



The Burden of Regulation - May 2011

Despite the rhetoric, the burden of regulation continues to get heavier

The Government made five key commitments to lighten the burden of regulation since it took power last May – but a year later, how many of the recommendations have made any difference? While systems have been put in place and pledges made in an attempt to cut regulation; there has been a limited reduction so far to the regulatory burden that small firms face on a daily basis.

Earlier this year, on March 18, the Government said that it would create an exemption from new domestic regulation for firms with fewer than 10 employees. But only a few weeks later on April 6, they implemented three large and burdensome regulatory changes to employment legislation - with no exemption for micro firms. Any confidence created by the exemption was greatly reduced by the Government's failure to halt these changes.

Added to which, over the next few years businesses are set to face even more regulatory change in areas such as pensions, flexible working and changes in maternity and paternity laws. This is in addition to changes coming from Europe, which includes the Agency Worker's Directive which is expected to cost business a staggering one off cost of £40m.

The FSB warmly welcomes the Government's commitment to review employment law and tackle some of the big issues that currently exist but believes that this will be undermined if such additional regulations are introduced. The Government must be careful not to give with one hand and take away with the other.

The UK still ranks 89th out of 139 countries for having the largest regulatory burden on business in the World Economic Forum's Global competitiveness report. Countries regarded as having similar workers rights and safety levels have managed a much better ranking, such as New Zealand which is ranked 25th for the regulatory burden that it imposes and Finland which is ranked 10th. This is not an argument about protection; this is about efficiency.

In a time when Government has limited spending powers, cutting regulation is a resource efficient way of improving business productivity and competitiveness. The deregulatory process needs to be thorough and well thought out – which can take time - but it is vital that evidenced changes are well communicated throughout the process. Over one third of FSB members cite regulatory burden as the biggest barrier to business, only behind cash flow and the recession. Getting this right could help ensure the economic recovery and create jobs.



The Government's policy commitments to reduce the regulatory burden

- Introduce new regulation only as a last resort¹
- Moratorium for micro-firms²
- Thematic stock review³
- 'One-in One-out'⁴
- To tackle the flow of new regulation from Europe

Government pledge - Introduce new regulation only as a last resort

Verdict: Disappointing so far

- Major regulatory changes introduced since this Government took power such as the extension to paternity leave and pay and the removal of the Default Retirement Age (DRA). Further changes in the next few years on pensions, flexible working and paternity and maternity laws

Businesses were promised that this Government would only introduce regulation as a last resort. This is a policy position which the FSB fully supports as a fundamental, wholesale change in culture. However, since May 2010 businesses have had to deal with major pieces of regulatory change including the extension of paternity leave and pay, the removal of the DRA and a tightening up of the rules on non-EU migration specifically in relation to Tiers One and Two.

The Government has not fully addressed one of the key concerns of business – the burden created by the flow of new regulation - by continuing to push forward with these changes. The FSB is further concerned about proposed changes which will add an even heavier burden on employers over the coming years, by introducing automatic enrolment to pension schemes, proposed changes to the right to request flexible working and proposed changes to paternity and maternity rights. Small

¹ Less regulation, better regulation and regulation as a last resort, December 2010, Department for Business, Innovation and Skills

² Minister of State Mark Prisk MP speech on 25 March 2011, at FSB conference

³ Plan for Growth, HM Government, 23 March 2011

⁴ Programme for Government, May 2010



businesses will question how all these regulatory changes can be considered regulation as a last resort.

Major changes, at a time when small businesses face economic uncertainty, carry the risk of a jobless recovery and weaken the prospect of a '*competitive environment for enterprise to thrive*⁵', which the Government has pledged to create. The private sector is being relied upon to employ those made redundant in the public sector. This is an unrealistic expectation if Government continues to make changes such as the ones described above.

Government pledge - Moratorium for micro firms⁶

Verdict: Disappointing so far

- It appears that no regulation introduced since the moratorium came into force has had the micro exemption

In an attempt to stem the flow of regulation – for micro firms - in March this year the Government made a commitment to introduce a moratorium on all new regulation of domestic origin for firms with fewer than 10 employees.

The moratorium was due to take effect from 1 April 2011. Yet despite this pledge, three of the most burdensome pieces of regulation for business were implemented after this date; additional paternity leave and pay, the abolition of the DRA and the tightening of the rules on non-EU migration specifically in relation to Tiers One and Two.

It appears that none of the regulations that came into force this April were subject to the moratorium. It is accepted that in cases of age consents on sun beds for example, that exemptions are not possible or desirable. However, the FSB questions the value of introducing a policy that so far has had no substantial impact.

The pledge was welcomed by the FSB as it had the potential to benefit many micro firms. However there was some disappointment when it became clear what was to be exempt. For this to have a meaningful impact it needs to include the big pieces of employment regulation.

⁵ Plan for Growth, HM Government, 23 March 2011

⁶ Minister of State Mark Prisk MP speech on 25 March 2011



The FSB argues that in many cases it would be more beneficial if permanent exemptions were introduced on specific regulations that impose a particular burden on micro firms, such as the upcoming reforms to auto-enrol employees into pension schemes. This would be a bold and extremely welcome move.

Government pledge - Thematic stock review⁷

Verdict: Some aspects welcomed, more to be done

- 13,955 suggestions made via the 'Your Freedom' website but how have they influenced Government policy?

In under a year the Government has attempted two crowd sourcing exercises with similar objectives. The 'Red Tape Challenge' website opened on April 7. The FSB questions the usefulness of creating a website for a limited period of time, for businesses to read the extensive list of regulations and to pinpoint exactly which Statutory Instrument (SI) they would like to remove or improve.

Many small businesses will not have the time to do this, will not know which two week time period relates to their sector, will not be aware of which SI burdens them the most and may not be aware that the website even exists. This is even before we begin to explore how firms that are not online use such a tool.

It is clear that this website has been used, but by whom? How many of the 4.8 million businesses in the UK have used the website as opposed to other members of the public who do not run businesses?

The predecessor to 'Red Tape Challenge', the 'Your Freedom' website closed on 10 September 2010. Businesses will be wondering what happened to the information they took time to input on the website and how it was used. Without transparency on this issue, many businesses will question the point of going through the exercise again with the 'Red Tape Challenge' website.

What is more important is that a series of thorough thematic stock reviews happen across Whitehall internally, with stakeholder engagement, alongside this external consultation. The website should only be the start of a much wider process. The FSB warmly welcomes the root and branch employment law review and Department for Environment, Food and Rural Affairs' waste review and would like to see more like this on other themes.

⁷ Plan for Growth, HM Government, 23 March 2011



There needs to be a concerted effort to overhaul the culture in Whitehall which remains the fundamental stumbling block in the deregulation agenda. Only when there is a focus on this issue will a thematic review be successful.

Government pledge: 'One-in One-out'⁸

Verdict: Fair start but with more to do – need for better communication

- 44 per cent of initial impact assessments 'not fit for purpose'

Small businesses are averse to regulatory change and the uncertainty that it brings. There have been two instances in the last year where the Government has demonstrated to some degree how the 'One-in One-out' system is working but in general it has poorly communicated to business the operation of this system.

The regulatory impact assessment process has to stand up to proper scrutiny to ensure that costs on businesses are minimised. How well this system works is crucial to the successful implementation of the 'One-in One-out' rule. If the figures cannot be relied upon the process becomes meaningless.

A report by the Regulatory Policy Committee (RPC) found that 44 per cent of the first round impact assessments (IAs) it saw were not fit for purpose. The report broke this figure down into reasons why this was the case. In 28 per cent of IAs they lacked substantive evidence to support the argument for a regulatory change and in 51 per cent of cases the IA failed to provide a reliable estimate of the costs and benefits. Some policy makers in Whitehall are still failing to understand the importance of deregulation to growth and jobs; they must get it right for this system to work. Hopefully with the light that the RPC is shining on the process this will begin to change and the FSB strongly supports this process but this initial RPC report remains disappointing.

The publication of the Statement of New Regulation (which provided details of the list of regulations implemented from 1 January to the 30 June 2011) was published on 6 April after many of the regulations came into force. It should have been published much earlier and covered a longer period of time.

The FSB is pleased with the limited number of regulatory changes made. However, this should have been communicated better to help businesses understand what this

⁸ Programme for Government, May 2010



means for them. Confidence in this system will only grow if there is a tangible reduction in the number of regulations introduced over a number of years and a large number of stock regulations removed.

The FSB would like to see a target for the number of regulations introduced on each Common Commencement Date. Alongside having the regulatory 'ins' balanced by the regulatory 'outs'; there is a need to ensure that the overall number of regulations does not increase.

The FSB would also like to see other regulatory changes considered as part of the 'One-in One-out' process. Micro firms often experience extra regulatory burdens as a result of changes and additions to guidance as well as changes to enforcement regimes.

Government Pledge: To tackle the flow of new regulation from Europe

Verdict: Not enough done so far, much more to do

- €124 billion a year of regulations

All of these regulatory processes and promises neglect to deal with the most significant source of regulatory burden that all firms face; the EU. For many businesses this is the white elephant in the room that has still not been dealt with. Even if all of the UK processes worked perfectly and no domestic regulation was ever introduced, businesses across Europe would still have to deal with the staggering €124 billion a year (3.5 per cent of EU GDP per year) and more than 100,000 pages of new EU regulations since 1997. The Commission's own figures⁹ show that 44 per cent of SMEs are operating in an over-regulated environment.

Only when a 'One-in One-out' rule is introduced at the European Commission along with a moratorium on regulation, will the culture in the EU begin to change from one which actively seeks to find areas to regulate to one that does all it can to help businesses thrive. Without radical changes of this sort in the EU, the deregulatory agenda will ultimately fail. The FSB welcomes the statements that this Government has so far made in Europe but there is much more that can be done. There is a need for a much greater focus on the work of the EU and Government needs to work more closely with other countries in the EU to achieve the radical changes that are needed.

⁹ www.ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-observatory/index_en.htm#h2-2007-observatory-survey



Conclusions

Freeing businesses from the shackles of regulation should be a crucial Government commitment and one which has the potential to boost job creation.

This year businesses will have to deal with three major changes to employment law and this is before EU regulation, such as the Agency Workers Directive, is even considered. And this burden is still set to increase over the coming years with the introduction of automatic enrolment into a pension scheme for all employees, changes to the right to request flexible working and changes to maternity and paternity laws.

Small businesses want a fundamental shift in Whitehall culture away from regulation being considered as the best solution in all situations and as part of an absolute commitment from all civil servants to the deregulatory agenda. And above all they want major reforms in the EU which will halt the constant flow of new regulations and ensure that the focus shifts instead to wealth creation.