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Small Firms: Red Tape

Small enterprises account for 99% of all enterprises. A recurring complaint of the business community has been the burden placed on them by regulations which are seen as being too complex, unnecessarily costly and over zealous in the pursuit of their regulatory objectives. Particular concerns have been voiced over "regulatory creep", "gold plating" of EU directives and the disproportionate impact of some regulations on small firms.

This paper provides an overview of the regulatory issues and describes the various government initiatives targeted toward the small firms sector such as the "think small first" policy. Also covered are the various structures which have been formed under the general oversight of the Panel for Regulatory Accountability, chaired by the Prime Minister.

Vincent Keter

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Summary of main points

It is widely recognised that regulations can have a disproportionate effect on small business, particularly in the area of employment. Successive governments have developed regulatory policies and principles to reform or repeal outdated provisions and guide the preparation of new regulations. Among these is the requirement that part of the development of all regulation should include an assessment of their impact, in particular on small firms.

Previous Conservative governments have focussed on deregulation. Under the current Government this focus changed to "better regulation". Various institutions are involved in the process of regulatory quality and reform. The Regulatory Impact Unit in the Cabinet Office provides scrutiny and advice; the Better Regulation Task Force concentrates on advocacy; and the Panel for Regulatory Accountability is responsible for accountability and awareness at the political centre of government. In addition, Departmental Regulatory Impact Units have been established in each government department to carry out the day to day work of co-ordinating regulatory activities and advising regulators. The Small Business Service (SBS) provides a voice for small firms within government and is given a consultative position in the regulatory process.

The *Regulatory Reform Act 2001* enables ministers, subject to parliamentary scrutiny, to amend or repeal laws in order to remove or reduce regulatory burdens and anomalies. Furthermore, the Public Sector Team, created in 1999, located in the Cabinet Office's Regulatory Impact Unit, work with front-line staff to identify and remove unnecessary paperwork and procedural formalities. This includes the promotion of an "Enforcement Concordat", a voluntary, non-statutory code aimed at helping compliance which describes what business and others can expect from enforcement officers.

A considerable amount of new regulation emanates from the European Union. The way in which these obligations are framed in domestic law can lead to over implementation or "gold plating". This European dimension to the problem has been taken up in a variety of initiatives including the "think small first" policy and the European Charter for Small Enterprises.

Considerable emphasis has been placed on the development of Regulatory Impact Assessments (RIAs). The current policy was established in August 1998 and requires that new legislation or regulation, which has a non-negligible effect on business, charities or the voluntary sector, has to be accompanied by a RIA. Guidance has been created for regulators and policy-makers on how to prepare RIAs. In the regulatory process special attention is paid to any burden placed on small businesses.

In view of the fact that regulations can be either too burdensome or unnecessary for small enterprises, a number of exemptions exist for small firms. The final section of the paper examines some of these in detail.

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I Small Firms

A. Definitions

There are various legal and policy definitions of the small business sector. For statistical purposes the DTI uses the following definitions:

- Micro firm: 0 - 9 employees
- Small firm: 0 - 49 employees (includes micro)
- Medium firm: 50 - 249 employees.

Section 249 of the *Companies Act 1985* states that a company is 'small' if it satisfies at least two of the following criteria:

- A turnover of not more than £2.8 million
- A balance sheet total of not more than £1.4 million
- Not more than 50 employees.

Under the Act a medium-sized company must satisfy at least two of the following criteria:

- A turnover of not more than £11.2 million
- A balance sheet total of not more than £5.6 million
- Not more than 250 employees.[1]

The DTI's small firms loan guarantee scheme operates on a definition of the sector; in the case of manufacturing, where turnover is £5 million or less; and in all other eligible businesses where turnover is £3 million or less. There is also an overall eligibility criteria for the scheme of fewer than 200 employees.[2]

The Bolton Committee in its 1971 report on small firms described many of the key characteristics of the sector.[3] This stated that a small firm is an independent business, managed by its owner or part-owners and having a small market share. The report adopted a number of different statistical definitions. It recognised that size is relevant to sector: ie, a firm of a given size could be small in relation to one sector where the market is large and there are many competitors; whereas a firm of similar proportions could be considered large in another sector with fewer players and/or generally smaller firms within it. Similarly, it recognised that it may be more appropriate to define size by the number of employees in some sectors but more appropriate to use turnover in others.

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1 HC Deb 24 July 2002 c 1336W

2 http://www.dti.gov.uk/sflg/pdfs/sflg_booklet.pdf

3 Cmnd 4811 November 1971

Across government, it is most usual to measure size according to numbers of full-time employees or their equivalent.[4]

In February 1996 the European Commission adopted a communication setting out a single definition of small and medium sized enterprises (SMEs), to apply across all Community programmes and proposals from 1 January 1998.[5] This was replaced by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. [6] Accordingly, the current European policy definition of the sector is as follows: [7]

Enterprise category	Headcount	Turnover	or	Balance sheet total
medium-sized	< 250	≤ € 50 million		≤ € 43 million
small	< 50	≤ € 10 million		≤ € 10 million
micro	< 10	≤ € 2 million		≤ € 2 million

There are also various legal and regulatory provisions which set parameters for the purposes of exemptions and jurisdiction. For example, with regard to the regulation of financial services it was formerly not possible for businesses to make a complaint to the ombudsman. This has now changed. The Financial Ombudsman Service states that it can normally deal with complaints from small businesses with an annual turnover of less than £1 million.[8] The "Small Firms Impact Test" procedure used by the Cabinet Office when assessing the potential impact of proposed regulation on small firms uses its own definition of the size and turnover of a small firm (see page 46 below).

Employment legislation contains various provisions relevant for small business. These are usually stated in terms of the number of employees and vary depending on the legislation. Section III below examines the various current and past small business thresholds in employment law and other areas. Where the rules provide exemptions based on the number of employees they usually require that employees of any associated employer must be included for the purposes of the calculation.

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[4] Some criticisms of the approach taken by the Committee are examined in, DJ Storey, *Understanding the small business sector*, 1994 pp 8-16.

[5] Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ L 107, 30.04.96)

[6] Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (notified under document number C(2003) 1422)

[7] http://europa.eu.int/comm/enterprise/enterprise_policy/sme_definition/index_en.htm

[8] Financial Ombudsman Service general leaflet entitled "Your complaint and the ombudsman" http://www.financial-ombudsman.org.uk/publications/consumer-leaflet.htm (For a group of companies, this means a group annual turnover of less than £1 million)

B. Statistics

National Statistics publish data on SMEs each year through the Small Business Service (SBS).[9] Information is available on the number of enterprises, the level of employment and turnover.[10] The main source for the statistics is the *Inter-Departmental Business Register*, produced by the DTI and drawn from a number of sources. Iinformation on very small business is also estimated using the *Labour Force Survey* and the *Inland Revenue Survey of Personal Incomes*. The current data relates to the start of 2002; data for 2003 will be available in mid-summer 2004. Other sources of information on business formation and closure such as VAT records, company registrations and insolvency proceedings, are all informative but none provide a complete picture of the stock or trends within the SME sector.

Table 1 below shows the number of enterprises, level of employment and turnover broken down by the number of employees. The definitions of small and medium enterprises depend on a number of factors, however in the tables below a small enterprise is defined as one employing between 0 and 49 employees and a medium enterprise is one employing between 50 and 249 employees. A large number of enterprises have no employees; these are small enterprises consisting of only the self-employed owner-manager or sole employee director.

Table 1 - Number of enterprises, employment and turnover in the whole economy, UK
By number of employees, start 2002

	Number			Percent		
	Enterprises	Employment (000s)	Turnover (b) (£million)	Enterprises	Employment	Turnover (b)
All enterprises	3,860,465	27,632	2,290,474	100.0	100.0	100.0
With no employees (b)	2,634,395	2,937	155,566	68.2	10.6	6.8
All employers	1,226,070	24,695	2,134,908	31.8	89.4	93.2
1-4	796,880	2,332	203,837	20.6	8.4	8.9
5-9	215,855	1,537	133,726	5.6	5.6	5.8
10-19	119,145	1,660	161,615	3.1	6.0	7.1
20-49	56,515	1,746	175,009	1.5	6.3	7.6
50-99	19,255	1,340	151,155	0.5	4.8	6.6
100-199	8,370	1,181	142,024	0.2	4.3	6.2
200-249	1,845	411	47,043	0.0	1.5	2.1
250-499	3,740	1,310	170,063	0.1	4.7	7.4
500 or more	4,470	13,178	950,437	0.1	47.7	41.5

Notes: (a) Excludes financial intermediation.
(b) "With no employees" comprises sole proprietorships, partnerships comprising only the self-employed owner-manager(s), and companies comprising only an employee director.

Source: Small Business Service, *SME Statisics 2002* , available at: http://www.sbs.gov.uk/content/statistics/tablessmestats.xls

As table 1 shows, small enterprises accounted for 99% all enterprises, 37% of UK employment and 36% of total turnover. A recent Parliamentary Question referred to the same data, reporting that 47.6% of those in employment work in small and medium businesses (1–249 employees).[11]

[9] http://www.sbs.gov.uk
[10] http://www.sbs.gov.uk/content/statistics/tablessmestats.pdf
[11] HC Deb 1 March 2004 c695W

Table 2 provides a breakdown of enterprises by employees and industry. The total number of enterprises is lower than in table 1 as it only covers the private sector, public corporations and nationalised enterprises.

Table 2 - Number of enterprises in the private sector, public corporations and nationalised bodies, UK
By number of employees and industry section, start 2002

			Percentage by number of employees			
		Number of Businesses	None [(a)]	1 - 49	50 - 249	250 or more
All industries		**3,797,725**	**69.3**	**29.9**	**0.7**	**0.2**
A, B	Agriculture, Hunting and Forestry; Fishing	175,290	68.2	31.7	0.1	0.0
C, E	Mining and Quarrying; Electricity, Gas and Water Supply	*	*	*	*	*
D	Manufacturing	298,425	58.8	37.7	2.8	0.7
F	Construction	733,610	83.3	16.4	0.2	0.0
G	Wholesale and Retail Trade; Repairs	527,185	50.6	48.4	0.9	0.2
H	Hotels and Restaurants	131,190	14.9	83.5	1.3	0.2
I	Transport, Storage and Communication	240,800	80.9	18.4	0.6	0.2
J	Financial Intermediation	63,290	71.8	26.7	1.0	0.5
K	Real Estate, Renting and Business Activities	882,440	68.9	30.5	0.5	0.1
M	Education	*	*	*	*	*
N	Health and Social work	224,205	76.6	22.1	1.0	0.2
O	Other Community, Social and Personal Service Activities	418,340	79.0	20.6	0.3	0.1

Notes: (a) "None" comprises sole proprietorships, partnerships comprising only the self-employed owner-manager(s), and companies comprising only an employee director.
Numbers of enterprises are rounded to avoid disclosure.
A * symbol replaces data that is deemed to be disclosive.

Source: Small Business Service, *SME Statisics 2002* , available at: http://www.sbs.gov.uk/content/statistics/tablessmestats.xls

Table 3 below shows employment in enterprises broken down by industry.

Table 3 - Level of employment in the private sector, public corporations and nationalised bodies, UK
By number of employees and industry section, start 2002

			Percentage by number of employees			
		Employment (000s)	None [(a)]	1 - 49	50 - 249	250 or more
All industries		**22,674**	**13.0**	**30.8**	**11.9**	**44.4**
A, B	Agriculture, Hunting and Forestry; Fishing	442	39.6	55.0	2.9	0.0
C, E	Mining and Quarrying; Electricity, Gas and Water Supply	*	*	*	*	*
D	Manufacturing	3,834	5.4	25.2	22.2	47.2
F	Construction	1,778	36.5	37.0	9.2	17.4
G	Wholesale and Retail Trade; Repairs	4,701	6.7	32.9	9.2	51.1
H	Hotels and Restaurants	1,574	1.7	43.0	10.5	44.8
I	Transport, Storage and Communication	1,717	12.4	17.4	8.4	61.8
J	Financial Intermediation	1,096	4.7	9.9	6.3	79.0
K	Real Estate, Renting and Business Activities	3,614	18.0	38.2	13.3	30.6
M	Education	*	*	*	*	*
N	Health and Social work	2,200	9.1	24.8	8.7	57.4
O	Other Community, Social and Personal Service Activities	1,246	28.5	35.8	9.3	26.5

Notes: (a) "None" comprises sole proprietorships, partnerships comprising only the self-employed owner-manager(s), and companies comprising only an employee director.
Numbers of enterprises are rounded to avoid disclosure.
A * symbol replaces data that is deemed to be disclosive.

Source: Small Business Service, *SME Statisics 2002* , available at: http://www.sbs.gov.uk/content/statistics/tablessmestats.xls

C. Concerns

It is worth remembering that regulation is only one of a number of concerns for SMEs. Research conducted in 2001, was published in the *Small Business Service Omnibus Survey 2001*.[12] The survey ranked the principal concerns to small businesses in terms of obstacles to success:

- Taxation
- Cash flow and finance
- Sales and marketing
- Regulations
- Staff related issues
- Economic environment
- Suitable premises
- New technology

Regulation is therefore a significant concern, but not the only concern and one that did not impact equally in all sectors. The different kinds of regulations were ranked in the following order:

- Tax compliance
- Environmental regulations
- Sector specific regulations
- Health and Safety
- Employment regulations

Further key findings concerning regulation were given as follows:

> Regulations affect small business by taking administration time and increasing running costs. 71% think the government should take action to reduce the burden of regulation (34% of the total population). Some of the suggestions included:
>
> • Make regulations simpler and more realistic.
> • Make exemptions for small businesses.
> • Try and improve co-ordination between authorities.[13]

A recent parliamentary question dealt with concerns relating to access to finance and the burden of regulation:

---

[12] http://www.sbs.gov.uk/content/research/omnibussurvey1.pdf The *Small Business Survey 2003* is expected to be published in summer 2004 and will give a wider picture of the various concerns and other issues affecting the sector.

[13] Ibid, http://www.sbs.gov.uk/content/research/omnibussurvey1.pdf

Small Business

Mr. Stephen O'Brien: To ask the Secretary of State for Trade and Industry how many small businesses have reported access to *(a)* finance and *(b)* regulation as barriers to growth in each year since 1997. [157233]

Nigel Griffiths: Prior to summer 2001 there were no Government surveys that collected robust information on the concerns of small businesses.

The following table records the proportion of small businesses reporting that access to finance was a barrier to growth in four surveys of small and medium enterprises conducted by the Small Business Service since 2001.

These surveys did not collect information on the proportion of small businesses reporting that regulation was a barrier to growth. They did, however, collect data on the proportion of small businesses reporting that regulation was one of the main obstacles to the success of their business. This information is also recorded in the following table.

In each survey, around two thousand owner-managers were interviewed.

The proportion of English small businesses with 1–249 employees(33) who said that they had had a problem with raising finance and that this had slowed the growth of their business(34)	**Percentage**
Wave 1 (summer 2001)	6
Wave 2 (autumn 2001)	3
Wave 3 (winter 2001–02)	2
Wave 4 (summer 2002)	(34)Not available
Wave 5 (autumn 2002)	1

(33) Excludes firms with no employees.
(34) This question was not asked in Wave 4 of the Omnibus Survey.
Source:
Small Business Service Omnibus Survey

The proportion of English small businesses with 1–249 employees(35) who, when asked what were the main obstacles to the success of their business, mentioned regulation(36)	**Percentage**
Wave 1 (summer 2001)	(36)Not available
Wave 2 (autumn 2001)	25
Wave 3 (winter 2001–02)	28
Wave 4 (summer 2002)	20
Wave 5 (autumn 2002)	22

(35) Excludes firms with no employees.
(36) This question was not asked in Wave 1 of the Omnibus Survey.

> *Source*: Small Business Service Omnibus Survey. The results of the most recent survey of small businesses conducted by the Small Business Service (autumn 2003) will be published in summer 2004.[14]

In March 2004 the Small Business Council, an independent non-departmental public body which reports to government, published *Evaluation of Government Employment Regulations and their Impact on Small Business.* This research assessed the effectiveness of employment regulations in achieving policy aims in relation to small businesses. The main findings of the research were as follows:

- Employers believe that employment legislation makes no positive difference to small businesses;
- Furthermore, employers' reports of their own behaviour suggest that legislation may actually have a negative impact on employment practices; and
- Small businesses have a low awareness of employment regulations and see complying with them as a very low priority.[15]

The Small Business Service publication *A government action plan for small business: The evidence base*, January 2004, found that a high proportion of small businesses were dissatisfied with the regulatory environment.[16] The following surveys were cited as evidence of this:

> 8.17 A survey of 18,500 businesses by the Federation of Small Businesses (2002) highlighted that around 80 per cent of small businesses were dissatisfied with either the volume or the complexity of the legislation. The Small Business Research Trust Survey (2003a) also found that around 80 per cent of small businesses with 20 or more employees believed that there is too much regulation and paperwork related to employees.
>
> 8.18 Not only are many small businesses dissatisfied with the regulatory environment, but a significant minority of them also believe that there has been an increase in regulation in recent years. For example:
>
> ■ A survey by the Small Business Research Trust (2001) found that about a third of respondents perceived that legislation and government regulation was on the increase, with the European Union believed to be the primary source of red tape.
>
> ■ More recently, a HBOS survey (2003) found that over two thirds of small businesses believe that the burden of red tape has increased in the last year.[17]

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[14] HC Deb 3 March 2004 c973W

[15] http://www.sbs.gov.uk/content/sbc/rigbigrep.pdf

[16] http://www.sbs.gov.uk/content/7-strategies/sbs_evidence.pdf

[17] Small Business Service *A government action plan for small business: The evidence base*, January 2004: http://www.sbs.gov.uk/content/7-strategies/sbs_evidence.pdf

II Red Tape

A. Regulation: Burdens and Benefits

As the previous section showed, the burden of regulation is a prominent concern affecting small business. It is a recurrent and long standing complaint by business that the burden of compliance with regulations of all kinds has worsened in recent years, and that it acts as a major impediment to competitiveness, especially for the small business sector. At the same time there are a variety of reasons why regulation is considered necessary and beneficial. A government strategy document summarises the debate as follows:

> **Rationale: why is action required?**
>
> 8.4 Most people accept that regulation has a crucial part to play in modern society by correcting market failures, promoting fairness and ensuring public safety. Effective regulation confers many positive benefits on businesses, employees and customers through its role in helping to:
>
> ■ Boost productivity by promoting competition and by improving employee welfare.
> ■ Protect individuals and vulnerable groups from exploitation and risks to their health.
> ■ Stimulate innovation and investment, for example through patent regulation and regulation linked to research and development.
>
> 8.5 But economic theory also predicts that regulation can stifle enterprise activity by removing incentives and by imposing costs, delays and uncertainties on the business. The costs of complying with legislation and controls associated with, for example, protecting the environment, health and safety, employment, planning permission, renting premises, and registering for VAT, can bear disproportionately on smaller businesses. Not only does this constrain development by increasing relative costs and reducing the ability of small businesses to compete but it can also divert resources from training, innovation and management in a way that is not common in larger organisations.[18]

The problems associated with bad regulation are summarised as follows:

> Unnecessary and poorly implemented regulation can reduce productivity and employment growth…
>
> 8.13 A number of research studies summarised in Enterprise in Britain (HM Treasury, 2002a) confirm the rationale for better regulation by highlighting the consequences of market failure caused by unnecessary, overly complex and

[18] Small Business Service *A government action plan for small business*: *The evidence base*, January 2004: http://www.sbs.gov.uk/content/7-strategies/sbs_evidence.pdf

poorly delivered regulation. New business start-up rates are generally lower in countries with over-burdensome regulation and administrative obstacles and this can reduce productivity in the wider economy.

8.14 The cumulative effect of regulation slows down business responsiveness, diverts resources away from productive investment, hampers entry into markets, and reduces innovation. Countries where there are high costs associated with starting a new business generally have lower employment rates. Strict product market regulation is also likely to be detrimental to productivity performance.

8.15 A recent World Bank study (2003) of 130 countries also indicates that heavier regulation is associated with greater inefficiency in the public sector, higher rates of unemployment, increased corruption and a larger informal economy.[19]

Internationally, the UK is seen as having a comparatively benign regulatory environment for business:

■ The UK ranked lowest in the index recently compiled by the OECD (2002) to illustrate barriers to entrepreneurship, which takes into account such factors as administrative burdens on start-up and the degree to which administrative systems are difficult to understand.

■ A study of legislation, taxation and regulation affecting established businesses in the USA and 9 EU countries concluded for the second consecutive year that the UK provides the most entrepreneurial friendly environment (Anderson/Growth Plus, 2002).[20]

Regulation places burdens on small businesses in a variety of ways, for example:

- Employment regulation can drive up staff costs by requiring that certain employees are paid more than if market forces were allowed a free reign.
- There are added costs in terms of insurance and possibly litigation.
- More management time will be taken up in understanding and complying with legal requirements.
- A number of regulations require employers to administer benefits (for example statutory sick pay) or collect tax via payroll.
- Regulations may have unintended or unforeseen negative consequences, such as causing damage to particular markets or employment and training opportunities.

19 Ibid.

20 Ibid. See also HC Deb 22 June 2004 c1302W: The Government cite surveys by the OECD and World Bank which have shown that regulatory burdens are low in comparison to other industrialised nations.

B. Policy Initiatives and Structures

1. Better regulation

Successive governments have sought to deal with the regulatory burden on business in a number of ways: clarifying the likely costs to business of regulatory initiatives, making efforts to improve the drafting of legislation before it reaches the statute book, and revising or removing existing regulations.[21]

Following the 1997 General Election the Labour Government announced its approach, summarised by David Clark, then Chancellor of the Duchy of Lancaster:

> Some regulation is necessary for public and consumer protection, for example to ensure food safety, and to carry out the functions of Government. 'Deregulation' implies that regulation is not needed. In fact good regulation can benefit us all – it is only bad regulation that is a burden. That is why the Government's new regulatory policy will concentrate on ensuring that regulations are necessary, fair to all parties, properly costed, practical to enforce and straightforward to comply with.[22]

Since then this emphasis on better regulation – rather than deregulation per se – has marked the Government's policy of regulatory reform, as noted in the 2002 Pre-Budget Report:

> Whereas effective and well-focused regulation can help to correct market failures, promote fairness and ensure public safety, unnecessary or poorly enforced regulation can restrict competition, stifle innovation and deter investment. The Government is therefore committed to regulatory reform in the UK and EU.[23]

The application of this principle of "better regulation" can take many forms. The Government acknowledge that "classic" or "prescriptive" regulation is not always the best option. The Cabinet Office Regulatory Impact Unit set out the following examples of alternatives to state regulation:

- do nothing/no intervention;
- incentives From Imaginative Thinking for Better Regulation
  - Creating Markets
  - Price Caps
  - Targets
  - Taxes as a regulatory device

[21] A good summary of the key developments in regulatory control since the 1980s is given in, National Audit Office, *Better regulation: making good use of regulatory impact assessments*, 15 November 2001 HC 329 2001-02: Appendix One p 40

[22] Cabinet Office News release CBA 46/97, *Better regulation not deregulation*, 3 July 1997

[23] *Pre Budget Report* Cm 5664 November 2002 para 3.28.

  - Rewarding desirable behaviour;
- information and education (eg product labelling or media campaigns);
- self-regulation;
  - codes of practice;
- co-regulation;
- quasi regulation;
- Regulatory Reform Orders;
- standards (eg voluntary or regulatory);
- market-based instruments (taxes, subsidies and user charges);
- tradable property rights;
- financial incentives (eg disincentives or price control);
- tradable permit schemes;
- guarantee arrangements (eg the Association of British Travel Agents scheme);
- mediation services;
- quality marks;
- recommendation schemes;
- representative bodies (eg Community Health Councils);
- pre-market assessment schemes (eg listing, certification and licensing);
- post-market exclusion measures (eg bans, recalls, licence revocation provisions and 'negative' licensing);
- service charters;
- other mechanisms (eg public information registers, mandatory audits and quality assurance schemes); and
- ombudsmen[24]

Where regulation appears necessary, legislators are encouraged "to ensure that everything necessary for compliance, monitoring and enforcement is in place, that monitoring costs are minimised and enforcement is adequately resourced."[25] There are also various steps that can be taken to reduce the burden of regulation or its disproportionate impact on small business. An example of one particular initiative is the arrangement of common commencement dates for regulations affecting enterprise. The proposal is that where possible new employment regulation will be timed to commence either in October or April of each year, making it easier for employers to adjust to changes in the law. [26] Another approach is to allow more flexibility in achieving regulatory ends, such as the "comply or explain" option, whereby companies can choose not to comply with a particular requirement, but must describe and explain in their annual reports how they are achieving the Government's objectives. Flexibility can also be achieved by allowing voluntary opt-out of certain provisions. Another approach, known as "sunsetting" is described as follows:

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[24] http://www.cabinetoffice.gov.uk/regulation/ria-guidance/content/alt-regulation/index.asp

[25] Better Regulation Taskforce *Imaginative Thinking for Better Regulation* September 2003: http://www.brtf.gov.uk/taskforce/reports/imaginativethinking/chapter3.htm

[26] See DTI Press Release, *Government consults on common commencement dates for new regulations,* 30 April 2004 http://www.wired-gov.net/WGLaunch.aspx?ARTCL=24188

> Where regulation addresses problems in fast moving markets such as the information and communication sector, areas of scientific uncertainty, or emergency measures such as terrorism, it should be regularly revisited and phased out if it no longer achieves it's objectives. Sunsetting achieves this by adding a date into the regulation itself after which it no longer applies. If Parliament or Government wants to keep it in place, sunsetting forces them to go through the legislative process again and reconsider the detail.[27]

The OECD has published a book entitled *From Red Tape to Smart Tape: Administrative Simplification in OECD Countries* on the various tools and measures that have been used by various countries to reduce red tape and make regulations more efficient.[28] A recent written answer gave an overview of 10 government initiatives to reform the regulatory environment for small business:[29]

> **Mr. Stephen O'Brien:** To ask the Secretary of State for Trade and Industry if she will make a statement on the 10 projects to reform the regulatory environment for small business referred to in figure 19.3 of the Trade and Industry Departmental Report, Cm 5916.
>
> **Nigel Griffiths:** The Government remain committed to creating a business environment in which all business, especially small business, has the chance to start, grow and employ staff. It recently published its Action Plan for Small Business on 8 January 2004, which details the measures it will take to reduce the regulatory burden. The Action Plan supersedes and builds on the 10 projects, details of which are set out as follows.

Projects	**Details**
Timesaver Initiative	Timesaver has been incorporated as part of the Business.gov programme. The new Businesslink.gov.uk website is a key delivery arm of the programme.
Carter Review of Payroll Services	There was general support for the principle of greater use of information technology. The incentive payments to encourage smaller employers with less than 50 employees to file electronically will begin from 2004–05. The electronic filing of employer returns are expected to become a universal requirement from 2010. The payroll support given by Business Support Teams and the employers'

27 Better Regulation Taskforce *Imaginative Thinking for Better Regulation* September 2003: http://www.brtf.gov.uk/taskforce/reports/imaginativethinking/chapter3.htm

28 A copy can be ordered online from the OECD website at: http://217.26.192.119/cgi-bin/OECDBookShop.storefront/EN/product/422003061P1

29 HC Deb 3 March 2004 c964W

	helpline will be expanding.
Small Firms Litmus Test	Revised Small Firms Impact Test introduced in February 2003 as part of new Regulatory Impact Assessment process. A database of businesses has been developed to assist policy makers.
Revitalising Local Business Partnerships	SBS introduced a Partnership Fund which aims to build on the work currently undertaken by LBPs and encourage LBPs to promote and sustain partnerships. The LBP website was launched in 2001. SBS provide a forum highlighting best practices within the partnerships. SBS have a part-time national LBP co-ordinator. A second national conference was held in June 2003 to mark the 10th anniversary of the first LBP (Barnsley).
Parental Leave and Dispute Resolution	Maternity and Paternity package introduced in April 2003. Dispute and Grievance Package including revised ACAS Code coming into force Oct 2004. Small business heavily involved in the shaping of the policy.
Disability	SBS has developed relationships with the Disability Rights Commission on the drafting of its code. SBS has worked with Employers Forum on Disability to ensure that Business Advisors can offer best advice to small business. Input into the new Bill and other initiatives on disability are on-going.
Better Regulation Task Force Small Shopkeepers Report	12 recommendations made to Government. Six were accepted, five accepted in part and one not accepted. Progress made, for example, on liquor licensing reform, single internet portal and guidance.
Food Standards and Food Labelling Requirements	SBS has forged closer links with the FSA and is working with the agency on the introduction of new simplified standards for the food sector. The aim is to minimise the impact on small businesses.
Climate Change Levy	In 2002 the SBS in conjunction with Ecotec undertook research into the impact of the Levy on small businesses. These results were fed into wider DTI work being completed on the levy.
Health and Safety Bill	The majority of elements within the Health and Safety Bill were transport related and were incorporated into a Transport Bill with all the health and safety issues dropped from it and not being pursued.

A voluntary "Enforcement Concordat" has also been prepared for local government organisations with an enforcement function, with the aim that businesses faced with enforcement action should be treated equitably and to reduce the variability in the quality

of enforcement, in particular between local governments. The Concordat is a voluntary non-statutory code aimed at helping compliance, describing what business and others can expect from enforcement officers. The vast majority of local authorities and central agencies have adopted the concordat.

Another example of an area which has been cited as being in need of reform is employment equality regulation, which is thought to be unnecessarily complex and itself unequal between the different groups who are protected. There have been ongoing proposals, such as a "Single Equality Act" to unify and simplify the law in this area. Recently, the Government published a White Paper on proposals to establish a Single Equality Body, the Commission for Equality and Human Rights, to oversee the full range of equality and human rights provisions.[30] The Commission for Racial Equality set out the arguments for a Single Equality Act as follows:

> What is wrong with the current legislation?
>
> ● It is complex and inaccessible – there are 30 Acts, 38 Statutory Instruments, 11 Codes of Practice and 12 EC Directives and Recommendations, which makes it hard for employers to keep track of their responsibilities.
> ● It is unequal, giving more rights to some people than to others. In particular, it is still legal for suppliers of goods and services to discriminate against people on grounds of their religion, sexual orientation and age. So, for example, a Muslim family who are refused accommodation because they are Muslim have no redress, but a Jewish or Sikh family could take action because the law treats them as belonging to an ethnic group as well as a religious group. This is unfair, illogical and works against the principle of equality.
> ● It is confusing because it is inconsistent – key terms are still defined differently in different Acts, and the remedies victims get vary depending on the reason for the discrimination. This makes no sense to people facing discrimination and is confusing for employers.
> ● It is backward looking, relying on victims to challenge discrimination after the event instead of making sure institutions act to prevent discrimination happening. The only exception is the innovative and relatively new law that requires public sector bodies to take active steps to promote race equality.
>
> What needs to change?
>
> Ideally we need a single Act bringing everything together in a clear, straightforward way. But the key is getting the content of a new Act right. Our priorities are:
>
> ● Common, clear standards that employers and the public can understand, including consistent definitions of key terms and common and effective remedies

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30 DTI *Fairness for all*: *A new commission for equality and human rights*, May 2004 (Cm 6185) http://www.dti.gov.uk/access/equalitywhitepaper.pdf

> ● A positive duty for all public bodies to promote equality for all, not just for race equality
> ● Protection from discrimination on grounds of sexual orientation, religion and belief and age to be extended to goods, facilities and services
> ● A general principle of equality: an over-riding principle of UK domestic law that no unjustified discrimination is permissible.[31]

2. Better Regulation Task Force (BRTF)

On 3 July 1997, the Labour Government launched the new policy initiative 'Better Regulation'. The Better Regulation Task Force replaced the Deregulation Task Force; a body set up by the previous Conservative Government to reduce the administrative burden on business.

The terms of reference of the Better Regulation Task Force are to:

> …advise the Government on action which improves the effectiveness and credibility of government regulation by ensuring that it is necessary, fair and affordable, and simple to understand and administer, taking particular account of the needs of small business and ordinary people.[32]

The Task Force is supported by the Better Regulation Unit in the Cabinet Office. Its role is to make specific recommendations for better regulation to the Government, and to advise government departments more generally. The Task Force published a checklist for policy makers on how to design better, simpler regulation. Good regulations and their enforcement should be measured against five principles:

- Transparency
- Accountability
- Targeting
- Consistency
- Proportionality

These are explained as follows:

> In summary, the five principles are that good regulation should be:
>
> **Proportionate**: Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
> **Accountable**: Regulators must be able to justify decisions, and be subject to public scrutiny.

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31 Commission for Racial Equality, *Why Britain needs a single equality act*, July 2002: http://www.cre.gov.uk/pdfs/EDF_Why.pdf
32 HC Deb. 3 July 1997, c.221W

> **Consistent**: Government rules and standards must be joined up and implemented fairly.
> **Transparent**: Regulators should be open, and keep regulations simple and user friendly.
> **Targeted**: Regulation should be focused on the problem, and minimise side effects.[33]

The way in which the Task Force works is described as follows:

> Anyone can suggest areas for new studies. Once a subject has been chosen, these reviews are taken forward by sub-groups of Task Force members who set their own working methods and produce detailed reports. As an advisory group with limited resources, the Task Force cannot carry out full consultation, but all sub-groups discuss their proposals with key organisations and individuals, as well as with Ministers and Government Departments. All reports are endorsed by the full Task Force before being sent to the relevant Ministers for their response. The Prime Minister has asked Ministers to respond to Task Force reports within 60 days of publication.
>
> All Task Force reports are systematically reviewed. We adapt the way in which we conduct these reviews to make the most effective use of our resources. We utilise a variety of techniques including conferences, meetings with stakeholders and, where necessary, put pressure on Ministers.[34]

In a debate in the House of Lords on regulation in February 2004, Lord Vinson suggested that there should be a standing committee on regulation:

> The Better Regulation Task Force does valiant work, but it is like matching David against Goliath. It certainly needs more clout and a wider remit in all departments, particularly over pre-legislative scrutiny and RIAs. Its power would be substantially reinforced if there was a Standing Committee on deregulation, probably composed of Members of both Houses. I would welcome the Minister's views on this.[35]

3. Budget Report 2004

The Government set out in general terms its current approach to the issue of regulation in the Budget 2004 as follows:

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33 http://www.brtf.gov.uk/taskforce/reports/entry%20pages/principlesentry.htm
34 http://www.brtf.gov.uk/

Better policymaking in the UK

3.54 Significant and lasting improvements in the regulatory environment for business will only be delivered through the continuous improvement in policy-making at both UK and EU level. The Government has already strengthened its approach to reducing the overall regulatory burden on business, improving the quality of regulations, and enhancing regulatory stability. For the first time, Government departments are this year reporting on their regulatory performance – and the independent Better Regulation Task Force (BRTF) will publish its own analysis of these reports. Departments' regulatory performance will be taken into account in the 2004 Spending Review. The Government has also accepted all the recommendations in a recent BRTF report[36] and is now promoting the use of alternatives to regulation across Whitehall and the wider public sector.

3.55 Building on this, the Government is introducing further changes to ensure that reducing the flow and improving the quality of regulation at UK level is a central part of the policy-making process. In future, any regulatory proposal likely to impose a major new burden on business will require clearance from the Panel for Regulatory Accountability, chaired by the Prime Minister, based on a thorough impact assessment of the proposal agreed by the Cabinet Office Regulatory Impact Unit, before the proposal is put to wider Ministerial approval. The Panel will consider all such proposals in the context of Departments' previous regulatory performance and the overall burden of regulation across key business sectors. Where appropriate emergency legislation will be exempt from these new processes, and the new requirements will not change the long-standing arrangements through which tax matters are considered by the Chancellor in the course of normal Budget processes.

Better policymaking at EU level

3.56 Around half of all new regulation with a significant impact on UK businesses originates in EU law. Further reform is therefore essential at the European level. In January 2004, the Chancellor and the Finance Ministers of Ireland, the Netherlands and Luxembourg set out proposals for regulatory reform. These proposals include improved tests to ensure that new legislative proposals do not damage the European economy, clear commitments to reduce the burden of existing EU legislation, and greater use of alternatives to regulation. EU Finance Ministers have supported these proposals and called for a clear programme of action covering the next two years. The Government will press for agreement on this at the Spring European Council. Further, the Government is submitting to the European Commission a list of priority areas for regulatory simplification, reflecting those suggested by business in the recent BRTF consultation.

Better regulation

3.57 The enforcement activity of regulatory bodies is a significant driver of business compliance costs. As the BRTF recognised in their 2003 report Independent regulators, well targeted inspection programmes are vital, not only to

35 HL Deb 25 February 2004 c283

36 *Imaginative thinking for better regulation*, Better Regulation Task Force, September 2003.

deliver the outcomes society demands, but also to minimise the costs borne by compliant firms. Regulators understand these challenges and some are making progress. Enforcement strategy is a theme of a document recently published by the Health and Safety Executive, and the Environment Agency's consultation Delivering for the Environment. Building on this work, the Government has asked Philip Hampton, former finance director of LloydsTSB, BT and British Gas, to consider, with business, regulators, and in consultation with the BRTF, the scope for promoting more efficient approaches to regulatory inspection and enforcement while continuing to deliver excellent regulatory outcomes.

Greater regulatory certainty

3.58 In Budget 2003 the Government committed to making changes to employment regulation on only two dates each year, unless European obligations require otherwise. This approach, providing greater certainty about changes to the regulatory environment, has been welcomed by business. The Government will consult formally with businesses next month on the feasibility of extending common commencement dates to other areas of regulation and tax. In parallel, the Department for Environment, Food and Rural Affairs will study the feasibility of extending the approach to environmental regulation.

Tackling regulations across key sectors

3.59 Alongside the strengthened central scrutiny of new regulatory proposals outlined above, Government Departments will continue to engage directly with businesses to tackle unnecessary regulations across key sectors. The sectoral reviews announced in Budget 2003 are progressing well:

• for the construction, chemicals and retail sectors, the Government will establish new industry/cross-government forums on policy and regulatory development, to give early warning of, and allow industry to express its views on, emerging policy and regulatory proposals; and

• following concerns expressed by the construction industry on unreasonable delays in payment, the Government will review the operation of the adjudication and payment provisions in the Housing Grants, Construction and Regeneration Act 1996 to identify what improvement can be made.

3.60 The two-year review of the Financial Services and Markets Act 2000 proposes making it easier for Citizens Advice Bureaux and similar organisations to advise their clients without being subject to Financial Services Authority regulation. Similar steps are proposed in relation to employers advising employees on pensions.[37]

[37] http://www.hm-treasury.gov.uk/media/DD446/bud04_ch3_281.pdf

4. Opposition policy

Conservative party policy is opposed to the 'better regulation' approach and favours deregulation on the basis that the regulatory burden on business is too great and should be reduced. A recent statement on policy in this area identifies five root causes or 'drivers' of regulation:

Driver 1: European Union

- Around 40% of regulation affecting UK business now emanates from the EU
- The think-tank Global Britain estimates that we are now subject to over 200,000 EU Regulations
- As many major EU Directives affecting business and employment have been implemented in the UK since 1997 as in the whole of the preceding 25 years

Driver 2: 'Gold-plating'

- EU Directives are, in the UK, made more detailed and prescriptive than they need be
- Officials and enforcement agencies add yet more gold-plating by developing guidelines that businesses are expected to follow, and by applying laws inappropriately or too rigidly

Driver 3 Government policy

- In 1998, Labour replaced the aim of 'deregulation' with 'better regulation'
- Agencies and officials are given target numbers for the 'regulatory contacts' they must have with business

Driver 4: Administrative creep

- Central government employment under Labour is up by more than in any other OECD country except Ireland
- The DTI's budget alone has risen 44% in four years, with spending rising fastest on central administrative staff and those regulating business

Driver 5: Compensation culture

- The Institute of Actuaries has calculated that Britain's compensation culture now costs £13 billion annually, and is rising by 15% each year
- According to the CBI, compensation claims rose by 100% between 1997 and 2002[38]

The Liberal Democrat's policy on these issues is stated in their 2004 policy briefing, *Setting Business Free: policies on commerce* as follows:

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[38] Mark Reckless & John Tate, *The Drivers of Regulation*, Policy Unit Conservative Research and Development, May 2004

At present, British business ensures a considerable amount of regulation imposed by regulators. Yet these regulators themselves are not accountable to parliament and therefore to the people. The role of the government in the economy needs to be focused on ensuring the best environment exists for business to prosper. It is not the role of government to pick commercial winners, bail out failing concerns or protect suppliers of goods and services from competition. Liberal Democrats believe that competition generally produces the best outcomes for the national and society overall. Government should therefore intervene to uphold competition and resist moves towards dominance of markets by single or small numbers of businesses.

Better regulation and smaller government

- Liberal Democrats believe government intervention in the economy should be kept to a minimum and be directed at maintaining competition; regulating monopolies where competition is not possible and protecting consumers, the environment and employees.
- Currently regulators are not sufficiently accountable. We will ensure they report to a Parliamentary Select Committee where senior regulators can be questioned by Parliamentarians who will be able to question them on their annual reports and actions throughout the year.
- The current role of the DTI as both the protector of consumers and the voice of British industry in government draws the department into areas of conflicts of interest. We will set up a small Department for the Consumer to handle consumer issues headed by a minister of Cabinet rank.
- We will introduce a sunset clause for most new regulations therefore requiring a comprehensive debate if a particular regulation is allowed to continue in operation.

Smaller government and abolition of DTI

- The DTI is a throwback to the days of widespread state intervention in the economy. Liberal Democrats will abolish the department. Consumer issues will be transferred to our new Department for the Consumer, Energy will be transferred to the Department for Environment, Energy and Transport, employment issues will go to the Department for Work and Pensions and research funding will go to the Department for Education and Skills.
- Business will continue to look for a voice in government to put its case. We will appoint a minister with Cabinet rank within the Cabinet Office to be responsible for the Deregulation Unit and services such as Companies House, the Insolvency Service and the Patent Office.
- Regional Development Agencies will be reformed to make them more accountable to the areas they serve prior to the transfer to election regional assemblies. They will take over the budgets previously managed by the DTI for business promotion.[39]

[39] http://www.libdems.org.uk/documents/policies/Policy_Briefings/03_Feb2004_Commerce.pdf

C. Deregulation and Regulatory Reform

1. Deregulation

During the 1980s Conservative Governments published a series of papers on measures to lift burdens on business.[40] Despite that and in the face of criticism of the 'burgeoning maze of regulations' there was a renewed effort in the early 1990s by government to quantify the regulatory burden.[41] This took the form of a 'Doomsday book' of those regulations imposing costs on business.[42] This included, first, a survey to determine those areas of the law in most need of reform, and secondly, with the help of a series of business task forces and the introduction of a new statutory power ("deregulation orders"), to provide a streamlined method of removing existing regulations.[43]

The latter was implemented by the *Deregulation and Contracting-out Act 1994* (DCOA) which introduced a special type of statutory instrument which gave Ministers the power to remove or reduce certain statutory burdens on businesses or individuals. Through them Ministers were able to amend or repeal primary legislation. In addition, the Act repealed a number of regulations in areas ranging from competition policy to the licensing of public service vehicles.[44]

2. Regulatory Reform

The Regulatory Reform Act 2001, which received Royal Assent on 10 April 2001, repealed the 1994 Act, replacing deregulation orders with a new category of related statutory instruments known as "Regulatory Reform Orders".[45] The Act also made provision to replace the little used enforcement procedures in section 5 of the DCOA with a reserve power for Ministers to introduce a code of good enforcement practice.

Regulatory Reform Orders are somewhat wider in scope than deregulation orders in that they can:

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[40] For example, *Lifting the Burden* Cmnd 9571 July 1985; *Building Businesses Not Barriers*, Cmnd 9794, May 1986; *Releasing Enterprise* Cmnd 512 November 1988.

[41] John Major's words (the then Prime Minister) in a speech he gave to the Conservative party conference in October 1992.

[42] DTI, *Consolidated list of regulations and forms having an impact on business*, 20 April 1993 (Deposited paper Dep 9123).

[43] A final report listed 605 proposals for regulatory change (DTI, *Deregulation: Task Forces proposals for reform*, January 1994).

[44] The background to the Act is discussed in: *Deregulation and Contracting Out Bill*, Library Research paper 94/16, 28 January 1994.

[45] Two Library papers may be recommended: the first focusing on the *Regulatory Reform Bill* itself (Library Research paper 01/27, 14 March 2001), the second setting this reform in the context of the broader issue of the regulatory burden on business (Library Research paper 01/26, 14 March 2001).

- impose 'burdens' as well as remove them, as long as those burdens are proportionate to the benefits expected to result, and a fair balance is struck between the public interest and the interests of those on whom those burdens fall;
- repeal and re-enact previous legislation with amendments. This, along with the first point above, enables the reform of whole regulatory regimes, instead of merely the removal or reduction of individual 'burdens';
- extend the statutory powers of a person or body (to relieve a burdensome situation caused by the lack of a statutory power to do something);
- remove 'burdens' from public bodies as well as the private sector;
- include power to allow further amendment by way of subordinate legislation — a kind of sub-delegated legislation;
- apply to the provisions of any Act not less than two years old, or which have not been 'substantially' amended in the previous two years.[46]

These types of order are considered in the Commons by the Regulatory Reform Committee.[47] The relevant changes to the House's Standing Orders were agreed on 2 May 2001.[48]

The Government provided an overview of the first year's operation of the *Regulatory Reform Act (RRA) 2001* to the Regulatory Reform Committee in May 2002.[49] The Committee published a short report on the handling of regulatory reform orders in October, making the following comments on the operation of the Act to date:

> The new Act has already proved its worth. Although progress in the first year may not have been as substantial as we might have wished, nevertheless some significant and helpful legislative changes have been made. We note particularly here the regulatory reform orders making changes to the regulations governing premises-related work at voluntary aided schools, and to the provision by local authorities of assistance for private sector housing renewal. These orders could not have been made under the old *Deregulation and Contracting Out Act 1994*, and may not have been capable of introduction were it not for the regulatory reform procedure.
>
> The publication in February of the Government's *Regulatory Reform Action Plan* offered the hope that many more useful changes might be made by way of the

46 The Act received Royal Assent on 10 April 2001 (Cabinet Office press notice CAB102/01, 10 April 2001).

47 This summary is based on, Paul Evans, *Handbook of House of Commons Procedure 3rd ed*, 2002 pp 150-1. Section 12.4 of this book sets out the parliamentary procedure for dealing with these orders in detail.

48 HC Deb 2 May 2001 cc 869-904. These changes are set out in a standard note: "Regulatory Reform Act: revised Standing Orders", SN/PC/848 30 April 2001.

49 This is reproduced in Regulatory Reform Committee, *Second special report*, 24 July 2002 HC 1029 2001-02 pp 14-24.

> Act. We look forward to seeing proposals for those changes brought forward, and to ensuring that they receive the necessary degree of Parliamentary scrutiny.[50]

In February 2002 David Irwin, the then head of the Small Business Service, welcomed the publication of the *Regulatory Reform Action Plan* for its potential impact for business:

> Speaking from a seminar on how to implement the plan at No 10 Downing Street today, David Irwin said: "I welcome this Regulatory Action Plan - it is good news that the Government has identified 250 measures that will reduce or eliminate regulation for business. I would encourage Ministers to continue to look for ways to cut unnecessary red tape. The SBS sees this as the start of a continuing process, where as well as Government legislating sensibly at the outset, they will also tackle unwieldy or out of date regulation from current legislation. I am pleased that the Government is responding to my message to think small first in all regulatory matters, and that they are listening to the needs of real businesses on the ground."[51]

The Plan summarises how the Government intends using the provisions under the *RRA 2001* to reduce the regulatory burden on both the private and public sector.[52] A list of all the deregulation measures being considered was published by the Treasury at the time of the 2003 Budget.[53] In Cabinet Office Questions in July 2003 the Minister summarised progress in this area as follows:

> **Mr. Andrew Love (Edmonton):** What progress has been made in implementing the regulatory reform action plan.
>
> **The Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster (Mr. Douglas Alexander):** We are on course to deliver the commitments set out in the regulatory reform action plan published last year. This is a three-year programme and, as of April this year, 31 per cent. of the measures in the plan had been completed. We will be publishing a formal progress report at the half-way stage in the autumn of this year.

The Government regarded the Act as an important part of its Modernising Government agenda. A recent written answer outlined that the Government plans to enact a total of ten regulatory reform orders by 2005:

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[50] *Third special report*, 29 October 2002 HC 1272 2001-02 para 5-6. On 1 July 2003 the Committee took evidence from Douglas Alexander, MP, Minister for Regulatory Reform, on the operation of the Act in the previous year, though a corrected version of this has yet to be published (7 July 2003 HC 908-i 2003-03).

[51] Dept of Trade and Industry press notice, 4 February 2002

[52] Cabinet Office/Regulatory Impact Unit, *Regulatory reform: the Government's action plan*, February 2002 [Dep 02/298]; available at: http://www.cabinet-office.gov.uk/regulation/actionplan/docs/rrap.pdf.

[53] http://www.cabinet-office.gov.uk/regulation/WhatsNew/Regulatory%20Reform%20Commitments9April.pdf

Regulatory Reform Orders

> **Mr. Stephen O'Brien:** To ask the Secretary of State for Trade and Industry which regulatory reform order have been used to amend burdensome primary legislation since 2001. [155319]
>
> **Nigel Griffiths:** The Department is currently committed to a total of 10 Regulatory Reform Orders by the end of 2005.
>
> The Department has completed one Regulatory Reform Order removing the 20 Partner Limit on business partnerships. A further two removing the Sunday Trading Reporting Requirements for large stores and Patent Law improvements are undergoing Parliamentary scrutiny. [54]

D. Regulation from Europe

1. Gold-plating

A dominant concern affecting small business is the burden of regulation emanating from Europe. There are essentially two elements to this concern. Firstly, there is the extent of regulatory requirements imposed by the EU and secondly there is the manner in which these requirements are implemented, in particular whether this is done in the least burdensome way possible. Small firms have frequently complained that EU regulation has been "gold plated" by Whitehall. In other words regulations were seen as being made more burdensome than the EU intended them to be. This is also known as "regulatory creep" and is currently being investigated by the Better Regulation Task Force who define "regulatory creep" as:

> … regulation or compliance with regulation that goes beyond its original source of authority. What is on the statute book can be embellished by Government Departments, independent regulators and industry bodies. The original intention of the legislation can become confused as it passes through this supply chain of regulation.
>
> Regulatory creep conflicts with the principles of good regulation - that regulation should be developed in a proportionate, accountable, consistent, transparent and targeted fashion. It means that the end result of regulation can be more costly and burdensome than necessary – or than originally intended. The Task Force is investigating where and why it happens and how it can be prevented.[55]

The British Chambers of Commerce have recently published a report on this issue, *How Much Regulation is Gold Plate? A study of UK elaboration of EU directives*.[56] This report

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[54] HC Deb 4 March 2004 c1064W

[55] BRTF Press Release, *Task Force targets "creeping regulation",* 4 March 2004: http://www.brtf.gov.uk/taskforce/pressreleases/creepreg.htm

[56] http://www.chamberonline.co.uk/pdf/GoldPlateReport.pdf

attempts to analyse the implementation of European legislation in the UK and three other countries, in order to ascertain the extent to which gold plating has taken place. The report, in part, took a word count approach. It found that, in the UK implementation of directives, there were on average 334 per cent more words, compared with the least wordy EU member state (having the lowest "transposition ratio").

The issues were also summarised by Mark Field in May 2003 during a debate on a Bill which proposed allowing gold plating to be challenged in the courts:[57]

> The irritation of business is encapsulated in the phrase "a level playing field". Whether it is the much publicised prosecution of a food producer or regulations that drive road hauliers out of business, it is the inequity of the British approach that so often generates the headlines. Although it is necessary to scrutinise all existing regulations to see if they can be sensibly simplified, a deregulatory approach on its own will not reduce the total net amount of regulation because new regulations are continually being promulgated in great detail.
>
> The EU treaty sets out the legitimate extent of business regulation in article 36 and implementation nearly always increases business costs. The UK procedure sets out clear and well rehearsed reasons why different EU nations may have different approaches to the development of national legislation. Here in the UK, the impact of national legislation is normally much more rigorous than in several other European countries.[58]

Government policy on this issue was set out in a written answer in April 2004:

Gold Plating

> **Mr. Stephen O'Brien**: To ask the Minister for the Cabinet Office how many instances of gold plating have been brought to the attention of the Cabinet Office Regulatory Impact Unit, with particular reference to the Cabinet Office Transposition Guide, 2003, page 17.
>
> **Mr. Alexander**: The Government's policy is to transpose Directives so as to achieve the objects of the European measure, on time and in accordance with other UK policy goals, including minimising the burden on business. It is Government policy not to over-implement ("gold-plate") directives unless there are exceptional reasons for doing so.
>
> The Regulatory Impact Unit has regular discussions with departments concerning policy development, including, on occasion, possible over-implementation. Records of the number of times such discussions have taken place are not available. Since November 2001, Transposition Notes have normally accompanied all legislation laid before Parliament that transposes any European

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[57] A similar bill was introduced in February 2004: *European Communities (Deregulation) Bill 2003-04*

[58] HC Deb 21 May 2003 c1018

> directive. These show how all the main elements of the directive have been or will be transposed into UK law.
>
> In accordance with Cabinet Office guidelines, Departments discuss with the Regulatory Impact Unit the range of options that might be included in regulatory impact assessments. These include options that could go beyond the minimum necessary to comply with a European directive, bearing in mind that, particularly where the original directive is unclear, it is not always straightforward to know in advance whether a proposed method of implementation might represent over-or under-implementation.[59]

2. European Charter for Small Enterprises

The *European Charter for Small Enterprises* was approved by EU leaders at the Feira European Council on 19-20 June 2000.[60] The Charter calls upon Member States and the Commission to take action to support and encourage small enterprises in ten key areas including better legislation and regulation. In this respect, it sets out the following goals:

> 3. Better legislation and regulation
>
> National bankruptcy laws should be assessed in the light of good practice. The learning from benchmarking exercises should lead us to the improvement of current practices in the EU. New regulations at national and Community level should be screened to assess their impact on small enterprises and entrepreneurs. Wherever possible, national and EC rules should be simplified. Governments should adopt user-friendly administrative documents. Small enterprises could be exempted from certain regulatory obligations. In this context, the Commission could simplify competition legislation to reduce the burden of compliance for small business.[61]

On 21 January 2003 the European Commission adopted a package of documents *Thinking small in an enlarging Europe* outlining EU policy towards small and medium-sized enterprises, which sets out the "think small first" policy whereby SMEs' special needs and concerns are incorporated into most EU policies and programmes. The communication provides a snapshot of recent progress in small business policy across Europe and points to possible further policy developments.[62]

A further report, *Creating an entrepreneurial Europe: The activities of the European Union for small and medium-sized enterprises (SMEs)* - SEC(2003)58 gives a more

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59 HC Deb 30 April 2004 c1319W

60 http://europa.eu.int/comm/enterprise/enterprise_policy/charter/charter_en.pdf

61 The UK's progress report to the EU on implementation of the charter's aims was published in September 2003: http://www.sbs.gov.uk/content/regulations/reportuk2003.pdf

62 http://europa.eu.int/comm/enterprise/enterprise_policy/sme-package/index.htm

detailed description of all EU activities having an influence on SMEs, such as the framework of enterprise policy.[63]

A written answer given in May 2003 summarised the Government's approach:

Small Businesses (Regulation)

> **Brian Cotter**: To ask the Secretary of State for Trade and Industry what recent discussions she has had with colleagues in the European Union concerning the impact of regulation on small business; and if she will make a statement.
>
> **Nigel Griffiths** [holding answer 12 May 2003]: Discussions on the impact of regulation have been held at every level, including the Competitiveness Council in March attended by my right hon. Friend the Secretary of State for Trade and Industry and the SME EU ministerial conference in February, and on Tuesday 13 May with Commissioner Liikanen.
>
> The UK has championed this cause in Europe through "Think Small First", and we have taken action to make the UK the least bureaucratic country in Europe to establish a business in. We also urge our European counterparts to follow the UK's lead in lifting regulatory and other burdens by having the most favourable VAT threshold in Europe, 100 per cent. tax write-offs for SMEs who buy computer equipment and connect to the web, 40 per cent. tax allowances for plant and machinery and a zero starting rate for corporation tax.
>
> We have also supported the setting up of an independent liaison office in Brussels (smallbusiness/europe) to represent the concerns of UK SMEs to the EU.[64]

The 2003 Pre-Budget Report contained details of the Government's concerns over European regulation, in particular impact assessment:

> **European regulation**
>
> 3.56 Many EU Member States are increasingly aware of the dangers of disproportionate or burdensome regulation. At the level of European law, the EU is introducing a new system of impact assessments to test the effect of new legislation on the economy, and its social and environmental effect. The Government will work closely with the European Commission and other Member States to ensure that this action plan has real bite. In particular, the Government believes it is important that impact assessments and consultations are of a high standard and subject to a proper process of scrutiny.
>
> 3.57 The principles that apply to new legislation should also extend to that which is already in force, and the European Commission is now looking to simplify

[63] http://europa.eu.int/comm/enterprise/entrepreneurship/promoting_entrepreneurship/doc/2003sec58_en.pdf
[64] HC Deb 19 May 2003 c534W

> existing laws. The Government believes that it is essential that this process of simplification makes a real difference to the regulatory framework in Europe. It looks forward to working with other Member States to ensure that added momentum is given to the review and that substantial progress is made during 2004 and 2005. There must be adequate external input – including from business – in this process of simplification. To help provide that input, the Better Regulation Task Force will select an area of EU legislation for investigation.[65]

The Budget 2004 further set out the Government's position on enterprise in Europe:

> **Enterprise in Europe**
>
> 3.61 The Government is also working with its European partners to promote enterprise in Europe. The Finance and Industry Ministers of the UK, France and Germany recently submitted joint proposals to the European Commission and other Member States setting out the priority actions to boost enterprise in Europe.[66] The Government believes these proposals, alongside those to improve the quality of regulation in Europe and a new European Centre of Enterprise competition, provide a concrete framework for further action. This work will be taken forward as part of the Commission's Action Plan on Entrepreneurship.[67]

E. Regulatory Impact Assessments (RIAs)

1. Cost of Compliance Assessments

During the 1980s concerns that the costs of new legislation on business were being ignored led to efforts to encourage government departments to assess the compliance costs of any regulatory proposals.[68] In April 1993 departments were formally required to publish an assessment of the likely costs to business of complying with any proposed legislation presented to Parliament which would have an impact on business.[69] Lists of all these compliance cost assessments (CCAs) were published regularly,[70] although no attempt was made to consolidate this information into some overall measure of the costs, and benefits, of new regulations. In August 1998 CCAs were replaced by Regulatory Impact Assessments (RIAs) as explained in a report by the National Audit Office:

> As part of their Better Regulation Initiative, the Government introduced regulatory impact assessments in August 1998, to replace compliance cost

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[65] http://www.hm-treasury.gov.uk/media//9A0EC/pbr03chap3_197.pdf

[66] *Towards an enterprising Europe*, A paper by the French, German and UK Governments, January 2004.

[67] http://www.hm-treasury.gov.uk/media//DD446/bud04_ch3_281.pdf

[68] *Lifting the Burden* Cmnd 9571 July 1985 para 8.3; *Releasing Enterprise* Cmnd 512 November 1988 paras 1.5-1.7

[69] Formal arrangements for the publication of CCAs were confirmed in written answers, both in relation to European legislation (HC Deb 19 July 1993 c 24W), and domestic legislation (HC Deb 19 October 1993 c 202W; revised HC Deb 19 July 1994 cc 182-3W).

[70] The first of these lists was issued in December 1994 (Cm 2719).

assessments. The intention was to broaden the focus of regulatory appraisal to make regulatory considerations an integral part of policy making. In addition to explaining the purpose of regulation and examining the risks and the financial costs which regulation imposed on business, departments are also required to analyse benefits, and to consider the overall impact on society. There is also much more emphasis on the impact on small businesses.

The main factors that a RIA is now expected to cover are set out [below] …

What a full regulatory impact assessment is expected to cover

Purpose and intended effect	Identifies the objectives of the regulatory proposal
Risks	Assesses the risks that the proposed regulations are addressing
Benefits	Identifies the benefits of each option including the "do nothing" option
Costs	Looks at all costs including indirect costs
Securing compliance	Identifies options for action
Impact on small business	Using advice from the Small Business Service
Public consultation	Takes the views of those affected, and is clear about assumptions and options for discussion
Monitoring and evaluation	Establishes criteria for monitoring and evaluation
Recommendation	Summarises and makes recommendations to Ministers, having regard to the views expressed in public consultation[71]

2. Cabinet Office Regulatory Impact Unit

The Regulatory Impact Unit (RIU) is described as follows:

The Regulatory Impact Unit (RIU) is based at the centre of Government in the Cabinet Office. Its role is to work with other government departments, agencies and regulators to help ensure that regulations are fair and effective. Regulations are needed to protect people at work, consumers and the environment, but it is important to strike the right balance so that they do not impose unnecessary burdens on businesses or stifle growth.

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[71] *Better regulation: making good use of regulatory impact assessments*, 15 November 2001 HC 329 2001-02 p 16, p 3

> The Unit's work involves:
>
> - Promoting the Principles of Good Regulation
> - Identifying risk and assessing options to deal with it
> - Supporting the Better Regulation Task Force
> - Removing unnecessary, outmoded or over-burdensome legislation through the powers as enacted in the Regulatory Reform Act.
> - Improving the assessment, drawing up and enforcement of regulation, taking particular account of the needs of small businesses
>
> In addition to taking an overview of regulations which impact on business, the RIU also examines the impact on the voluntary sector, charities and the public sector.[72]

The RIU has prepared detailed advice for government departments on drawing up RIAs. This was updated in January 2003 and a revised, web-based version was published on 28 November 2003, following consultation on the paper based version. Information is organised by subject, for ease of reference, and the site has a built-in search facility. [73] A list of all RIAs is published twice each year as a Command Paper by the Cabinet Office. The most recent was released on 20 May 2004 listing RIAs published between 1 July and 31 December 2003. This was the 20th such Command Paper.[74]

3. Evaluation of RIAs

The National Audit Office (NAO) announced on 2 December 2002 that it would be taking on the new ongoing role of independently evaluating the quality and thoroughness of a sample of RIAs. After hearings held by the Committee of Public Accounts on the 2001 NAO report *Better Regulation: Making Good Use of Regulatory Impact Assessments*,[75] the Cabinet Secretary invited the Comptroller and Auditor General to undertake this role. The NAO strongly support the use of RIAs as a means to foster better regulation as was made clear in one of their reports published in November 2001:

> RIAs add value to the policy making process and can help deliver better and lighter touch regulation. They represent a significant change in the way policy makers think through the consequences of Government action. Producing robust RIAs and using them as a basis for meaningful consultation with the representatives of business and others likely to be affected calls for considerable commitment from departments and agencies if good use is to be made of them. Since they were introduced RIAs have improved both in design and application,

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72 http://www.cabinet-office.gov.uk/regulation/Role/index.aspv
73 *Better policy making: a guide to regulatory impact assessment*, January 2003. This is available at: http://www.cabinetoffice.gov.uk/regulation/ria-guidance/
74 HC Deb 20 May c64WS
75 HC329 Session 2001-02: http://www.nao.org.uk/guidance/focus/0102329_pp12-13.pdf

> under the influence of the Cabinet Office Regulatory Impact Unit working with departmental regulatory impact units. The Small Business Service have also helped to raise the profile of small business concerns and recommended actions to help small businesses such as successfully pressing for agreement that in each case guidance on how to comply with regulation should be published at least three months before its implementation. More can still be done by the Cabinet Office, the Small Business Service, departments and agencies to build further on this achievement so as to make continuing good use of RIAs.[76]

The value of RIAs has also been noted by the Better Regulation Task Force. In its 2001-02 annual report the Task Force commented on RIAs as follows:

> Regulatory Impact Assessments (RIAs) describe the costs and benefits of regulation and its alternatives. We firmly support them, and have already put considerable effort into helping the Government improve them. Where they are done well, they help the Government choose the best way to tackle a problem. They make the facts and assumptions transparent, and this helps stakeholders challenge them where necessary. The result is better policy making. Departments are meant to produce a high quality RIA at an early stage of the policy process. But not all take this seriously enough. The Government has set itself the target of full compliance by 2005. We want to help.
>
> The Task Force has, with the Government's support, taken on a new role. We are drawing to the attention of the National Audit Office ten RIAs which we think it should consider … We hope that the NAO will produce a report, and that it will point out to Departments where they can do better. There were some Government initiatives which the Task Force were thinking of including in the list of RIAs, until we discovered that no RIA had been done: the farm animal movements regime introduced by DEFRA in 2002 was one example. RIAs are a crucial part of the good regulation process and we find it disappointing when they are not done. Another difficulty in some cases was finding the RIA. For example, we could not track down the RIA on the regulation of Electoral Registers access, supply and sale (LCD), which was not available to the public. Departments must make them more easily accessible.
>
> There are also good practice examples of RIAs. We want to encourage departments to improve their analysis and we suggest the NAO could analyse at least one good practice example. The Task Force suggests the RIA on the Enterprise Bill 2002 prepared by the DTI. It gives a comprehensive analysis of the costs and benefits of a variety of options. We invite our stakeholders to let us know during the year of any RIAs which might feature in next year's list. We challenge Departments to make them all so good that we cannot find any bad or missing RIAs to highlight! And we challenge them to make them all readily available on their websites. But we also call on businesses, charities, Trade

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[76] *Better regulation: making good use of regulatory impact assessments*, 15 November 2001 HC 329 2001-02 p 8. This is available at: http://www.nao.gov.uk/publications/nao_reports/01-02/0102329.pdf

> Unions, consumer groups and others. They need to help departments get RIAs right, by feeding in information about costs and impact when Departments consult them.[77]

Minister of State at the Cabinet Office, Douglas Alexander, commented on these recommendations during Cabinet Office Questions on 1 April 2003:

> The Better Regulation Task Force firmly supports the regulatory impact assessments as a tool to endeavour to help Government improve the quality of the legislation that is passed. That is why the BRTF has drawn to the attention of the National Audit Office in its annual report, "Champions of Better Regulation", a number of RIAs that it believes need to be of higher quality. That work continues and I believe will be a useful contribution to our better regulation endeavours.[78]

The implications of this work were also mentioned in a written answer in June 2003:

> **Bob Spink:** To ask the Chancellor of the Exchequer if he will make a statement on the Treasury's regulatory impact assessment procedure; and how many regulatory impact assessments have been reviewed in respect of the department over the last year.
>
> **Dawn Primarolo:** A Regulatory Impact Assessment (RIA) must be completed for all policy proposals that have a potential impact on businesses, charities or the voluntary sector. It includes details of the arrangements for monitoring and evaluating policy proposals and their impact. Information on the number of RIAs that have been reviewed by the Treasury, Inland Revenue and Customs and Excise in the last year is not held centrally. From this year the National Audit Office (NAO) has a new role in independently evaluating a selection of RIAs. In their Annual Report, published in February 2003, the Better Regulation Task Force put forward suggestions of RIAs for the NAO to review. The NAO review will focus on the quality of analysis in the RIAs and the thoroughness with which the RIAs have been undertaken. The findings and recommendations of best practice will be fed back to departments and aims to improve the standards of RIAs across Government.[79]

RIAs must also assess the impact of regulations on all areas of society including consumers as well as the impact on business.[80] A written answer in March 2004 outlined the arrangements for monitoring the quality of RIAs:

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[77] Better Regulation Task Force, *Champions of better regulation – Annual Report 2001-02*, February 2003 pp 10-11. This is available at: http://www.brtf.gov.uk/taskforce/reports/ar2002.pdf

[78] HC Deb 1 April 2003 cc 790-1

[79] HC Deb 26 June 2003 cc 934-5W

[80] HC Deb 4 March 2004 c1063W

Regulatory Impact Assessments

> **Mr. Stephen O'Brien**: To ask the Minister for the Cabinet Office if he will make a statement on the monitoring of the (a) quality and (b) thoroughness of regulatory impact assessments. [160135]
>
> **Mr. Alexander**: Cabinet Office Regulatory Impact Unit (CORIU) continues to work with departments to ensure that Regulatory Impact Assessments (RIAs) are consistent with the most recent guidance. From April this year departments will have to provide information on better regulation, including their compliance with the RIA process and their use of RIAs, as part of their annual reporting requirements,
>
> The National Audit Office (NAO) has undertaken an ongoing role to evaluate the quality and thoroughness of a sample of RIAs each year. The recently published NAO Compendium Report on the Evaluation of RIAs for 2003–04 noted that the CORIU has achieved significant progress in increasing the quality of RIAs.[81]

The Better Regulation Taskforce *Annual Report 2004* contains a recent evaluation of RIAs.[82] The Task Force has for a second time identified Regulatory Impact Assessments which it has drawn to the attention of the National Audit Office. Three are good practice examples; nine illustrate "lessons Government needs to learn".

Some work critical of the current use of RIAs was published by the British Chambers of Commerce in February 2003 – in particular, that by themselves, RIAs did not lead to any regulations being removed from the statute book:

> RIAs are supposed to promote the achievement of policy objectives through non-legislative means but in the event they do not reduce the number of regulations … The quantification of costs and benefits of regulations is also patchy leading to the possibility of these estimates being used to promote, as distinct from objectively assessing, the regulations. Costs and benefits for business were quantified in 69% and 20% of RIAs [that the study examined] … We accept that benefits are more difficult to assess than costs. Those estimates made were accepted as reasonable by half of those we surveyed and do help refine the compliance burden on industry.[83]

In addition, the BCC have cited a survey which challenges the thoroughness of the process and whether or not the ministerial confirmation in each RIA that the benefits outweigh the costs is actually supported by the RIA evidence:

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81 HC Deb 16 March 2004 c218W

82 BTRF: *Annual Report 2004: The Challenge of Culture Change: Raising the Stakes*: http://www.brtf.gov.uk/taskforce/reports/entrypages/AR2003entry.htm

83 Tim Ambler et al., *Do Regulators Play by the Rules?*, British Chambers of Commerce, February 2003 page 3.

> RIAs are required for any proposed UK or EU legislation that has an impact on businesses, charities or voluntary bodies. Tim Ambler, Senior Fellow at London Business School, Professor Francis Chittenden and Mikhail Obodovski, from Manchester Business School studied 165 RIAs published by Government departments between July 2002 and June 2003. Their report shows that Government departments do not appear to devote the thoroughness required by Cabinet Office guidelines to determining the least burdensome form of regulation.
>
> Commenting on the report, David Frost, BCC Director General, said, "Ministers must state that the benefits of any regulation that they approve justify the costs. In general the evidence in RIAs does not support these claims. Overall, in 2002/3 the balance between costs and benefits arising as a result of new regulations has worsened substantially, compared with the period 1998 to 2002."
>
> RIAs give the appearance of justifying new regulations rather than challenging to the need for regulation. The research reveals a series of failings responsible for pushing regulatory burdens past the £30bn level since 1998. These failings include:
>
> - Ministerial certification that the "benefits justify the costs" is not, in general, supported by the evidence in the RIAs and the balance between costs and benefits has worsened. A substantial minority of RIAs contain little factual data about the consequential costs and benefits and it is difficult to see why more RIAs are not withdrawn at the partial RIA stage.
>
> - Obtaining RIAs from Government information sources is extremely difficult and far from the open access RIAs proposed by the Cabinet Office.
>
> - Only 23 per cent of RIAs now refer to non-regulatory alternatives and it is not apparent that RIAs are part of a serious search for the least burdensome solution to an issue.
>
> - The assessments of regulatory costs to SMEs are inadequate. Departments often fail to recognise the impact that new regulations have on SMEs.[84]

The *Regulatory Impact Assessment (Audits) Bill,* a Private Member's Bill was introduced Archie Norman and had its first reading in the Commons on 11 February 2004. The Bill proposes two measures:

[84] BCC news release *Regulatory guidelines ignored as red tape costs outweigh benefits*, 31 March 2004: http://www.britishchambers.org.uk/press_centre/press_31032004_2

First, it suggests that all RIAs should be subjected to scrutiny by independent auditors at the point at which they are prepared for use by stakeholders in the legislative process.

Second, it proposes that there be a subsequent full audit. This should be held once a regulation has been in force long enough for its associated costs and benefits to become reasonably clear. As part of this post hoc audit, an assessment of the actual costs and benefits of a particular piece of regulation should be made. It also requires the responsible minister (as is already required of initial RIAs) to acknowledge that he has read and understood the contents of this audit.

The combination of these two measures will increase confidence in the reliability and comprehensiveness of RIAs, whilst also strengthening pressure to produce them to a high quality. The audit would ensure the assessment process has been thorough, and based on reasonable and honest assumptions. The prospect of subsequently being exposed will substantially diminish the incentive on ministers and officials to understate the likely cost of regulations.[85]

4. Quantifying the burden of regulation

A major survey of the academic literature on the impact of government regulations on small firms across the EU, as well as the USA, Australia and New Zealand – published by the Small Business Service in 2002 – found that “there is no definition of compliance costs that has gained wide acceptance”, although “despite initial scepticism on behalf of government departments, in all the countries reviewed government had accepted that the burden of regulation has a disproportionate impact on small firms.”[86]

The British Chambers of Commerce (BCC) has been conducting assessments this area for several years.[87] In an assessment published in February 2003 it was suggested that “the total cost of regulations introduced on business since 1998 is now £20.6 billion.”[88] This estimate rose to £30 billion in their figures released in March 2004.[89]

When the BCC gave evidence to the Trade and Industry Select Committee in February 2002, Christopher Chope MP was critical of the fact the Barometer was a single ‘lump sum’, and to arrive at it the BCC had ‘multiplied up’ any recurring annual costs to cover the single five year period:

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[85] ePolitix briefing 17 February 2004: http://www.epolitix.com/EN/Legislation/200402/911dec55-f6bd-4c8e-89c9-17887aee6a35.htm

[86] F Chittenden et al (Manchester Business School), *Regulatory burdens of small business: a literature review*, Small Business Service 2002 pp 2-3.

[87] http://www.britishchambers.org.uk/cutredtape/

[88] Tim Ambler et al., *Do Regulators Play by the Rules?*, British Chambers of Commerce February 2003 pp1-2

[89] BCC News release, *Red tape costs spiral to £30bn*, 8 March 2004 http://www.britishchambers.org.uk/press_centre/press_08032004_2

> You have a very fair point to make that there are costs as a result of regulation but if you are looking at a five year period the rational thing to do, I would have thought, is to say the costs that occur in 2002 over and above those that occurred in 1997—that is the additional costs which could go on, year on year, if the regulations are not changed—but in some cases double, treble and quadruple.[90]

The methodology of this survey has also been criticised by the Cabinet Office's regulatory impact unit:

> What [the BCC] count as a so called "red tape" cost is largely actually the value of the policies themselves to recipients - eg enhanced maternity rights for women, the minimum wage for 1.5 million workers, and better working conditions - of which this Government is rightly proud. BCC are deliberately confusing those benefits with the small proportion of costs to business of administering such measures. The BCC have presumably added the value of policies to those who gain from them … to the cost of implementing those policies. But only the latter costs of implementation can reasonably be regarded as "red tape"; and even then the real issue is whether or not implementation is done in the most efficient way.[91]

The BCC figures have also been rejected by the Government on the basis that the "UK could not have achieved its position as the fastest growing developed economy if the burden on business was as high as the BCC claimed."[92]

Another method that has been used to assess the regulatory burden has been the number of statutory instruments each year, leading to estimates that the Government introduces around 3,000 new regulations a year.[93] Arguably this method is more flawed than the BCC's Burdens Barometer – as many statutory instruments will have no direct impact on business, and some will have the effect of removing regulations. This point was made in answer to a PQ put to the DTI in November 2002 on the number of SIs the Department had passed since 1997:

> Only a small proportion of SIs have a significant impact on business. Of the 100 SIs so far produced in 2002, 11 have produced benefits to business and 78 have had negligible or no impact.[94]

The lack of an agreed measure of the regulatory burden was noted in a written answer, although it went on to record a decrease in the number of statutory instruments that have been laid before the House:

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[90] *Third report: minutes of evidence*, 26 February 2002 HC 597 2001-02 Q126

[91] Cabinet Office press notice, *BCC burdens barometer figure flawed*, 18 February 2003

[92] "Ministers reject claims of rise in red tape burden" *Financial Times,* 22 April 2004

[93] There have been a number of exchanges in the House on this question: for example, HC Deb 21 January 1999 cc 1012-3; HC Deb 25 February 1999 c 530

[94] HC Deb 7 November 2002 c 731W

Mr. Prisk: To ask the Secretary of State for Trade and Industry if she will make a statement on the (a) level and (b) cost of regulations imposed on small businesses by her Department since 1997.

Nigel Griffiths: There is no established method of assessing the precise level or cost of imposing or removing regulations on SMES, either before 1997 or after. The latest 2002 figures indicate a reduction in new Statutory Instruments over 1996-97.[95]

5. International Comparisons

A memorandum, submitted by the DTI as part of the Trade and Industry Committee's enquiry into manufacturing, outlined IMF and OECD findings in support of their approach to the issue of the burden of regulation:

> Some types of regulation clearly produce benefits for business through setting a stable and predictable commercial framework and by ensuring competition is able to flourish. This is backed up by the OECD findings noted earlier and by the IMF staff report (IMF Country Report, March 2002)[96] which welcomes the Government's focus on improving product market efficiency by further strengthening the competition regime. Regulation can, however, assist business in other ways too: ensuring work pays through the minimum wage makes work a practical option—increasing the pool of potential workers; ensuring fairness in the workplace and protecting employees from unsafe working practices increases the willingness of employees to give their all in employment, reducing the number of absences and ensuring a level playing field protecting employers from the few who would otherwise unfairly cut costs through low standards. Consumer protection legislation creates confidence in products, allowing business to flourish.
>
> It is worth noting that the IMF survey noted above considered the government's efforts to increase employment finding that remarkable progress had been made in this area—demonstrating that good social policy often produces good outcomes for business; that health and safety regulation can clearly be helpful in reducing the costs to employers of accidents and ill-health in the workplace which have been estimated by the Health and Safety Executive (1997) to cost business between £3.5 billion and £7.3 billion per year; and that US studies have demonstrated that technological innovation resulting from health and safety initiatives, including regulation, can lead to productivity gains (Ashford 1997).

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[95] HC Deb 3 July 2003 c 417W

[96] (The OECD's work in this area – *Government capacity to assure high quality regulation: regulatory reform in the United Kingdom*, 2002 – is available on their internet site at: http://www.oecd.org/dataoecd/46/38/2766135.pdf)

> Poorly designed regulation can, however, impose unnecessary costs on business which could impede innovation, competitiveness, investment and economic efficiency. It is also true that regulations, however necessary, well designed and implemented, can be unpopular with business. Where this is the case, the Government needs strongly to explain its policy position while being sensitive in how the policy is implemented—as it was when it amended the working time regulations to provide greater flexibility to workers to determine their own hours of work and to reduce the detailed record-keeping requirements, and in developing the proposals currently being taken forward in the Employment Bill which have been designed specifically with business and practical implementation in mind.
>
> While regulation can have a negative impact on business, it is not the key to closing the productivity gap. As noted in the IMF Country Report, the issues having the greatest impact on the productivity gap with our trading partners relate to the size of the physical capital stock and the relative lack of skills in certain areas and the London School of Economics has noted that if regulation were the key to comparative European productivity outcomes, Britain would probably outperform both France and Germany.
>
> This does not however reduce the Government's desire to minimise regulatory burdens and the Government has established some key structures to ensure that regulation is only used where necessary and then in a manner consistent with enterprise and growth.[97]

In its strategic framework published in late 2002 the Small Business Service noted another useful international study on this issue:

> Independent analysts consider the UK in general to be a relatively lightly regulated economy. A recent survey[98] of a range of burdens on business placed the UK as the country with the lowest barriers amongst the 21 covered. However, the UK did not outperform its neighbours in every category, and small businesses feel the weight of regulatory burden more acutely. It is essential that all new policies and regulations are designed and implemented in a way which minimises the burdens on the sector.[99]

In its report on manufacturing published in June 2002, the Trade and Industry Select Committee concluded there was little ‘hard evidence’ that UK business was over-regulated, although the regulatory burden remained a matter of some concern:

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[97] *Third report: minutes of evidence*, 13 March 2002 HC 597 2001-02 Ev 212. The Department has also cited work by the Economist Intelligence Unit (EIU), in which it “studied the business environment, including regulation, in 60 countries. The Unit found that the Netherlands, the USA and Britain take the top three places” (HC Deb 8 July 2003 cc 749-750W).

[98] Andersen/Growth Plus, *Not just peanuts: the annual pan-European benchmark on funding, people and the business environment*, 2001 at: http://www.notjustpeanuts.com

[99] SBS, *Small business and government: the way forward*, 2002 p 5

> The general perception of an over-regulated industry does not seem supported by hard evidence. The DTI has pointed out that the UK has the lowest product market regulation of any OECD country, and the UK labour market is less heavily regulated than many other EU countries. Neither is there compelling evidence that the UK transposes and implements EU legislation more vigorously than other EU Member States. Indeed, the European Commission's Internal Market Scoreboard, which summarises the efforts of EU Member States to transpose EU legislation, puts the UK at no more than mid-table …
>
> Government, business and the unions, however, recognise that, while the objectives and implementation of individual regulations may be acknowledged and accepted, the cumulative regulatory burden on business is considerable. The financial and management resources required to ensure compliance can be onerous, and impact disproportionately on SMEs. The Government has sought to address this, in some cases reducing the regulatory requirement for small businesses, and occasionally exempting them altogether. We endorse this approach and recommend that consideration of the scope for further relaxation of the administrative burden imposed by regulatory demands on smaller businesses, or their exemption, be adopted as a routine element of the process of regulatory assessment.[100]

The OECD has a Regulatory Reform Programme aimed at helping governments improve regulatory quality by "reforming regulations that raise unnecessary obstacles to competition, innovation and growth, while ensuring that regulations efficiently serve important social objectives."[101] The OECD's review, *Government capacity to assure high quality regulation: regulatory reform in the United Kingdom*, 2002 is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.[102] The review gives an assessment of the entire regulatory regime in the UK and summarises the position as follows:

> UK regulatory policies are anchored in a centuries old twin track tradition of informal decision-making and respect for the rule of law. With twenty years of continuous effort behind it, the United Kingdom is one of the most experienced OECD countries in regulatory reform. Privatisation and at a later stage economic policies to stimulate competition have provided a major impetus for deregulation and reform of the regulatory system, and, placed regulatory reform among recent Governments' top priorities. In recent years, regulatory policies have been broadened to include both consumer protection and market efficiency. Improving regulatory quality has increased in importance, alongside eliminating regulations.
> A constant up-grading of instruments has occurred simultaneously with the establishment of an array of regulatory policies, institutions, and tools many of

[100] HC 597 2001-02 paras 48-49. Since the Committee's report, the more general issue of the burdens placed on business was debated in the Lords in May 2003 (HL Deb 7 May 2003 cc 1096-1126).

[101] http://www.oecd.org/topic/0,2686,en_2649_37421_1_1_1_1_37421,00.html

[102] http://www.oecd.org/dataoecd/46/38/2766135.pdf

> them innovative and unprecedented. This has formed a set of broadly efficient, transparent and accountable regulatory systems of high quality.

6. Think small first

The ministerial Panel on Regulatory Accountability (PRA) was set up "to take a strategic overview of the regulatory system and to ensure that the burden of regulation on business is kept to the minimum necessary." The composition of the panel is as follows:

> Prime Minister (Chair)
> Chancellor of the Exchequer (Alternate Chair)
> Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster (Alternate Chair)
> Secretary of State for Trade and Industry
> Chief Secretary, Treasury[103]

The Chairman of the Better Regulation Task Force and the Chief Executive of the Small Business Council are invited to attend.

A Small Business Service publication entitled "Think Small First" sets out the overall features of the policy:

> 'Think Small First' asks every part of Government to think about their role in supporting and promoting small businesses and an entrepreneurial society. The Government has a responsibility to provide the most appropriate support required by our small businesses, so that they can compete effectively and meet the challenges of a global economy. But it also has a responsibility to minimise the burdens that it imposes, for example through better regulation.
>
> We have created the Small Business Service (SBS) to provide a focal point within Government for small business issues. I am determined that the SBS will succeed. But I believe that the real challenge is for the whole of Government to Think Small First. I call upon every department and agency of government to work with the SBS to help achieve our aim of making the UK the best place in the world to set up and run a small business.[104]

7. Small Firms Impact Test

The Cabinet Office guidance incorporates a requirement that all RIAs must include a "Small Firms' Impact Test", except where the proposal solely affects the public services. If the proposal solely impacts on the public services, the RIA must state explicitly that a "Small Firms' Impact Test is not required in this RIA because the proposal impacts only

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[103] http://www.cabinet-office.gov.uk/cabsec/2003/cabcom/pra.htm
[104] http://www.sbs.gov.uk/content/consultations/TSFBookleta_w.pdf

on the public services. This has been verified by the completion of a Public Services Threshold Test". [105]

The procedure for the test, also known as the "Litmus Test" is set out in the guidance as follows:

> Most proposals which are likely to impact on business will have an impact on small firms, either directly or indirectly. The Small Firms' Impact Test is an integral part of the RIA process which should be undertaken early in the process. If you think your proposal has no impact on small firms, you must test this assumption by having an informal discussion with a number of small businesses or a representative group.
>
> Speak to the Small Business Service (SBS) in order to seek agreement/confirmation of your view. For a simple picture of how the Small Firms' Impact Test fits into the overall RIA process see the flow chart.
>
> **What is a Small Firm?**
>
> The definition of a small firm is one with:
>
> - fewer than 50 employees; and
> - no more than 25% of the business owned by another enterprise (which is not a small business); and either
> - less than £4.44 million annual turnover; or
> - less than £3.18 million annual balance sheet total.
>
> **Stage 1**
>
> The first stage of the test is an initial sounding on a range of options with small businesses. This can give you an early warning about possible unintended consequences and provide an indication of whether the proposal is likely to be contentious.
>
> When canvassing for small business views and carrying out the Small Firms' Impact Test, bear in mind that focus groups and face-to-face meetings are often better than written responses.
>
> Results of stage 1:

a) Insignificant impact	(b) Significant yet straightforward impact	(c) Significant and complex impact
If you find from your stage 1	If the anticipated impact is significant but simple to	If the anticipated impact is

[105] *Better Policy Making: A Guide to Regulatory Impact Assessment*, January 2003: http://www.cabinet-office.gov.uk/regulation/ria-guidance/content/impact-test/index.asp

discussions that the impact on small business is likely to be small, simply agree a form of words with the SBS for the partial RIA.	evaluate, you may conduct stage 2 discussions by phone.	significant and a complex picture has emerged during stage 1 discussions, you should arrange for stage 2 focus groups/panels to explore the options for delivery in detail. The SBS can advise you on how to arrange these.

Getting agreement from your own Ministers

In the Initial or Partial RIA you need to provide a statement of the results of your initial soundings with small businesses (stage 1). You should include:

- details of the companies you consulted (size, sector, location);
- how they were contacted (eg phone, email);
- issues raised;
- whether a significant impact on business was revealed; and
- whether stage 1 changed the substance of your recommendation to Ministers.

The majority of proposals will impact on small businesses and it is anticipated that Stage 1 will be completed in most cases. However, if you did not complete Stage 1 you must give a statement justifying your decision and agree this with the SBS. If the impact on small businesses of your proposed policy is significant but straightforward, it may be appropriate to conduct Stage 2 of the Small Firms' Impact Test by telephone.

What is a 'significant impact' on small businesses?

A significant impact can be both a high cost and/or a disproportionate cost on small firms, relative to other sized businesses. Differences in the number of employees, market structure, handling of the personnel function etc mean that the implementation costs of a policy can vary widely from business to business. You should test your estimate of costs with a range of businesses.

Stage 2

If the expected impact of your chosen option is complex, you should convene small business focus groups which will help you to explore the least burdensome ways of delivering the chosen policy. The SBS has detailed guidance on how to run focus groups. They can help you set up Stage 2 consultations with small

> businesses, and help identify participants, and representative organisations happy to identify volunteers (including the Small Business Council – see contact list for full details).
>
> If your policy proposal has changed substantially as a result of the general consultation, you should reconvene focus groups/panels. Ideally, you should include small businesses that have already taken part in the earlier focus groups since they will be familiar with the policy goal and options for implementation. This will help them to identify pitfalls and make suggestions to ensure that any burden is minimised.

Another way in which the concerns of small business are taken into account in the process of evolving regulations is through "Regulatory Impact Statements". A National Audit Office Report of 4 March 2004 entitled *Evaluation of Regulatory Impact Assessments Compendium Report 2003-04* explained the role of the SBS in such statements:

> 2.30 Business representatives and others have expressed concerns about regulation imposing unnecessary or disproportionate costs on small businesses, charities and voluntary organisations. For this reason departments are expected to consider these impacts during the RIA process, and include a section outlining these impacts. They are expected to consult with the Small Business Service (SBS), which is entitled to issue a statement in the RIA at the initial RIA stage if it disagrees with the department's assessment. If the SBS disagrees at a later stage in the process it can produce a Regulatory Impact Statement (RIS), which is separate to the RIA and forms part of the Cabinet Office clearance process.[106]

The SBS website gives the following explanation of the requirement on government departments to consult them when preparing regulatory impact assessments:

> **Regulatory Impact Assessments**
>
> The Cabinet Office makes clear in its "Better Policy Making: A Guide to Regulatory Impact Assessment", that Regulatory Impact Assessments (RIAs) will record whether or not the SBS was consulted, and the SBS will have the right to have its views recorded in RIAs.
>
> Government Departments need to involve the SBS on all proposals that will affect small businesses, at the stage when regulatory policy and coverage are being decided.

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[106] http://www.nao.org.uk/publications/nao_reports/03-04/0304358.pdf

The Cabinet Office Regulatory Impact Unit sets out detailed guidance on the stages during the RIA process where the SBS must be consulted.[107] An explanation of the regulatory impact statements can be found on page 30 of the guidance. It comes in at the partial RIA stage, where collective agreement with the regulatory proposal is being sought:

> **Regulatory Impact Statement**
>
> 3.37 A Regulatory Impact Statement is a paragraph (in addition to the partial RIA) to include in the Cabinet paper or Ministerial letter to colleagues seeking collective agreement to the proposal. The paragraph must explain the impact on business, charities or voluntary organisations of any proposals involving new or amended regulations. It must take account of the results of the partial RIA and any discussions with the Cabinet Office RIU and SBS.
>
> 3.38 A proposal requires a Regulatory Impact Statement if it is 'significant', ie:
>
> - the partial RIA suggests high costs (in excess of £20 million in any year);
> - the issue has high media topicality or sensitivity;
> - the issue is one on which the Better Regulation Task Force has reported or where there is Task Force work in hand; and
> - the proposal would have a disproportionate impact on a particular group, eg small businesses, charities or a particular business sector.
>
> 3.39 The Regulatory Impact Statement must be agreed with the Regulatory Impact Unit at the Cabinet Office and, if the proposal affects small firms, the SBS. The SBS has the right to have its view recorded in the Cabinet paper or letter to colleagues.

III Thresholds and Exemptions for Small Firms

A. Employment Regulations

1. Current exemptions

a. Trade union recognition

Firms with fewer than 21 workers are exempt.

The *Employment Relations Act 1999* introduced a statutory procedure for trade union recognition which came into force on 6 June 2000. The right to apply for statutory

[107] *Better Policy Making: A Guide to Regulatory Impact Assessment*, January 2003: http://www.cabinetoffice.gov.uk/regulation/ria-guidance/

recognition does not apply in firms with fewer than 21 employees. Schedule 1 of the Act inserted a new schedule A1 in the *Trade Union and Labour Relations (Consolidation) Act 1992*. Paragraph 7 of this schedule provides that a request for recognition is not valid:

> unless the employer, taken with any associated employer or employers, employs –
>
> (a) at least 21 workers on the day the employer receives the request, or
> (b) an average of at least 21 workers in the 13 weeks ending with that day [108]

The Government recently reviewed the *Employment Relations Act 1999* but decided to retain the existing threshold. The DTI's consultation document, *Review of the Employment Relations Act 1999*, published on 27 February 2003 explained:

> 2.11. There are two main issues to consider on this subject – (a) whether there should be any threshold based on the size of the employer for access to the statutory recognition procedure and (b) if so, where the size threshold should be set. On the first point, if no threshold existed, very small organisations could be required by law to bargain collectively – in extreme instances, where perhaps there were only one or two employees. Not withstanding that small companies may in some instances voluntarily agree to recognise Trade Unions, the judgement was made at the time of the Act that it would be inappropriate to impose recognition in smaller firms. The Government remains of that view. Though most individual employment rights – including the right to be accompanied – apply to organisations of all sizes, it is not appropriate to impose collective employment relations on smaller employers.

On the second issue, the document pointed out that that enterprises with 19 or fewer employees account for just under 20% of all employment. In addition, union density and union recognition in small firms is generally very low. The Government therefore decided to retain the threshold at the current level. [109]

b. Maternity and Parental Leave

Under regulation 20(6) of the *Maternity and Parental Leave etc Regulations 1999*, SI No.3312 an employer with less than five employees is exempt from the normal provisions on automatically unfair dismissal in respect of refusal to allow an employee back to work at the end of maternity leave, if they can show that:

> it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to a job which is both suitable for her

[108] para 7 (1) of the new schedule A! which schedule 1 of the *Employment Relations Act 1999* inserts in the *Trade Union and Labour Relations (Consolidation) Act 1992*

[109] http://www.dti.gov.uk/er/erareviewc.pdf

> and appropriate for her to do in the circumstances or for an associated employer to offer her a job of that kind

They may still be liable for unfair dismissal, but an employment tribunal will not be able to move straight to a finding of unfair dismissal without considering if the dismissal was unfair "in accordance with equity and the substantial merits of the case" or whether the requirement for a period of continuous employment of one year has been met. The exemption does not provide protection from liability for unlawful sex discrimination.

c. Disability discrimination: employment provisions

Firms with fewer than 15 employees are exempt, although the exemption is due to be removed in October 2004.

The *Disability Discrimination Act 1995* (DDA) originally excluded from its employment provisions "an employer who has fewer than 20 employees".[110] However, the Act required the Secretary of State to review the threshold within four years and gave him the power to lower (though not to raise) the threshold by order. The Labour Government reduced the threshold to 15 with effect from 15 December 1998, following the statutory review.[111]

In March 2001, the Government announced that it would be abolishing the threshold altogether in October 2004:

> 3.31 … We will, when legislative time allows, ensure that all small employers and prospective employers are covered by Part II of the DDA. By legislating in this way, we do not need to define what is meant by associated companies. We will add private households because they are covered by the SDA (which has a defence for the employer in relation to potential unlawful discrimination that the person's sex is a genuine occupational qualification). The size of employers, and the resources available to them, would be taken into account when it comes to making reasonable adjustments. That is how 'reasonableness' works. Practicability and resources are two particular factors which the Act requires to be taken into account. Private households, like any employer, would only need to do what is reasonable and would be able to justify treating disabled people less favourably than others if appropriate.
>
> 3.32 The DRC has proposed that these changes take effect by 2002. We do not believe it is practicable to end the exemption as soon as that. However, in October 2004, service providers of all sizes have to comply with the final phase of their duties under the DDA for their disabled customers. Ending the employment exemption in 2004, therefore, would mean businesses which are both service providers and employers would have to consider all aspects of how they treat disabled people, whether they are employees or customers, to the same

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110 section 7

111 The *Disability Discrimination (Exemption for Small Employers) Order 1998,* SI No 2618

> timescale. We agree with the DRC that it is appropriate to end the small employer exemption and we propose to do so by 2004 which would ensure a joined-up approach with benefits to business and disabled people. We are consulting on what help small employers might need when we do this. The DRC, the Small Business Service and the DfEE's telephone advice line Equality Direct will all work together to ensure that effective advice and information are available at the right time.[112]

In fact, the Government would have had to abolish the small employers' exemption by December 2006 in any case to comply with the *EC Directive establishing a general framework for equal treatment in employment and occupation*.[113] The purpose of the Directive is to prohibit discrimination in employment on the grounds of religion or belief, disability, age, or sexual orientation. Member States have until 2 December 2006 to implement the Directive's provisions on disability. Draft regulations were issued for consultation in October 2002. The *Disability Discrimination Act 1995 (Amendment) Regulations 2003 SI No.1673* were made on 2 July 2003 and come into force on 1 October 2004.

d. Consultation on collective redundancies

Firms with fewer than 20 employees are exempt.

Section 188 of the *Trade Union and Labour Relations (Consolidation) Act 1992* effectively excludes firms with fewer than 20 employees from the requirement to consult on redundancies by restricting the requirement to cases "where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less". The requirement to consult on collective redundancies arises from an EC Directive (75/129/EEC) and was originally implemented by Part IV of the *Employment Protection Act 1975*. At that time, there was a requirement to consult "where the employer is proposing to dismiss as redundant 10 or more employees at one establishment within 30 days or less".[114] The Conservative Government raised the threshold to 20 by the *Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations* 1995 SI No 2587. The Labour Government consulted on removing this threshold,[115] but decided against it.[116]

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[112] DFEE, *Towards Inclusion – civil rights for disabled people*, March 2001, paras 3.31-3.32

[113] Council Directive 2000/78/EC of 27 November 2000

[114] section 99 (3) (b)

[115] DTI Employment Relations Directorate, *Employees' Information and Consultation Rights on Transfers of Undertakings and Collective Redundancies*, February 1998

[116] DTI press release, 7 July 1999, *New rules will clarify employers' obligations when consulting on redundancies and business transfers*

e. Statutory Maternity Pay (SMP)

Firms are able to recover 100% of their SMP payments, and receive an additional 4.5% compensation for administration costs, if their annual liability for Class 1 national insurance contributions is £45,000 or less.

National insurance maternity allowance, administered by the state, was replaced by Statutory Maternity Pay (SMP), administered by employers, in April 1987 under the *Social Security Act 1986.* At first, employers were able to recover 100% of their SMP payments and received an additional sum (originally 7%) to compensate them for their share of national insurance contributions (NICs) payable on SMP. In 1994 the rate of recovery was reduced to 92% and the compensation for secondary Class 1 NICs was removed.[117] However, employers qualifying for "small employers' relief" were allowed to continue to recover their payments in full.[118] They also continued to receive additional compensation for their secondary NICs payments.[119] This figure varies, but is, at present, 4.5%.[120] Employers qualify for small employers' relief if their "contributions payments for the qualifying tax year do not exceed £45,000".[121]

f. Written statement of disciplinary procedures

Firms with fewer than 20 employees are exempt, but they are due to be included in 2004.

At present, employers with fewer than 20 employees are exempted from the requirement that they issue their employees with a written statement of any disciplinary rules they may have. The statutory authority for this exemption is contained in section 3 (3) and (4) of the *Employment Rights Act 1996.* However, section 36 of the *Employment Act 2002* repeals this exemption, as part of the new statutory dispute resolution procedures being introduced for employers of all sizes. Section 36 has not yet been brought into force. The provisions will be implemented by the *Employment Act 2002 (Dispute Resolution) Regulations 2004* SI No. 752 in October 2004.

g. Stakeholder pensions

Firms with fewer than 5 employees are exempt from the requirement to provide access.

Stakeholder pensions were introduced by regulations made under the Welfare Reform and Pensions Act 1999. In its original consultation paper on employer access to a stakeholder

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[117] *Maternity Allowance and Statutory Maternity Pay Regulations 1994*, SI No 1230

[118] section 167 (1) of the *Social Security Contributions and Benefits Act 1992,* as amended by the *Maternity Allowance and Statutory Maternity Pay Regulations 1994*, SI No 1230

[119] Regulation 3 of the *Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994*, SI No 1882

[120] The *Statutory Maternity Pay (Compensation of Employers) Amendment Regulations 2002*, SI 2002/225

[121] *Statutory Maternity Pay (Compensation of Employers Amendment Regulations 2004*

pension scheme, the Government stated that it did "not propose to exclude employers on the basis of size alone".[122] The paper summarised its reasons and in doing so explained the effect of excluding businesses with 1-4 employees:

> 24. Representations from various sources have argued for exemption based on the number of employees working for an employer, contending that providing access would impose disproportionate burdens on smaller employers. Individuals will be free to make their own arrangements with schemes so exempting employers need not prevent people from joining a scheme and providing for their own retirement.
>
> 25. There has, however, been no clear agreement as to whether such an exemption should be made or the level at which it should be set. Exemption at any level could have a distorting effect to the extent that it affects employer decisions about staffing levels. Any exemption inevitably creates more complexity in applying and policing the requirement.
>
> 26. Clearly the higher any limit is set, the more employees will be affected. Most employees work in a relatively small number of large businesses. Excluding small employers does not therefore exclude a high proportion of employees, but could exclude a high proportion of businesses. For example, excluding businesses with **1-4** employees would affect **67%** of businesses and **7%** of employees.
>
> 27. Such figures do not, however, take into account that the businesses affected by the requirement are those without occupational schemes at present; larger employers are more likely already to have an occupational scheme than smaller employers. Nor do they take into account that the main target group for stakeholder pension schemes have below-average earnings; lower earners are, on average, more likely to work for small businesses than for large businesses. Both factors suggest the proportion of those who stand to benefit from the employer access requirement who work for small businesses will be higher than the figures shown above. On our best estimate, an exclusion restricted to businesses with four or fewer employees would be likely to exclude about 0.75m, out of the overall target group of around 5 million.

However, as a result of the consultation, the Government decided to exempt employers with fewer than five employees to "avoid an additional burden on the smallest businesses".[123] Alistair Darling, then Secretary of State for Social Security, made the announcement on 10 January 2000, promising a review "in three years' time":

> Employers will generally be required to give access to a stakeholder scheme from October 2001, unless they already offer a suitable alternative. Employers with

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[122] DSS, *Stakeholder pensions: employer access – the government's proposals, Consultation Brief 2*, 29 June 1999, para 29

[123] DSS, *Stakeholder pensions: outcome of the consultation*, 10 January 2000, para 21

> fewer than five staff will initially be exempt from this requirement, but the arrangement will be reviewed in three years' time. Employers who arrange group personal pensions and who make a contribution of at least 3 per cent. of earnings will also initially be exempt, subject to review after three years.[124]

This review is due in 2004 (three years after the employer access requirement was introduced).

h. Health and Safety

Undertakings with less than five employees do not have to prepare a written statement on health and safety policy.

Employers normally are required to prepare a written statement of general policy setting out their approach to the health and safety of employees and to bring it to the notice of all employees.[125] Under the *Employers' Policy Statements (Exceptions) Regulations 1975*, SI No. 1584, there is an exemption for employers who carry on undertakings with fewer than five employees actually present on the premises.[126]

An "undertaking" for the purpose of the above regulations is not the same as an "establishment". Therefore if an employer operates his "undertaking" through a number of small establishments, each employing less than five employees, the employer must prepare a written health and safety policy for the whole undertaking if the total of employees is five or more.[127]

i. Information and consultation

Undertakings with less than 50 employees are not covered by the EU Directive on informing and consulting employees.

In February 2002, the European Parliament and the Council of Ministers adopted a directive which will require Member States to establish national systems for informing and consulting employees in undertakings with at least 50 employees.

Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, establishing a general framework for informing and consulting employees in the European Community came into force on 23 March 2002, and must be implemented by 23 March 2005.[128] Countries which do not already have a "general, permanent and

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[124] HC Deb 10 January 2000, c 80W

[125] *Health and Safety at Work Act 1974*, section 2(3)

[126] This does not include relief staff (see *Osborne v Bill Taylor of Huyton* [1982] IRLR 17)

[127] See HSE Guidance notes, local authority circular 38/3 of June 1995, to local authority enforcement officers on Written Health & Safety Policy Statements

[128] Full text: http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_080/l_08020020323en00290033.pdf

statutory system of information and consultation of employees" (i.e. the UK and Ireland) can limit the Directive's application to undertakings with at least 150 employees until 23 March 2007 and to undertakings with at least 100 employees until 23 March 2008.

There is a provision in the current *Employment Relations Bill 2003-04* which enables the Secretary of State to make regulations which will implement the EC Directive on Information and Consultation.[129] The clause allows forthcoming regulations to stipulate thresholds on the number of employees in any undertaking so that they may apply to undertakings of different sizes from different dates. The draft regulations apply to undertakings of 50 or more employees.[130] The Government intends to take advantage of the transitional derogations allowed by the Directive. The proposal is to provide that the regulations will apply initially to undertakings with 150 or more employees from March 2005, to undertakings with between 100 and 149 employees from March 2007 and to undertakings with between 50 and 99 employees from March 2008.

In the July 2003 consultation document, *High Performance Workplaces: Informing and Consulting Employees* the Government announced that it had held consultations with the TUC and CBI and agreed a framework for implementation of the legislation. The employer must establish information and consultation procedures when 10% of the workforce makes a valid request. The parties will be free to negotiate an agreement which best suits their needs and circumstances, in light of government guidance. If there is a failure to conclude a negotiated agreement then the statutory provisions based on Article 4 of the Directive apply. This involves the setting up of an I&C committee elected by the employees. The employer then has various duties to inform and consult the employees via the committee. Complaints about any failure on the part of the employer to establish I&C procedures or complaints about the operation of established procedures will be heard by the CAC.

2. Previous exemptions

a. Unfair Dismissal

At one time, people who worked for firms employing fewer than 21 employees had to wait two years before qualifying for protection against unfair dismissal, while those in larger firms only had to wait one year.

The *Employment Act 1980* raised the qualifying period for unfair dismissal in firms with fewer than 21 employees to two years at a time when the general rule was one year's service. The exact wording used referred to an employment in which "at no time during the period did the number of employees employed by the employer for the time being of the dismissed employee, added to the number employed by any associated employer, exceed twenty".[131]

[129] 2002/14/EC
[130] Draft Regulations available at: www.dti.gov.uk/er/consultation
[131] 1980 Act, section 8

This special provision became redundant when the qualifying period was raised to two years for all employees in 1985.[132] It has now been reduced to one year, again for all employees.[133]

b. *Sex Discrimination*

The *Sex Discrimination Act 1975* originally excluded employment in private households and in firms employing fewer than six people.[134] This was repealed by the *Sex Discrimination Act 1986* following a European Court ruling. The *Race Relations Act 1976* still exempts employment in private households,[135] although this exemption will be partially repealed to comply with the *EC Directive establishing a general framework for equal treatment in employment and occupation*.[136]

c. *Redundancy Rebates*

When the redundancy payments scheme was first introduced under the *Redundancy Payments Act 1965*, employers were able to claim substantial rebates from the Redundancy Fund. However, over the years, the size of the rebates was reduced until they were abolished for all but firms with fewer than 10 employees by the *Wages Act 1986*. The *Employment Act 1989* finally abolished all rebates.

d. *Statutory Sick Pay*

At one stage, the Small Employers' Relief Scheme enabled firms with a gross national insurance contributions bill of £16,000 or less a year to recover SSP payments for employees absent on sick leave for six weeks or more. However, this has now been replaced by a Percentage Threshold Scheme under which employers must calculate each month the ratio of SSP paid to Class 1 liability in the month. If SSP exceeds 13% of the contribution liability, the employer may recover the monthly excess.[137] The effect is to help employers with a large proportion of the workforce sick at any time.

Statutory Sick Pay (administered by employers) replaced national insurance sickness benefit (administered by the DHSS) in April 1983 under the *Social Security and Housing Benefits Act 1982*. At first, employers received full re-imbursement for their expenditure under the scheme but, under the *Statutory Sick Pay Act 1991,* this was reduced to 80%, and the *Statutory Sick Pay Act 1994* transferred the whole cost of SSP on to employers.

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[132] *Unfair Dismissal (Variation of Qualifying Period) Order 1985* SI 1985/782.

[133] *Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 1999,* SI 1999/1436

[134] section 6(3)

[135] section 4 (3)

[136] Council Directive 2000/78/EC of 27 November 2000 and Explanatory notes on the *Draft Race Relations Act 1976 (Amendment) Regulations 2002*, published for consultation in October 2002, http://www.dti.gov.uk/er/equality/racexplanatory.pdf .

[137] Inland Revenue, *Statutory Sick Pay Manual for Employers*, CA 30 from April 2002, paras 75-78 http://www.inlandrevenue.gov.uk/pdfs/emp2002/ca30.pdf and Inland Revenue, website, http://www.inlandrevenue.gov.uk/employers/employee_sick.htm#13

There were, however, special provisions for small firms called "Small Employers' Relief". Under the 1991 arrangements, employers whose gross contributions bill did not exceed £15,000[138] in the last complete tax year were able to recover SSP paid in respect of employees who were absent through sickness for at least six weeks. In 1994, the threshold was raised to £20,000 and the threshold for eligible sickness absence reduced to four weeks.

B. Other Small Firms Thresholds

1. Tax

a. VAT registration

VAT is charged on the supply of all goods and services made in the course of a business by a taxable person, unless they are specifically exempt. All businesses must register for VAT if their turnover of taxable goods and/or services is above a given threshold, which is currently £58,000.[139] VAT is charged either at the basic rate - currently 17½% - or the zero rate.[140] VAT is charged on the additional value of each transaction, and is collected at each stage of production and distribution. A business pays VAT on its purchases - known as input tax, and charges VAT on its sales - known as output tax. It will settle up with HM Customs and Excise for the difference between the two. In the end the cost of the tax is borne by the final consumer.

b. Zero rate on corporation tax

Corporation tax is paid by companies and unincorporated associations (like clubs, societies and voluntary associations) on their profits each year. This guide outlines the current rates to help you calculate how much you owe.

There are three key corporation tax rates: the starting rate, the small companies' rate and the main rate.

If your company's profits fall between two rate bands, you will be eligible for marginal relief. This is designed to ease the transition from one rate to the next.

Each of the three rates of corporation tax – starting, small companies' and main rate - relate to a level of profit. When a company's profit level changes from one corporation tax rate to the next, higher, rate, marginal relief is available to ease the transition.

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[138] £16,000 from April 1992

[139] With effect from 1 April 2004 (HM Customs & Excise Budget Notice CE5, 17 March 2004). The threshold was increased by £2,000 to its present ceiling by Order (SI 2004/775).

[140] A reduced rate of 5% is charged on a small number of supplies under schedule 7A of the *Value Added Tax Act (VATA) 1994*; principally, the supply of domestic fuel and power, the installation of energy saving materials, women's sanitary products, children's car seats and certain types of construction work.

The corporation tax rates for 2004/5 include a starting rate on profits of £0 - £10,000 of 0 per cent (where no tax payable). However, from 1 April 2004 a minimum rate of 19 per cent will be charged when profits are distributed to non-company shareholders. The zero rate remains if profits are re-invested in the business.

The marginal starting rate relief on profits of £10,001 - £50,000 is 19 per cent less relief. The relief is £50,000 minus the amount of profits multiplied by 19/400. The small companies' rate on profits of £50,001 - £300,000 is 19 per cent. The marginal small companies' relief on profits of £300,001 - £1,500,000 is 30 per cent less relief The relief is £1,500,000 minus the amount of profits multiplied by 11/400. The main rate on profits of £1,500,001 and above is 30 per cent.[141]

2. Rate relief for small businesses

From 1 April 2005 the Government are introducing a new small business rate relief under powers available in section 61 of the *Local Government Act 2003*. Mandatory rate relief will be available at 50 per cent for properties up to £3,000 of rateable value and will then decline on a sliding scale as rateable value increased, reaching no relief at £8,000 rateable value.

The relief is intended to help small businesses. The relief will be available to any business that declares to the local authority that it occupies only the one property for which it is claiming relief. Full details of the scheme will be set out in subordinate legislation, issued either by the Secretary of State or, for Wales, by the National Assembly.[142]

A similar scheme already exists in Scotland, where it was introduced it on 1 April 2003. There are some notable differences in the schemes; in Scotland, for example, all non-domestic subjects with a rateable value of £10,000 or less are eligible for a discount of between 5% and 50% on the rate poundage.[143]

3. Rate relief for rural shops

Businesses in a rural village with a population below 3,000 are entitled to a 50% mandatory reduction in the business rates bill. Local councils have the discretion to increase this to 100%. The types of business that qualify for this relief are:

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[141] Taken from the Business Link website: http://www.businesslink.gov.uk/bdotg/action/detail?r.l3=1073908103&r.l2=1073859200&r.l1=1073858808&r.s=sc&type=RESOURCES&itemId=1073790939

[142] Further details of the scheme are available in Library standard note, SN/PC/3009, *Implementing the Local Government Act 2003: Small business rate relief scheme*

[143] See *Small business rate relief scheme*, available at http://www.scotland.gov.uk/library5/finance/sbrs-00.asp

- the only village general store or post office as long as it has a rateable value of up to £6,000;
- a food shop with a rateable value of up to £6,000; and
- the only village pub and the only petrol station as long as it has a rateable value of up to £9,000.

Local councils also have the discretion to give up to 100% relief to businesses in a qualifying rural village with a rateable value of up to £12,000, as long as the business is of benefit to the community.[144]

Similar schemes operate in England, Wales and Scotland.

4. Company Audit and Reporting

Ever since 1967 private companies have been required to file annual accounts at Companies House and to have these accounts audited by a qualified independent auditor. However, in 1981 the UK took advantage of an exemption provided for in the EC's Fourth Company Law Directive and allowed small and medium sized companies to file abbreviated accounts at Companies House.[145] The option to exempt small companies from the statutory audit requirement was rejected on that occasion, and again when the matter was reviewed in 1986 and 1988. Abbreviated accounts limit the information available to a company's competitors about its operations, but do not save small companies money.

In 1993, when a further EC Directive was being implemented, the UK took advantage of the scope for audit exemptions for the first time. Companies with turnovers of £90,000 or less became exempt from the audit requirement; companies with turnovers above this threshold, but not above £350,000, could opt to prepare a simpler evaluation, the Audit Exemption Report (AER). In 1997, the regime was simplified by abolishing the AER, and extending the exemption from audit to all companies with a turnover of not more than £350,000.[146] Provisions to allow shareholders to require an audit on request despite entitlement to exemption exist as a safeguard for minority shareholders. As the DTI's consultation on increasing the thresholds noted, whilst an audit by a regulated auditor is not required where an exemption exists, the directors nevertheless still have to prepare and file accounts which present a true and fair account of the company's financial position.

Certain types of small company are unable to take advantage of the exemption, including banks, insurance companies and financial services companies; companies which hold significant assets on their balance sheets; and companies which are part of groups (unless the whole group falls below the audit threshold). Charitable small companies have an

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[144] See *Business rates: a guide*, available at http://www.local.odpm.gov.uk/finance/busrats/guide/03.htm#14

[145] 78/660/EEC

[146] *The Companies Act 1985 (Audit Exemption) (Amendment) Regulations 1997* SI 1997 No 936

overlapping regime: where such companies have annual income of between £90,000 and £250,000 an Audit Exemption Report is required. If their income exceeds £250,000, a full audit is required.[147]

[147] See Library Standard Note SN/B/2845: http://hcl1.hclibrary.parliament.uk/notes/bts/snbt-02845.pdf

Appendix: Organisations and Contacts

Interest Groups

British Chambers of Commerce
1st Floor
65 Petty France
St James' Park
London SW1H 9EU

Tel.: 020 7654 5800
Fax: 020 7654 5819
Email.: info@britishchambers.org.uk
Website: www.britishchambers.org.uk

Federation of Small Businesses
Sir Frank Whittle Way
Blackpool Business Park
Blackpool
Lancashire FY4 2YE

Tel.: 01253 336000
Website: http://www.fsb.org.uk/

Forum of Private Business
Ruskin Chambers
Drury Lane
Knutsford WA 16 6HA

Tel.: 01565 634467
Fax: 01565 650059
Email.: fpbltd@fpb.co.uk
Website: www.fpb.co.uk

Institute of Directors
116 Pall Mall
London SW1Y 5ED

Tel.: 020 7839 1233
Fax: 020 7930 1949
Email.: enquiries@iod.com
Website: www.iod.com

National Federation of Small Businesses
2 Catherine Place
London SW1E 6HF

Tel.: 020 7592 8100
Fax: 020 7233 7899
Email.: London@fsb.org.uk
Website: www.fsb.org.uk

Small Business Bureau
Curzon House
Church Road
Windlesham
Surrey GU20 6BH

Tel.: 01276 452010
Fax: 01276 451602
Email.: info@sb.org.uk
Website: www.smallbusinessbureau.org.uk

Parliament/Government

All-Party Small Business Group
c/o Alan Cleverly OBE
Small Business Bureau
Curzon House
Church Road
Windlesham
Surrey GU20 6BH

Website: http://www.smallbusinessgroup.org.uk

Business Link
Website: http://www.businesslink.gov.uk/

Cabinet Office Better Regulation Task Force
Cabinet Office
5th Floor
22 Whitehall
London SW1A 2WH

Tel.: 020 7276 2142
Fax: 020 7276 2042
Email : taskforce@cabinet-office.x.gsi.gov.uk
Website: http://www.brtf.gov.uk/index.htm

Department of Trade and Industry (DTI)
1 Victoria Street
London SW1H OET

Tel.: 020 7215 5000 (enquiries)
Email : dti.enquiries@dti.gsi.gov.uk
Website: http://www.dti.gov.uk/for_business_small_business.html

Small Business Council
6th Floor
Kingsgate House
66-74 Victoria Street
London SW1H 6SW

Tel.: 020 7215 8519
Email.: sbcsecretariat@sbs.gsi.gov.uk
Website: http://www.sbs.gov.uk/default.php?page=/sbc/default.php

Small Business Service
Kingsgate House
66-74 Victoria Street
London SW1HE 6SW

Tel.: 0845 001 0031
Email.: gatewayenquiries@sbs.gsi.gov.uk
Website: http://www.sbs.gov.uk/