

SECT:OR

Small Enterprises
in Covid Times:
On Regulation

**Navigating the COVID-19
Regulatory Landscape:**
How small businesses
experienced regulations
in a crisis

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Newcastle University is one of the UK's leading civic, research-intensive universities. We have a strong tradition of working for the public benefit through the co-creation of knowledge in partnership with others.

FSB is a non-profit making, grassroots and non-party political business organisation that represents members in every community across the UK. Set up in 1974, we are the authoritative voice on policy issues affecting the UK's 5.5 million small businesses, micro businesses and the self-employed.

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Foreword



**Tina McKenzie, UK Policy
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On the 31st of January 2020 the UK was preparing to enter a “new world”, a post-Brexit post-transition world that increased the scope for substantial regulatory change and challenge. Many anticipated that this would herald a reduction in regulatory burden, and FSB has put forward the British Columbia Model¹, showing how a change in culture around regulation could be delivered. However, almost immediately, that world and that future changed significantly.

The COVID-19 pandemic quickly dominated the regulatory agenda, as the Government and health professionals sought to understand and respond to the pandemic. As the race to create vaccines got underway, many areas of day-to-day life were regulated in a way that none of us would have ever imagined, and business worlds were turned upside down. This was the biggest regulatory stress test in decades.

Almost every small business in the UK has been affected by regulatory changes during the pandemic, and business owners, managers and employees have had to take decisions, sometimes with only a few hours' notice, about how their business could respond to sudden changes in the law and regulatory guidance.

For small businesses, the cost and resource required to respond to and manage regulation can often be high. Small businesses don't have compliance managers, and often finding time to understand new regulations, let alone implement them, takes time and resource away from other parts of the business.

A dramatic flood of new and altered regulation and guidance hit small business in quick succession, drastically forcing change in business practices and in many cases, business models. Despite these challenges, small businesses stepped up to the mark.

This research project, which Newcastle University and the University of Birmingham have delivered in partnership with FSB, seeks to learn the regulatory lessons from the pandemic. It shows that some of the regulatory changes during the pandemic were seen as beneficial, although that didn't mean they weren't also difficult, with furlough being an example. In particular, the research highlights small businesses' tendency to “gold-plate” in a crisis, their fear of non-compliance, and how lack of clarity in regulatory communication and requirements come at a significant cost.

As we transition to “Living with COVID”, and as we look to make use of the UK's new post-Brexit regulatory landscape, this is the time for governments and regulators to learn these lessons and make good regulation the norm.

¹ FSB (2021) report, *Escaping The Maze: How Small Businesses Can Thrive Under The British Columbia Regulatory Model*

Executive summary

As the COVID-19 pandemic took hold in early 2020, governments across the UK were forced to react. They were faced with the considerable challenge of striking a balance between protecting the health of the UK population while mitigating the negative impacts to the economy. One element of the response was a regulatory one and Government actions compelled business leaders to take decisions with far-reaching consequences for their employees' livelihoods, public and employee health, and the viability and survival of their businesses. This report sets out the impact of the new and changed regulations arising from the pandemic on the UK small business community.

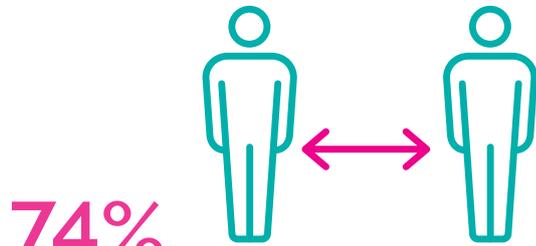
As is well understood, regulatory compliance presents small businesses in particular with a significant challenge given their relatively constrained resources. Hence, pandemic conditions presented those businesses with a stern test. This report provides an account of how small businesses from across the UK responded to that test. In so doing, it demonstrates the severe difficulties that many business owners faced in adapting to how the rapidly changing regulatory landscape affected their business. At the same time, the report evidences the resilience and innovation exhibited by business owners as they sought to adapt their businesses to survive pandemic conditions and thrive beyond them.

This report draws on the insights and experiences of nearly 1000 UK small businesses, the vast majority being members of FSB. The research comprised a large-scale online survey in addition to follow up interviews with individual business leaders, which added depth and explanation to the patterns revealed by the survey.

The detailed findings of this research are set out in several sections. The initial sections report on small businesses' engagement with new and changed regulations arising from the pandemic, identifying those which businesses found most difficult to comply with and those they found most beneficial. The report then interrogates business leaders' experience of complying specifically with COVID-security regulations, something that the overwhelming majority of businesses were affected by to some degree. Research findings identify differences in the impact of regulations depending on factors including: the number of employees, the sector, the business model, and the type of premises. The report also concludes that the impact of regulations varied over the course of the pandemic for individual businesses depending on the nature of the business and its regulatory experience. Some reported that the shock of having to engage with a raft of new regulatory information prompted them to implement innovative changes to their business operations which they intend to keep. Many of those changes have highlighted the importance of small businesses growing their digital capacity. Finally, the report identifies businesses' views on the clarity, consistency, and timing of regulatory communications as well as the sources that they relied on to take responsive actions.

This comprehensive picture of UK small businesses' experience of navigating an unprecedented period of regulatory change informs a series of recommendations for those tasked with designing and implementing business regulations. The insights set out in this report should inform regulatory responses to future public health and, potentially, other widely felt crises, and to regulation more generally in a post-COVID landscape.

Navigating the COVID-19 Regulatory Landscape



74%

of small businesses said they had to engage with **social distancing measures** for customers and/or staff



18%

of small businesses listed furlough as one of **the most beneficial** and at the same time **one of the most difficult** regulations



66%

of businesses in the **hospitality, food and beverage sector** found they had to **take considerable action** to make their premises COVID-secure



35%

of small businesses found it either **quite difficult** or **very difficult to understand the implications of regulations/guidance in relation to the COVID-security** of their business



82%

of small businesses used **more than one source of information** to find out about regulatory changes during the pandemic



22%

of businesses thought the distinction between **regulations enforceable by law** and **non-mandatory government guidance** was 'totally unclear'

Key findings

Regulatory engagement in broad terms

- Regulations relating to the protection of public health dominated engagement by small businesses, although businesses also had to engage with new or changed regulations relating to employment, tax and finance and other regulatory areas. Businesses within the Health and Education, and the Hospitality, Food and Beverage sectors were engaging with significantly more regulations than sectors such as Professional and Support Services.
- In terms of specific regulations most commonly engaged with during the pandemic, those relating to social distancing, hygiene and cleaning practices, and the use of PPE came out on top. At the same time, a majority of small businesses reported involvement with processes relating to the furloughing of employees, while just over a quarter reported having engaged with regulations concerned with tax filing/payment extensions.
- Taking the size² of the business into account, businesses with no employees engaged, on average, with around 3 of the 21 new or changed regulations the survey listed, while those with 10 or more employees engaged with around 9 on average. So, in general terms, the more employees the small business had the more regulatory engagement it had to manage.

Regulations found to be 'difficult' or 'beneficial' to engage with

- Regulations most frequently ranked within the top three most difficult to comply with were requirements to close premises or reduce capacity; social distancing; and those relating to the furlough scheme, which was reported to be insufficiently flexible, especially when first introduced.
- Furlough was most likely to be ranked within the top three most beneficial regulations (leading to what the report terms a "furlough paradox") alongside other regulatory changes specifically designed to assist businesses, including extensions to tax filing deadlines/extended terms for tax payments.
- Interviews revealed multiple benefits businesses associated with the furlough scheme, including: the ability to retain staff and avoid redundancy procedures; providing time to adjust to the pandemic conditions; protecting vulnerable employees or those with vulnerable family members; and dealing with reductions in business levels after re-opening.

² 'size' in this report refers to the number of employees within the business.

Complying with COVID-security regulations

- 35% of businesses found it quite difficult or very difficult to understand the implications of the regulations and guidance in relation to ensuring the COVID-security of their business. Difficulties in this area, in part, related to the number of changes that were made to the UK Government's "Working safely during coronavirus (COVID-19)" guidance.
- The size of the business impacted participants' experience of complying with COVID-security regulations – the more employees, the more difficult businesses found it to understand what the regulations implied for them, the greater the amount of action they took to comply, and the more difficult it was to take such action.
- The sector also had an impact. Two-thirds of hospitality businesses, and slightly fewer health and education businesses stated that they had to take considerable action to make their business COVID-secure. By contrast, only 28% of professional and support services businesses did. In terms of how easy or difficult it had been to take such action, health and education businesses reported having had the most difficulty even though most businesses across all sectors stated that it had been easy to take the required action.

Impact of regulations over time

- The research found that regulatory impact can vary over time for businesses. Some businesses expended considerable financial and management resources early on to achieve compliance with COVID-security regulations, for example, but after a period of time these compliance processes became normalised within everyday operations. This is not to say that regulatory impact disappears; rather, that the experience of managing how a business responds to regulations is not necessarily constant.
- Having managed to adapt to the initial shock of engaging with a raft of new regulatory information, some businesses found that their "new" situation opened up novel opportunities to implement changes that they would maintain post-pandemic. Such innovations related to activities such as implementing hygiene practices, home working, operational changes (e.g., new office layout), developing new products, services, and sales channels, and introducing virtual working practices (e.g., virtual meetings). In relation to digital innovations, businesses who had invested in digital technology prior to the pandemic were more able to withstand the disruption caused.

Regulatory practices and processes during the pandemic

- Although regulatory changes in the midst of a pandemic were acknowledged as unavoidable by many businesses, the lack of clarity and number of changes was a source of stress for some. Frustration was also experienced by many businesses in relation to the lack of clarity in the distinction between those requirements enforceable by law and non-mandatory government guidance. Some businesses experienced additional complexity caused by the varied regulatory responses and communications across the nations of the United Kingdom.
- More than half of the businesses expressed a preference for flexible regulations with some discretion in how to comply, although well over a third stated they would prefer prescriptive regulations during a crisis. The smallest businesses were more likely to prefer prescriptive regulations than businesses with five or more employees, the latter expressing a clear preference for flexible regulations.
- Some small business owners had purposefully gone further than the minimum levels of compliance in order to better protect their business, themselves, their employees, and customers against COVID-19. Others "gold-plated" their response due to uncertainty as to what was required to comply and where a minimum compliance level sat.

Navigating sources of regulatory information

- 82% of businesses relied on more than one source to find out about regulatory changes during the pandemic.
- Nearly three-quarters of businesses reported that they had relied on GOV.UK for regulatory information during the pandemic, with half the sample relying on business representative organisations such as FSB. Business representative organisations and sector specific organisations were found to have tailored the language and information they provided so that it was more useful to their business audience.
- Just over half of the sample made some use of informal sources (news sources, friends, other business owners, social media).

Relative significance of pandemic-related regulatory changes

- The degree of impact of new and changed regulation in the light of the pandemic varied depending on the individual business's pre-existing regulatory engagement. For those businesses operating in already highly regulated sectors, the addition of new and changed pandemic-related regulations may have been experienced as less impactful than for other, lightly regulated businesses. Some business owners reported that, while pandemic-related regulations presented them with all manner of challenges, other regulations have, or still do, represent greater burdens.

Recommendations

- 1. Governments across the UK should seek to minimise the restrictions imposed on small businesses in order that they can qualify for schemes designed to support businesses.** When thinking about how best to reduce compliance burdens in the future, it is important to not only consider regulations that businesses must comply with, but also to avoid unnecessary qualifying criteria being applied to beneficial schemes that businesses might choose to apply for. Furlough was potentially one of the most beneficial regulations for those small businesses with employees, but also one of the most difficult. At the outset, with the binary choice of furloughing employees for a minimum of three weeks or paying their full wages, some businesses faced the stark choice of missing out on revenue-generating work or incurring full wage costs for an employee. The introduction of flexible furlough removed this binary choice, better reflecting the needs of small employers.
- 2. UK Government should ensure any future income support scheme for small businesses is flexible from the outset and additionally should ensure directors who draw income from running their business via dividends are treated in-line with the self-employed.** A Directors' Income Support Scheme (DISS), proposed by FSB and partners and founded on the principles underpinning the Self-Employment Income Support Scheme, could have been established based on the trading profits of the company.
- 3. Not all employees can work from home, therefore the UK Government should promote other forms of flexible working arrangements.** Hybrid working cannot be undertaken by all small businesses including many of those in hospitality and childcare, and adopting a range of practices (e.g. staggered hours) would enable all sectors and employees to benefit from a greater adoption of flexible working in the labour market.
- 4. The Help to Grow (Digital) scheme should be expanded to organisations with fewer than five employees and provide access to a wider range of software.** Regulatory and legal changes during the pandemic have only increased the importance of having a digital presence, with digital skills and capability being fundamental to a business's ability to react to legal and regulatory changes. The Help to Grow (Digital) scheme provides vouchers which can be used to invest in digital technologies. This scheme should be extended in scope, so that businesses with fewer than five employees can use the vouchers to invest in a wider range of software.
- 5. The UK Government should establish a taskforce of Ofcom, devolved bodies, suppliers and business groups to develop temporary and affordable solutions that address the slow and unreliable broadband connection in very hard to reach areas while Gigabit capable broadband is rolled out across the country until the end of the decade.** The UK Government should also undertake its own nationwide awareness-raising activities of the benefit of gigabit-capable broadband. It should establish and lead a coalition of key stakeholders to work together on a national campaign. In addition, mobile coverage in hard-to-reach areas must be addressed.
- 6. Governments across the UK should evaluate the impact of the actions taken during the pandemic in respect of regulation, and draw up a contingency plan.** A wide range of public health restrictions and business support measures were rolled out at different times during the pandemic, at a speed that meant the normal impact assessment was simply not possible. Now is the time to evaluate those impacts, so that if a similar event should happen again there are clear plans and communication channels in place so that this action can be understood by the wider community.

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7. **Governments and regulators across the UK should publish illustrative examples of compliance when regulating small businesses. This would include the individual steps and time scales in which a business could become compliant.** This helps show small businesses the journey to compliance, and the timescales indicate which changes are required immediately, and which can be done in time. These illustrative examples would give small businesses examples of how they could choose to comply with the regulations, without fettering the scope for flexibility that many small businesses desire. It should be made clear in each illustrative example which are the mandatory steps, and which are discretionary.
 8. **Governments and regulators across the UK should, whenever changing or introducing new regulations, draw clear distinctions between the actions that a business must take to comply with regulatory changes, and the steps that a business might choose to take.** This should be done by introducing a "red list" at the top of guidance documents setting out which actions must be done, where in the UK this applies, and with further detail later in the document. Additionally, in respect of any optional steps suggested, it should be made clear that these are not part of the regulations and requirements, and as such a business would not be found to be in breach of the regulations for not following them. This distinction would allow small businesses to make informed choices about whether to go beyond minimum compliance levels, while avoiding the risk of gold-plating due to uncertainty.
 9. **Governments and regulators across the UK should avoid making guidance documents unnecessarily lengthy and ensure that they pass a plain English language test.** Where regulatory documents are produced in different languages for the respective devolved nations, simplicity should be the guiding principle. This means that, regardless of which of the UK's languages businesses use, they should be able to understand what is required of them. These guidance documents should ideally be produced in conjunction with intermediaries (such as business representative organisations and sector specific organisations).
 10. **Whilst it is impossible to account for each and every individual business circumstance and situation created by new regulations or regulatory change, Governments and regulators across the UK should include an FAQ document within new regulations and regulatory changes designed to address common questions.** This would also include where business groups have asked for further clarity or identified common questions among the business community.
 11. **Governments and regulators across the UK should set up a "regulation request" inbox for the first year of any new regulations, so that businesses can email in queries, which can then be responded to or used as a point of signposting towards useful documentation.** The most common queries can then be used to better update the guidance and future regulations.

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12. **Unless safety critical, Government and regulators should always allow a grace period after a regulatory change is introduced before enforcement action will be taken. Ideally, this would take the form of a standard six-month grace period automatically applied to new regulations unless it can be shown that there is a safety critical requirement.** When enforcement begins, it should be soft touch, encouraging compliance rather than punishing mistakes. Clearly, while circumstances during the pandemic required rapid regulatory change, there is a learning point that small businesses would be more confident in their compliance approach if they knew that they would not face immediate enforcement activity on Day 1 of a regulatory change. During this grace period, regulators could assess compliance levels and reach out to offer advice and support to small businesses.
13. **Governments and regulators across the UK should design and implement appropriate consultation processes with intermediary bodies as part of communication plans when key regulations are changing.** Many small businesses chose to use a range of sources when finding information about regulatory changes during the pandemic, including informal sources (e.g. social media news feeds and online groups). Where government bodies or regulators can engage early on upcoming regulatory changes with intermediary bodies (like business representative bodies, sector-specific regulators, or trade associations) and work with them in the design of the guidance, it allows those intermediary bodies to produce tailored guidance much faster, ensuring that there is another source of information on the steps needed to comply. This is critically important in devolved nations. Using intermediaries such as Business Wales, Business Gateway in Scotland or NI Business Info can help business draw that distinction between regulations which apply differently in each nation. This early engagement could also take the form of a confidential consultation on the regulatory changes themselves, even in the context of a fast-moving pandemic, and must avoid simply using intermediaries to disseminate Government guidance or as simply an email list.
14. **Government and regulators should always pursue a culture of regulation that emphasises proportionate, appropriately communicated regulation that acknowledges the differential needs and regulatory experiences of different types and sizes of small business. All governments across the nations of the UK should be considering how to take forward their frameworks for better regulation.** For example, the UK Government is currently re-evaluating its approach to regulation in light of the UK's departure from the European Union, and it will be important to ensure that the burden of regulation on small businesses continues to be rigorously assessed and minimised. The 2001 Northern Ireland Better Regulation Strategy, although welcome, is in great need of modernisation and should be reviewed, refreshed and republished. Additionally, the Northern Ireland Executive should legislate to ensure that the Small and Micro Business Impact Test (SAMBIT) is used across all Northern Ireland departments when developing new policy and regulations.

Introduction

A key aspect of the UK Government and devolved national governments' responses to the COVID-19 pandemic in the early months of 2020 was a regulatory one. The pre-existing Public Health (Control of Disease Act) 1984 and the Coronavirus Act 2020, with associated secondary legislation, put in place new regulations and many existing regulations were amended, with the aim of simultaneously preventing the spread of the virus and supporting the business community. This regulatory push also provided ministers in other nations in the UK with new and wide-ranging regulatory powers.

In this context, business leaders were compelled to take decisions with far-reaching consequences for employees' livelihoods, public and employee health, and the viability and survival of their businesses. Crucially, what underpins these types of business decisions are complex judgements based on an understanding of the regulatory context and a capacity to discriminate between swathes of legal obligation and guidance of different kinds. This presents a particularly significant challenge to small businesses (0-49 employees) due to their constrained resources.

The Better Regulation Framework (BEIS, 2020) recognises regulations can place a disproportionate burden on small businesses and considers '*whether such businesses could be exempted from regulation, or the impacts mitigated in some way without compromising the policy objectives*' (p. 23). Regulations introduced in a public health crisis cannot be subjected to normal scrutiny and businesses cannot be exempted. However, understanding how effectively regulations have been communicated and the responsive actions of small businesses is a matter of significance for governments, regulators, the business community, their representative bodies, business support organisations, and professional advisers. Therefore, this research sought to understand how small businesses received, understood, interpreted, and acted on the UK's regulatory response as the pandemic unfolded.

This report provides evidence and insights which can inform governmental regulatory responses to future public health and, potentially, other widely felt crises, and to regulation more generally in a post-COVID landscape. It makes specific policy recommendations and is intended to provide those who formulate regulation and related guidance relevant to small businesses with greater clarity about the means by which businesses receive and interpret guidance, and whether and how they act on it. Regulation informed in this way has the potential to deliver a positive impact on employees' livelihoods, public and employee health, and the prosperity and survival of UK small businesses. In this report, 'regulation(s)' is taken to mean both regulation and guidance, given that understanding the implication of, and taking appropriate action on the basis of both can have an impact on the resources and actions of small businesses.

The report also showcases the resilience of small business owners as they navigated their way through the pandemic regulatory landscape with consideration for employees, customers, and clients. It highlights the lived experience of small businesses dealing with the unavoidable changes and challenges brought by a public health crisis and illuminates the visceral and emotive nature of ensuring compliance with regulations in a crisis. With the UK Government and Devolved Administrations having removed remaining legal restrictions, and as we are now "Living with COVID", the report also sets out further potential challenges that small business owners will have to face.

Research design

The research design of the project needed to take into account the 'general' nature of small businesses in terms of their likely constrained resources to monitor and comply with regulations, while accounting for the heterogeneity of the UK small business population in terms of sector, size, age, regulatory environment and geography. Regulations affected all small businesses regardless of size, sector, or market, but regulatory compliance for those businesses which come into close contact with the public was more complex. During the pandemic, the complexity of the UK's regulatory landscape was laid bare, with the Devolved Administrations each utilising their specific powers to vary the regulatory response to COVID-19 in Scotland, Wales, and Northern Ireland from that in England. It was therefore necessary to capture a representative picture of the impact and implications across as wide and representative a sample of this diverse population as possible. Hence, we conducted a large-scale online survey of small businesses across the UK³, with follow up interviews with individual businesses to provide added depth and explanation to the patterns revealed by the survey.

The survey was open between 3 and 18 August 2021 and administered by the research agency Verve on behalf of FSB. This timing was significant as it enabled us to capture data from small businesses who had experienced more than 12 months of adapting their strategy and operations as a result of understanding and responding to regulation, new and pre-existing, under pandemic conditions. The final sample comprised 991 responses with the vast majority of those respondents being members of FSB.

Inevitably, given the prominence of the pandemic in media coverage and in people's everyday lives, there are bound to be a range of views across society and the business community about how governments across the UK and beyond should have responded to the pandemic. Such views are out of scope of this research. This research has instead sought to focus on eliciting information about the impacts that particular regulations, or regulatory changes, had on small businesses.

Rather than asking about broad regulatory categories the survey sought to provide a novel and valuable level of granular detail by focusing as far as possible on specific⁴ regulations which were new or amended to deal with the pandemic, as well as pre-existing regulations that may have taken on more significance during a pandemic. The way these regulations were presented in the survey was as follows and respondents were asked to identify which of these they had engaged with:

Health and Safety

- Reductions in capacity limits and/or requirement to close premises
- Social distancing measures for customers and/or staff (e.g. at business premises/in shared vehicles/at client premises)
- Requirement to work from home where feasible
- Use of PPE, or additional PPE, at work
- Self-isolation protocols following a confirmed/suspected case of COVID-19
- Guidance related to clinically extremely vulnerable workers, including shielding
- New or additional hygiene, cleaning, and ventilation protocols

³ The demographics of the survey sample are shown at Appendix A

⁴ Some of the 21 regulations that survey respondents were asked about were necessarily broader than individual regulations. However, for the purposes of this report, we will refer to the 21 regulations throughout, for ease of reference.

Employment

- Putting yourself and/or employees on furlough (using the Coronavirus Job Retention Scheme)
- Amendments to Statutory Sick Pay regulations
- Changes to Working Time Regulations to allow annual leave entitlement to roll over to following year(s)
- Engaging with redundancy regulations for the first time
- Changes to “Right to Work” checks, such as allowing video calls and scanned documents

Tax and Finance

- Changes to Business Rates Relief and/or Rural Rate Relief
- Temporary reductions in VAT rates for food, non-alcoholic drinks, accommodation, attractions, and/or PPE
- Extensions to tax filing, and/or extended terms for tax payments
- Temporary bans on business evictions, and/or extensions to Corporate Rent Arrears Recovery (CRAR)

Other

- Ensuring employees can comply with data protection regulations when working from home (e.g. in relation to access to secure data storage/avoidance of data security breaches)
- Gathering customer and/or employee data (e.g. for NHS Test and Trace, vaccination status)
- Modifying licensing, or acquiring new licensing, for example due to changes in business model
- Relaxation of particular planning and/or reporting regulations
- Changes to regulations to permit electronic submission of documents

The survey also provided a sampling frame from which to identify businesses for the interviews, which enabled us to understand more about the experiences and reasoning which led businesses to take actions in response to regulations and guidance. The sample of businesses interviewed has achieved a good spread in terms of business size, location, sector, and regulatory experience. The interviews reported here were undertaken between December 2021 and January 2022.

Analysis of the survey data across the sample enabled us to identify patterns of response to the COVID-19 crisis and regulatory changes, by size, sector, or location of business, and discern key themes, commonalities of experience and areas of difference. Following a process of detailed coding and cross-comparison of transcripts, these patterns and themes have been integrated with findings from the interview data, which have served to contextualise and explain trends in the survey data. Close consideration of both data sources inform the findings of this report, and have led us to the recommendations detailed above.

Overview of regulatory engagement

Many businesses came to an abrupt stop when the first lockdown was announced on 23 March 2020, and some had been required to close a few days earlier. The impact of the instruction to the UK population to stay at home was huge, but the visceral and emotive impacts for many small business owners was similarly profound.

*When the first lockdown came, it was just, the world for me it crashed. **Maths tutor***

*I was really quite surprised when commercial occupational health just tanked, and it was across the whole industry that our workload just disappeared overnight. **Commercial occupational health business***

*When we first heard that we were going to go into lockdown my first thought was we won't survive, within three months we'll have to close the company [...] I just thought I could lose my house, I'm going to lose my business, I've got to lay off five or six people, where do I go from here? **Company in the construction industry***

However, the survey was administered 16 months after the first lockdown was announced and it therefore captures reflections from businesses adapting to, and operating under, a pandemic regulatory regime for more than a year. This first section reports the level of engagement with the 21 regulations and its variation across sector and size of business.

Figure 1 shows how many of those regulations each sector engaged with on average. Unsurprisingly, given the public health nature of the crisis, regulations categorised under the health and safety category dominated engagement by businesses. In terms of sectors, small businesses within the Health and Education, and Hospitality, Food and Beverage sectors were engaging with significantly more regulations than sectors such as Professional and Support Services. Also, unsurprisingly, the data showed that those whose customers came into their premises had more regulatory engagement than those dealing with customers remotely or by visiting the customer's premises.

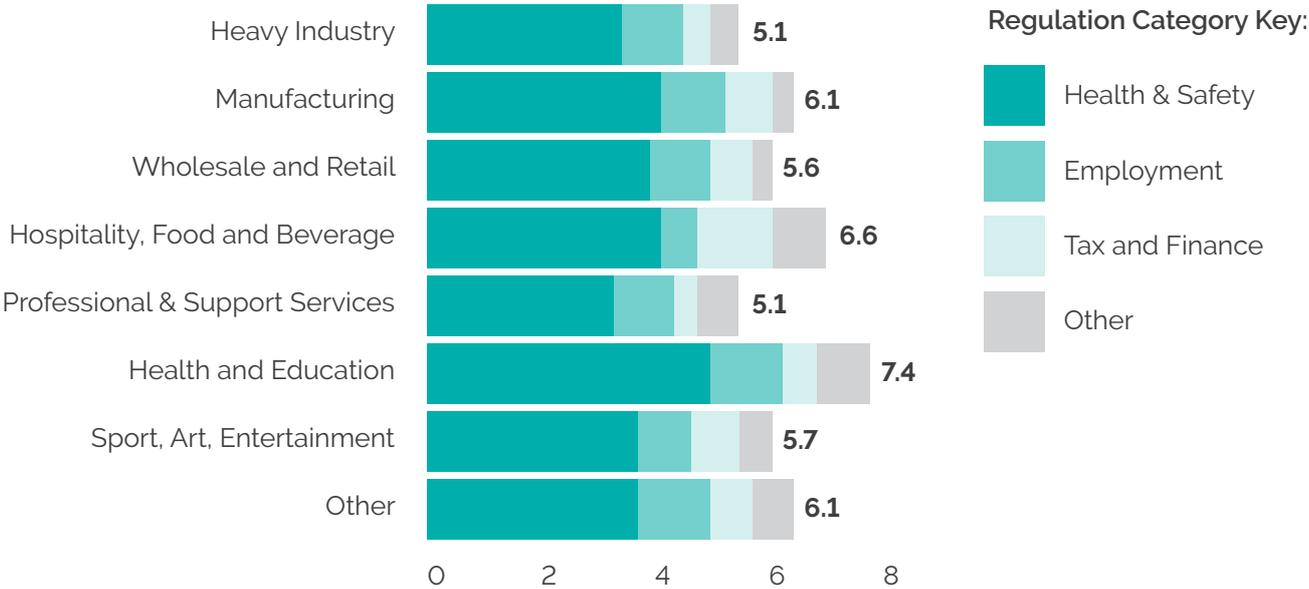


Figure 1: Mean regulatory engagement by sector

Figure 2 shows the specific regulations most commonly engaged with according to each regulatory category. Again, health and safety related measures, such as those relating to social distancing, hygiene and cleaning, and the use of PPE, dominated businesses' regulatory engagement. At the same time, a majority of

small businesses reported involvement with processes relating to the furloughing of employees under the UK government's Coronavirus Job Retention Scheme (Furlough), while just over a quarter reported having engaged with regulations concerned with tax filing/payment extensions.

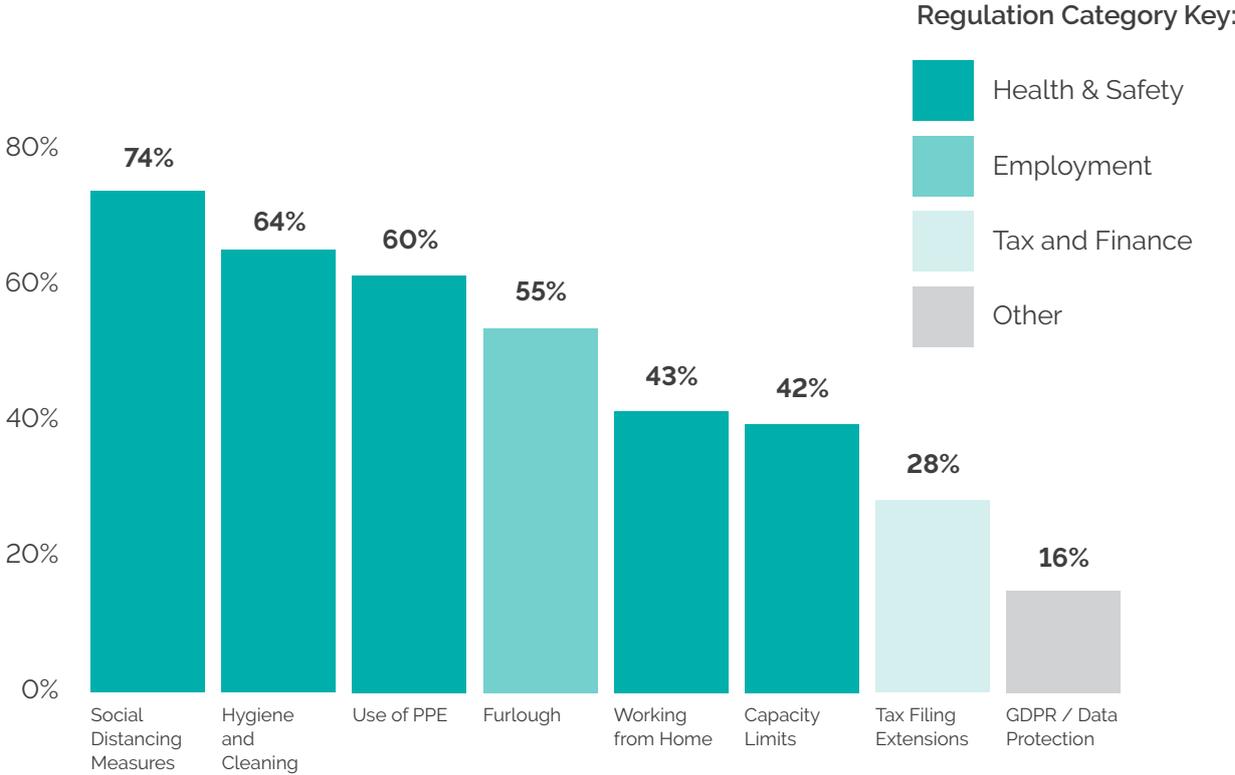


Figure 2: Most common regulations engaged with within each category

Taking the size of the business into account, Figure 3 shows that businesses with no employees engaged, on average, with around 3 (of the 21) regulations, while those with 10 or more employees engaged with around 9 on average. So, in general terms, the more employees the small business had the more regulatory engagement it had to manage. A number of factors are likely to have driven this trend. Inevitably, employment-related regulations, such as using the Coronavirus Job Retention Scheme (Furlough) or the amendments to Working Time Regulations to

allow annual leave entitlement to roll over to following year(s) were more likely to have been engaged with by businesses with employees. An additional factor is that businesses that do not have any employees are statistically more likely to operate their business from home, and businesses with no employees accounted for almost half of all businesses operating from home. Home-based businesses were less likely to need to take action to comply with requirements to make their premises COVID-secure than a business operating from a commercial business park, for example.

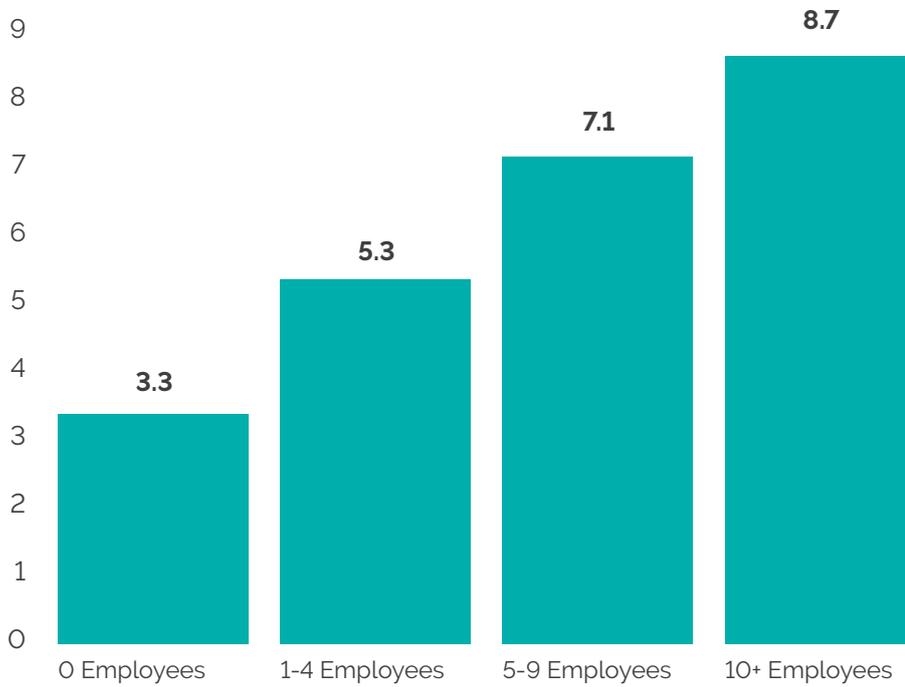


Figure 3: Mean number of regulations engaged with in relation to number of employees

Business engagement with 'difficult' vs 'beneficial' regulations

Regulation tends to be seen as a burden on small businesses, whereby compliance costs are seen as stifling entrepreneurship and resources diverted from productive elements of the business (Beecroft, 2011; Minniti, 2008). Such costs are regarded as having disproportionate effects on small businesses (Carter et al., 2009). While the pandemic was certainly an unusual time, interviews revealed that some small businesses found they spent considerable time navigating new regulations even when restrictions meant they did not have much 'productive' business:

I was mega busy throughout all of the pandemic, even when there's not been much work for my business. My whole time has been spent trying to keep my business alive and trying to understand what the regulations are. I didn't have downtime, it was just really, really flat out. [Ecology consultancy business](#)

While the burden of regulations on small businesses is broadly accepted, some research suggests that regulations can also be seen as business enablers, motivating positive change and innovation (e.g. Kitching et al., 2015; Mayer-Schonberger, 2010). The data collection strategy in this project sought to reflect this balance of research evidence. Further, while the regulatory regime introduced in the wake of COVID-19 included measures focusing on containing and slowing the virus, it also incorporated those specifically intended to support individuals (e.g. eligibility for statutory sick pay from day 1) and businesses (e.g. reductions in VAT rates or extensions to tax filing), adding further nuance.

This section highlights the findings from the survey questions which asked respondents to rank not only the three regulations, or regulatory changes, the businesses had had to engage with which had been the most difficult with which to comply, but also the three which had been the most beneficial for the business. In broad

terms, while over half of the sample (56%) ranked certain regulations as difficult to comply with, a sizeable minority (44%) did not. On the other hand, 61% of small businesses chose to rank certain regulations as beneficial; again, a sizeable minority (39%) did not rank any as beneficial.

There were significant differences between businesses of different types (size, sector, whether home-based or not, sales model etc.) identifying regulations as difficult and the patterns mirror those identified in relation to the difficulties of achieving COVID-security reported later. By contrast, the only differences identifiable in terms of benefits from the regulations reflected the fact that businesses without employees, and/or those based at home, had less need to engage with most of the regulations and were therefore less likely to obtain any notable benefits from them. In all other respects, the evidence suggests that the benefits arising from the regulations were broadly equitable across business sectors, locations, and other business characteristics.

Most difficult regulations

Figure 4 shows the regulations most frequently ranked within the top three most difficult to comply with. It is not surprising that 'reductions in capacity limits and/or requirement to close premises' and 'social distancing

measures for customers and/or staff (e.g. at business premises/in shared vehicles/at client premises)' were ranked as the two most difficult to comply with. Furlough appearing in third place was more surprising, leading to what can be termed "the furlough paradox", which is demonstrated in Figure 6 and discussed below.

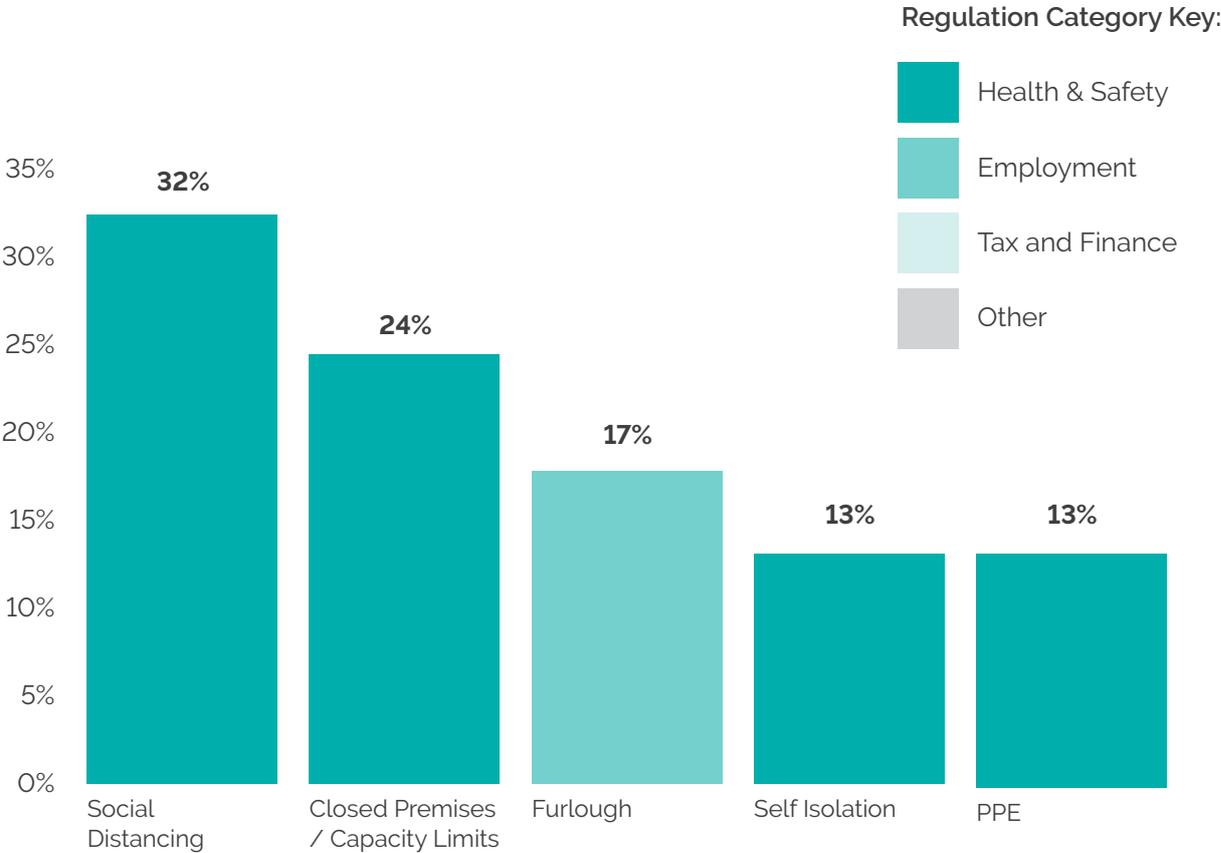


Figure 4: Regulations most frequently ranked within the Top 3 most difficult to comply with

Self-isolation protocols following a confirmed/suspected case of COVID-19 were included by 13% of the sample as one of their three most difficult regulations to comply with. This may have been due to the survey window coinciding with what was termed “the pingdemic” in the media. Proximity apps downloaded to smartphones “pinged” people with a notification to self-isolate when the app registered close contact with someone who had tested positive with COVID-19. Cases had risen following easing of social distancing rules and the rules on self-isolation still applied, even to those who had been vaccinated. This resulted in staff shortages for businesses where people could not work from home. One business reported that of their 32 employees:

*We had one occasion when we lost literally, I think it was 12 members of staff in one day [...] That was probably the most difficult period we had, trying to cover those staff because that was immediate pressure. **Petrol retailer and supermarket business***

Use of PPE, or additional PPE, at work was also ranked by 13% of the sample as one of their three most difficult. From analysis of interview data this difficulty may have related to either sourcing of PPE (especially at the outset of the pandemic) or annoyance with what was seen as excessive requirements. This dual ‘difficulty’ was noted by a dentist who when interviewed said that, at the point of re-opening in June 2020:

It really was two and a half weeks of hell trying to find stuff [PPE] that we could then use [...] but it worked out in the end.

But he also joked that his ‘favourite’ piece of guidance was that they needed to wear a plastic apron:

I’m not sure what it does. I wear scrubs which I only wear in surgery. When I finish wearing them, they go into a laundry basket at the end of the day, and

they go off and get laundered at 60 degrees. There is a fresh set every day. Apart from the fact [the plastic apron] blows around because we’ve had all the doors and windows open. So, you get that lovely thing where you might have got something on your apron and then it blows up in your face.

Dentist

General trends in responses show that complying with the regulations caused difficulty in terms of factors such as: operational problems (including staffing issues); negative impact on the business model (e.g. reduced level of business activity); considerable additional financial cost; or being stressful or challenging to comply with. Responses relating to factors such as difficulty in finding out about and keeping up to date with changes to the regulation and guidance, complying being excessively time consuming, and the regulation and guidance being too prescriptive were selected less frequently.

One issue that was demonstrated by the survey data was that businesses less than five years old were significantly more likely to select “had a negative impact on my business model” to explain why their top ranked regulation was difficult whereas businesses more than 19 years old were significantly less likely to select this option. This may imply older businesses had a more robust business model and customer base that could withstand new and changed regulations, as evidenced by this interviewee:

*So, the knock-on effect is I had a good enough customer base that were willing to buy. **Art gallery owner noting his seven-year track record enabled him to sell pieces despite the gallery being closed.***

Most beneficial regulations

The regulations most frequently ranked within the top three most beneficial are shown in **Figure 5**. When asked to justify the top-ranked choices here, the reasons included: the regulation allowed the business to continue operating; protected employees; provided the business time to adjust; or saved the business money. Furlough was, perhaps unsurprisingly, most likely to be ranked within the top three most beneficial regulations and other changes specifically designed to assist businesses, including extensions to tax filing deadlines/extended terms for tax payments, were also

frequently ranked as beneficial. Changes to rates relief were, again unsurprisingly, likely to be ranked as beneficial although this obviously did depend on having a property that was eligible. The requirement to work from home where possible was seen as beneficial by 15% of survey respondents, although as interview data revealed this benefit had a temporal and more challenging dimension for some businesses as will be discussed later in the report. It may seem surprising that the requirement for new or additional hygiene, cleaning, and ventilation protocols was rated as one of the three most beneficial regulations by a tenth of the respondents and again this will be further examined later.

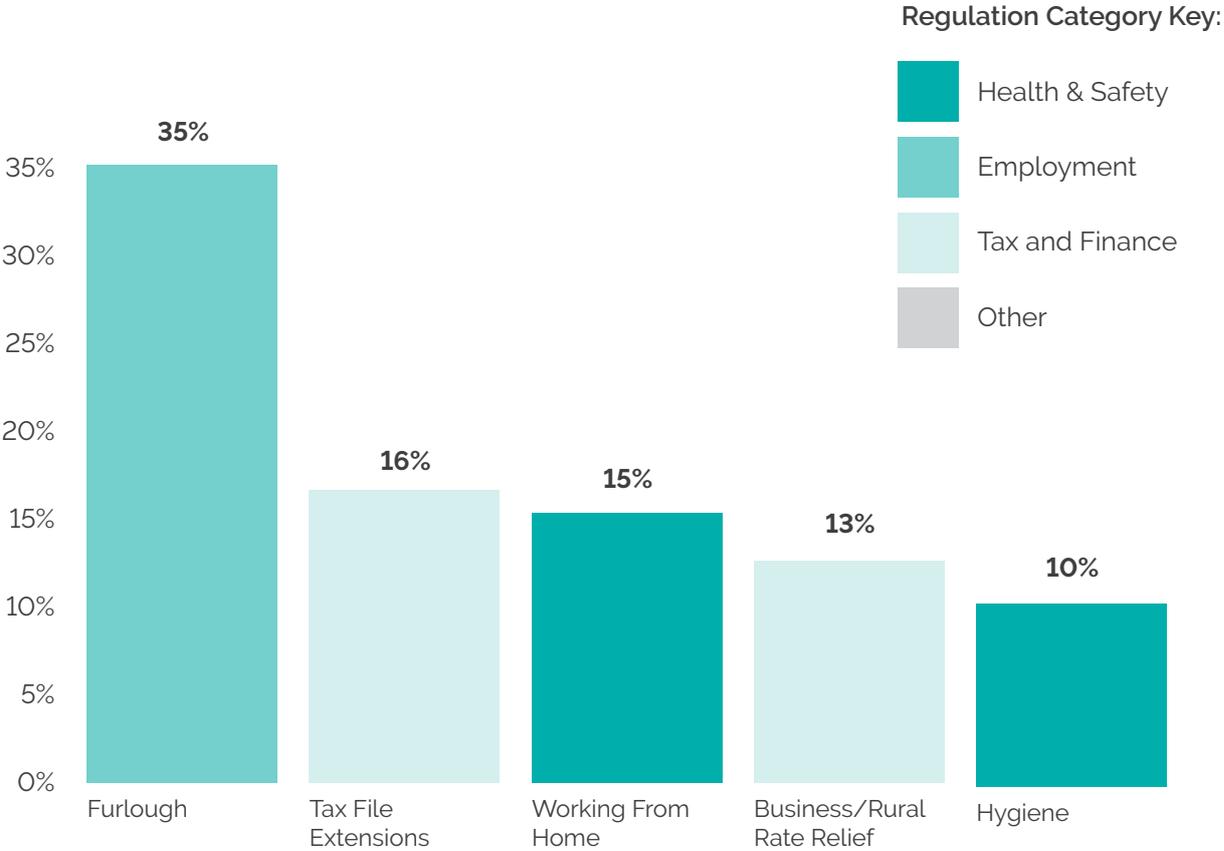


Figure 5: Regulations most frequently ranked within the Top 3 most beneficial

The Coronavirus Job Retention Scheme (Furlough)

Over half (55%) of the sample had engaged with furlough and while interviews revealed a challenge for small businesses to follow rules for something completely new, most had quickly worked out the scheme:

*I mean at the start of furlough, no one even knew what furlough was, so you had to make sure you were saying the right things to your staff. I am not comfortable in telling anyone anything that I don't fully understand. [...] I had to rewrite my whole staff handbook, I had to look at the policies we had in place, I had to go through every detail and make sure I understood it. **Marketing consultancy company***

Some of those who had not engaged with furlough would have been the 12% of survey respondents who were self-employed⁵ and had no employees and therefore were not eligible for the scheme. Other examples from the interviews included a manufacturing employer who had consulted with his employees and agreed that they could carry on operating throughout, and a director of a limited company who had not furloughed herself due to the restrictions imposed by the regulation⁶ but had continued to work even though she was not generating immediate commercial income due to the lockdown.

Figure 6 shows that, of those who had engaged with furlough, 63% had ranked it in their top 3 most beneficial regulations. Interviewees reported a wide range of benefits, including:

Ability to retain staff

*It was a godsend once it had been announced - It just changed the game completely, absolutely changed the game. **An early years nursery owner who, prior to the scheme being announced, had had to tell his staff that he could only pay them for two months***

Avoiding redundancy procedures:

*Thankfully, the furlough scheme got us past that, but without that I would have had to fire her. **IT consultancy owner recounting that he would not have felt able to send a member of staff out to clients' premises due to uncertainty about their COVID risk assessment.***

Contingency⁷ and providing time to adjust

*We put everybody on furlough at the start. We did the three weeks with everybody in case we needed it, but we haven't really used it. **Company in the construction industry***

Protecting vulnerable employees or those with vulnerable family members

*One of [my employees] has a child with [a serious chronic illness] so he had 14 weeks off at the start because of that, so he used all his holiday pay and then went on to the furlough. **Company in the construction industry***

Dealing with reductions in business levels after re-opening

*The first lockdown we stayed open for a week in anticipation of having about fifteen children in. And in fact, we only got one. So we said, "Sorry, we can't stay open just for one child." So we closed, and furloughed the staff. Then after re-opening: we were on low numbers, still the same number of staff to pay. We did, when numbers were really low, furlough some staff again. **Children's day nursery***

⁵ The UK Government put in place the Self-Employed Income Support Scheme to provide support for the self-employed. The scheme was subject to eligibility criteria, but those claiming could still work in their business

⁶ In order to claim furlough for any money they received as salary through PAYE, directors could initially only carry out duties to fulfil their statutory obligations as a company director and not do any work to generate revenue or provides services on behalf of their company.

⁷ From 1 July 2020, only employees who had previously been furloughed between 1 March 2020 and 30 June 2020 for the minimum three-week period were allowed to be included in the furlough scheme.

The “furlough paradox”

As **Figure 6** shows, 31% of respondents who had engaged with furlough ranked it in their top 3

most difficult regulations to comply with and 18% of respondents ranked furlough both within the three most difficult and three most beneficial, representing the “furlough paradox”.

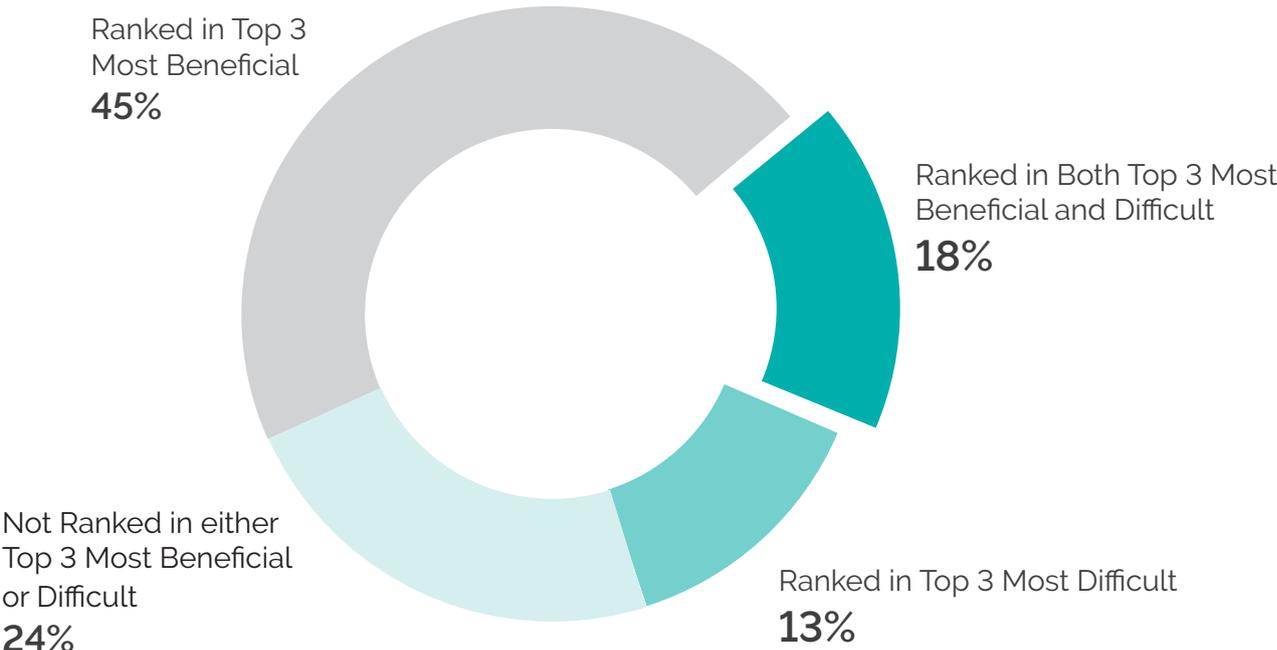


Figure 6: The “furlough paradox”

The “furlough paradox” - where the same businesses are both constrained and enabled by the same regulatory measure - is exemplified by the case of an ecology consultancy business. This business was affected in two ways by the inflexibility of the scheme when first introduced. The business had a contract deemed as essential by the Scottish Government at a time when only essential ecology work could be undertaken in Scotland. The work was spread over several months, needing two people for each visit. However, the income from the contract *‘wasn’t enough to cover one person’s salary for one month.’* As a sole company director, the owner had chosen not to furlough himself so that he could keep the business operational. In all other respects the other person needed to do the work with him on that contract would have qualified for furlough *‘but I couldn’t take*

advantage of it because I needed their skills to deliver this job.’ This was because the initial scheme required employees to be furloughed full-time for a minimum of three weeks at a time.

The second aspect of inflexibility was the hard cut-off date for eligibility. Inevitably, there had to be a cut-off date for eligibility to ensure those claimed for were genuine employees, but the cut-off date of 19 March 2020 for employees to be employed, and on the payroll system, had caused problems for the consultancy too. A new Principal Ecologist had been employed but had deferred her start date so she could undertake research in Africa. She was not eligible for furlough; however, the company had still chosen to pay her full salary even though they did not have sufficient work for her to do.

When the flexible furlough scheme came in on 1 July 2020, the director of the company reported: *'I was able to start taking people back for proportions of the week, and they were able to get back into doing work when I couldn't give them a full-time job. And that was really good. I think, if it had been like that from the start, even with the challenges with myself and my other member of staff, my business wouldn't have lost as much money. And again, probably the government wouldn't have paid out as much money. So, I think everyone would have been better off.'*

Another interviewee, this time in the commercial occupational health sector, had been hit by the cut-off date for eligibility because they had staff who had only just increased their working hours to full-time, so were only eligible to be furloughed on their original (part-time) hours. That business again agreed to pay those staff for the increased hours despite not being able to use the furlough scheme for them at the time. It should be noted that the hard cut-off date for eligibility particularly impacted the smallest employers where the impact of one employee not qualifying for furlough had a disproportionate effect.

Other interviewees had had staff wanting to work for the business even on a voluntary basis, but they had to be turned away:

We had them wanting to come and help us, and I was like, "no, if you come in and help, I cannot then claim furlough for you". It was hard for them as well, because they were like, "we want to do it for the business." **Board game shop and gaming café**

Directors of small limited companies were further disadvantaged. Firstly, in order to claim furlough for any money they received as salary through PAYE they were initially limited to carrying out duties to fulfil their statutory obligations as a company director and were unable to do any work to generate revenue or provide services on behalf of their

company. This issue was eased with the introduction of the flexible furlough scheme. However, a more significant issue was that those who receive payment by way of dividends had no recourse to a scheme similar to that afforded to self-employed individuals through the Self-Employed Income Support Scheme (SEISS), based on trading profits.

Recommendation: Governments across the UK should seek to minimise the restrictions imposed on small businesses in order that they can qualify for schemes designed to support businesses. When thinking about how best to reduce compliance burdens in the future, it is important to not only consider regulations that businesses must comply with, but also to avoid unnecessary qualifying criteria being applied to beneficial schemes that businesses might choose to apply for. Furlough was potentially one of the most beneficial regulations for those small businesses with employees, but also one of the most difficult. At the outset, with the binary choice of furloughing employees for a minimum of three weeks or paying their full wages, some businesses faced the stark choice of missing out on revenue-generating work or incurring full wage costs for an employee. The introduction of flexible furlough removed this binary choice, better reflecting the needs of small employers.

Recommendation: UK Government should ensure any future income support scheme for small businesses is flexible from the outset and additionally should ensure directors who draw income from running their business via dividends are treated in-line with the self-employed. A Directors' Income Support Scheme (DISS), proposed by FSB and partners and founded on the principles underpinning the Self-Employment Income Support Scheme, could have been established based on the trading profits of the company.

Complying with COVID-security

In addition to asking businesses about their engagement with the 21 regulations, the survey asked businesses in more detail about the regulations and guidance specifically relating to COVID-security in order to ensure there was a baseline regulatory area that practically every business would have engaged with, to some extent.

Ease of understanding COVID-security requirements

While no new health and safety legislation was introduced, under existing legislation employers (and some self-employed) must by law protect workers and others from risks to their health and safety, including risks from COVID-19. A suitable and sufficient assessment of the risks of COVID-19 in the workplace and an identification of control measures to manage that risk was required, with the Health and Safety Executive

advising that a generic risk assessment was unlikely to be specific or detailed enough.⁸

Compared with large organisations, information asymmetries exist among small businesses; they are often 'ignorant of changes to existing legislation or the introduction of new regulations because they do not have the capacity or expertise to monitor and respond to such requirements' (Atherton et al., 2008: 2). Differences in capability and capacity, especially in relation to managing risk, have also been highlighted (Atherton et al., 2008; Hutter and Jones, 2007) and Genn (1993) found that there was greater confusion about regulation among smaller businesses. The volume, complexity, and rate of change of regulations – as witnessed in the context of COVID-19 – add to that burden and can act as a barrier to compliance. Although it should be noted that regulatory changes introduced in the context of COVID-19 generally received a much higher degree of publicity and media coverage than any regulatory change would in the normal course of business.

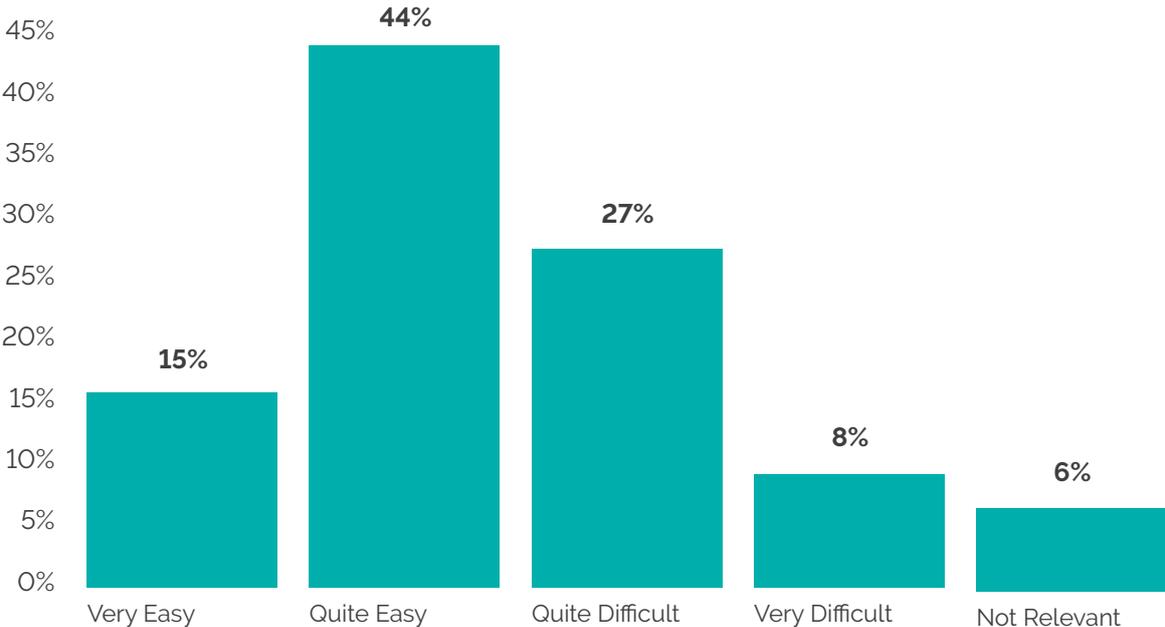


Figure 7: Ease of Understanding the Implications of COVID-Security

⁸ <https://web.archive.org/web/20220110154712/https://www.hse.gov.uk/coronavirus/index.htm>

While **Figure 7** shows that only just over a third of businesses found it quite difficult or very difficult to understand the implications of the regulations and guidance in relation to ensuring the COVID-security of their business, this issue did come through in interviews:

*I do remember some of the stuff on the government website was good, but it was so extensive. There were pages and pages of things to run through. [...] It took quite a lot of reading I remember, to work out what needed to be done, what the requirement was, and I was still unclear. **Web design agency***

In part, this appeared to be related to the number of changes that were made to the UK Government's "Working safely during coronavirus (COVID-19)" guidance:

*We ended up, I can't remember, did we finish up on twelve versions of that set of guidelines⁹ and each one had me spending hours and I mean literally hours going through them, to find what had changed ... and then not only identifying that but then how does that change our risk assessment and our response and the discussions that we're going to have with our employees. **Manufacturing company***

⁹ This refers specifically to "Working safely during COVID-19 in factories, plants and warehouses: Guidance for employers, employees and the self-employed"

Differences in experiences of complying with COVID-security in relation to size of business

The experience of complying with COVID-security measures (and, indeed, all areas of regulation) was far from universal as would be expected with the diverse range of businesses in the sample.

Figure 8 demonstrates a clear trend whereby, as the number of employees increases, businesses found it more difficult to understand the implications of COVID-security regulations for them. This will be explained partly by the pattern in Figure 3 which shows that, in general terms, the more employees a small business had the larger the number of regulations that the business needed to engage with and therefore understand. As the quotation from the manufacturing company above illustrates: the more employees, the more consultation required, and therefore potentially the more questions likely to be raised.

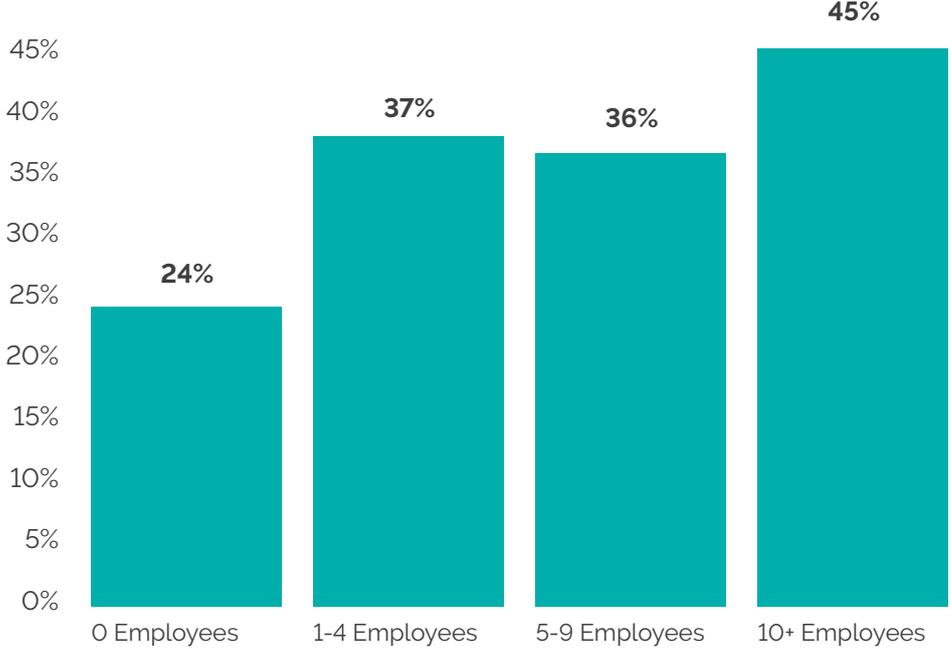


Figure 8: Percentage of businesses reporting difficulty in understanding the implications of COVID-security by size of business

In general, size also impacted both the amount of action businesses needed to take to comply with COVID-security measures, and how difficult it was to take such action. Figure 9 shows how the proportion of businesses required to take little or no action falls steadily as size increases, with a quarter of businesses with no employees experiencing no need to take any significant action, whilst the proportion needing to take considerable action increases with each size

category, reaching nearly 60% for businesses employing 10 or more people. Given that businesses with no employees were seen to be statistically more likely to operate their business from home, this can partially be explained by the data which showed that 29% of home-based businesses were taking little or no action compared to only 7% of other businesses.

Figure 9 also shows that while the proportion of businesses with no employees taking considerable action is only marginally lower than that for the 1-4 employee category, the proportion having to take considerable action increases by one third between the 1-4 and 5-9 employee categories, but the proportion reporting difficulty in taking action only increases slightly. This is consistent with the fact that health and safety legislation requires businesses employing five or more people to have written health and safety policies, and several interviewees reported the need to continually rewrite and update their policies

for this reason. Whilst not intrinsically difficult, it is an example of why the amount of action could rise disproportionately for the 5-9 employee businesses.

Between the 5-9 and 10+ employee categories there is a similar increase in the proportion of businesses reporting having to take considerable action, but here the proportion reporting difficulty increases by just over a half. This suggests that difficulty in taking action to comply with COVID-security measures is in part related to scale of operation and the number of staff employed.

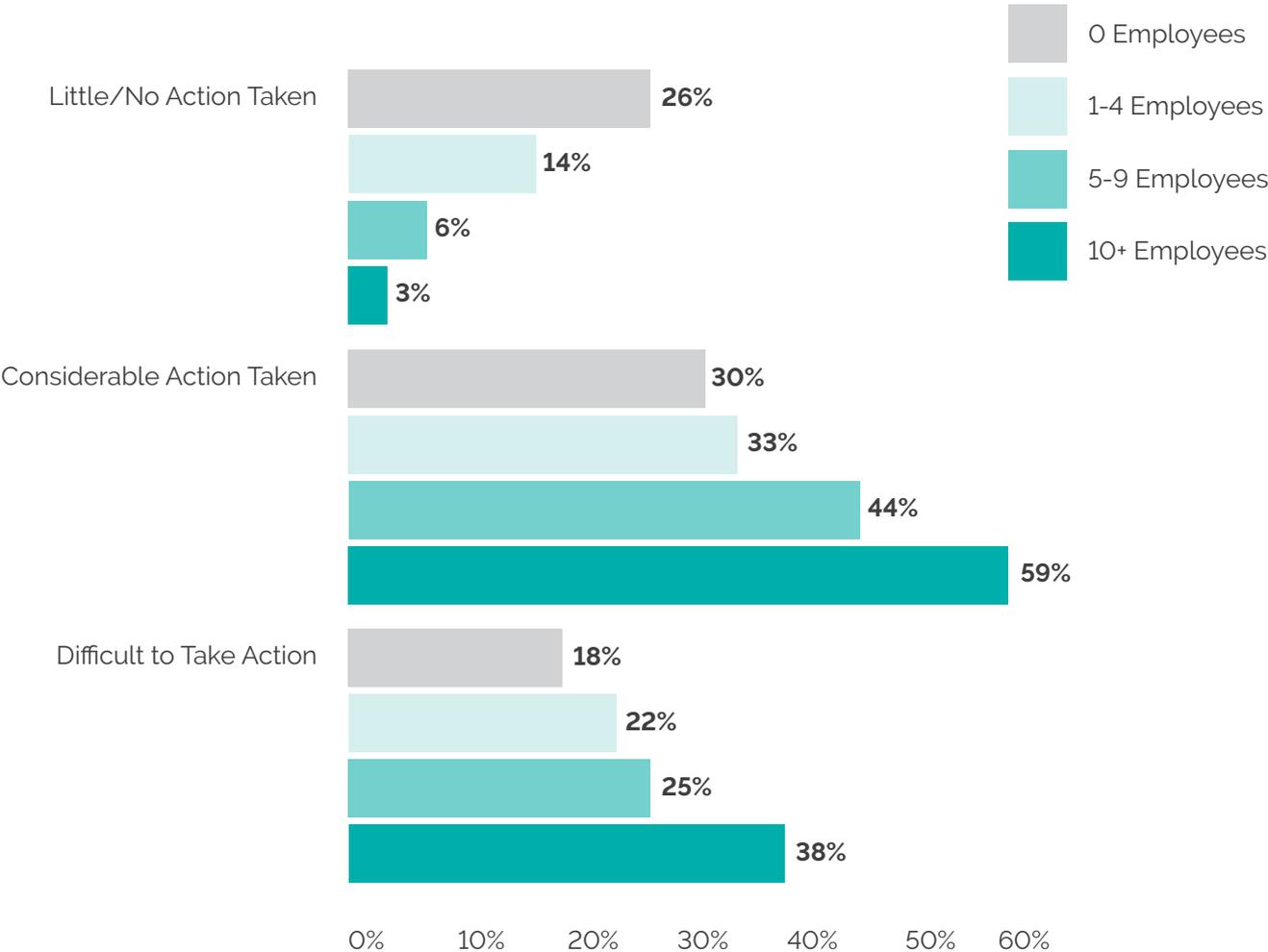


Figure 9: Action taken and difficulty in taking action in respect of COVID-security by size of business

Differences in experiences of complying with COVID-security in relation to sector

Figure 10 illustrates that most businesses did take action to make their businesses COVID-secure, but the amount of action varied by sector. Two-thirds of the hospitality businesses, and slightly fewer health and education businesses, stated that they had to take considerable action to make their business COVID-secure compared to the sample average of 38%. By contrast, only 28% of professional and support services businesses stated that they had taken considerable action, and 21% had not needed to take any more than a little action, compared to the sample average of 14%.

The amount of action taken to comply with COVID-security is likely to be explained in part by the sales model of certain types of businesses. Survey data showed that businesses that relied on customers visiting their premises were significantly more likely to take more action to comply with COVID-security requirements, and also found it more difficult to do so. In contrast, businesses that primarily conducted their sales online typically needed to take little action to comply with COVID-security.

Manufacturing businesses also found that they had to take at least some or considerable action to achieve COVID-security and this will probably relate less to the sales model and more to the patterns of interaction between employees, and a consequence of the nature and layout of the production process. Significantly fewer manufacturing businesses took little or no action compared to the sample average.

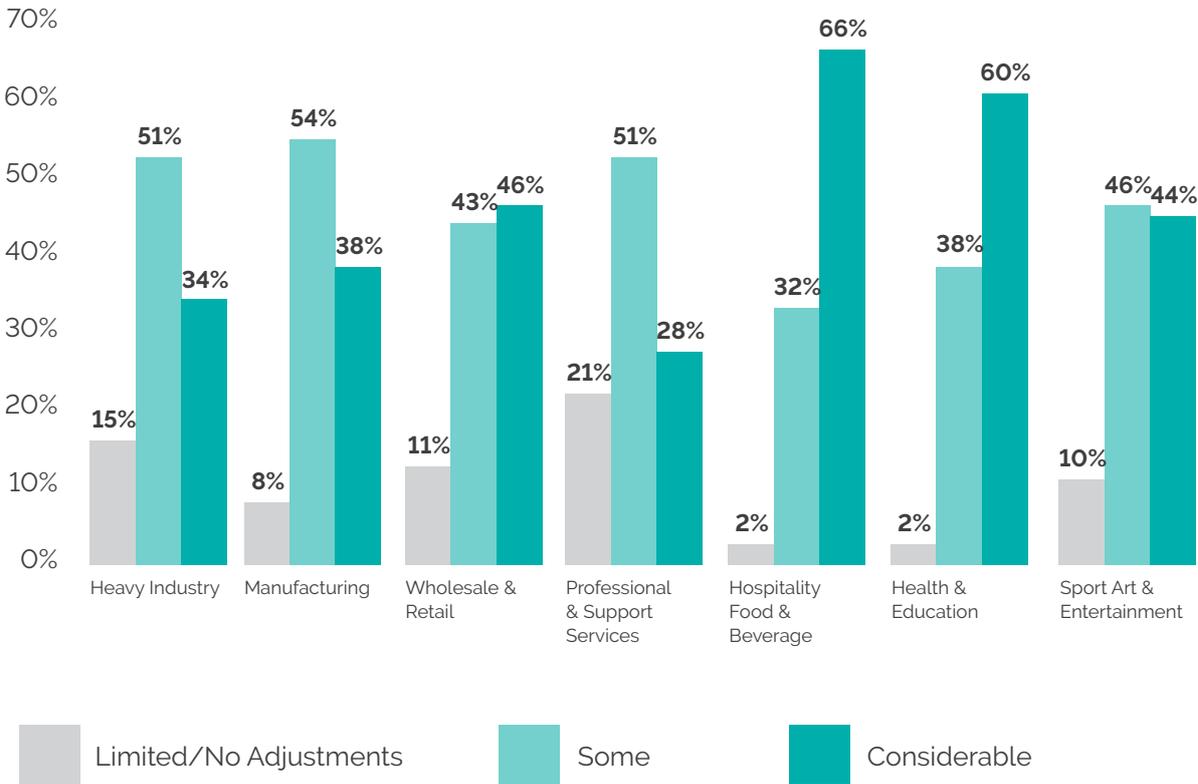


Figure 10: Amount of action taken in respect of COVID-security by sector

Ease of taking action in respect of COVID-security

As **Figure 11** shows, most businesses across all sectors stated that it had been easy to take the required action, even if considerable action had been required to make the business

COVID-secure. Just under a quarter of all businesses found the adjustments difficult, but it was the health and education businesses that expressed most difficulty (39%), not surprisingly given the face-to-face nature of much of their activities, whilst the professional and support services businesses were least likely to express difficulty (17%).

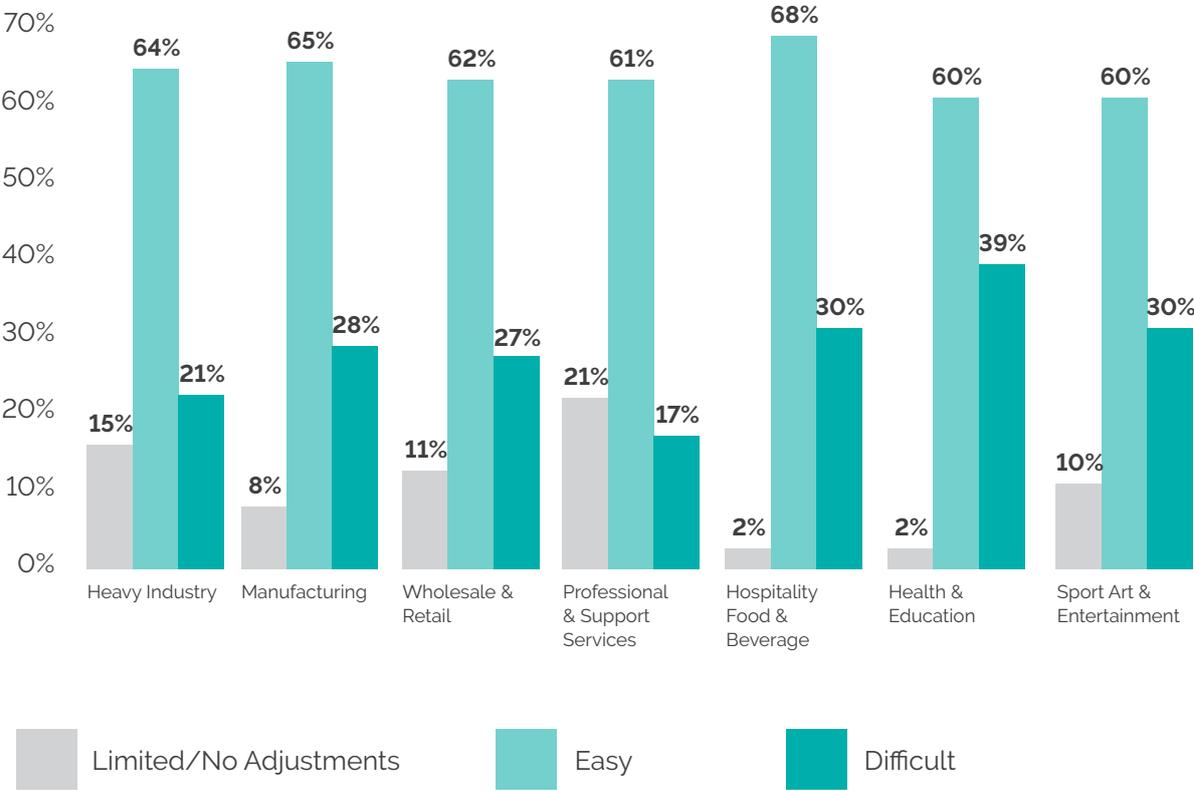


Figure 11: Level of ease/difficulty in making adjustments by sector

As part of the survey, respondents who had indicated that they had either taken considerable action or found it difficult to take action in relation to COVID-security were asked to state to what extent they agreed or

disagreed with seven different impact-relevant statements. **Table 1** provides the statements, along with the percentage of those respondents reporting finding it difficult to take action who strongly agreed with each.

Statement	Strongly Agree
The adjustments had a negative impact on my business model	69%
The adjustments required additional resources	59%
I found the process of complying with the required adjustments stressful or challenging	56%
The process of adjustment was excessively time consuming	48%
The adjustments were excessively costly in financial terms	45%
It was practically difficult or impossible to put in place the necessary adjustments	33%
I experienced difficulties sourcing needed supplies	29%

Table 1: Explanatory statements regarding difficulty in implementing COVID-security measures

Inevitably the vast majority of those businesses who had been forced to close had suffered a reduced level of business activity, but interview data revealed more about the nuances of dealing with COVID-security measures. Some businesses who had been able to stay open throughout the lockdown periods had committed to expensive purchases early on. A petrol retailer and supermarket business who had purchased a “fogging machine” based on earlier assumptions of how the virus spread recounted that he felt he had made a purchase that ‘was actually a waste of my time and money. It was a resource in terms of staff three times a day that was also a waste. It was taking them away from something that would have been more productive’.

The nature of premises clearly impacted the ease or otherwise of making the adjustments, and as described above, more action tended to be required when customers were visiting those premises. A dentist recounted in an interview that:

Our building actually lent us a hand because we have a front and a back door. So we got everybody to come in the back door. They were greeted by a lovely cardboard cut-out of me pointing at the hand sanitiser.

Other businesses had found their premises needed more adjustments. For example, an interviewee with non-essential retail premises said that, when they had re-opened after the first lockdown, they were operating with a temporary counter so one customer could be in the store and others had to queue. This was problematic for sales, so during the second lockdown they took the opportunity to completely reorganise the layout of the store which has proved to be much more efficient even than the original layout pre-COVID.

Shared premises were particularly challenging because different tenants interpreted regulations differently. One business who operated from shared serviced offices said:

Everybody was interpreting the regulations differently. That becomes really challenging with motivating staff to come in. They were saying, well, "Why can't we behave like the people next door? Why is their interpretation different from our interpretation of the regulations? Is it safe?" [Market research agency](#)

Impact of regulations over time

Previous research demonstrates that regulatory impact can vary over time for the small business (Edwards et al., 2004; Pollard et al., 2011). For example, a business may find that it has to engage with a new regulation for the first time, which demands an initial focus of resources but, over time, the regulatory impact may lessen as the business operationalises and streamlines its response. In this research project, this and other similar kinds of temporal dynamics were found to be at play.

Adapting business processes to meet changing regulatory requirements during the pandemic

It was evident from interviews that, in the case of certain regulations such as those relating to COVID-security measures, some businesses reported having to expend considerable financial and management resources early on to achieve compliance, but after a period of time these compliance processes became normalised within everyday operations. This was the experience of this business in the construction industry:

Construction could carry on, so then we had to look at how we would carry on... We put hand sanitizers, face masks, gloves into the vans, so they could get there, when we got to site a lot of the sites had made one-way systems. We were having inductions outside, the canteens were basically shut, if you wanted to eat you ate in your vans.

Businesses within certain sectors, such as hospitality, food and beverage or retail, found they had to grapple with a regulatory climate that changed a number of times during the pandemic. They reported a stop-start experience of regulatory compliance whereby they not only had to suspend business operations once again,

after having been able to re-open after the first lockdown, but were also obligated to ramp up and then allowed to reduce public and staff safety measures at different times, as demonstrated by this publican:

For a while it was fine, then there was that other period in the run up to the second lockdown. It felt like what we were having to do was changing every week, every two weeks. [...] The more it changed, the more customers were getting fed-up with it.

While such changeability in the regulatory environment caused unavoidable business stresses, some businesses found they were able to operationalise compliance processes over time. This is not to say that regulatory impact disappears; rather, that the experience of managing how a business responds to regulations is not necessarily constant.

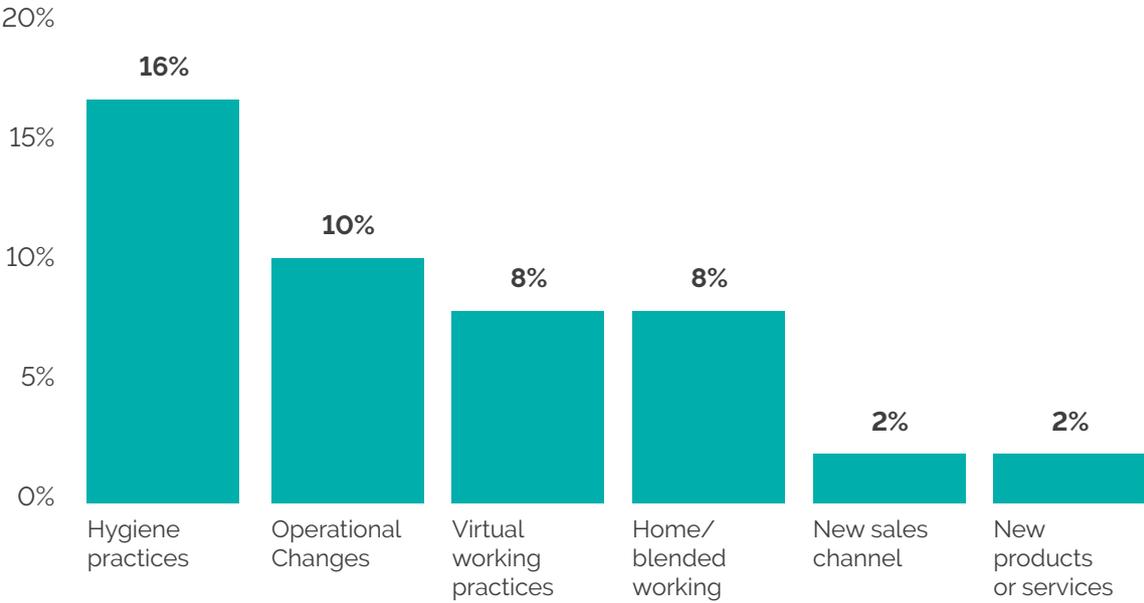
Making the most of novel opportunities

Building on this temporal dynamism theme, survey responses and data from interviews showed that some businesses, having managed to adapt to the initial shock of engaging with a raft of new regulatory information, found that their "new" situation opened up novel opportunities. This was less about the actual act of compliance being experienced differently over time but, rather, that the (often severe) impact of regulations that upended existing business processes and practices gave way to innovative business behaviours in certain cases.

The survey had asked whether businesses had introduced any new processes, practices or products as a result of responding to regulation and guidance during the pandemic that they intended to retain post-pandemic. The open text responses were coded into the six categories shown in **Figure 12**. **Hygiene practices** relates to

answers given regarding PPE, hand sanitiser, sanitation protocols, face masks, social distancing etc. **Home working** relates to answers given regarding changes to working habits. These range from complete working from home for all staff to more blended approaches. **Operational changes** covers things such as new office or building layouts; changes to operational processes (e.g. introducing an appointment system or limiting numbers of customers in store at one time); modifications to

how business is conducted (e.g. move to table service for a pub etc.) and so on. **New products or services** indicates they are selling something new, whereas **New sales channel** refers to practices for selling existing products or services such as introducing click-and-collect, creating an e-commerce site (or adding e-commerce functionality to an existing website) etc. Virtual working practices relates to new online practices such as e-signing of documents, virtual meetings etc.



Categories of New/Innovative Practices, Processes, and Products

Figure 12: New processes, practices and products intended to be retained post-pandemic

Nearly half of respondents answered yes to the question about retaining business changes post-pandemic, although it can be inferred from the examples given that some of the hygiene practice and operational changes were on-going because the pandemic was also on-going at time of survey. While some hygiene measures are unlikely to be deeply embedded (e.g. those answering 'face masks' are probably unlikely to keep wearing these in the medium to long term as guidance/rules change), some do seem to be more embedded. Some practices categorised as "hygiene practices" had led to operational changes which, in turn, were having positive

business effects. For example, a photography business had changed its processes for photographing large groups of people (to account for distancing rules) and found that the new changes have saved time and money. Another example was a manufacturing business who through introducing an "airlock" for deliveries to reduce outside footfall had created a considerable rise in work area cleanliness, which in turn had *'precipitated a review of storage and organisational layout in our work areas, which has led to lower stress levels and increases in efficiency'*.

Interview data reinforced the magnitude of some of the changes introduced in response to COVID regulations. For example, some businesses found that working from home directives and social distancing guidance presented an opportunity to pivot to exclusively online operations, something which they had previously not engaged in. The experience of this academic and autism support company illustrates this point:

The first thing that happened is my wife had to teach me how to use Zoom, because I'd never used it before. All our students and our other clients all came onto Zoom. Now, it's the norm. [...] We'll never go back to face to face; we'll always do Zoom.

Other business owners had a similar experience of shifting to a working from home and remote communication model in the light of regulatory restrictions. An interview with a web design agency with seven employees revealed that this transition gave rise to multiple benefits, including increased staff productivity, the expansion of its historically local client base to a national one, and reduced business travel costs associated with previously in-person client and supplier meetings. Recounting winning new business remotely, she said:

Winning new work without ever having met people was a first. No one pre-pandemic, would have ever considered signing a contract for any £20,000 project without having met the supplier face-to-face, shook them by the hand, look them in the eye.

Other businesses reported having been able to incorporate videoconferencing into what would have previously been entirely face to face operations. An interior design business recounted that:

Those first three months we certainly did less site visits, we did more Zoom meetings and we still do Zoom meetings with clients now, it is convenient. Zoom is a marvellous thing as we've discovered.

It was not only communications with clients that were transformed in light of adaptation to working from home regulations. The founder of an ecology consultancy recounted:

We used to try to do these regular team meetings at the office, but it was impossible to get everyone together. But with technology now, people can actually join in from the field, they can be up a hill somewhere and join this meeting.

The owner of a marketing company recounted that the immediate impact of the pandemic on their business model was that the high-end Virtual PA aspect of their work was not going to be competitive. She had consulted with her team and recalls *'out of seven staff, I had one stay and the rest were ready to go and do other things'*. However, she had been able to recruit exceptional new staff and at the time of the interview in January 2022 she had nine staff. Some of them had been made redundant because of the pandemic and because the pandemic had enforced working from home, she felt able to have a workforce spread across the UK. Twice weekly team meetings are remote, but there are quarterly team get togethers to retain the social aspect of work. She revealed that, *'before COVID, we were going to buy a property and have that as office space. I'm so thankful we didn't because we just don't need it, and that money can go into investing in my team'*. She concluded:

It's been a roller coaster of a ride, one that wasn't exactly enjoyable at the time. But gosh, coming out the other side and seeing the team I have now compared to what I had before, and the offering that we had is just chalk and cheese. COVID, for us, it's been a bit of a blessing in disguise because it made me really look at the opportunity of the business.

These findings show that some businesses have made significant adjustments to their practices which has resulted in leaner and fitter business models. It appears the initial shock of a pandemic, and associated regulations to protect public health, forced a re-evaluation of the business with, in some cases, innovative outcomes.

This is not to say that the regulatory impact which led to changing business practices for such businesses delivered only beneficial outcomes. For example, the owner of the web design agency who had highlighted the benefits of being able to secure contracts without a face-to-face meeting, also reported that virtual working had had a negative impact on 'trust and camaraderie' among team members over time and had made the process of onboarding new recruits, especially junior ones, difficult. Initially working from home worked well and led to a decision to make that a permanent option:

Everyone seemed really happy, and I said, "Oh wow, this is clearly working amazingly, let's just make this a permanent thing going forward."

However, the business was then faced with difficulty in getting people back into the office:

It's not that people are against it by and large, but it's not got a regular routine anymore, and as such, you just stick with what you're now used to doing, which is working from home. New habits have developed – no commute etc.

I kind of made my own hole there, but I suppose we live and learn. In another pandemic, I won't be making such a quick decision that permanently affects how we work going forward.

Overall, enforced working from home demonstrated the potential benefits, but also the potential downsides, for small businesses and their employees. It is increasingly likely that many employees will seek flexible working practices (including hybrid working - a mixture of working from an employer's premises and working from home or another location) and these will need to be considered by employers. In 2021, ACAS produced guidance¹⁰ on hybrid working to assist small businesses in thinking about flexible working processes and practices.

Recommendation: Not all employees can work from home, therefore UK Government should promote other forms of flexible working arrangements. Hybrid working cannot be undertaken by all small businesses including many of those in hospitality and childcare, and adopting a range of practices (e.g. staggered hours) would enable all sectors and employees to benefit from a greater adoption of flexible working in the labour market.

Exploiting digital technologies to pursue innovation

Many of the innovations referred to above relied on the business having, or quickly acquiring, the relevant digital know-how and equipment. It was apparent from interviews that businesses who had invested in digital technology prior to the pandemic were more able to withstand the disruption caused. Inevitably, retailers who were equipped to sell online benefitted:

*Our online sales were never high volume before, but we were all set up for it. We were doing somewhere like £1000 a month at most through it in pre COVID times. That went up by somewhere in the order of 12 times through COVID. **Board game shop and gaming café***

¹⁰ <https://acas.frontify.com/d/9XEi1YzDsXxS/n-a#/campaigns/hybrid-working>

*I'd just finished [pre-COVID] building a new website that's all derived from the back-office system, so actually I was one hundred percent geared to being an online business. Straight away, a simple to use website that people could buy from. I was very, very lucky that I had done that before. Definitely. **Art gallery***

The dentist mentioned earlier had also invested in digital technology:

We took a decision some time ago [...] to have a cloud-based clinical system so we made that change back in 2015/16. So, I could access patient records sitting at home unlike most of my colleagues who had to go into work and wait for people to phone up.

Recommendation: The Help to Grow (Digital) scheme should be expanded to organisations with fewer than five employees and provide access to a wider range of software. Regulatory and legal changes during the pandemic have only increased the importance of having a digital presence, with digital skills and capability being fundamental to a business's ability to react to legal and regulatory changes. The Help to Grow (Digital) scheme provides vouchers which can be used to invest in digital technologies. This scheme should be extended in scope, so that businesses with fewer than five employees can use the vouchers to invest in a wider range of software.

There were issues with increased digital adoption. Regulators had to remind businesses that the apps that were widely introduced to facilitate the ordering of food and drink remotely and maintain social distancing, must still comply with data protection law, and only collect personal data that is necessary and relevant.¹¹

Additionally, increased dependency on digital technology has brought new risks for businesses who have become increasingly reliant upon them. Interviews were undertaken shortly after Storm Arwen hit in late November 2021 disrupting power supplies to nearly a quarter of a million properties. The maths tutor who had moved entirely online recalled that recently she had suffered an internet outage and therefore lost the fee income from those students who she would have been tutoring.

Recommendation: The UK Government should establish a taskforce of Ofcom, devolved bodies, suppliers and business groups to develop temporary and affordable solutions that address the slow and unreliable broadband connection in very hard to reach areas while Gigabit capable broadband is rolled out across the country until the end of the decade. The UK Government should also undertake its own nationwide awareness-raising activities of the benefit of gigabit-capable broadband. It should establish and lead a coalition of key stakeholders to work together on a national campaign. In addition, mobile coverage in hard-to-reach areas must be addressed.

¹¹ <https://metro.co.uk/2021/08/18/pizza-and-a-pint-not-worth-your-data-uk-watchdog-takes-aim-at-pubs-15110907/>

Clarity and consistency of regulations and regulatory communications

Regulatory communications from government that are clear and accessible are always vital for small businesses to ensure that sound decisions are made, and a proportionate level of action is taken. The need for clarity and accessibility is all the more important during times of crisis and change. As the pandemic progressed and regulations were changed, frustration and stress were apparent from some of those interviewed:

I mean I'll be honest with you, after I went on [to GOV.UK] for the first time, post the first official lockdown [being lifted] I gave up. I just thought none of this makes sense, there's too many contradictions, it's not clear. Why do governments make everything so damn complicated? **Interior design company**

The whole [regulatory] environment is just completely lacking in clarity. I think for all of us as a [senior] team, it is really impacting mental wellbeing, that's the biggest battle. **Market research company trying to get their workforce to come back into the office in January 2022**

Shift in attitudes towards regulatory improvement as a result of crisis

To ascertain whether a crisis situation influenced the attitude of small businesses towards regulatory improvement, the survey asked: 'How could regulations introduced during any future crisis be improved to be more helpful to your business?' thereby replicating a question that was asked in the FSB regulation survey (2017) relating to how a regulation that a respondent considered beneficial in "normal" times could be improved. The following specific options were provided:

- The regulation(s) could be simplified
- More tailored language and format for smaller businesses
- More consistent enforcement by the public authorities/ regulators
- Reduced costs of complying with the regulation(s)
- Improved guidance on how to maximise the benefits of the regulation
- Tougher enforcement by public authorities/ regulators
- Allow more discretion in meeting the regulation(s) requirements
- More detail in the regulation(s) on how to comply

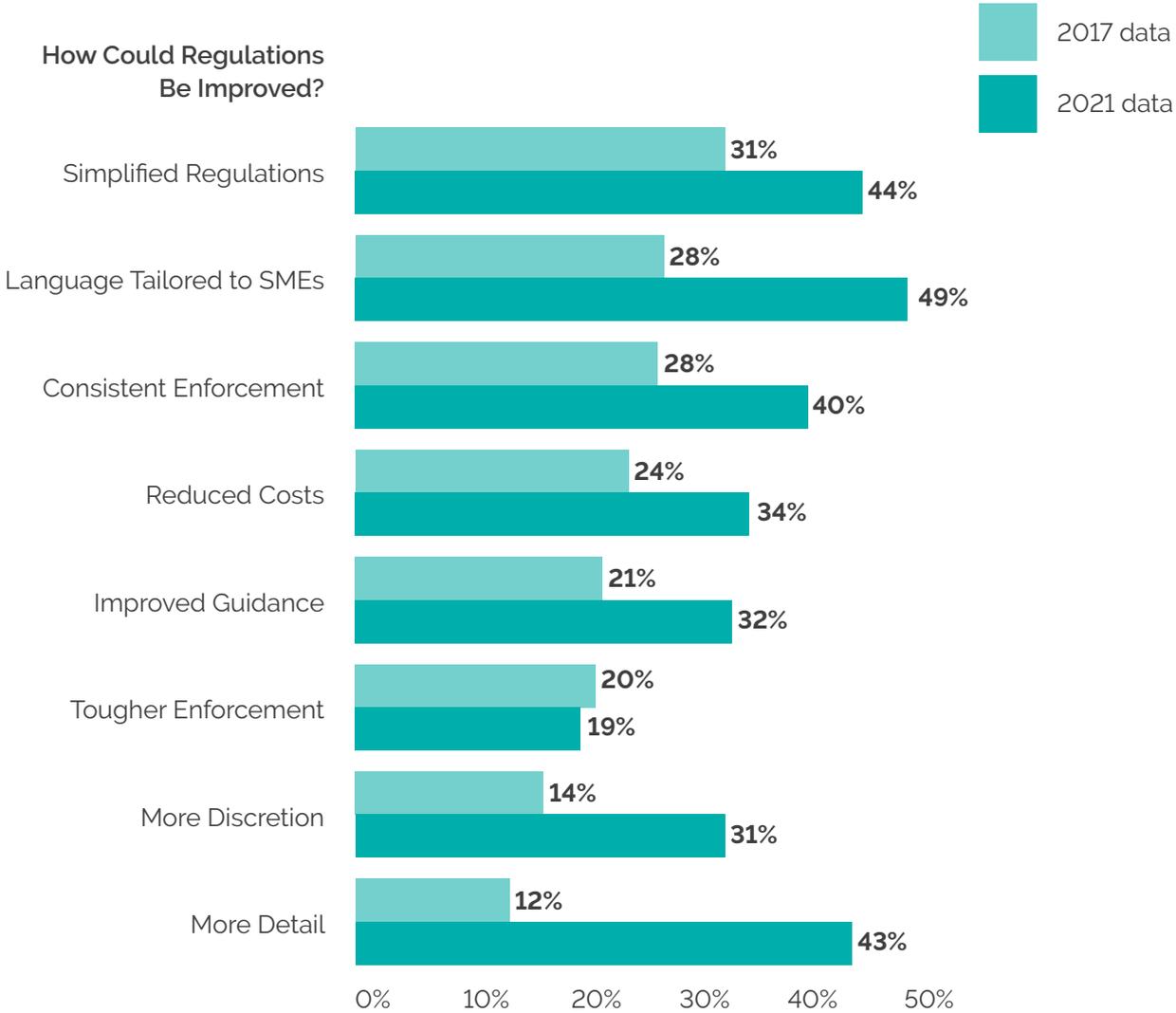


Figure 13: Changing attitudes to regulatory improvement

Figure 13 illustrates a clear pattern showing an increase across all the options of what would be helpful, other than a slight dip relating to 'tougher enforcement by authorities'. The most dramatic change relates to a desire for 'more detail in the regulation on how to comply'. On the face of it, there appears to be a contradiction between this clear desire for more detail and a similar level of demand for simplification. It is possible these figures could have reflected completely different subsets of respondents, but closer inspection revealed that 23% of the 2021 sample were asking for both simplification of the regulations and more detail in how to comply. Moreover, about 52% of those who wanted simplification also wanted more detail on how to comply and vice versa. For many businesses, therefore, the issue is not just that regulations seem unduly complicated, but that they would also like more guidance on the practical steps that would enable compliance. This would appear to be a difference between the requirements of businesses during a crisis such as the pandemic and at a non-crisis time. Overall, these results can be taken to show a desire for a more helpful and supportive regulatory landscape in a climate of increased anxiety and uncertainty regarding how to comply in the correct way.

Distinction between regulations enforceable by law and non-mandatory guidance

The survey asked small businesses to consider how clear the distinction had been between regulations enforceable by law, and non-mandatory government guidance during the pandemic. Figure 14 shows an atypical pattern of response for this type of measurement scale, as a smaller number of responses in both extremes would normally be expected. In this survey, 'totally unclear' is being interpreted differently to 'totally clear'. This possibly indicates a frustration amongst many respondents at the lack of clarity in the distinction between those regulations enforceable by law and non-mandatory government guidance. Open text comments included, *'The [government] kept going back on what had been said earlier, regulations which were said to be enforceable being re-categorised as advisory'* and a tax specialist when interviewed stated, *'Oh it's totally unclear, I still don't know. There's zero [clarity]. Instead, what I just said was I'll do what seems safest and rightest given that we have to produce something every day.'*

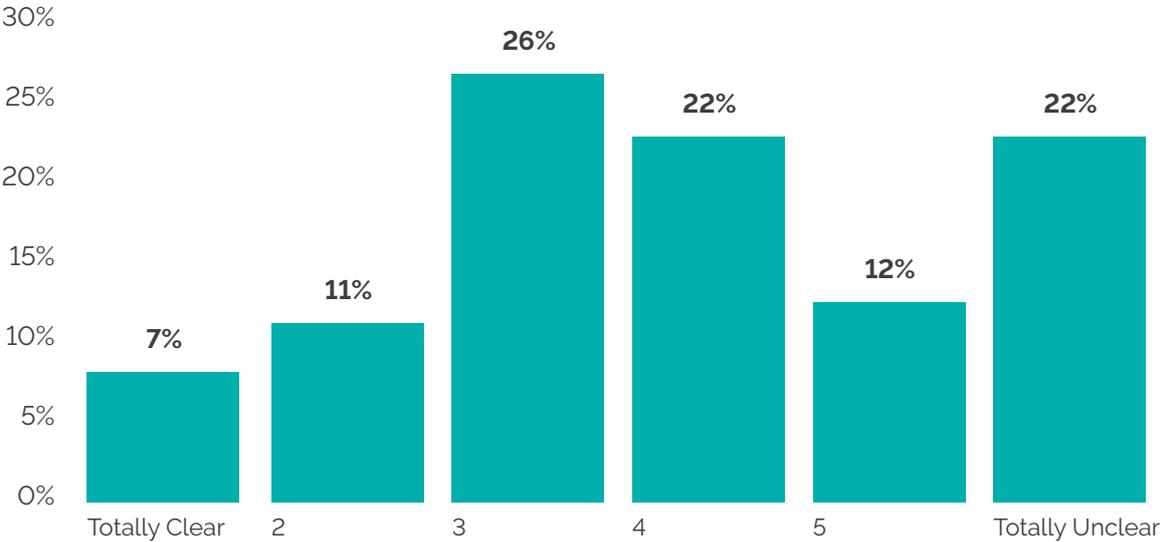


Figure 14: Perceptions of clarity in distinction between law and guidance

Even official sources were not clear as to the distinction between regulations enforceable by law, and non-mandatory government guidance, with <https://www.legislation.gov.uk/coronavirus>¹² stating 'The law is what you must do; the guidance might be a mixture of what you must do and what you should do'.

The business operating from shared serviced premises quoted above conveyed an example of the issues that this uncertainty caused. They were enforcing social distancing and mask wearing in accordance with the guidance in place at the time, but other tenants were not, and the "rules" were not being enforced in the communal areas. This was causing an issue with their own staff – either because some staff did not feel safe coming into the office or, on the other hand, some did not want to continue to wear masks. When the business owner approached the buildings management company they recounted:

I was challenged to provide evidence of the rules in place in Wales to the buildings management so that they could then feel that they were doing the right thing by all the businesses in the building [...] but it's guidance, that's the point, it's guidance. It's not a regulatory stick to beat anybody with. How you interpret the health, safety and wellbeing of your staff is almost entirely up to you.

Another issue regarding interpretation of guidance was a lack of clarity particularly regarding working from home where possible. One interviewee expressed desperation that it was not clear whether it was the employer or employee who should decide whether working from home was possible. Talking about the instruction to work from home where possible she said, 'All of these words are so emotive and so lacking in clarity' and modelled a scenario, saying:

What does that even mean? "Hi, please can you come in next Tuesday for a meeting between 10:00 and 12:00? COVID safe space, we're following all the regulations, this is really important meeting to decide on the future of the company, whatever it might be". "No, I can't. Because I'm being told to work from home if I can"

Regulatory guidance across the four nations

The survey results did not identify any major differences in the experiences of businesses in the various devolved nations compared to the UK as a whole that could not be explained by the characteristics of the sample or sample size. Nevertheless, the research found that there was additional complexity caused by the varied regulatory responses and communications across the nations of the United Kingdom. For example, a global market research agency when interviewed stated:

The lack of clarity on COVID, the amount of energy as a senior team that we have spent trying to work out what the government is trying to tell us, what the UK government is trying to say and then layering that up with what [Mark] Drakeford and his team are telling us. [Business based in Wales](#)

Another way this emerged was through open text responses where survey participants were invited to report issues in their own words. One of the most common complaints was the lack of clarity and confusion caused by a different regulatory response to the pandemic from different nations: "Devolved differences lead to confusion and stress for staff and customers. One UK policy required"; "Be clear in everything. Different regulations in Wales, England and Scotland during a pandemic is a complete nonsense."; "One UK wide set of regulations". The preference for a unified regulatory approach during a crisis was also expressed during interviews:

¹² Accessed 11 March 2022

What I've always thought would have been nice is if all four bits of the UK Government could have got together and gone: 'here's our unified response'
Welsh based board game shop and gaming café.

There were some interview responses from businesses in the devolved nations that suggested some sector-specific bodies had struggled to tailor advice for businesses based outside England. For example:

All of their advice was based on English restrictions, and they didn't seem to understand that that advice wasn't applicable in Scotland
Scottish based business talking about one of their professional bodies

Interview analysis revealed this also posed issues for businesses with clients based across the United Kingdom, for example:

We've got clients who work in England, Scotland, Wales and Northern Ireland. So we were then having to check what you could do and then write business specific guidance but then go "if your office is in Glasgow then you've got to do this, if your office is London then you do this."
Commercial occupational health company

Recommendation: Governments across the UK should evaluate the impact of the actions taken during the pandemic in respect of regulation, and draw up a contingency plan. A wide range of public health restrictions and business support measures were rolled out at different times during the pandemic, at a speed that meant the normal impact assessment was simply not possible. Now is the time to evaluate those impacts, so that if a similar event should happen again there are clear plans and communication channels in place so that this action can be understood by the wider community.

Over-compliance in respect of COVID regulations

Evidence from interviews shows that some small business owners went further than they needed to in complying with regulation. Some had purposefully gone further than the minimum levels of compliance, in order to better protect their business, themselves, their employees and customers against COVID-19, and that was obviously a legitimate choice for that business owner to take in the face of a public health crisis. A tax specialist who was reluctant to have her staff come back into the office when the recommendation was to have people working from home where possible, even though that would have been beneficial for her business, stated:

Well, that's why I was so strict until the vaccine came out. I was so strict with people because I did not want to be the reason my employees died.

Their own clinical vulnerability was an issue for some owners. One owner of a home-based retail business explained why he had closed for longer than required, despite being able to work from home:

I am clinically vulnerable; my wife is vulnerable [...]. So, we took the decision just basically to stop running the business for that period [...]. The killer was the post office basically, there was just no way of getting stuff out shipped and tracked and then later on, the post office started doing their pickup service, which would have maybe covered some of it. But by then, I'd already taken the decision, it was easier just to stay shut for the rest of the tax year.

However, some interviewees had "gold-plated" their response to regulation and substantially over-complied because they felt compelled to follow guidance in full due to fear of falling foul of existing health and safety law. Talking about official UK Government guidance, a manufacturing company, who had fewer than 10 employees said:

We decided to follow the recommendation, to stagger start and finish times, stagger breaktimes, stagger lunchtimes and it had ... were they predictable consequences, I don't really know? I mean we found that people starting at different times created distractions that took people off what they were doing. So, that was another hit on productivity and of course that was happening several times a day.

That same government guidance¹³ stated:

Failure to complete a risk assessment which takes account of COVID 19, or completing a risk assessment but failing to put in place sufficient measures to manage the risk of COVID 19, could constitute a breach of health and safety law. The actions the enforcing authority can take include the provision of specific advice to employers to support them to achieve the required standard, through to issuing enforcement notices to help secure improvements. Serious breaches and failure to comply with enforcement notices can constitute a criminal offence, with serious fines and even imprisonment for up to two years.

Others went over the top when it came to compliance due to the lack of clarity and uncertainty as to what was required to comply and where a minimum compliance level sits. One health care practitioner said in an interview:

I do as I'm told. I don't understand the regulations. I don't understand why. I can understand enough to follow them and see why but not enough to predict them or criticise them. [...] I'd rather have the minor inconvenience and not worry about it rather than try and cut a corner. I don't know whether it was right until someone checks me over. No one checked me over. So, they said do this. I did it and I hope everything is good enough.

Prescription vs. discretion in regulations during a crisis

Overall, just over half of respondents expressed a preference for flexible regulations with some discretion in how to comply. However, well over a third stated they would prefer prescriptive regulations during a crisis. This may be related to the desire for clarity that emerged from the survey and interview data.

As **Figure 15** shows there was a significant relationship between business size and preference for prescriptive vs flexible regulations during a crisis, with businesses with up to four employees more likely to prefer prescriptive regulations than those with five or more employees, the latter expressing a clear preference for flexible regulations.

¹³ <https://assets.publishing.service.gov.uk/media/5eb965d5d3bf7f5d3c74a2dd/working-safely-during-covid-19-factories-plants-warehouses-110520.pdf> (page 9)

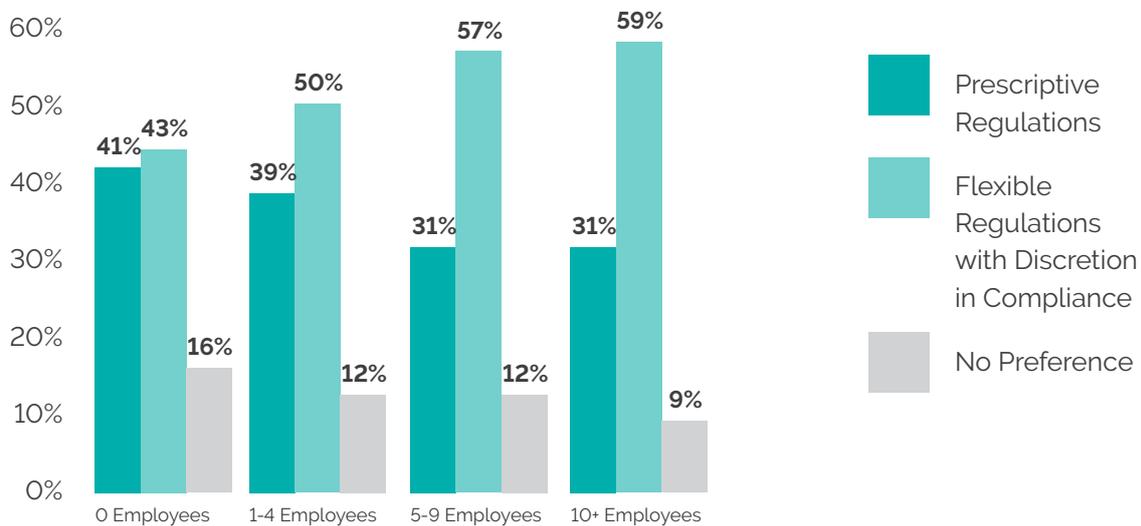


Figure 15: Preference for prescriptive vs flexible regulations during a crisis by business size

Broadly, there was also a significant relationship between sector and preference for prescriptive vs flexible regulations. Strongest effects were found for businesses in the Manufacturing sector which preferred flexibility (59% selected flexible compared to the sample average of 51%, whilst only 28% wanted prescriptive compared to the sample average of 37%), whilst businesses in the Hospitality, Food and Beverage (47% compared to average of 37%) and Sports, Arts and Entertainment (52% compared to average of 37%) sectors were more likely to prefer prescriptive regulations.

It might be inferred that businesses in those sectors may have wanted more prescriptive rules because they were needing to regulate

their customers' behaviour. As a publican pointed out, *'you were having to remind customers to put the masks on. You just end up a feeling like a teacher'*. Alternatively, they may have feared that lack of compliance with the regulations could lead to enforcement action. A board game shop and gaming café owner recounted knowing that other businesses had been closed for customer breaches:

There was a bar just up the road from us where the manager went down to the cellar to get something, licencing came in while he was off the floor, two groups had mingled, and he was closed. [...] We were sort of aware that if we didn't do it right, that it wasn't going to be long for us.

It is clearly not always possible or desirable for regulations to be made more prescriptive. An overly prescriptive approach can result in businesses needing to take more actions to comply, adding to the cumulative regulatory burden. Prescriptive regulations can also preclude businesses from taking different paths to achieve the same regulatory objective. It is for this reason that regulators of financial and professional services¹⁴ have been seeking to move from rules-focused regulation to outcome-focused regulation in recent years.

The preference for prescription expressed by well over a third of respondents (37%) might suggest that what they want is clarity about minimum compliance levels. Therefore, it could be possible for governments and regulators to find an approach which meets the needs of businesses of all sizes, by ensuring that when regulations are changed or introduced, illustrative examples of minimum compliance levels are published in accompanying guidance.

Recommendation: Governments and regulators across the UK should publish illustrative examples of compliance when regulating small businesses. This would include the individual steps and time scales in which a business could become compliant.

This helps show small businesses the journey to compliance, and the timescales indicate which changes are required immediately, and which can be done in time. These illustrative examples would give small businesses examples of how they could choose to comply with the regulations, without fettering the scope for flexibility that many small businesses desire. It should be made clear in each illustrative example which are the mandatory steps, and which are discretionary.

Recommendation: Governments and regulators across the UK should, whenever changing or introducing new regulations, draw clear distinctions between the actions that a business must take to comply with regulatory changes, and the steps that a business might choose to take. This should be done by introducing a “red list” at the top of guidance documents setting out which actions must be done, where in the UK this applies, and with further detail later in the document. Additionally, in respect of any suggested optional steps, it should be made clear that these are not part of the regulations and requirements, and as such a business would not be found to be in breach of the regulations for not following them. This distinction would allow small businesses to make informed choices about whether to go beyond minimum compliance levels, while avoiding the risk of gold-plating due to uncertainty.

Survey data shows (Figure 17) that 74% of businesses had used GOV.UK and nearly 80% of those respondents went on to rank it within their Top 3 most useful sources in helping to decide what action to take. Indeed, GOV.UK was the most common top ranked source. However, from interviews there were comments that GOV.UK is very text heavy. While it was clear that many business owners wanted in-depth information to be available, an easier way of accessing the basic details would have reassured small businesses that they had taken the right steps.

¹⁴ <https://www.fca.org.uk/news/speeches/outcomes-focussed-regulation-measure-success>

Recommendation: Governments and regulators across the UK should avoid making guidance documents unnecessarily lengthy and ensure that they pass a plain English language test.

Where regulatory documents are produced in different languages for the respective devolved nations, simplicity should be the guiding principle. This means that, regardless of which of the UK's languages businesses use, they should be able to understand what is required of them. These guidance documents should ideally be produced in conjunction with intermediaries (such as business representative organisations and sector specific organisations).

Recommendation: Whilst impossible to account for each and every individual business circumstance and situation created by new regulations or regulatory change, Governments and regulators across the UK should include an FAQ document within new regulations and regulatory changes designed to address common questions.

This would also include where business groups have asked for further clarity or identified common questions among the business community.

Recommendation: Governments and regulators across the UK should set up a "regulation request" inbox for the first year of any new regulations, so that businesses can email in queries, which can then be responded to or used as a point of signposting towards useful documentation. The most common queries can then be used to better update the guidance and future regulations.

The timing of regulatory guidance

In addition to the issues of clarity and accessibility of regulatory guidance, there was also an issue of timing. At times during the pandemic, businesses were required to ensure they were compliant with changes to the law almost immediately after the change had been announced, and before the accompanying government guidance was published. This speed of change, accompanied by a fear of enforcement, resulted in greater upheaval and cost for the business. As part of the survey, respondents were given the option to offer direct feedback on how regulations could be improved. A number of those who responded expressed their frustration with the frequent and rapid implementation of new and changed regulations and voiced a clear desire for more time to allow adjustment between the announcement of changes, and their implementation. These free text comments from the survey illustrate this point:

Regulations/governing body recommendations changed several times in a short period of time, which presented difficulties in cascading to staff. Also, notification [was] often received on weekends, presenting challenges in implementation quickly.

More notice of change. You cannot issue step changes the few days before. Lack of notice and confusing interpretations was [the] biggest challenge.

Interviewees also noted the importance of having time to plan for and adjust to changes before legally enforceable regulations came into effect. For example, a marketing consultancy, when asked what would improve regulations made in a future crisis, said:

Just make the communication clearer, so if they're making an announcement have all the detail and the background of that announcement online after that announcement goes live, don't wait three days to post the detail because at that point mental health [is under pressure], because everyone's [thinking], "What does that mean? Does that mean me? Does that mean them? What about my wedding?" [...] If you're going out with these statements publicly make sure you've got the small print behind it so we can do the research after.

Whilst a crisis such as a pandemic might by necessity curtail the ability for a government to give such notice, the data strongly suggests that business owners clearly wished to comply with regulations and for the most part understood their necessity. However, they did not want to find themselves in a position where they could be held legally accountable for a failure to comply with rapidly changing regulation when there was not yet sufficient clarity on how to comply, nor had there been sufficient time to cascade information out to staff, and then act upon it.

Recommendation: Unless safety critical, Government and regulators should always allow a grace period after a regulatory change is introduced before enforcement action will be taken. Ideally this would take the form of a standard six-month grace period automatically applied to new regulations unless it can be shown that there is a safety critical requirement. When enforcement begins, it should be soft touch, encouraging compliance rather than punishing mistakes. Clearly, while circumstances during the pandemic required rapid regulatory change, there is a learning point that small businesses would be more confident in their compliance approach if they knew that they would not face immediate enforcement activity on Day 1 of a regulatory change. During this grace period, regulators could assess compliance levels and reach out to offer advice and support to small businesses.

Navigating sources of regulatory information

Another key issue in relation to regulation, and one which is often neglected, relates to how businesses come to understand which regulations are relevant to them and which sources they trust to base resulting actions on. Prior research has shown that small businesses do not receive regulatory information undiluted and fully formed, direct from the originator. Rather, business owners' understanding of regulations is often mediated through their relations with a variety of sources, both formal and informal (Pollard et al., 2018; Pollard et al., 2011; Richter et al., 2015; Richter et al., 2012). From this perspective, responding to regulations is seen as a cultural phenomenon, shaped by a business's pre-existing attitudes and behaviours towards regulation, and its networks.

For those who had never had to deal with regulatory issues in great depth it was particularly challenging to need to engage with regulations in great detail. An interview with a marketing consultancy owner was revealing in this respect:

I think if you look at the small businesses, we don't have networks of lawyers that are working for our business, we're actually like a one-man band, and we're leading from the front. It's us that's got to go and find the information. We've never had to deal with stuff in that way before where you're looking in that detail. Or you can pay a consultant. But if you've just lost 70% of your business, you can't afford to pay someone else to find out, so they can learn about your business to then give you the answers, and then for it to keep changing so rapidly.

Improving understanding of where small businesses go to find reliable regulatory information is important and it is even more crucial to understand what sources were useful during a time of crisis. The survey asked respondents to select the sources they had used during the pandemic and **Figure 13** shows the most frequently used sources.

Figure 16 shows that nearly three-quarters of the sample reported that they had relied on GOV.UK, with half the sample relying on business representative organisations such as FSB. It is worth noting that the vast majority of survey respondents were FSB members. Indeed, interviews showed that some businesses had specifically joined FSB in the pandemic to obtain advice. This does make it more likely that a larger proportion of this group would go to a business representative organisation like FSB for their information, as compared to a randomly selected sample of UK small businesses.

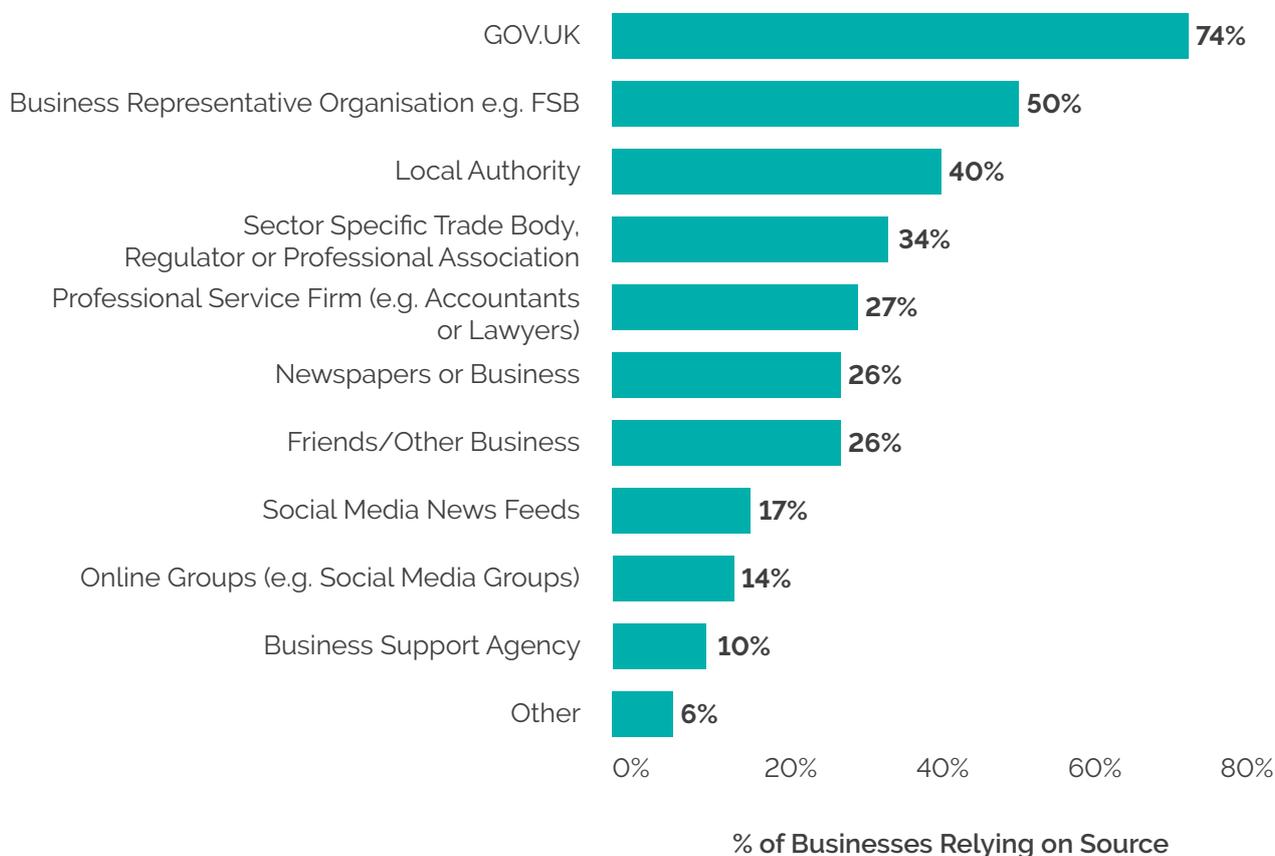


Figure 16: Frequently used sources of regulatory information

Utilisation of multiple sources

The survey data showed that 82% of businesses relied on more than one source of information to find out about regulatory changes during the pandemic. Almost 60% of respondents were relying on between two and four different sources of regulatory information. This demonstrates that individuals were finding value in having multiple sources of guidance so that they could triangulate between sources as suited the specific needs of their business. The data suggest there were many different combinations of sources, with no obvious dominant patterns emerging. Although Figure 16 might suggest that formal sources were predominant, just over half of the sample made some use of informal sources (news sources, friends, other business

owners, social media). Use of friends as a source was most strongly associated with use of social media groups and this may be because this was an important mechanism for communicating with friends or other business acquaintances for many respondents.

Examples were given in interviews of pre-existing social media groups that were utilised during the pandemic to help interpret regulations:

*There was a lot of chat between myself and other store owners, because we've got a Facebook group for people that own the same sort of stores as I've got, sort of 80 to 100 of us in a couple of Facebook chats that sort of pooled resources and sort of picked brains and sort of argued about how best to interpret the various regulations as they applied as well. **Board game shop and gaming café***

The age and gender of the business owner was seen to be associated with certain preferences, especially the more informal sources. For example, the survey found that the younger the business owner, the more likely they were to rely on sources such as social media news feeds, online groups, and friends/other business owners. This association was especially strong for business owners aged over 65 whereby they were far less likely to rely on such sources than their younger counterparts. When gender is factored in, the survey found that younger (under 45) female business owners were significantly more likely to rely on social media news feeds and online groups than female business owners above that age. Age was found not to have had a similar effect in the case of male respondents, although male business owners overall were less likely to rely on these specific sources (social media news feeds and online groups) than female business owners.

The survey also found that use of local authorities as a source of information commonly occurred in conjunction with any of the other sources and also found that businesses who had customers visiting their premises to make purchases were more likely to rank local authorities as a useful source of regulatory information than businesses who visited their customers. This might reflect the fact that for regulatory changes such as rates rebates it was necessary for the business to apply through their local authority so that, having found out about the regulatory change from GOV.UK or some other source, respondents then had to obtain the detailed information about how to make an application from their local authority. Correspondingly, local authorities, when ranked as useful, were more likely to be ranked second or third rather than first, in contrast to other formal sources for which a first ranking was more likely than either a ranking of two or three.

Identification of most useful sources

The survey also asked respondents to rank up to three of the sources on which they had relied as being the most useful in helping decide what action to take. **Figure 17** shows the four most common sources of regulatory information relied upon across the sample and the percentage of those using the source who ranked it as one of their top three most useful sources.

Intermediary bodies, such as business representative organisations and sector specific organisations, could tailor the language and information they provided so that it was more useful to their audience, and it was clear that those who had accessed those sources rated them highly.

FSB and similar organisations were praised by interviewees for their information around regulations: *'I think the FSB do a good job of making it accessible'* **Academic and autism support company**; and *'It's about clarity and distilling the information and the way the information is presented'* **Wellbeing and inclusivity consultancy**.

Interviewees also highlighted the value of bodies like FSB in advocating for small businesses and feeding back their members' views to government. A marketing consultancy owner said: *'I think it's really useful having an organisation like FSB that are here for the local businesses, for the small businesses, what's happening in your local area, and giving that feedback that could go back to government'* and another interviewee in the construction sector, when asked if he had specifically joined FSB because of the pandemic, replied: *'Yes, they got in touch and I liked the whole way they've set up the lawyers, the information you can get, the professionals they've got and it was just nice to hear somebody that was on your side, sort of thing'*.

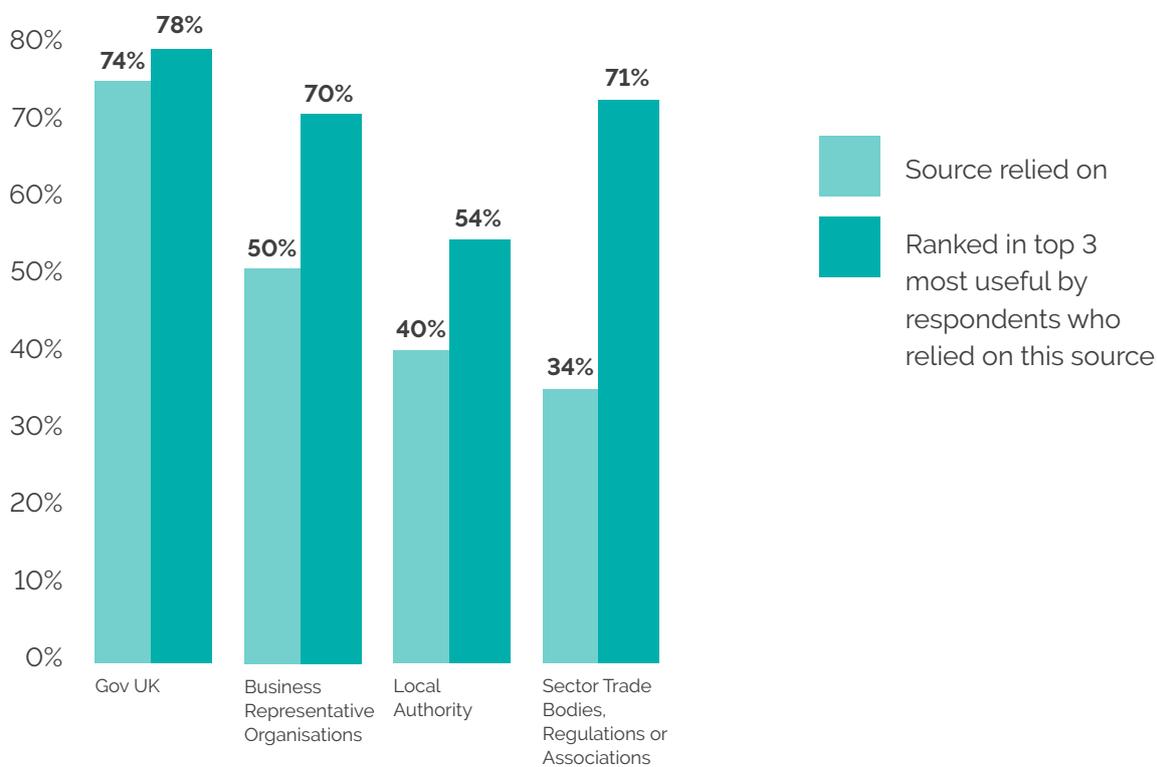


Figure 17: Sources ranked most useful by those who had accessed them

Trade associations and sector bodies were also ranked in the Top 3 most useful sources by over 70% of those who had used them. Examples that were highlighted through interviews were:

A chiropractor who praised the British Chiropractic Association for providing tailored guidance suited to the sector, said: *'The trouble with regulations is they're written in legalese and bureaucratic languages that common people don't understand. And so they translated it to say, "right, this is what you should do"'*

A publican who complimented the Society of Independent Brewers, commented: *'Certainly, towards the beginning especially, they were very encouraging in the sense of, "we know you're not our members, but we all need to know this information". They were pulling out loads of information, loads of advocacy as well, that was really helpful and useful. Every time rules changed, they'd do a summary, which is helpful.'*

Other trade associations, including the Early Years Alliance¹⁵, were praised in interviews not only for summarising government rule changes in an accessible way but because, as one nursery owner said, they *"made resources available to help nurseries re-open, things about communicating with the parents and so on."*

¹⁵ <https://www.eyalliance.org.uk/coronavirus-early-years> for summarising government rule changes

Recommendation: Governments and regulators across the UK should design and implement appropriate consultation processes with intermediary bodies as part of communication plans when key regulations are changing.

Many small businesses chose to use a range of sources when finding information about regulatory changes during the pandemic, including informal sources (e.g. social media news feeds and online groups). Where government bodies or regulators can engage early on in the process on upcoming regulatory changes with intermediary bodies (like business representative bodies, sector-specific regulators or trade associations) and work with them in the design of the guidance, it allows those intermediary bodies to produce tailored guidance much faster, ensuring that there is another source of information on the steps needed to comply. This is critically important in devolved nations. Using intermediaries such as Business Wales, Business Gateway in Scotland or NI Business Info can help business draw that distinction between regulations which apply differently in each nation. This early engagement could also take the form of a confidential consultation on the regulatory changes themselves, even in the context of a fast-moving pandemic, and must avoid simply using intermediaries to disseminate Government guidance or as simply an email list.

The significance of the pre-pandemic regulatory environment

Up until now, this report has charted small businesses' experience of navigating new and amended regulations arising from pandemic conditions. However, it is worth bearing in mind that, even during a pandemic, businesses have a pre-existing regulatory environment to comply with. In this research, it was observed that the degree of impact of new and changed regulation in the light of the pandemic varied depending on individual businesses' pre-existing regulatory engagement. For those businesses operating in already highly regulated sectors, the addition of new and changed pandemic-related regulations may have been experienced as less impactful than for other, lightly regulated businesses. This was evident from an interview with a children's nursery owner:

Whilst the pandemic has put a few extra layers in, it's not been a game changer for us in the same ways as it will have been for many other businesses.

During the interviews some business owners reported that, while pandemic-related regulations presented them with all manner of challenges, other regulations have, or still do, represent greater burdens. For example, the owner of an art gallery explained that complying with anti-money laundering regulations causes him the greatest concern as a micro business owner:

That's got to be really looked at; I just don't see how it's enforceable, and it's enforceable by law as well. If I make a mistake, I could go to prison. That is...going to stop people from taking business on, legitimate business.

An interview with a petrol retailer and supermarket business indicated that complying with waste regulations was a particular issue for him, and he cited what he saw as disproportionate costs to small businesses:

The record keeping, the cost of compliance, particularly with regard to waste compliance is one of my particular bugbears.

In the case of both children's nursery owners interviewed, one of the most challenging regulatory requirements over recent years has been the requirements for qualifications that are considered 'full and relevant' by the Department for Education and the difficulties that has created in recruiting staff.

This research has demonstrated that small businesses' experience of the regulatory environment during the pandemic was characterised by considerable variability, depending on factors including sector, size of business and business model, with the findings particularly pointing to the impact of the number of employees on the regulatory experience of the business during the pandemic. The extent of existing regulatory burden was also a factor, albeit some regulatory requirements were eased due to the pandemic, and adaptations made to practices and processes due to COVID-19 also required some businesses to engage with regulations that they had not needed to engage with before.

Recommendation: Government and regulators should always pursue a culture of regulation that emphasises proportionate, appropriately communicated regulation that acknowledges the differential needs and regulatory experiences of different types and sizes of small business. All governments across the nations of the UK should be considering how to take forward their frameworks for better regulation. For example, the UK Government is currently re-evaluating its approach to regulation in light of the UK's departure from the European Union, where it will be important to ensure that the burden of regulation on small businesses continues to be rigorously assessed and minimised. The 2001 Northern Ireland Better Regulation Strategy, although welcome, is in great need of modernisation and should be reviewed, refreshed and republished. Additionally, the Northern Ireland Executive should legislate to ensure that the Small and Micro Business Impact Test (SAMBIT) is used across all Northern Ireland departments when developing new policy and regulations.

Conclusion

The pandemic was arguably the biggest stress test ever of Governments' ability to design and implement regulations at speed across the UK, and to communicate them in a way that they could be understood by those they were seeking to regulate. As the United Kingdom emerges from the pandemic, businesses are now directed to the United Kingdom Health Security Agency's general guidance on reducing the spread of respiratory infections¹⁶, which states that *'Employers, in accordance with their legal obligations, may wish to consider how best to support and enable their workforce to follow this guidance as far as possible'*. To encourage the right public health behaviour to stop the spread of COVID-19, and other sicknesses, the Government should consider permanently introducing a Statutory Sick Pay (SSP) rebate for small employers, in respect of all illnesses and must remove any perverse incentives from the business rates system that might deter ventilation improvements, and furthermore consider positive incentives, like grants, for installation of ventilation.

While the overall aim of many of the recommendations in this report is to create a wider framework within which regulations can be made, understood, and implemented by businesses across the UK, the UK Government and devolved nations must learn the lessons from this pandemic regarding how new regulations were made at speed, and often differed between nations. Now is the time to retrospectively evaluate the impacts of different restrictions and business support measures as well as implementation strategies across the UK, so there is a clear hierarchy of interventions identified for future crises of this scale.

¹⁶ <https://www.gov.uk/guidance/reducing-the-spread-of-respiratory-infections-including-covid-19-in-the-workplace>

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Appendix A

Demographics	Responses
Business Size	
0 employees	259
1-4 employees	396
5-9 employees	177
10+ employees	159
Sector	
Heavy Industry	92
Manufacturing	192
Wholesale and Retail	177
Hospitality, Food & Beverage	47
Professional and Support Services	345
Health and Education	52
Sports, Art & Entertainment	50
Other	36
Nation	
England	789
Scotland	137
Wales	43
Northern Ireland	22
Age of Business	
0-4 years in business	86
5-9 years in business	129
10-19 years in business	322
20+ years in business	454
Gender	
Male	624
Female	324
Other preferred description	5
Rather not say	38
Age of Owner	
16-44 years old	68
45-54 years old	220
55-64 years old	385
65+ years old	318

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