of injustice, humour and ridicule.

- This extended media coverage, and the nature of that coverage, will tend to heighten and reinforce existing perceptions of regulatory burden on business.

Headlines are designed to draw attention, and a summary of the headlines in our four case studies demonstrates quite clearly the pattern of coverage that businesses and the public will have been exposed to with regard to these particular regulatory announcements (see Tables 3.4 a-c). In all four case studies, simple “factual” reporting about the nature and purpose of regulation tends to be limited to websites and material derived from press releases on the day of announcement. Comments in other places and at other times are rarely (just) factual; they focus instead on nuances surrounding the facts. In the case of the Red Tape Challenge, the rhetoric surrounding these announcements has inevitably provoked comment of the likely impacts of regulatory change on “business costs” and “economic recovery”. However, “negative or unintended consequences” and the perceived “interference” of the European Union also attracts considerable attention. Headlines that focus on negative or unintended consequences are particularly constant, suggesting that the media focuses readers’ attention on examples of what are presented as unnecessary burdens. It is easy to see how the constant drip of negative comment arising from overlapping cycles of regulatory change can add fuel to business perceptions of what they regard as unfair and unnecessary regulatory burden.

Table 3.4a: The Red Tape Challenge – Media commentary by issue area

	Regulatory Cost	Purpose of Regulation and compliance	Negative or unintended consequences	EU Issues	Economic Recovery
The Employment Red Tape Challenge (2200 comments)	Crippled by Regulation : No wonder small business owners wish they were employees (The Daily Mail) Flexible working and parental leave changes will add to red tape burden (FSB) Chancellor promises to cut business red tape and end tribunal culture (The Daily Mail)	Employees' rights cut in plan for easier hiring and firing (The Times) Will employment tribunal changes make much difference? (The BBC)	Jobs rights blitz: Workshy targeted in dole blitz SCROUNGERS will be targeted in crackdown after half refused to take on voluntary work (The Sun)		Eroding employee rights will not fix Britain's problems (The BBC) We need to consider the health and safety of the economy: (The Daily Mail...merged story with health & safety red tape challenge)
The Health and Safety Red Tape Challenge (332 Comments)	Elf 'n' safety axe BONKERS health and safety laws which tie up small firms in red tape are to be axed (The Sun)	Firms to be freed from elf 'n' safety red tape in bid to release us from nannyng state (The Daily Mail)	What the entrepreneurs have to say...lack of support for medium-sized business compared to small business... (The Times)	Consultation on scrapping health and safety rules...limited due to requirements to comply with EU regulations (BBC)	Osborne is rising to his biggest challenge... Small business will welcome this initiative... (The Times)

Table 3.4b: The Equalities Act 2010 – Media commentary by issue area

Regulatory Cost	Purpose of Regulation and compliance	Negative or unintended Consequences	EU Issues	Economic Recovery
Firms warned on Equalities Act arrival..(The Daily Mail) Gender pay disclosure plans eased by coalition... (The BBC) British business owners have been told to prepare for the impact of the Equality Act, due to come into force on Friday October (BCC Sep 10) The delay to the dual discrimination provision which would have added to the business burden (Reed Business Information Group)	Firms warned on Equalities Act arrival...purpose to simplify existing laws (The Daily Mail) What does the Equality Act mean in practice? The new legislation is designed to help tackle pay inequality (The BBC) Welcomes the consolidation of existing equalities law (BCC) The new Equality Act simplifies and strengthens discrimination law (IoD) Chambers of Commerce (BCC) today urges small and medium size businesses to examine their pay systems to ensure they comply with equal pay laws. (BCC Nov 09)	School meetings in evening 'are sexist', says equalities quango (The Daily Mail) Rod Liddle: Equality notion lets Stalin into the workplace (The Times) Human Rights laws' use is 'barmy' (The Sun) Court defers judgement on gay couples B&B refusal (The BBC) Concerns raised over access to online fuel tariffs (The BBC ...energy sector) Caste discrimination in the UK could be outlawed (BBC ...ethnic business sector) RNID survey finds shop hearing loops 'not usable' (The BBC) Nick Clegg targets racial 'ceiling' in banks and sport (The BBC) Oxfordshire disabled woman unable to board buses'(BBC) Guide dog access row at Devon hotel (The BBC) Theresa May shelves 'equality duty' on councils... (The BBC)		Beware, the equality zealots are unfair and cost us millions (The Times) Equality laws aid economic recovery (The BBC)

Table 3.4c: The EU Agency Workers Directive 2011 – Media commentary by issue area

Regulatory Cost	Purpose of Regulation and Compliance	Negative or unintended Consequences	EU Issues	Economic Recovery
Employers count cost of triple whammy of new employment rules (The Times)	A guide on how to handle the upcoming regulations (CBI)	Two-thirds of employers will use fewer or NO agency workers under proposed EU directive (The Daily Mail)	Cameron's tricky task ...Let us not forget that the EU's agency workers' directive comes into force this week (The BBC)	Too many regulations will stifle recovery, says BCC (The Times)
Don't take us back to the 1970s, FSB warns	Overview of the implications of the regulations on employing agency staff (BHA)	Third of bosses will sack temporary staff because of new EU employment law (The Daily Mail)	New EU rules on jobs 'can't be challenged' says Cable as he admits agency workers' law will hit economy (The Daily Mail)	Cameron vow to slash red tape and 'get to grips' with employment in a drive to boost growth (The Daily Mail)
The DTI has suggested that the total cost to agencies will be between £80 and £194 million and the cost for clients between £239 and £387 million (Lawspeed, 2002)	Checklist for its members on the proposed regulations (Caterer & Hotel Keeper Assoc)	ASDA suppliers strike deal over agency workers (BBC example of co regulation)	Business fury at EU bid to extend employment rights to agency workers (The Daily Mail)	Chancellor George Osborne strikes back (The Sun)
Cost to business of the agency workers regulations will be £2bn per year, and costs will rise by around 10% across the agency sector (CBI)		Are working hours being cut to save jobs? (The BBC)	EU Stalemate on workers rights (The BBC)	
Could cost British businesses £2 billion a year (BCC)		Government is 'gold plating' agency directives (IoD)	Micro firms still hit by a raft of EU regulations as moratorium on regulation begins (FSB)	
		Many small businesses will now be exempt from Agency Workers Directive (BCC)		

4. EVIDENCE FROM BUSINESS PERCEPTION SURVEYS

The case studies reported in the previous section provide a vital context within which to approach analysis of data derived from opinion surveys. Systematic evidence of businesses' perception of regulatory burden is derived mainly from business surveys which tend to vary considerably in reliability and rigour. The surveys reported here focus on those sources where it is possible to evaluate reliability in terms of coverage and sample size.

We were given access to original datasets to enable disaggregation of the National Audit Office (NAO) Business Perceptions Survey findings 2007 to 2010. This is included as it represents what can be regarded as the official government data series. However, other surveys use different methodologies which generate varied results. We illustrate this variation with reference to data from the British Chambers of Commerce Barometers as well as surveys conducted by the Institute of Directors (IoD) and the Institute for Chartered Accountants in England and Wales (ICAEW). Data is also extracted from two international sources that include indicators of "burden of government regulation (World Economic Forum) and "ease of doing business" (World Bank Reports).

It is fair to say that these surveys of business perception are conducted within a social and economic arena that is often highly charged and influenced by political cross-cutting themes including party politics and business attitudes towards European integration. In addition, defining and measuring "regulatory cost" is complex and views on this can change over time as debates stimulate greater recognition of the different aspects of direct cost as well as opportunity cost. Add to this the nuances contained within the term "burden" and it becomes increasingly important to understand the survey methodologies being used to gather data. In this regard, these various national and international surveys can at times appear to contradict each other. There are many reasons why this might occur, including differences in the sample of businesses involved in the survey or the timing of the survey in relation to other events that shape opinion. However, a more basic issue concerns the precise wording of questions and here there are significant differences between the surveys commonly cited in discussions surrounding regulation.

Some examples will demonstrate the importance of this consideration. Table 4.1 shows the findings from a survey of business perceptions conducted by the UK National Audit Office (NAO) in 2010. These results are drawn from one survey so we have no reason to presume that the findings are affected by differences in survey methods and response rates. The design of the questions themselves is largely the cause of these differences. For instance, 94 percent of respondents say there is too much regulation because this question was only directed at those who thought the balance between cost and protecting people and the environment was not right. The two questions concerning change over time also generate different answers that appear inconsistent but may simply reflect the fact that complying with regulation can be tedious (easy enough to do) but time consuming.

These comparisons highlight the dangers of comparing data even within one survey. Extending this point, comparing results from different surveys will magnify this issue. The FPB survey, conducted in 2011, asked members about the “impacts of compliance for the business” and also whether compliance has become “more or less time consuming”. A different approach to this is illustrated by the Institute for Chartered Accountants in England and Wales (ICAEW) which conducted an enterprise survey in 2011 including a question on the extent to which respondents felt that the UK Regulatory and tax environment was “business friendly”. It is in the context of these cautionary points that we explore some of the survey findings that report on patterns of business perception of regulatory burden.

Table 4.1 Results from NAO 2010 survey of business perception

Do you agree or disagree that the overall level of regulation in the UK is an obstacle to your business’s success	62% agree
Government has to weigh up the cost to business of complying with rules and regulations against protecting people and the environment from harm. Overall do you think the government has got the balance right?	56% think the balance is not right
Do you think there is too much regulation? (replies only from those who thought the balance was not right)	94% think there is too much regulation
In the past 12 months, has complying with regulations become less or more time consuming	40% say more time consuming
In the past 12 months, has complying with regulation become easier or more difficult?	29% say become more difficult

4.1 Data sources on regulatory costs and regulatory burden

It is likely that policymakers awareness of businesses’ perception of regulations in the UK at present tends to be driven by (at least) four sources:

- NAO business perception survey
- Feedback from business lobby groups
- Comparisons from World Bank and World Economic Forum (WEF) rankings
- OECD reports

An analysis of the data sample for the NAO report would suggest that it over-represents certain sizes of business but covers a wide range of business sectors. So the analysis may be skewed to certain sizes of business operating in certain sectors. Business lobby groups will represent the views of their membership. For instance the FSB and FPB will represent views of smaller businesses, the CBI the views of larger businesses; and sector specific groups, the views of their sectors. Part of the CBI website ⁶⁹ suggests that it is heavily involved in the creation of new regulation and unlike the FPB and FSB, the CBI doesn’t make its surveys available publically. So it could be argued that the views of individual lobby groups are of less interest to businesses outside of their groups.

⁶⁹ <http://www.cbi.org.uk/media-centre/news-articles/2010/03/intelligence-first-agency-workers-directive/>

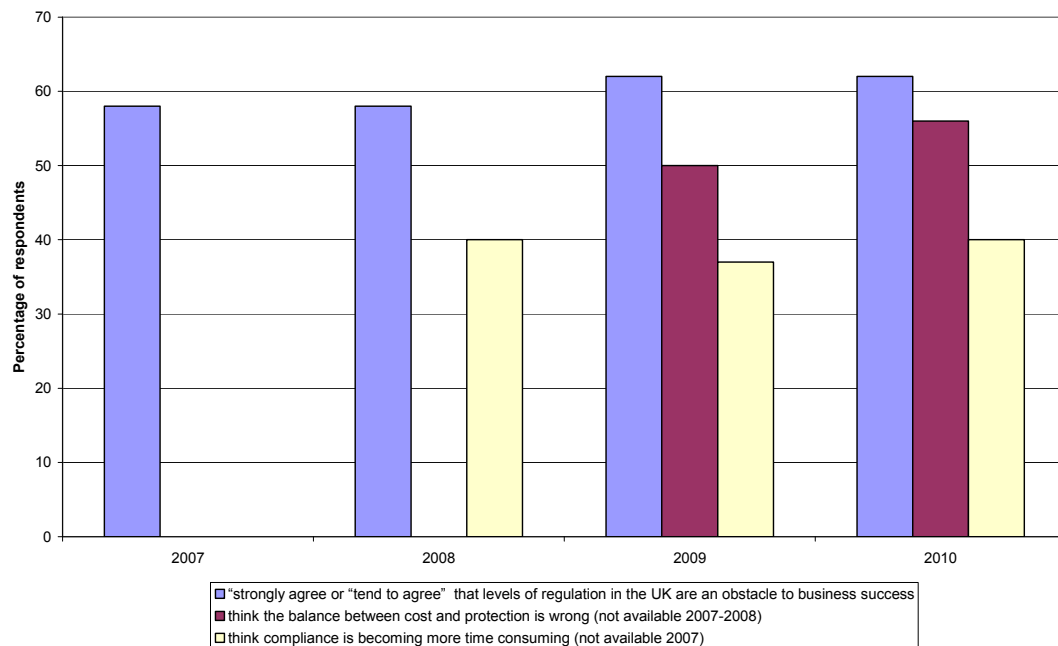
The international reports from the World Bank, the World Economic Forum and the OECD offer a comparative view of trading in the UK compared to the rest of the world. So it could be argued that these rankings only really affect businesses that are competing with others that operate outside the UK national boundaries. Any one of these sources will therefore only partially reflect the impact of regulations on any specific business within the UK. With this in mind, this analysis will offer an interpretation of the results found from the sources available.

4.2 What are the trends in surveys of business perceptions of burden?

With a few exceptions, the evidence from surveys of businesses in the UK conducted up to 2011 points to a perceived increase in the cost or burden associated with compliance with regulation. The business perception surveys conducted by the National Audit Office contain three general measures of regulatory burden. The proportion of businesses that think regulation is an obstacle to business success has increased marginally between 2007 and 2010. Similarly, the percentage of respondents who believe that the benefits of regulation do not justify the cost to businesses increased from 50% in 2009 to 56% in 2010. Both of these trends can be regarded as “statistically significant” differences in terms of sampling errors (+/- 2.2% at 95% confidence level).

There is a slight contradiction in the survey, however, which also reports no change in the proportion of businesses that think compliance is becoming more time consuming. We cannot be sure of the reasons for this contradiction. It may indicate, for instance, that compliance is no more time consuming, but the weakening economy up to 2010 made regulatory cost more significant to business survival. Another interpretation might be that as regulatory burden has increased, more businesses are out-sourcing compliance to third parties in order to avoid time costs internally.

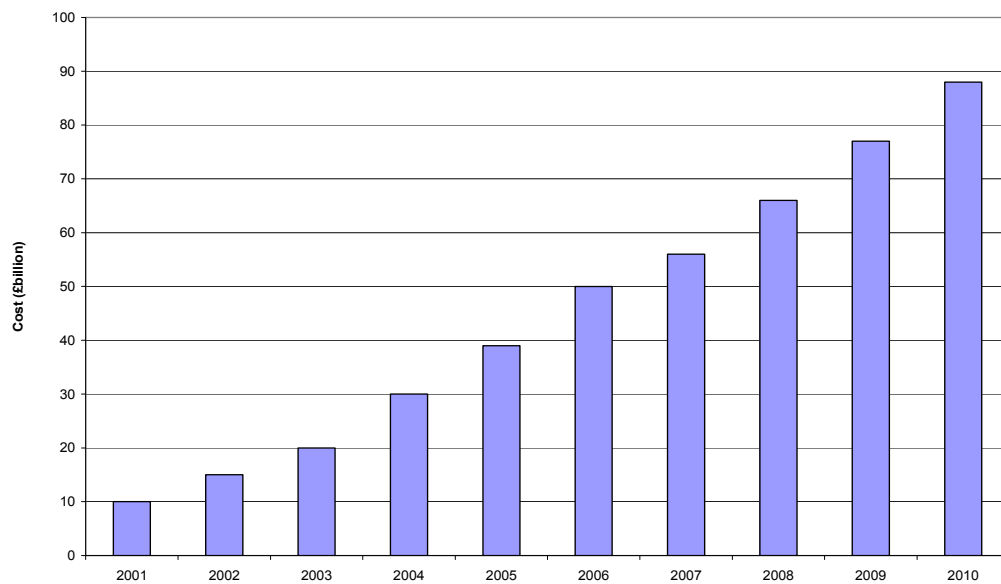
Figure 4.1: NAO Business Perception Survey: 2007- 2010



The NAO survey, however, is not our only source of data on trends in perceptions of regulatory cost. The British Chambers of Commerce (BCC) Barometers provide another useful time series dating back to 2001. This analysis makes use of data from Impact Assessments (IAs) produced by Government Departments. The “burdens barometer” shows compliance costs rising annually over the past ten years. The Institute of Directors (IOD) also publishes estimates of regulatory cost using a methodology based on responses from 3,000 members. The IOD Regulation Reckoner⁷⁰ shows an increase in costs of 40.12% from 2010 to 2011 (£79 billion to £111 billion).

⁷⁰ IOD Regulation Reckoner: counting the real cost of regulation (2010 and 2011)

Figure 4.2: BCC Barometer of Regulatory Costs (£bn)

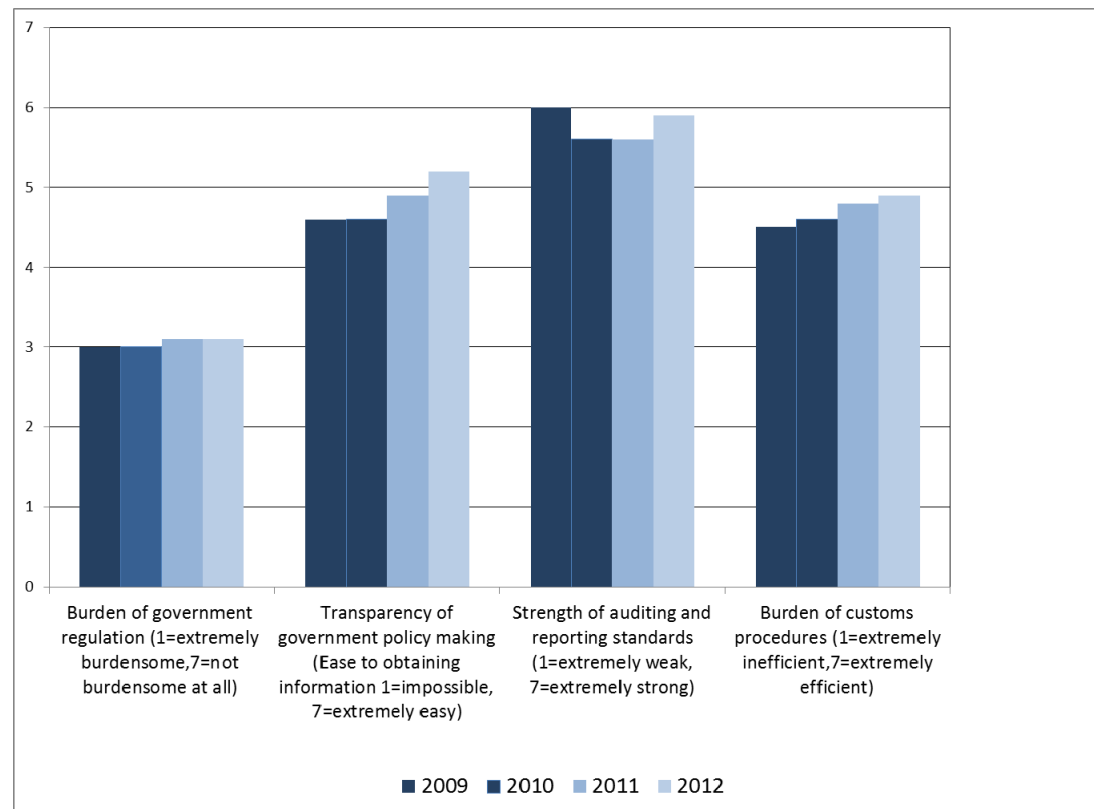


Source: Burdens Barometer (British Chambers of Commerce 2001-2010)

Compared to the BCC and IoD, however, other surveys give a less clear picture. The Institute for Chartered Accountants in England and Wales (ICAEW), for instance, publishes findings from an annual survey which includes questions on regulatory environment. Respondents are asked simply to state whether or not they believe that the UK's tax and regulatory system is "business friendly". The proportion who say "yes" to this question increased from 45% to 50% between 2009 and 2010 but dropped back to 44% in 2012.

A static picture also dominates international comparisons. The World Economic Forum (WEF) offers a perceived global ranking of the UK as a place to do business. This ranking is in part based on its Executive Opinion Survey which gathers the views of over 12,000 top management business leaders in over 130 countries. Results from this survey would be expected therefore to reflect the views of larger businesses with an eye on international trade. Overall, while the UK's ranking in terms of competitiveness has increased marginally since 2009 (up from 12th to 10th), perceptions of regulatory burden have remained fairly static (moving from 3 to 3.1 on a scale of 1 to 7). Interestingly, UK businesses also reported perceived growth in the transparency of regulations (up from 4.6 to 5.2 on a scale of 1-7). This implies that improvement in communication of the regulatory system does not appear to have translated into a perceived drop of the burden of government regulations.

Figure 4.3: World Economic Forum ‘Global Competitiveness Report’



The WEF survey results can be viewed in conjunction with the World Bank’s ‘Doing Business’ report which shows trends in various indicators over the years 2008 to 2012. This data shows that while there are understandable differences in regulatory costs associated with different tasks (construction permits, employment, property, exporting etc) the overall ranking of “ease of doing business” in the UK is fairly high (ranked 7th in 2012). Trends over time include the following;

- No change in the costs of starting a business
- A decrease in the procedures and time involved in construction permits although accompanied by rising costs
- A static number of procedures and cost involved in registering property accompanied by a decrease in the time involved to the business.
- A slight reduction in the time required to export or import goods that was marginally reflected in a reduction in costs to business
- A slight decrease in the number of procedures and days required to enforce a contract that was not reflected in the cost of the enforcement.

Table 4.2: World Bank “ease of doing business”

	2008	2009	2010	2011	2012
Ranking	*	*	*	6	7
Starting a business					
Procedures (number)	6	6	6	6	6
Time (days)	13	13	13	13	13
Cost (% of income per capita)	0.8	0.8	0.7	0.7	0.7
Dealing with construction permits					
Procedures (number)	17	17	9	9	9
Time (days)	150	150	113	113	99
Cost (% of income per capita)	50.9	50.4	56	57.5	63.8
Registering property					
Procedures (number)	6	6	6	6	6
Time (days)	42	42	29	29	29
Cost (% of income per capita)*	4.8	4.7	4.7	4.7	4.7
Paying Taxes					
Time (hours per year)	105	105	110	110	110
Trading across borders					
Time to export (days)	9	9	9	7	7
Cost to export (US\$ per container)	940	1030	1030	950	950
Time to import (days)	8	8	8	6	6
Cost to import (US\$ per container)	1267	1350	1160	1045	1045
Enforcing contracts					
Procedures (number)	30	30	30	28	28
Time (days)	404	404	399	399	399
Cost (% of income per capita)	23.4	23.4	23.4	23.4	24.8

Source: World Bank Historic Datasets accessed on <http://www.doingbusiness.org/custom-query#hReprtpreview> * Inconsistent data due to changes in methodology introduced in 2011

The IoD and the FPB both report increases in time spent on regulations, the IoD suggesting that the cost is increasing faster as a workforce cost whilst the FPB research would suggest that the direct time cost is increasing for small businesses but is being transferred away from staff costs for micro and medium businesses. This does not reflect the sectoral increase in time costs suggested by the FPB and could be because the service sector in the sample had medium and micro businesses that had outsourced the time cost of the regulations.

Figure 4.4: Time spent dealing with regulations (IoD)

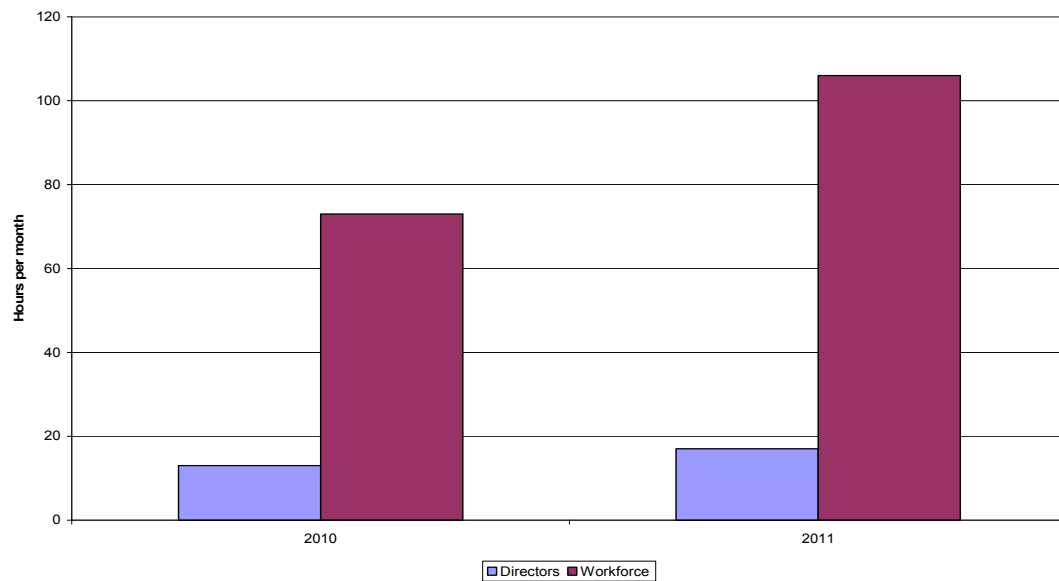
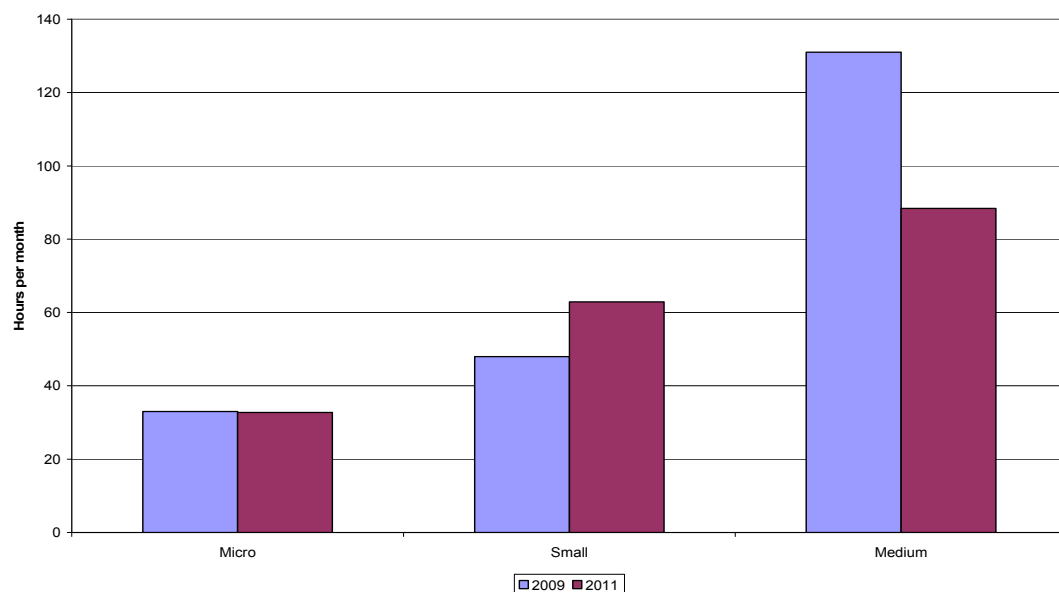


Figure 4.5: Time spent on compliance by company size (FPB 2011)

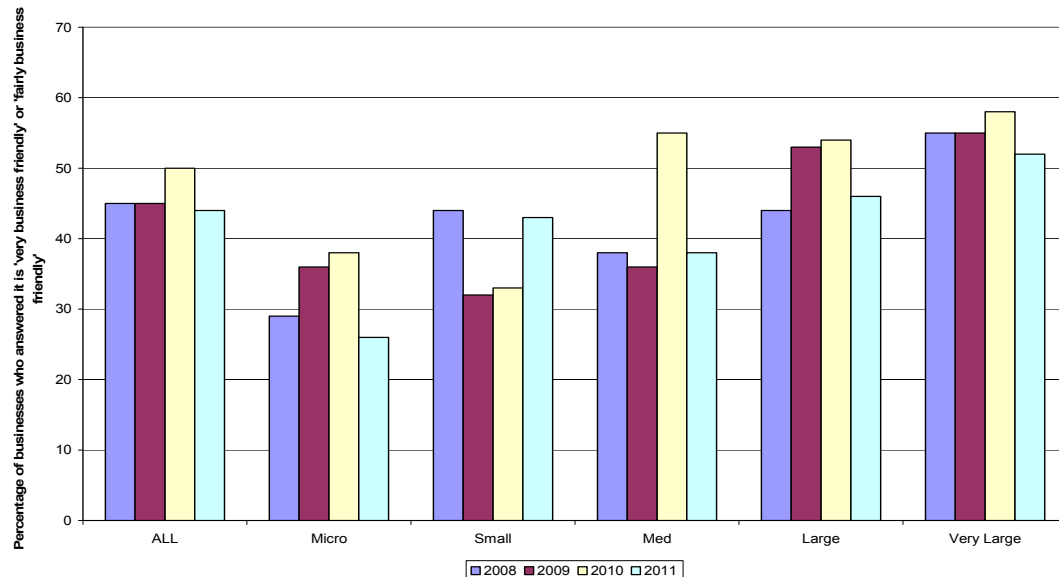


The general conclusion from the results of these surveys is that businesses overall believe that there has been an increase in regulatory burden in recent years. However, international comparisons suggest that the regulatory burden in the UK has not worsened in comparison with other countries. Alongside this, there is a suggestion that the UK has become much more active in releasing information about regulatory requirements and changes. **Arguably, this has tended to stimulate a public debate and increase awareness in the business community of the real costs of regulation at a point in time when businesses are struggling in an economic downturn.** It seems plausible to argue that increased perception of regulatory burden in the period since 2007 may have as much to do with squeezed profit margins as with actual regulatory costs which represent significant fixed costs to businesses at a time when revenues for many are falling or uncertain.

4.3 What types of businesses seem most sensitive to the burden?

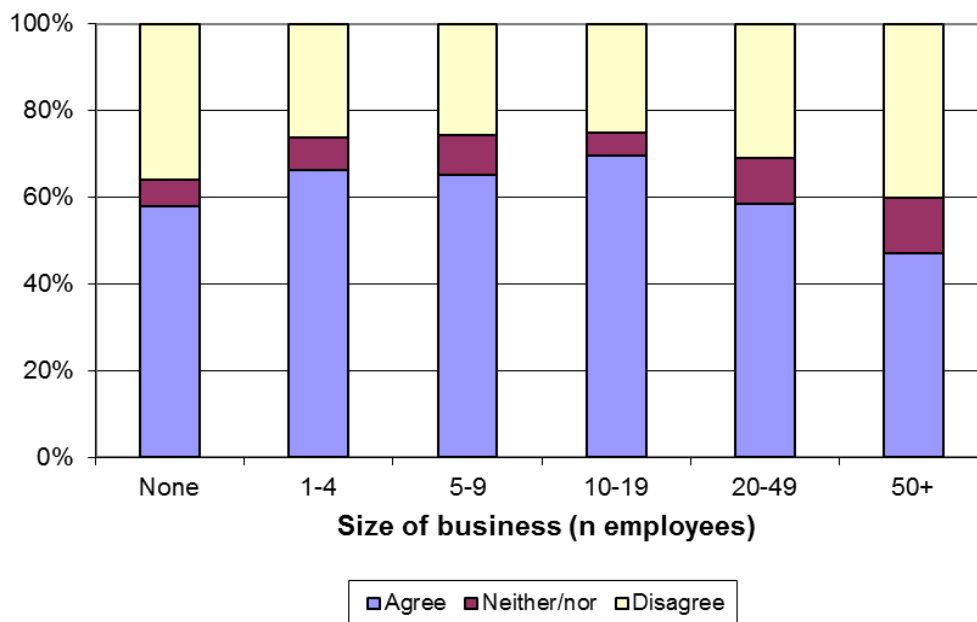
It is widely believed that smaller businesses experience greater regulatory burden than businesses in general. Intuitively, this might be expected due to the fact that compliance constitutes a fixed cost which larger firms can absorb more readily. Available evidence does appear to support this conclusion. The most robust evidence is provided by the ICAEW survey which has good representation of businesses across all size bands. Table 4.8 shows that micro businesses (employing 0-9 workers) are much less likely to regard the regulatory environment as “business friendly”. Due to small size samples in larger size bands, the NAO survey of business perception is less reliable. However, this data does show a similar trend with the most widespread regulatory burden appearing to fall on businesses employing between 1 and 20 workers (see figure 4.7).

Figure 4.6: “How friendly is the UK’s tax and regulatory environment?” (ICAEW)



Note: Figures given are percentages of respondents who answered that “it is very business-friendly” or “fairly business-friendly.”

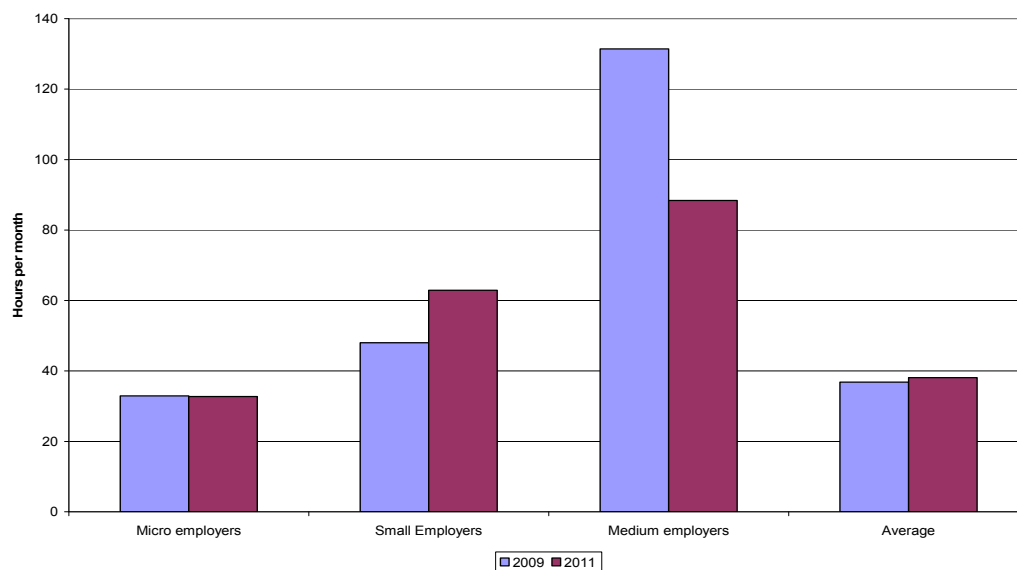
Figure 4.7: “Do you agree or disagree that the overall level of regulation in the UK is an obstacle to your business' success?”



Source: NAO (2010) survey of business perceptions

Analysis of data provided by a survey conducted by the Federation of Private Business in July 2011 provides further insight into this relationship between regulatory burden and size of business. Respondents were asked to indicate how much time was lost in complying with regulation. In 2011, the average firm spent 38 hours per month dealing with administration associated with regulation. As might be expected, the time absorbed in compliance related broadly to size of business; larger firms obviously require more management time than small ones.

Figure 4.8: Comparison of time spent on compliance 2009-2011 (hours per month)



Source: FPB (2011)

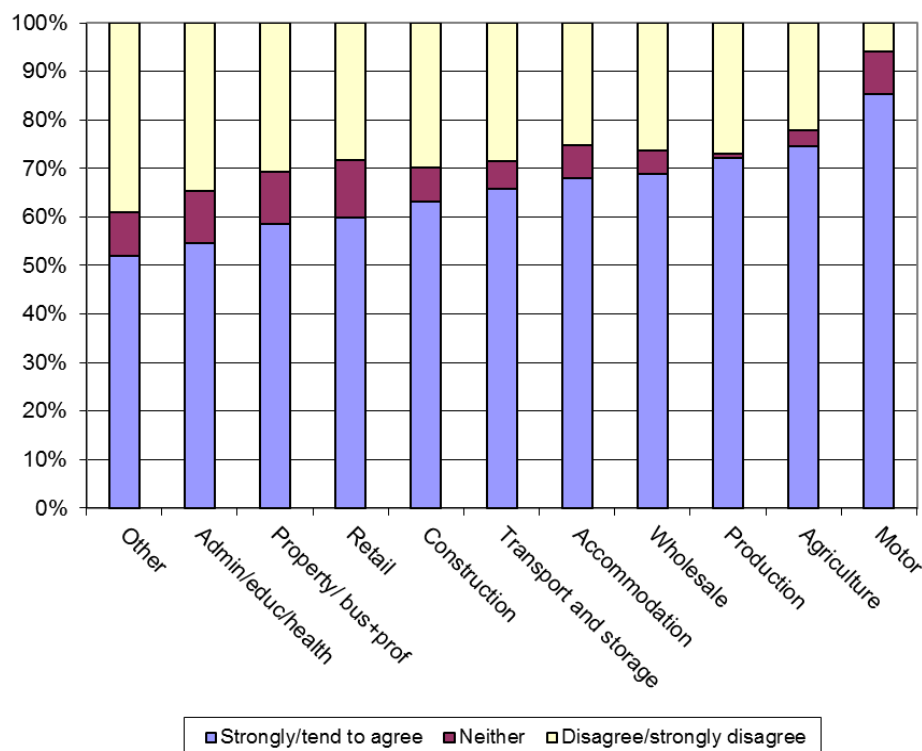
Sour

What is more significant, however, is that the **differences between size bands are relatively small**. The time absorbed in compliance in businesses with between 10 to 49 workers, for instance, is equivalent to 71 percent of the compliance costs for firms with over 50 workers. The FPB argues that this reflects the fact that medium-sized employers benefit from scale economies and can use the option to outsource administration related to compliance more easily than smaller businesses. The costs of compliance, therefore, **fall more heavily on internal management time in smaller businesses**. The FPB also suggests that increased levels of outsourcing explains why time spent on compliance for medium-sized employers has fallen dramatically between 2009 and 2011 while those for small firms has risen equally so.

4.4 Which sectors appear to experience greatest burden?

The NAO survey provides useful analysis of variations in perceptions of regulatory burden comparing different sectors. Figure 4.9 shows that perceptions of high regulatory burden are more widespread in motor, agriculture, production and wholesale sectors but lowest in utilities (though note small sample size), public administration and business and professional services. It is perhaps poignant that several of the sectors where feelings of burden are lowest are also those customarily associated with relatively high levels of regulation (utilities, education, health). This may reflect the fact that in these sectors understanding regulatory frameworks is actually a fundamental part of business development. It is what defines their product and their market.

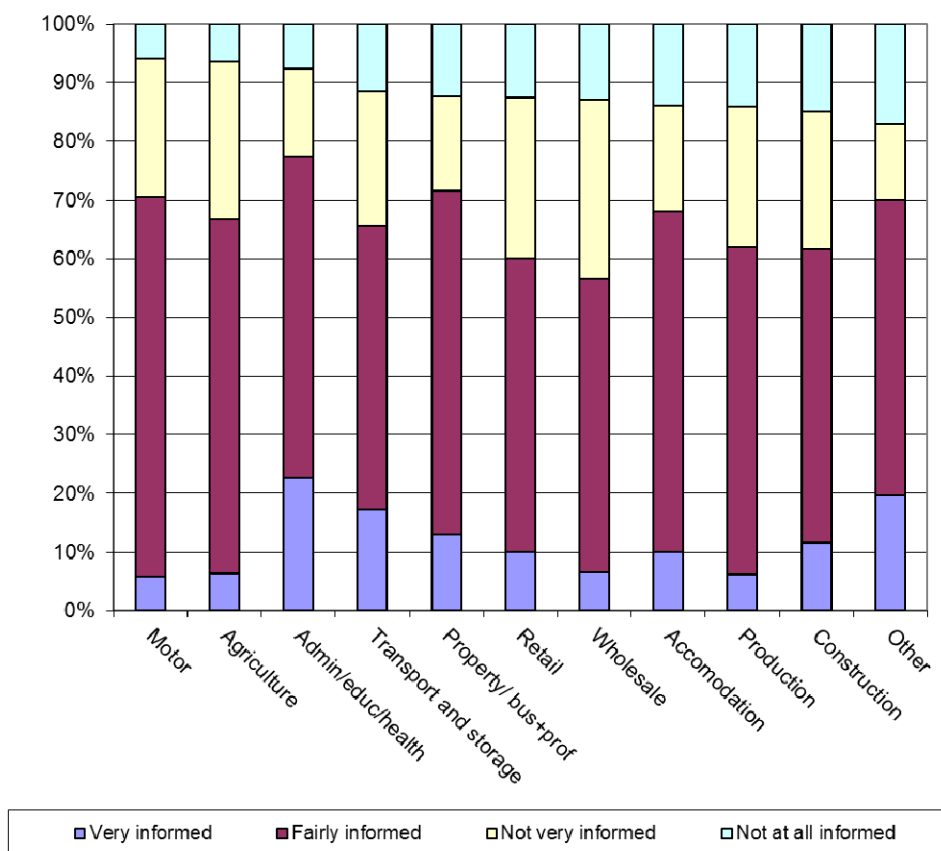
Figure 4.9: “Do you agree or disagree that the overall level of regulation in the UK is an obstacle to your business' success?”



Source: NAO (2010). Chart excludes “Finance” and “Utilities” – sample size under 10.

Further insight is provided by examining variations in awareness of regulation across sectors. Figure 4.10 shows that there is a significant minority of businesses (over a third) in wholesaling, retailing, production, construction and transport that claim to be “not at all” or “not very” informed about regulation. High levels of awareness are slightly more common, however, in property, business and professional services, public administration, education and health. The dataset has not been designed to explain these differences, but it is notable that the high awareness sectors tend to be in services characterised by a higher proportion of workers in professional and administrative roles (information processing).

Figure 4.10: “How informed do you feel about (area of law) regulations which affect your business?”

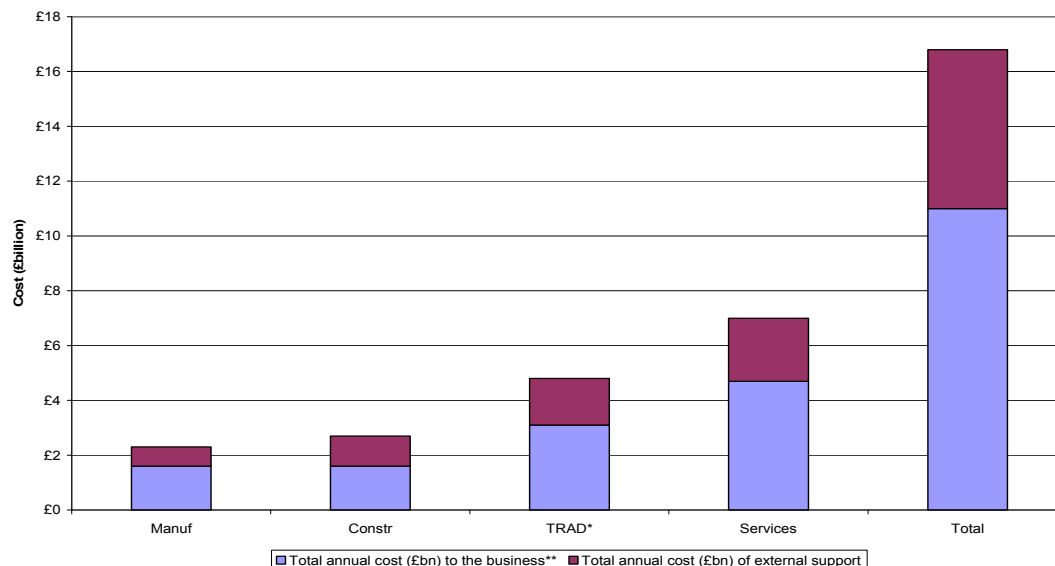


Source: NAO (2010) Survey. Chart excludes “Finance” and “Utilities” – sample size under 10.

There are also sectoral differences in the propensity to “buy-in” support for addressing regulatory requirements. Arguably, this reduces the internal administrative burden but adds real cost in terms of contracting. The effect of this on business perceptions of regulatory burden is not easy to ascertain. Arguably, **increased outsourcing could simultaneously increase perceived cost but reduce the sense of burden.** Data from the FPB survey provides estimates of the relative cost of internal administration and outsourcing. Overall, this analysis suggests that external costs (£5.8bn) are half the estimated internal cost (£11bn) to all businesses. This

varies considerably by sector, however. The relative cost of buying in external support was far higher in construction than the other sectors.

Figure 4.11: Relative cost of internal administration and outsourcing of compliance



Source: FPB (2011)

*Transport, Restaurants and Distribution

**This is direct costs associated with compliance with regulation. It does not include the opportunity costs to the business which was estimated as an extra £29.8 bn

Table 4.3 Time spent on compliance

	Total	Manuf	Constr	TRAD*	Services
Time spent on compliance	38.1	44.6	41.3	32.7	39.4
Percentage change in time spent 2009-2011	4%	29%	13%	0%	-4%

Source: FPB (2011)

*Transport, Restaurants and Distribution

These sectoral variations in responding to regulatory requirements partly reflect the fact that the nature of regulatory requirements varies considerably across sectors. One could argue, for instance, that outsourcing to deal with regulation is more common in construction because of the health and safety training accreditation requirements in the industry. What this means is that use of “internal compliance time” may underestimate the true cost of regulation in these sectors.

The difference between sectors on how they deal with regulations may also help to explain how the perceived burden can vary from the direct cost of the regulation. A sector that outsources most of the handling of the regulatory costs will be aware of the outsourced costs BUT may not spend as much internal management time planning the impact of current or future regulations as these will be the responsibility of the ‘professional’ that is dealing with the regulations.

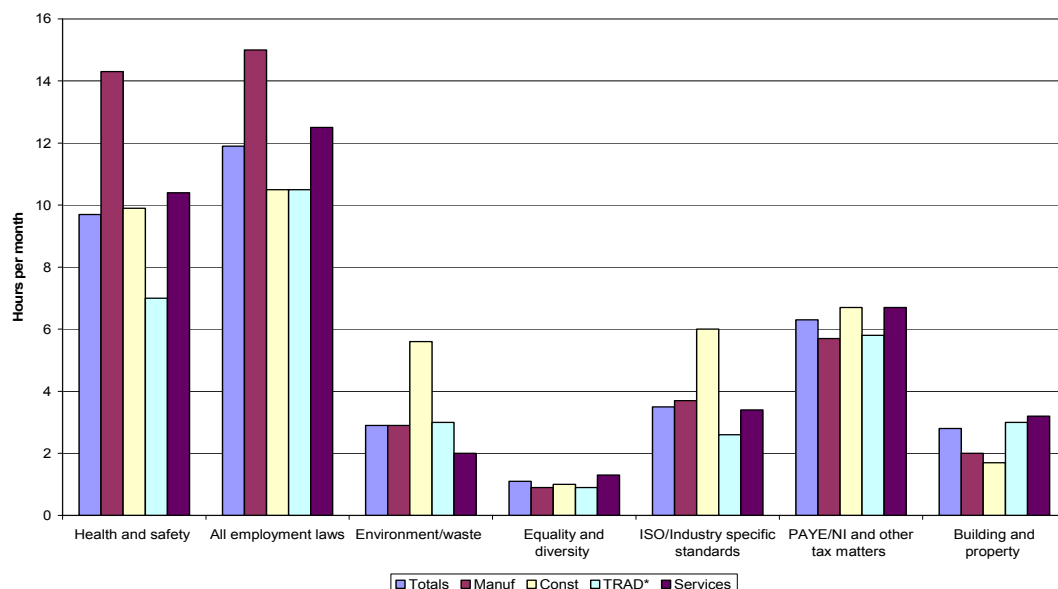
A sector that is dealing internally with the regulatory costs will be aware of the internal costs used in managing current regulations but will also have the additional burden of considering the impact of present and future regulations as these are not the responsibility of an outside ‘professional’.

The time spent dealing with the burden and potential burden of regulations also has an opportunity cost. In the sectors where the majority of this burden is carried internally this will have a larger increase on the business burden of regulations than in sectors where the ‘burden’ is outsourced. Owner-managers of small businesses cannot delegate compliance administration to specialists. This not only costs in terms of time but also prevents them from using time more productively for the business (eg. networking with potential clients).

4.5 Which aspects of regulation seem most burdensome?

Various surveys have attempted to disentangle the nature of regulatory cost to determine which areas or aspects appear to be most burdensome. The FPB (2011) survey uses estimates of hours per month to try to establish relative cost across different areas of regulation. The findings (figure 4.12) show that, across all sectors, compliance with employment law and health and safety laws generate the greatest amount of time cost per month. This is true of all sectors but there are some differences further down the rankings. Costs associated with the environment and waste management as well as industry standards, for instance, are higher in construction than in other sectors.

Figure 4.12: Time spent on compliance by industry (hours per month)



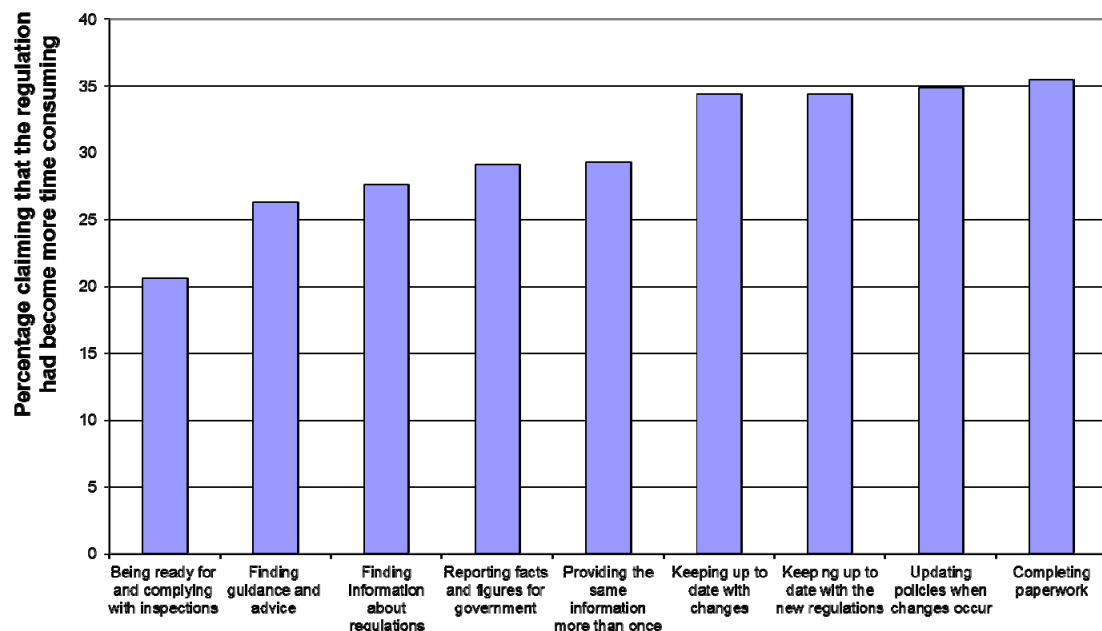
Source: FPB (2011)

*TRAD transport, restaurants and distribution

NAO data also enables us to distinguish between different aspects of regulatory burden. Respondents were asked to indicate whether or not certain aspects of

regulation are becoming more or less time-consuming. Figure 4.13 shows that a relatively high proportion of businesses believe that keeping up-to-date with changes and new regulations and the knock-on effects of having to update internal policy documents are aspects that are becoming more time-consuming. This offers some support to the hypothesis that an increasing pace of change associated with reform of regulation can actually be a source of regulatory burden in the short term.

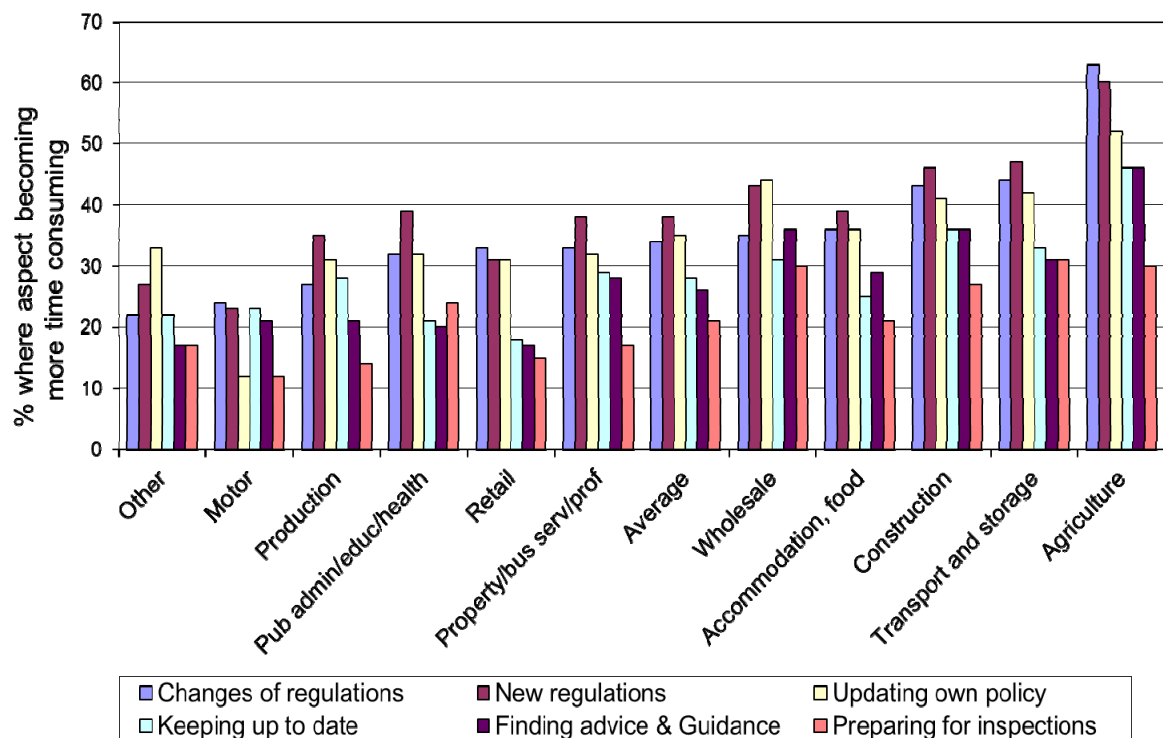
Figure 4.13: The parts of regulation that businesses in the NAO survey (2010) thought were becoming more time consuming (therefore increasing in burden)



Source: NAO (2010)

Data on perception of different aspects of regulatory cost can be disaggregated by sector (Figure 4.14). This shows that changes to regulations seem to have a much more widespread negative effect on agriculture, transport and construction and to a lesser extent on wholesaling. The pattern of responses across these different questions is very clear and consistent and this adds considerable weight to the conclusion that while improved or simplified regulation is likely to be welcome, rapid changes required to achieve this are likely to create short term increases in the perception of regulatory burden.

Figure 4.14: The perception of time cost and regulatory burden by sector



4.6 Lessons from the business surveys: summary of key points

➤ What are the trends in surveys of business perceptions of regulatory burden?

The general conclusion from the results of these surveys is that businesses overall believe that there has been an increase in regulatory burden up to 2011. However, international comparisons suggest that the regulatory burden in the UK has not worsened in comparison with other countries. Alongside this, there is a suggestion that the UK has become much more active in releasing information about regulatory requirements and changes. Arguably, this has tended to stimulate a public debate and increase awareness in the business community of the real costs of regulation at a point in time when businesses are struggling in an economic downturn. It seems plausible to argue that increased perception of regulatory burden in the period since 2007 may have as much to do with squeezed profit margins as with actual regulatory costs which represent significant fixed costs to businesses at a time when revenues for many are falling or uncertain.

➤ **What types of businesses seem most sensitive to regulatory burden?**

Available evidence does appear to support this conclusion that smaller businesses experience greater regulatory burden than businesses in general. Also, medium-sized employers benefit from scale economies and can use the option to outsource administration related to compliance more easily than smaller businesses. The costs of compliance, therefore, fall more heavily on internal management time in smaller businesses. Trends suggest that the regulatory burden gap between small and larger employers is widened in the period 2009-11.

Time costs have a far greater impact on opportunity costs for small businesses. Hence any increase in time cost of a regulation will have a far greater burden on opportunity cost to a small business than to a large business and thus add to their burden.

➤ **Which sectors appear to experience greatest regulatory costs or burdens?**

Evidence suggests that perceptions of high regulatory burden are more widespread in motor, agriculture, production and wholesale sectors. There are also sectoral differences in the propensity to “buy-in” support for addressing regulatory requirements. Arguably, this reduces the internal administrative burden but adds real cost in terms of contracting. The effect of this on business perceptions of regulatory burden is not easy to ascertain. Arguably, increased outsourcing could simultaneously increase perceived cost but reduce the sense of burden.

The time spent dealing with the burden and potential burden of regulations has an opportunity cost. In the sectors where the majority of this burden is carried internally this will have a larger increase on the business burden of regulations than in sectors where the ‘burden’ is outsourced.

➤ **Which aspects of regulation seem most burdensome to businesses?**

Across all sectors, evidence suggests that compliance with employment law and health and safety laws generate the greatest amount of time cost per month. However, costs associated with the environment and waste management as well as industry standards are also high in construction and manufacturing. A high proportion of businesses believe that keeping up-to-date with changes and new regulations and the knock-on effects of having to update internal policy documents are aspects that are becoming more time-consuming. This offers some support to the hypothesis that an increasing pace of change associated with reform of regulation can actually be a source of regulatory burden in the short term.

Changes to regulations seem to have a much more widespread negative effect on agriculture, transport and construction and to a lesser extent on wholesaling. This adds considerable weight to the conclusion that while improved or simplified regulation is to be welcomed, rapid changes required to achieve this are likely to create short term increases in the perception of regulatory burden.

5. INTERNATIONAL COMPARISONS OF REGULATORY COMMUNICATION

Analysis presented in previous chapters suggests that the management of relationships with business stakeholders in the context of regulatory regimes is usually highly complex, multifaceted and potentially confrontational. In these circumstances, there are evident challenges for government in terms of consultation on future intentions as well as communication of regulatory changes. The UK, however, is not alone in facing these challenges and in this chapter, we explore experiences of other countries in order to distil international good practice in this aspect of policymaking. Section 5.1 explains the rationale for selecting country comparators for the UK. This is followed in section 5.2 by outlining the current strengths and weaknesses of the UK regulatory regime. Section 5.3 then explores international experience that might help in identifying ways of improving approaches to consultation and communication in the UK.

5.1 Choice of comparator countries

It seems pertinent to select countries that have followed a similar historic development path to the UK in terms of the evolution of the market economy and the role of the State in regulating private business. This suggests comparison with other Western European states as well as developed free market economies elsewhere in the world. In addition, as the purpose of international comparison is to identify good practice in regulatory practices, there is value in selecting some countries where there is some evidence of good performance in regulatory practice. It is also useful to include a variety of countries in terms of size, global market areas and level of competitiveness.

A useful source of such information is provided by the World Economic Forum (WEF) which publishes league tables of countries on a variety of measures including some that relate to regulatory environment. Table 5.1 shows the ranking of countries chosen on this basis with respect to international comparator indices. The countries selected are all ranked in the top 25 countries in terms of global competitiveness. More significantly, however, all of these comparator countries are more highly ranked in terms of government burden, which implies perhaps that some of their practices might hold useful lessons for the UK.

Table 5.1: Country Comparison league tables: Rankings

Country	Global Competitiveness Index (WEF)	Government Burden (WEF)	Ease of Doing Business Indicator (World Bank)
Australia	20	75	15
Denmark	8	19	5
The Netherlands	7	51	31
New Zealand	25	20	3
Norway	16	70	6
UK	10	83	7
USA	5	58	4

This data has served its purpose in enabling us to select countries for comparison. However, it can be misleading to rely on one data source only. The table therefore also includes data from the World Bank on “ease of doing business” which suggests that UK performance in terms of being “open to business” is, in fact, much more favourable than suggested by WEF. The reason for this difference may lie in the different methodologies used to construct these indicators. The WEF indicator “government burden” is one of the 139 indicators that comprise the broader Global Competitiveness Index. It is based on the results of a questionnaire gathering the opinions of senior business executives in each country. As such, this indicator should more accurately be described as “perceived” Government Burden. On this method, the UK appears lowly ranked. In contrast, the World Bank “ease of doing business” indicator compiled by the World Bank takes 10 specific regulatory factors that bear on the ease of doing business, namely:

1. the strength of investor protection;
- the ease of:-
2. starting a business
3. hiring and firing
4. licensing
5. registering property
6. getting credit
7. paying taxes
8. trading across borders
9. enforcing contracts and
10. closing a business.

The World Bank’s view is that a high ranking means that the government has created a regulatory environment conducive to business operations. Hence it is salient that the UK should do so well on this indicator but not be perceived in the same way by businesses themselves.

Table 5.2: Starting a Business Indicator: 2012

Country	Ranking: ease of starting a business	No. of procedures	Time (days)	Cost (% of income per capita)	Minimum Capital (% of income per capita)
Australia	2	2	2	0.7	0
Denmark	31	4	6	0	25
Netherlands	79	6	8	5.5	50.4
New Zealand	1	1	1	0.4	0
Norway	41	5	7	1.8	19.4
UK	19	6	13	0.7	0
USA	13	6	6	1.4	0

Source: World Bank (2012), Country Tables

Looking in more detail at one aspect of the “Ease of Doing Business” indicator, Table 5.2 lists these countries according to the ease with which one can start a business as measured by the number of procedures, time taken, cost and minimum capital requirements to register a business formally. This evidence runs counter to the

survey-based ranking of the WEF. It suggests, in fact, that at least in terms of starting a business, there are fewer regulatory barriers in the UK compared to the three other European comparator countries.

5.2 OECD Evaluation of the UK Regulatory Regime 2010

The remainder of this chapter focuses on the key question concerning international good practice in regulatory communication to businesses. In this regard, the OECD provides a highly valuable source of information on the policy and practice related to regulatory regimes in different countries. Many of these documents are based on systematic enquiries conducted within different countries which provide a useful degree of comparability. The most recent publication related to the UK was published in 2010 as part of a series of country reports on “Better Regulation in Europe”. This document explains the policy context that has evolved in the UK over the past 20 years including prominently the regulatory reform agenda which has been led by the Better Regulation Executive (BRE) within BIS. The OECD described the vigour, breadth and ambition of the UK as “impressive” and progress with enforcement and ex-ante impact assessment as “ground-breaking” (p.38).

Compared to experience in other countries, some aspects of consultation processes in the UK are praised in the OECD document. The policy of Better Regulation is described as “strongly business oriented” which in the context of this investigation can be regarded as a positive attribute. The authors note that stakeholders are keen to be involved including unions and consumers as well as businesses and Parliament. Consultations involve a wide range of stakeholders including business organisations, academics, trade unions, citizens and parliamentary committees. Information is made available readily on government department websites and businesses are encouraged to propose how regulations can be improved.

There are, however, a number of implied criticisms or words of caution regarding current practice in the UK. The OECD authors suggest that:

- The voice of business might be too strong (relative to the public, groups of citizens or consumers) as business associations can be powerful lobbyists with an ability to influence consultation processes.
- BRE consultations are described as “ad hoc” which implies perhaps that there is not a systematic approach to dealing with consultations on regulatory changes. There is no formal arrangement for the ongoing engagement of social partners in discussion of government policy.
- It is stated that “all departments” of government “put their consultation exercises on a departmental web page” which seems to imply that sources of information on regulation are scattered across different departments possibly with different approaches to communication.

The OECD study also comments on UK experience of communicating regulatory changes. Again there are words of praise for the example of the UK in recognising the need to control the flow of announcements of new regulations by introducing common commencement dates twice a year. BRE is also regarded as an example of good practice in proactive engagement with the business media and business associations and third sector organisations. BRE is commended for requiring its staff to make regular visits to businesses in the course of the year to build relationships and highlight developments. Documentation on regulation is also considered to be effective. BRE produces downloadable guides on aspects of regulation as well as published plans, progress reviews and recommendations for regulatory reform.

With regard to communication regulation, the OECD report signals some areas in need of attention or improvement, some of which reflect concerns raised above in the consultation phase:

- There has been a “rapid succession of developments and initiatives” in policy that, the OECD argues, might have been introduced too quickly and sweepingly without consideration of the need for stakeholders to keep pace with changes;
- There is no clear and integrated vision for communication which has contributed in part to over-optimistic messages about delivery of burden reductions (p. 40)
- There is a need for a more structured approach to the development of e-government at local level in support of business regulation (p. 38)
- Government websites are not always well joined up and “there is no consolidated government (or other) register of regulations” (p. 79)

This critique suggests that there may be value in examining approaches to consultation and communication of regulation in comparator countries under the following aspects:

- How do other countries seek to manage the pressure exerted by business lobby groups during consultation exercises?
- What experience have other countries had in developing more systematic approaches to dealing with business consultation?
- Are there examples of good practice in coordinating regulatory information communication involving different government departments?
- How have other countries managed communication so as to avoid over-optimistic messages about delivery of burden reductions?
- How have other countries applied e-government in support of business regulation?

- What examples are there of publicly available consolidated registers of regulations?

It should be noted that the OECD document published in 2010 will reflect practice and policy prior to this date hence some of these criticisms may be less valid in 2012. There has been a change in government and policy with regard to regulation in the past 2 years. Where appropriate, this has been reflected in the discussion that follows below. The comparisons presented are based largely on material produced by the OECD which has been summarised systematically in Appendix A. The page numbers cited in parentheses refer to the individual OECD country reports as follows:

- OECD Reviews of Regulatory Reform: AUSTRALIA towards a seamless economy (2010)
- Better Regulation in Europe: Denmark (2010)
- Better Regulation in Europe: The Netherlands (2010)
- OECD Economic Surveys: New Zealand (2011)
- Regulatory Reform: Norway - Government Capacity to Assure High Quality Regulation (2003)
- From Red Tape to Smart Tape: Administrative Simplification in OECD Countries, the United States, ch. 8 (2003)

5.3 How do other countries manage pressure from business groups?

OECD documents suggest that the degree of pressure exerted on government by business lobby groups does vary between countries and that the UK has particular pressure in this regard. However, some countries do seem to have more systematic approaches to consultation with stakeholders on regulatory change. One example comes from Denmark which undertakes a considerable degree of consultation when drafting regulations which is conducted on the basis of search for consensus. Their considered approach to consultation strategy means that a wide range of stakeholders are involved and this prevents any one group from exerting too much influence over the process. For example, the OECD (2010) reports that “a long-standing tradition of co-operation exists between government, unions and employers’ organisations in policy formulation and implementation relating to the labour market (approximately 88% of wage earners are members of unions)” (p. 65). There are clearly cultural differences at work in this case, but this experience points to the need for early and transparent consultation.

The significance of systematic consultation has also been recognised by the Australian Government. Since 2007, the Australian Government has recognised that consultation should be widely based to ensure it captures the diversity of stakeholders affected by proposed changes. This includes state, territory and local governments as appropriate and all relevant Australian government departments and agencies. One consequence of wide consultation is that business lobby groups have needed to become more adept in shaping debates and taking account of others’ opinion. A similar effect is produced in the USA where government adopts

the practice of “negotiated rulemaking” which brings together representatives of government with the various affected interests in a cooperative effort to develop regulations that are acceptable to all those involved.

5.4 What experience is there in developing systematic consultation?

From the above discussion, it would appear that more systematic approaches to dealing with business consultation can reap rewards in terms of improved quality in the dialogue. As already mentioned, Denmark appears to have a more cooperative tradition of consultation with businesses and stakeholders more widely. This extends into greater transparency in processes. Once the consultation period is over, the government publicises all written comments which have been received and takes time to show in detail how comments have been taken into account.

These same principles have been debated in the context of Australia where government recognises the need for the process to be *accessible* and *transparent* and for consultation practice to be *evaluated* and reviewed continuously. The process is facilitated by “a business consultation website (that) provides a facility for government agencies to link to current consultation activities. Businesses and individuals are invited to register themselves and identify their areas of policy interest” (p. 107).

OECD documents also highlight the experience in the Netherlands with regard to the effectiveness of consultation and communication. The Regulatory Reform Group (RRG) operates within the context of a formal Communication Plan which provides for a range of communication channels to capture business views and to communicate results. The RRG’s Communication Plan has an initial budget of 1m euro. The RRG Communication Plan’s primary target is to answer the question “What’s in it for me?” with special attention on communicating directly with SMEs. There is recognition of the need to communicate what companies want to know rather than be “sender focussed.” The various communication channels of the RRG Communication Plan comprise:

- one external website for all communication between the RRG and the business community. Businesses can submit their complaints regarding regulation including nuisance factors to it. The issues are passed on to the relevant ministry which must answer within 4 weeks on what has been done.
- Regular discussions are held with representative organisations.
- The compliance costs monitor and perception monitor, carried out by the RRG, provide the programme with new issues.
- The Minister and State Secretary of the Ministry of Economic Affairs have “adopted” companies with the goal of better understanding the day-to-day problems of companies.
- Brochures, fact sheets on specific subjects have been produced for intermediaries such as accountants.
- “Regulatory navigators” provide business with information on all the regulatory obligations of their sector.

- Business “Ambassadors” are used to explain and discuss important developments to the business community and to other stakeholders and opinion formers. The Wientjes Commission is the voice of business and it also communicates achievements in regulatory reform to it. The government plans to evaluate the effectiveness of the Wientjes Commission, regularly.

Experience in Norway is also celebrated. The Ministry of Trade and Industry is responsible for reducing and monitoring regulatory burdens on businesses. It offers support and guidance to Ministries preparing regulations with impacts on businesses. A Business Impact Analysis Task Force has been established to engage in ongoing dialogue with business on how to optimise businesses’ regulatory obligations. Since 2002, the Ministry has operated through a *Forum* of business organisations to provide input on how to simplify and reduce businesses’ regulatory burdens.

5.5 Are there good examples of coordination of information?

The challenge of communication *within* government and coordination of information flows emanating from separate government departments is also not unique to the UK. In Australia, in 2006, for instance, the Banks Review set in place reform initiatives to “address overlapping and inconsistent regulation among the layers of government” (p. 100). There does not seem to be one solution to this problem as there are examples of both centralised and decentralised models of communication.

In Denmark, the OECD concludes that communication is well managed and accessible even though communication is fairly decentralised across departments. The OECD observes that “ministries responsible for implementing Better Regulation policies (such as administrative burden reduction) are accountable for results through regular reports to the Prime Minister” (p. 48). The Ministry of Economic and Business Affairs is responsible for the government’s Better Regulation programme in relation to business but clearly needs to coordinate its external communications with other departments.

In contrast to this, in the Netherlands, there is a dedicated unit of officials at the centre of government to support, monitor and steer the process of better regulation, the Regulatory Reform Group (RRG) and an independent advisory body (ACTAL). The RRG reports to the state secretaries for Finance and Economic Affairs and through them to the cabinet. Regular reports to the parliament are made on the main programmes and posted on the parliament’s website. It would seem that both systems can be made to work if communication plans are well-designed and understood.

In Norway, The Brønnøysund register plays a big part in the efforts to avoid the possibility of contradictory messages emanating from different sources within government. The register provides a continuously updated record of regulatory obligations imposed by government on businesses as well as estimates of administrative compliance cost. This central function provides coordination of

reporting obligations of business and industry and ensures that businesses rarely need to report the same information more than once.

5.6 How do other countries manage expectations?

Communicating regulatory requirements clearly needs to embrace management of expectations about impacts. Over-optimistic claims can clearly have damaging effects on business morale and negative consequences for business trust in government communications. Despite the obvious downside, over-optimism about reducing burdens can sometimes be countered by stimulating debates about *necessary* regulatory costs and the limitations of government. This may entertain political risks, but it can also add credibility to government communication and somewhat paradoxically improve levels of trust.

There are numerous examples of practice in countries where governments have addressed the burden issue head-on. In Denmark, there is regular monitoring of progress and a barometer of burdens displayed on a dedicated web-site. In 2007, the government initiated the Burden Hunters Project – a more systematic approach towards the reduction of what were described as “irritation” burdens with ministries visiting businesses to get information on their experiences. Use of this term “irritation” signals that some regulatory burdens are necessary and should be expected.

The OECD commentary on practice in Norway also links “realistic” assessment of regulatory burden with the effectiveness of consultation based on consensus-building and broad participation. There is strong mutual trust between policy-makers, the civil service and citizens which underpins regulatory reform and regulatory policies. As a consequence, the atmosphere is less confrontational and governments are less inclined to seek to balance negative views by announcing over-optimistic claims about achievements. “In many policy areas, performance and high compliance rates are enabled not by enforcement, control or competition, but because policy-makers and regulators, in return for “fair” and “agreed-upon regulations”, can expect the regulatees to comply” (p.5). This implies also that businesses do not feel over-burdened by regulation.

Finally, the USA seeks to avoid loose generalisations about impacts and achievements by developing more sophisticated models of costs and impacts involving the concept of “tiering”. US mechanisms for measuring cost are much more targeted in terms of tracking impacts by state, local government, businesses size and sector. “Tiering” involves designing regulations to account for relevant differences among those being regulated. By tiering, an agency can alleviate disproportionate burdens and make more efficient use of its limited enforcement resources. With this level of information available, governments are less likely to make sweeping generalisations that can easily be challenged by one group or another.

Another key to managing the expectation of burden reduction may be to look at **alternatives** to formal regulation. This is actively pursued in several countries. For example, in Australia, “evidence of use of co-regulation, self-regulation and education suggest that Australia does not overly use prescriptive regulation” (p. 110). In the USA, Federal agencies are required to consider alternatives to “command and control” regulation such as performance standards, marketable permits and “environmental contracting.” The OECD considered Norway’s use and development of alternatives to regulation to be extraordinary. They include economic instruments eg. green taxes, deposit-refunds and subsidies, voluntary agreements (eg. recycling) as well as self-regulation and since 1995, there has been a requirement to assess the potential use of alternative instruments as part of regulatory process.

5.7 How do other countries use e-government in regulation?

There is considerable interest internationally in application of IT to business regulation. It is fair to say that the most advanced systems tend to involve financial regulation. In Australia, for example, the OECD believes that Standard Business Reporting (SBR) will reduce the reporting burden by making it faster, cheaper and easier for businesses to report their financial information to Australian state and territory governments. The system effectively removes unnecessary and duplicated information from government forms and assists businesses by utilising business software that automatically pre-fills government forms. In this way, compliance can more readily be interfaced with business practice in general making financial reporting to government a by-product of natural business processes. (OECD Reviews of Regulatory Reform: AUSTRALIA Towards a Seamless National Economy).

In the USA, interactive electronic tools are used by agencies to give advice to businesses about how to be compliant with federal requirements. The growth of one-stop shops on government services and many technology driven mechanisms (eg. electronic filling and reporting) have, it is argued, reduced administrative burdens on businesses. First.Gov is now the web site that consolidates 20,000 government web sites into one, providing users with an easy, one-stop access to all government resources.

5.8 Are there examples of consolidated registers of regulations?

Consolidated registers of regulations are actually quite common in our comparator countries. Publicising these lists can of course attract adverse publicity and potential ridicule, but this appears to have been avoided in these cases. In New Zealand, all Acts, Bills and Regulations can be freely accessed on the government web-site <http://www.legislation.govt.nz/about.espx>. In Australia, “primary laws and subordinate legislation are accessible from a database on the ComLaw website maintained by the Attorney General’s Department” (p. 107). Departments are also required to publish and maintain on their website an Annual Regulatory Plan “which details regulatory changes affecting business from the previous financial year and informs about activities planned for next year” (p. 108).

In Norway, the Brønnøysund Register centre has 14 registers with information that includes: businesses' reporting obligations; and the permits and licences that are required for businesses. All legislation in force is available from a database accessed by an easily accessible web-site. The OECD reported that "considerable investment in capacities to review and simplify existing regulations has resulted in a well-consolidated, easily accessible and readable stock of national laws and regulations" (p. 38). In the USA, the Office of Management and Budget (OMB) publishes, in the Federal Register and on the internet, an annual list of regulations that apply to small businesses.

6. BUSINESS PERCEPTIONS OF REGULATORY BURDEN: CONCLUSION

This study has investigated business perceptions of regulatory burden in the UK. Recent political comment has drawn considerable attention to this issue which has been intensified by the economic downturn and its impacts on business growth and survival. The debate surrounding regulatory burden on business has also been conducted in the media spotlight which not only reflects the views of business but can also exercise considerable influence over the strength of feeling about this issue.

The research reported in this document was constructed around the general hypothesis that the manner in which regulatory changes are reported or communicated to the business community tends to exaggerate the effects of regulatory burden leading to an unrealistic perception of the actual burden on businesses. The methodology was therefore designed to gather available evidence from existing research, supplemented by case studies and international comparisons based on secondary sources to establish the extent to which business perceptions differ from reality. The findings of these investigations are summarised in turn.

6.1 Key Findings

Objective 1: To identify the theoretical channels for information dissemination

This objective was addressed using a systematic review of existing academic and policy literature in relation to regulatory burden and the communication of regulatory requirements to business. It became apparent in conducting the literature review that identifying the “actual” regulatory burden against which to compare business perceptions is problematic. There are three points of importance to make on this issue.

First, while there are various methodologies in use that attempt to measure “regulatory costs” including those developed by BIS as part of Regulatory Impact Assessment methodology, there is no clear consensus in the literature about the nature and extent of these costs. Cost models tend to be based on estimates of “staff administrative time” and “management time” consumed in monitoring and implementing regulatory requirements combined with the cost of accessing advice and external assistance in achieving compliance. It is much more difficult, however, to measure “opportunity costs” which vary considerably depending on circumstance.

Secondly, and perhaps more significantly for this study, the concept of regulatory burden embraces far more than the direct and even indirect quantifiable costs of compliance. “Burden” is not synonymous with “cost”. Our review of the literature reveals that definitions of this term include variously less easily quantifiable aspects such as the anxiety generated by the threat of litigation, increased complexity of legislation, uncertainties about regulatory requirements, worries about not keeping abreast of current legislation, the impact of the increased pace of regulatory change on the need for external advice and support, and the negative psychological effects on businesses of some legislation that is perceived as “unfair” or poorly targeted.

Under this definition, it is even possible for regulatory “costs” to reduce while at the same time, the “sense of burden” actually increases, particularly at times when regulatory changes are introduced rapidly.

Thirdly, our review of the literature also shows that sources of regulatory burden extend well beyond the immediate effects of UK government legislation. The regulatory landscape is complex including international regulation, co-regulation and self-regulation. Surveys of business perception of regulatory burden available to us did not distinguish between these various categories of regulation. It is by no means certain, therefore, that attempts to reduce the cost to businesses of UK national regulations will translate into lower overall perceptions of regulatory burden. This will especially be the case where formal regulation is replaced by extensions to self-regulation.

While the literature on business regulation and associated costs and burdens is fairly wide-ranging across academic disciplines (finance, economics, business and environment) there is very little that specifically examines the process of communication of regulatory requirements. Comments on such processes tend to be tangential to studies designed for other purposes. Even so, there are useful research findings on “trusted” sources of regulatory information used by SMEs. These demonstrate the importance of personal communication with advisers, business contacts and accountants as a means of verifying information obtained from websites and media reports.

In the absence of an existing model of regulatory communication, an attempt was made to develop such a model by reviewing literature on models of communication in general. This literature is extensive but based around a core of key concepts related to communication channels and potential sources of “information failure” associated with at least three aspects: sender failure; channel inefficiencies and recipient failure. Attention is given to the ways in which media channels in particular can lead to messages becoming distorted, softened, intensified or confused.

Simple communication models, however, tend to be fairly linear and do not fully reflect the complex social interaction that occurs over time as regulations are proposed, debated, challenged and enacted. The regulation dialogue is conducted in a very *open* social system where there are multiple channels of information, several senders and many recipients all seeking to “decode” the same (or similar) information. This creates complexity for communication of regulatory requirements where recipients are exposed to a wide range of influencers besides the formal communication. Communication of regulations, we conclude, is more about *managing a social process* rather than simply conveying information.

A bespoke model has been defined that reflects the way in which regulatory debates evolve over time. The model assumes that business representatives and regulators are often involved in “co-production” of messages through extensive consultation commonly associated with regulatory change. Pre-existing regulation, former experiences and discussion generated by consultation exercises are presumed to

create a “memory pool” of associated knowledge, thoughts and beliefs that condition how the new regulatory message is received. The “efficiency” of communication will be affected by three aspects: a) the way in which government (the sender) encodes the message; b) the “noise” generated by media channels; and c) the way in which recipients are affected by the build up of expectation and the way in which they engage in “scanning” of media sources.

The model assumes that there are three phases of regulatory communication: pre-consultation; consultation and regulation stage. While these phases are clearly defined in terms of specific announcements over time, the social processes that influence business perceptions are continuous and cumulative. This analysis emphasises that the nature of this social process is central to understanding business perceptions of regulatory burden.

Objective 2: To explore the different sources where businesses obtain information regarding regulatory obligations and to evaluate the veracity of these sources

The literature review has already provided some insight into the sources of information available to businesses. The range of sources is considerable, and it is unlikely that businesses rely on any single source of information. Businesses are exposed to comment and debate surrounding regulation even at times when they are not actively seeking it. Sources will include leaflets from official government sources, advertising from consultancies, e-bulletins circulated by business organisations, chambers of commerce; trade bodies; ACAS; Citizens Advice; Universities; peer groups; suppliers and banks as well as media reports.

Managers of businesses will also proactively seek such information through web searches, telephone enquiries and personal contacts with professional advisers, colleagues and business networks. The literature review suggests that those sources that involve face-to-face contacts with relevant people are most often trusted by businesses. There is, however, complexity in finding a comprehensive single source of trustworthy information about regulation across the spectrum. In relation to impacts on perceptions of regulatory burden, as reflected in the model of regulatory communication developed in chapter 2, these various sources will have a cumulative effect over time.

In order to understand the impacts of these interactions on business perceptions of regulatory burden, a case study approach has been applied. Four case studies for this research were:

- The Employment Red Tape Challenge
- The Health and Safety Red Tape Challenge
- The Equalities Act 2010
- The EU Working Time Directive 2011.

The rationale for the choice of cases is based upon providing a balance of both deregulatory and regulatory measures, EU and domestic. For practical purposes, the

range of media choices was restricted to selected tabloid newspapers (The Sun and The Daily Mail) and The Times as well as The BBC and various Trade Associations. These were selected in order to capture the range of headlines to which different audiences are exposed including tabloid and broadsheet readers as well as BBC viewers and business groups involved in trade associations.

The body of the report documents details of the way in which these four aspects of regulatory change were reported in the media. While these specific impacts are of interest, this final section of the report seeks to distil the general conclusions that can be drawn from this information about the likely impact of coverage on business perceptions of regulatory burden. The key conclusions are as follows:

- Reports on specific pieces of regulatory change usually appear over an extended period of time and are not just limited to the day of announcement. Some of the most critical and potentially distorted reporting tends to occur in advance of an announcement and in the long tail of commentary that usually follows.
- The case studies document very clear examples of the way in which comment stimulated by consultations and debates surrounding the decision-making process can generate considerable “media noise” and influence expectations.
- The final announcement of regulatory changes will often be followed by an extended period of further “media noise” as the reactions of recipients and key influencers are variously reported. This tail of reactions can often involve reports of unfair (and often perverse) “unintended” consequences of regulatory change.
- In all four case studies, simple “factual” reporting about the nature and purpose of regulation tends to be limited to websites and material derived from press releases on or close to, the day of announcement. Our investigation has not revealed widespread misreporting of the basic facts of regulatory change. Rather media reports tend to be constructed around nuances that attract public attention and in particular, the negative or unintended consequences of regulation.
- The most persistent form of reporting that we have observed involves what appears to be negative comment that draws attention to unintended consequences. This type of reporting builds up an impression that regulations only partially achieve their purpose and this, in turn, adds fuel to business perception of unnecessary regulatory burden.
- One implication of this is that business costs may be reduced by “simplifying” regulation, but if targeting is compromised, business perception of unnecessary regulatory burden may well increase.

Objective 3: To assess the results from business perception surveys

As the case studies illustrate, surveys of business’ perceptions are generally conducted within a social and economic arena that is highly charged and often

influenced by party politics and attitudes towards European integration. Various national and international bodies conduct surveys of businesses' perceptions of regulatory burden. With a few exceptions, the evidence from recent surveys in the UK points to a perceived increase in the burden associated with compliance with regulation. The IoD and the FPB both report increases in time spent on regulation.

There is a suggestion that the UK has become much more active in releasing information about regulatory requirements and changes. Arguably, this has tended to stimulate a public debate and thereby increase awareness in the business community of the real costs of regulation at a point in time when businesses are struggling in an economic downturn.

It seems plausible to argue that increased perception of regulatory burden in the period from 2007 to 2010 may have as much to do with squeezed profit margins as with actual regulatory costs which represent significant fixed costs to businesses at a time when revenues for many are falling or uncertain. Some broad generalisations can be made on the basis of available evidence.

- Evidence appears to support the conclusion that smaller businesses experience greater regulatory burden than businesses in general. The costs of compliance fall more heavily on internal management time in smaller businesses.
- There are also variations between sectors which partly reflect differences in business size structure. Government data appears to show that perceptions of high regulatory burden are more widespread in motor, agriculture, manufacturing and wholesale sectors but lowest in utilities, public administration, business and professional services.
- There are also sectoral differences in the propensity to “buy-in” support for addressing regulatory requirements. Where scale economies enable this, internal administrative burden can be reduced. Arguably, increased outsourcing could increase perceived cost but simultaneously reduce the sense of burden.
- The time spent dealing with the burden and potential burden of regulations has an opportunity cost. In the sectors where the majority of this burden is carried internally this will have a larger increase on the business burden of regulations than in sectors where the ‘burden’ is outsourced.
- Keeping up-to-date with changes and new regulations and the knock-on effects of having to update internal policy documents are aspects that are becoming more time-consuming. This offers some support to the hypothesis that an increasing pace of change associated with reform of regulation can actually be a source of regulatory burden in the short term.
- Contrary to most domestic surveys, international comparisons suggest that the regulatory burden in the UK has not worsened in comparison with other countries.

- Across all sectors, evidence suggests that compliance with employment law and health and safety laws generate the greatest amount of time cost per month. However, costs associated with environment and waste management as well as industry standards are also high in construction and manufacturing.
- Changes to regulations seem to have a much more widespread negative effect on agriculture, transport and construction and to a lesser extent on wholesaling. This adds considerable weight to the conclusion that while improved or simplified regulation is to be welcomed, rapid changes required to achieve this are likely to create short term increases in the perception of regulatory burden.

Objective 4: To explore examples of international best practice in managing dissemination of regulatory requirements

Analysis presented in previous chapters suggests that the management of relationships with business stakeholders in the context of regulatory regimes is usually highly complex, multifaceted and potentially confrontational. In these circumstances, there are evident challenges for government in terms of consultation on future intentions as well as communication of regulatory changes. The UK, however, is not alone in facing these challenges. In chapter 5, we explored experiences of other countries in order to distil international good practice in this aspect of policymaking. The analysis is based on reviews of regulatory environments in the UK and a number of comparator countries.

The review published in 2010 identifies many areas of strength in the UK regulatory environment:

- Approach to regulation is commended for its vigour, breadth and ambition
- Progress with enforcement and ex-ante impact assessment are described as ground-breaking
- Policy of Better Regulation is described as “strongly business oriented”
- Information is made available readily on government department websites and businesses are encouraged to propose how regulations can be improved
- UK was an early adopter of the practice of common commencement dates twice per year
- BRE has good practice in proactive engagement with the business media and business associations and third sector organisations
- BRE is commended for requiring its staff to make regular visits to businesses in the course of the year to build relationships and highlight developments
- Documentation on regulation (downloadable guides, published plans, progress reviews) is considered to be effective.

This document, however, also commented on a number of weaknesses or aspects where improvements could be made in the UK. Examination of OECD reviews conducted in comparator countries indicates examples of good practice in communication and consultation that could inform policy debates in the UK.

Benefits of systematic communication and consultation

OECD documents suggest that the degree of pressure exerted on government by business lobby groups varies between countries and that the UK has particular pressure in this regard. OECD reviews suggest that some countries (Denmark, Australia and the USA) appear to have much more systematic approaches to consultation with stakeholders on regulatory change and that this tends to prevent any one group from exerting too much influence over the process. More systematic approaches to dealing with business consultation also improve the quality of the dialogue.

The UK regulatory environment has become more open in recent years. However, several other countries (Denmark, Australia, Netherlands and Norway) are not only more systematic but also more transparent throughout the whole regulatory cycle from consultation to final announcement. Feedback from consultations are publicised routinely as well as the results of evaluations. Communications Plans appear to be more highly developed in these countries which stimulates new ideas such as the nomination of business ambassadors and innovations in e-government (compliance cost monitor, business perception monitor).

Coordination of communications within government

The challenge of communication *within* government and coordination of information flows emanating from separate government departments is also not unique to the UK. There does not seem to be one solution to this problem as there are examples of both centralised and decentralised models of communication. In Denmark, the OECD concludes that communication is well-managed and accessible even though communication is fairly decentralised across departments. In contrast to this, in the Netherlands there is a dedicated unit of officials at the centre of government to support, monitor and steer the process of better regulation, the Regulatory Reform Group (RRG) and an independent advisory body (ACTAL). It would seem that both systems can be made to work if communication plans are well-designed and understood.

Managing expectations

Communicating regulatory requirements clearly needs to embrace management of expectations about impacts. Over-optimistic claims can clearly have damaging effects on business morale and negative consequences for business trust in government communications. Despite the obvious downside, over-optimism about reducing burdens can sometimes be countered by stimulating debates about *necessary* regulatory costs and the limitations of government. This may entertain political risks, but it can also add credibility to government communications and somewhat paradoxically improve levels of trust. Governments also appear to be less prone to making overstated claims about reducing regulatory burden where consultation is systematic, transparent and less confrontational (as in Denmark), in

circumstances where regulation is better targeted (USA) and where alternatives to formal regulation are actively pursued (Australia and the USA).

E-government

There is considerable interest internationally in application of IT to business regulation. It is fair to say that the most advanced systems tend to involve financial regulation. In Australia, for example, the OECD believes that Standard Business Reporting (SBR) will reduce the reporting burden by making it faster, cheaper and easier for businesses to report their financial information to Australian state and territory governments. The system effectively removes unnecessary and duplicated information from government forms and assists businesses by utilising business software that automatically pre-fills government forms. In this way, compliance can more readily be interfaced with business practice in general, making financial reporting to government a by-product of natural business processes. (OECD Reviews of Regulatory Reform: Australia: Towards a Seamless National Economy).

In the USA, interactive electronic tools are used by agencies to give advice to businesses about how to be compliant with federal requirements. The growth of one-stop shops on government services and many technology-driven mechanisms (eg. electronic filling and reporting) have, it is argued, reduced administrative burdens on businesses. First.Gov is now the web site that consolidates 20,000 government web sites into one, providing users with an easy, one-stop access to all government resources.

Consolidated registers of regulations

Finally, consolidated registers of regulations are actually quite common in the comparator countries. Publicising these lists can of course attract adverse publicity and potential ridicule, but this appears to have been avoided in these cases (New Zealand, Australia, Norway and USA). In these countries, legislation in force is made available from databases that can be accessed on-line. Websites are well-consolidated, easily accessible and stocked with national laws and regulations.

6.2 Implications for Regulatory Communication in the UK

The key findings in this study are as follows:

- It is important to distinguish between regulatory cost and burden. Regulatory burden is a wider phenomenon that embraces subjective feelings and perceptions of businesses regarding the impacts of regulation. Regulatory burden, therefore, is fundamentally about perception and not separate from it.
- Communication is not a simple linear process but involves a complex social interaction between various stakeholders over an extended period of time.

- Businesses may trust some sources more than others in terms of the detail of compliance, but their sense of burden will be affected by a multitude of sources working together. Identifying sources that they trust and working within these may increase awareness of compliance but not reduce feelings of burden.
- Media noise on this topic is considerable. There does not appear to be widespread misreporting of regulatory requirements. Rather, the most persistent noise relates to negative or unintended consequences. This fuels the sense of regulatory burden by emphasising weaknesses in regulation and portrayal of regulation as unnecessary.
- Simplifying regulation may reduce costs of compliance, but evidence suggests that this is unlikely to influence opinion surveys if this process leads to very rapid announcements of changes and less sophisticated regulations that provide opportunities for critics to focus on unintended consequences.
- Available evidence is consistent with the interpretation that increased perception of regulatory burden in the period since 2007 may have as much to do with squeezed profit margins as with actual regulatory costs which represent significant fixed costs to small businesses at a time when revenues for many are falling or uncertain.
- An integrated approach to communication which engages a wide range of interested parties is consistent with the philosophy of open government. However, this can spread anxiety through a continuous sense of impending new burdens.
- Many aspects of regulatory practice in the UK stand up well to international comparison. The UK system has breadth, ambition, a strong focus on business and displays good practice in engaging with business associations and third sector organisations. Some comparator countries, however, appear to have developed more effective approaches to the following:
 - Systematic communication and consultation with all stakeholders across the whole of the regulatory cycle
 - Coordination of communications within government between separate government departments
 - Managing expectations of regulatory impacts on the business community
 - Extending the process of e-government into regulation and regulatory reform.

APPENDIX: Country comparison table on regulatory consultation and communications

	Australia (edb ranking 15 th , gc 20 th , gb 75 th)	Denmark (edb ranking 5 th , gc 8 th , gb 19 th)
Degree of consultation	One of the government's 6 principles of good regulatory practice is that "there needs to be effective consultation with regulated parties at the key stages of regulation making and administration" (p. 101).	Considerable, on the basis of search for consensus and compromise and based on trust.
Form of consultation	Ministers or agencies hold regular stakeholder forums. Discussion also takes place through discussion papers and White Papers being published. "A business consultation website provides a facility for government agencies to link to current consultation activities. Businesses and individuals are invited to register themselves and identify their areas of policy interest" (p. 107). The government is testing a number of online consultation mechanisms to support the regulatory reform agenda and to allow the community to comment on regulatory costs.	Formal public hearings and consultation before draft law tabled before parliament. Possibility for comment on dedicated websites in preparation for larger reforms. Ministries usually consult at a very early stage in the preparation of regulations. Ministries may appoint preparatory committees bringing together a wide range of stakeholders and interested parties. Once the consultation period is over, the government publicises the written comments which have been received and shows how they have been handled.
Communication on regulation	"Primary laws and subordinate legislation are accessible from a database on the ComLaw website maintained by the Attorney General's Department" (p. 107). Departments are also required to publish and maintain on their website an Annual Regulatory Plan "which details regulatory changes affecting business from the previous financial year and informs about activities planned for next year" (p. 108). Where possible, there is a common commencement date for new regulation to provide greater certainty for business.	Initiatives as part of the government's De-bureaucratisation Plan for Business Regulation include informing companies of specific regulatory, ICT and other changes that are intended to make life easier. Also launched a "LET Administration" (EASY Administration) label to improve the visibility of its initiatives. Government publishes action plans on the internet. Communication is well-managed and accessible. Strong use of IT and well-developed business and citizens portals for access to information and services.
Compliance	The development of risk-based compliance strategies is undertaken in some sub-jurisdictions in Australia. Australian regulators use a variety of compliance tools including significant sanctions such as pecuniary penalties and jail.	Inspection agencies have accumulated a thorough knowledge of companies which has facilitated the development of a risk-based approach to regulatory enforcement. Hence, their strategy is one of "risk-based controls, reinforced sanctioning and increased guidance to business to promote higher compliance" (p. 110). The appeal system rests on complaint boards within ministries which avoids overcrowding the courts although decisions can still be appealed in court. Compliance rates appear to be

		high.
Rationalisation of existing regulations and reduction of administrative burden on businesses	In 1996, each jurisdiction examined its entire stock of laws and scheduled for review around 1,800 pieces of legislation. By 2004, nearly ¾ of priority areas had been completed and legislation reformed accordingly. Ministers are required when proposing new regulations to consider regulations that can be removed in accordance with the “one in one out” principle. The administrative burden imposed by federal regulation is assessed ex-ante in the RIS process. “In 1996, the Government commissioned the Small Business Deregulation Taskforce made up of representatives from the business sector to review and report on measures to reduce the compliance and paperwork burden on small businesses by 50%” (p. 99). The focus was on better processes.	Government has pursued action plans for the reduction of administrative burdens since 2002 and gradually focussed them on businesses. Uses the SCM to measure administrative burdens and committed to a reduction of 25% net between 2001-10. Regular monitoring of progress and a barometer of burdens displayed on a dedicated web-site. In 2007, the government initiated the Burden Hunters Project – a more systematic approach towards the reduction of irritation burdens with ministries visiting businesses to get information on their experiences.
Progress on reduction of administrative burdens	The OECD reports that “a key challenge for the future is establishing a mechanism for the assessment of a baseline measurement of regulatory costs, against which the Minister for Finance and Deregulation can report to Cabinet on the government’s commitment to no net increase in the regulatory burden” (p. 103). “Evidence of use of co-regulation, self-regulation and education suggest that Australia does not overly use prescriptive regulation” (p. 110). “A report on the administrative compliance costs of business regulations concluded that the total costs of complying are generally low” (p.116). “The time costs of registration were low and fees and charges represent the most significant cost to business” (p. 116). There is still room for improvement in the use of ICT – “more than 60% of regulators provide information and application forms online, but fewer than 20% are able to receive application forms or allow licences to be renewed online” (p. 117).	15% reduction 2001-08 and the estimated cost of administrative procedures on business decreased from 2.3% of GDP to 1.9% in 2008. Danish officials estimate that the administrative costs for businesses are a lower share of GDP in Denmark and estimate that 40% of existing administrative costs borne by businesses emanate from EU-origin regulations. New regulations tend to catch up with efforts to prune back existing regulations. Reflects new policy areas, EU requirements and requests by society.
Success Factors	Goal of continuous improvement in regulation. Commitment to no net increase in the regulatory burden arising from new federal regulation.	Culture of consultation, consensus and trust.

	The Netherlands (edb ranking 31 st , gc 7 th , gb 51 st)	New Zealand (edb ranking 3 rd , gc 25 th , gb 20 th)
Degree of consultation	Slow progress on modern and open forms of consultation for all regulations. "Consultation is not an issue that is covered formally in the current impact assessment process for the development of new regulations" (p. 64).	There would appear to be little consultation except on a few forms of regulation eg. "Tax Issues Papers."
Form of consultation	A policy to boost transparency and consistency of consultation approaches on the development of new regulations, via the internet, is under development (2010). Formal advisory bodies work with the ministries on policy issues. "The search for consensus though promotes regulatory complexity as additional details are added to balance competing interests" (p. 63).	The Canterbury Earthquake Response and Recovery Bill was rushed through the House in 1 day and gave government the power to alter the effect of almost any piece of legislation on the statute books. "This is exacerbated by a very "hands on" approach from some government ministers, who are often involved in regulatory decisions and enforcement at a very detailed level" (p. 116). "Although consultation on new regulatory proposals generally occurs, it is rare for legislation to be reviewed on the basis of feedback. The RIA process needs to become more rigorous and an integral part of policy development and the culture of government departments" (p. 118).
Communication on regulation	Communication and public documents on Better Regulation are focussed on specific programmes. Reports are available on the government's website and circulated directly to stakeholder networks. The most prominent communication strategy is the one established by the Regulatory Reform Group (RRG) to convey and discuss developments in the programme to reduce administrative burdens on business. The RRG Communication Plan provides for a range of communication channels to capture business views and to communicate results. Business "Ambassadors" are used. The introduction of Common Commencement Dates (CCD) is a very positive step forward.	RIAs are posted on The Treasury's website: www.treasury.govt.nz/publications/informationreleases/ris at the time that the regulatory proposal is put to Parliament. A Regulatory Impact Statement (RIS) summarises the RIA that has been undertaken, the consultation undertaken and the proposed arrangements for implementation and review. All Acts, Bills and Regulations can be freely accessed on the government web-site http://www.legislation.govt.nz/about.e.spx
Compliance	"The Netherlands was engaged in pioneer work to ensure that compliance and enforcement are considered at the start of the rule-making process" (p. 107). Regulators must ensure, before adopting a regulation, that they will be able to	The Commerce Commission is the principal enforcer of competition law but it is suggested by the OECD that a wider range of interventions would be beneficial "such as remedial orders, the payment of damages and/or compensation and public warnings, in

	adequately enforce it. A “Practability and Enforcement Assessment” is part of the Dutch Impact Assessment process. The country also developed the “Table of Eleven” determinants of compliance, which has been used by other countries. A reduction of state supervision forms part of their plan to reduce administrative burdens on businesses.	order to resolve cases more quickly and free up resources for new investigations” (p. 119).
Rationalisation of existing regulations and reduction of administrative burden on businesses	There is no rigorous approach to assess the ex-ante effects of new regulations. Neither is there for ex-post evaluations of BR policy. The Administrative burden reduction programme for businesses was launched in 2003. The Netherlands were pioneers in the development of a measurement system for administrative burdens, originally labelled MISTRAL which gave rise to an international brand (the Standard Cost Model – SCM).	A Regulatory Quality Team within the Treasury has been set up to help the government set up a programme for reviewing existing regulation. Regulatory uncertainty is a problem with some ad hoc policy changes occurring without any formal analysis of the associated costs and benefits.
Progress on reduction of administrative burdens	There is a 25% net reduction target for 2011, additional to the reductions that have already been achieved over the last few years. The 2007 OECD/World Bank Report said that the Dutch model had been an inspiration to other countries. Despite this, there have been negative business reactions to burden reduction programmes due to i) time lags between promised results and delivery ii) slowness to identify and address key issues for business.	The administrative burden associated with starting a business has remained low in NZ. However, the broader estimate of barriers to entrepreneurship in the Product Market Regulation indicators has increased slightly since the early 2000’s, whereas virtually all other OECD countries have made solid progress in this domain” (p. 115). NZ is now in the lower third of OECD countries on barriers to entrepreneurship.
Success Factors	The role of the RRG.	Despite the fact that the regulatory reform system in NZ is less progressive than in the UK, the burden of government regulation does not appear to be onerous on businesses.

	Norway (edb ranking 6 th , gc 16 th , gb 70 th)	United Kingdom (edb ranking 7 th , gc 10 th , gb 83 rd)
Degree of consultation	Much regulatory decision-making is not sufficiently based on empirical evidence but rather on consensus among stakeholders. RIA's are not given much emphasis. Regulatory policies do not enjoy strong broad-based political support because they are fragmented across ministries.	Policy on Better Regulation (BR) is strongly business orientated. The OECD report said that there was some concern that the voice of business might be too strong as business associations can be powerful lobbyists with an ability to influence consultation processes. The OECD peer review team heard that unions, consumers and parliament would like greater interaction with the Better Regulation Executive (BRE).
Form of consultation	Public consultation on draft regulations is mandatory and copies are available via the internet or as paper copies upon request. Informal consultation with selected partners often takes place taking into account expert opinions and assessments of potentially affected parties at the earliest possible stage. Full impact assessments of regulation proposals must be conducted.	Ex-ante impact assessments are done for all policy proposals. The BRE engages in ad hoc public consultations on specific BR policies, which draws responses from business organisations, academics, trade unions, citizens and parliamentary committees. Consultations should normally last for at least 12 weeks. "All departments put their consultation exercises on a departmental web page" (p. 82). The BRE is keen to have a 2-way dialogue with stakeholders and on its website, it encourages businesses to propose how regulations can be improved.
Communication on regulation	The Brønnøysund Register centre has 14 registers with information that includes: businesses' reporting obligations; and the permits and licences that are required for businesses. All legislation in force is available from a database accessed by an easily accessible web-site.	"The UK was ahead of other countries in the introduction of common commencement dates," twice a year, for new regulations (p. 78). The OECD report states that websites are not always well joined-up and "there is no consolidated government (or other) register of regulations" (p. 79). BRE has an ongoing programme to target business media and business associations for coverage on BR and to build relationships with key journalists. BRE staff are required to make several visits to businesses +/- or public and third sector organisations during the course of a year, to build relationships and highlight developments and successes in BR.
Compliance	Government guidance stresses the need to consider compliance issues	The Hampton Report (2005) was a milestone in changing attitudes to

	when preparing regulations. Where compliance with regulations is poor, more stringent enforcement of the old regulations rather than the introduction of new ones is recommended. The level of compliance appears to be high. "Each ministry via its regional or local branches, is responsible for monitoring compliance and enforcing the laws and regulations under its portfolio" (p.22).	enforcement, toward a risk-based approach. Resources released from unnecessary inspections are to be redirected towards advice to improve compliance. "When new regulations are being devised, departments should plan to ensure enforcement can be as efficient as possible" (p. 49). The Regulatory Enforcement and Sanctions Act 2008 gives regulators new civil sanction powers, as an alternative to criminal prosecution when there is not a proportionate response.
Rationalisation of existing regulations and reduction of administrative burden on businesses	The OECD reported that "considerable investment in capacities to review and simplify existing regulations has resulted in a well-consolidated, easily accessible and readable stock of national laws and regulations" (p. 38). However, government assessments of the expected effects and implementation of regulations should be made available. Norway has a long-standing tradition in the use of alternatives to command and control regulation and since 1995, there has been a requirement to assess the potential use of alternative instruments as part of regulatory process. Results from the 1998 OECD survey covering 8,000 SMEs showed that administrative costs of compliance are relatively high in Norway at 8% of turnover (av. = 4%).	There has recently been increased emphasis placed on ex-post assessments and departments must set a date for when a policy will be reviewed to assess whether it has been effective in delivering its expected policy goals. The OECD 2006 baseline measurement of administrative burdens suggested that these amounted to around £20bn per annum for business and third sector organisations or 1.6% of GDP. The Regulatory Enforcement and Sanctions Act 2008 imposes a statutory duty on regulators not to impose unnecessary burdens.
Progress on reduction of administrative burdens	The Brønnøysund register plays a big part in the efforts to monitor and reduce administrative burdens. They provide: a continuously updated count of regulatory obligations imposed by government on businesses; estimates of administrative compliance cost imposed on businesses by government and; coordination of reporting obligations of business and industry, ensuring that businesses never report the same information more than once.	The simplification programme for the reduction of administrative burdens on business is well-structured with a net 25% reduction target by 2010. The National Audit Office (NAO) conducts an annual survey of 2000 businesses' perceptions of the burden of regulation and the impact of departmental initiatives to reduce burdens. The BRE uses this evidence to shape its approach.
Success Factors	Culture of consensus-building, participation and trust. Use of alternative instruments to regulation.	Despite very good consultation with businesses and many initiatives aimed at BR, there is a continuing negative perception of the burden of regulation.

	United States of America (edb ranking 4 th , gc 5 th , gb 58 th)
Degree of consultation	Since 1982, 17 federal agencies have initiated 67 (until 2003) negotiated rulemakings. Even in regulatory programmes with a history of adversarial rulemaking, it is not unusual for parties to negotiate a settlement under the supervision of a court after the rule has been published.
Form of consultation	The Office of Management and Budget (OMB) reports annually to Congress on the costs and benefits of federal regulations. Its draft report is subject to peer review and public comment when posted in the Federal Register and on the OMB web site. The public can make its views known concerning any federal data collection, both to its perceived practical utility and reporting burdens involved. A number of federal agencies have successfully pioneered a consensus-based approach to drafting regulations called “negotiated rulemaking.”
Communication on regulation	The Small Business Paperwork Relief Act (2001) required every federal agency to establish a single point of contact for small businesses who needed help with paperwork requirements and also required the Office of Management and Budget (OMB) to publish, in the Federal Register and on the internet, an annual list of regulations that apply to small businesses. The Clinton Administration made the use of “plain language” in drafting regulations, a priority. The Environmental Protection Agency (EPA) Small Business Ombudsman produces a guide listing its supported assistance, training, mentoring, compliance support and funding programmes tailored for small businesses as well as hotlines and information centres.
Compliance	The use of “marketable permits” rather than command-and-control regulation avoids businesses having to engage in defences of enforcement proceedings and intra-business litigation. It can also reduce record-keeping and time devoted to dealing with inspectors. The use of “Plain English” in drafting new regulations and amending old ones “reduces compliance costs and makes it easier for individuals and small businesses to deal with their government

	without the need to hire a lawyer” (p. 239). Interactive electronic tools are used by agencies to give advice to businesses about how to be compliant with federal requirements.
Rationalisation of existing regulations and reduction of administrative burden on businesses	In 2001, the Small Business Paperwork Relief Act was passed which required federal agencies to identify ways to reduce paperwork requirements for companies with fewer than 25 employees. Federal agencies are required to consider alternatives to “command and control” regulation such as performance standards, marketable permits and “environmental contracting” which if used can save the economy millions of dollars without undermining regulatory objectives. The Regulatory Flexibility Act requires agencies to publish and implement a plan for reviewing within 10 years existing rules that have a significant economic impact on a substantial number of small entities.
Progress on reduction of administrative burdens	The proliferation of one-stop shops on government services and many technology driven mechanisms (eg. electronic filling and reporting) have reduced administrative burdens on businesses. First.Gov is now the web site that consolidates 20,000 government web sites into one, providing users with an easy, one-stop access to all government resources. The US Department of Agriculture’s Service Center Initiative, for example, found that 3 of the agencies in the agricultural industry were collating information on a total of 547 forms and using 402 non-form collection methods, of which 74 forms were duplicative! Statistics on the federal information collection burden, however, show that in most areas, there was an increase in the number of burden hours over the decade 1992-2001.
Success Factors	Alternatives to command-and-control regulation are encouraged. The information revolution, reducing administrative burdens, is producing cost savings both for the regulatees and regulatory agencies.

Note: edb ease of doing business world ranking
gc global competitiveness world ranking
gb government burden world ranking

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