Burdened by Brussels or the UK?
Improving the Implementation of EU Directives

A joint publication by the Foreign Policy Centre and the Federation of Small Businesses

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Disclaimer

The views in this paper are not necessarily those of the Foreign Policy Centre or the Federation of Small Businesses.

Preface

The Federation of Small Businesses is the UK's largest business association with over 195,000 members. A recent survey of our membership, *Lifting the Barriers to Growth*, found that the legislative burden has increased in the last two years. Furthermore, a significant minority of our members cited regulatory burden as a reason for downsizing or closing their businesses.

We hear a great deal from government and the European Commission about plans to slash red tape. The FSB welcomes these initiatives, but as our surveys have revealed, the small business community urgently needs to see some results. This is why we have coordinated our efforts with the Foreign Policy Centre to identify the source of some of the more controversial regulations in recent years, together with quantifying their impact on the business community.

This report investigates gold-plating, the practice of over implementing at national level a Directive passed by the EU, in an attempt to identify the reasons and subsequent costs of over implementation of EU Directives. The report does not question the need for the original Directive, only the subsequent requirements added by national government.

Our report finds that gold plating does present a significant problem to the small business community. It takes time and money away from key wealth and job creators. Furthermore, it contravenes the essence of the single market by putting UK businesses at a competitive disadvantage to their continental counterparts.

Tina Sommer
EU Affairs Chairman,
Federation of Small Businesses
August 2006

The debate about how to make the European Union more effective has recently been dominated by the issue of competitiveness. A greater focus on innovation and R&D is indeed crucial if EU member states are to achieve economic growth in the age of globalisation. No less important, however, is the Better Regulation agenda. The internal market must function well, and be seen to be functioning well not only to foster growth, but to persuade the EU's citizens that it is fit for purpose.

Yet, as this joint report by the FPC and FSB shows, some member states, including the United Kingdom, have "over-implemented" some EU directives; and this has had a direct and adverse impact upon businesses' competitiveness and economic agility.

The Government has already addressed this issue by commissioning the Davidson Review on the over-implementation of EU legislation. This report is intended to complement that separate research-in-progress and to offer solutions and proposed improvements.

A substantial proportion of business legislation now has its origins in Brussels. Yet, unless the Government, policy-makers and MPs improve the way these EU regulations are explained and implemented, the burden of regulation will remain too great for all the wrong reasons.

Stephen Twigg
August 2006

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Executive Summary

The issue of "gold-plating" is a subject of growing controversy. Eight directives were analysed by The Foreign Policy Centre after the Federation of Small Businesses (FSB) was advised by its members which regulations have proven particularly burdensome. 1131 FSB members completed a survey focussing on the areas where there may have been over-implementation. These results were complemented by case studies.

Conclusions:

- There can be no doubt that there are **a number of cases where Whitehall has extended the scope of the original directive**.
- Gold-plating occurs in various forms, including extending the scope of EU directives by including extra pieces of legislation in the statutory instrument; widening the scope of the EU directive to cover extra requirements; and introducing targets and deadlines
- Additionally, there is a danger of over-implementation of another kind if the enforcement agencies have such rigid inspection criteria that they do not focus on those businesses that pose the greatest risk
- Significant proportions of businesses complain that the **regulations have increased costs significantly**.
- **Many businesses have been deterred from expanding their operations and from taking on new staff** due to the perceived effect of regulations.
- In several cases, the problem has been the **previous lack of clarity rather than new burdens from gold-plated regulations**.
- It is not only real costs but also **perceived costs** of regulations that affect businesses' competitiveness. While only one business respondent had actually been fined for failing to comply with the requirements of the Part-time Workers Regulations, nearly a quarter of all businesses surveyed said that the regulations had deterred them from taking on part-time staff.

Recommendations:

- The Government should consider setting up a central body, independent of Government, to assess the potential burden of all new legislation.
- This body will conduct improved risk assessments that focus resources on the most relevant businesses
- There should be retrospective RIAs, examining not only envisaged costs but also real costs to businesses
- This body should be involved in the legislative process at all stages. There is a case for its representatives to attend legislative meetings on an EU level and identify potential problem areas early.
- MEPs should play a more active role in overseeing the legislative process.
- Clear and unambiguous regulatory language should be a key priority for legislators
- Once the Davidson review is published, the Government should outline a series of steps it will take to review existing legislation that has been over-implemented
- The Government should consider ways in supporting Germany in its effort to make the Better Regulation agenda a priority of the EU

- EU member states should abide by their 2003 agreement to publish concordance or conformity tables when transposing EU Directives. As set out in the agreement between the Council of Ministers, the Commission and the European Parliament in 2003, concordance or conformity tables should be compulsory and should be communicated to the European Commission

Introduction:

How real is the regulatory burden?

There has been much political debate over the past few years about the red tape or regulatory burden faced by businesses. The Labour Government, eager to present itself as pro-business, has repeatedly stressed its commitment to cut regulation.[1] Yet regulation continues to be the overwhelming complaint by businesses when striving to become more competitive. As the recent Hampton Review[2] pointed out, the predominant mood, particularly among small businesses, when asked about the regulatory burden, was "one of concern that they did not know what inspectors would require of them, and the cumulative burden of regulation". As Hampton stressed, the most "worrying" aspect of the research is the extent to which burdens are felt "disproportionately" in smaller businesses.[3]

It is unsurprising that this is a fundamental concern for the Government as the creation and success of smaller businesses is in many ways the lifeblood of the economy and an essential part of continued economic growth. If small businesses fail to expand or, more dramatically, collapse, this will have a direct negative impact on productivity and employment figures. SMEs account for more than half of employment and turnover in the UK. According to recent research by the FSB[4] , *Lifting the Barriers to Growth in UK Small Businesses*, small firms are keen to grow and employ more people – 59% want to expand in the next two years – but over half see regulation as a "serious barrier to growth".

Enforcement and Inspection: The Importance of Risk Assessment

To address these concerns, the Government recently published the Hampton Review, a detailed and comprehensive study into better regulation. As this pamphlet will argue, the recommendations of this review are mostly highly desirable and will go a long way in reducing the regulatory burden for business. The report was published in 2005 and it is therefore too early to see real changes on a regulatory level, but the regulatory environment for small businesses should improve if the principles outlined in the report are embedded in a cultural shift in how regulators operate. The review was published along side the Better Regulation Task Force (BRTF) *Less is More* (March 2005) that recommends the setting of targets to reduce administrative burdens.

[1] See *Hampton Review*, Annex D: "Overall, the UK's regulatory reform regime is well-respected internationally. Of regulatory costs, found Britain to be the most competitive in the world."
[2] See *Hampton Review*, p.3
[3] see *Hampton Review*, p.25
[4] For more detail, see FSB surveys, *Barriers to Growth in UK Small Business*, 2006 and also *Inspector at the Door* , 2005

Its central objective was to improve the quality and effectiveness of the regulatory system. This should be done, it argued, by entrenching the principle of risk assessment throughout the regulatory system, so that the burden of enforcement falls on highest–risk businesses, and the least on those with the best records of compliance. Inspection activity should be better focussed and reduced where possible, but increased where there is cause for concern. Monitoring and enforcing regulatory obligations ought to be targeted towards highest–risk businesses and punishments ought to be consistent, clear and tough. At the same time, better guidance about regulatory requirements should be provided to businesses, accompanied by a substantial reduction of unnecessary form-filling.

The concept of risk-assessment lies at the very heart of an efficient regulatory structure because it can help to direct resources where they have the maximum impact on outcomes.[6] However, risk assessments will fail to deliver the necessary regulatory outcomes if the information they are based on is insufficient. The accumulation of the accurate and consistent details and information about businesses, their environment and the regulatory framework is thus essential. If handled correctly, risk assessments can contribute significantly to the drive to cut the regulatory burden by ending unnecessary inspections or date requirements on less risky businesses, identify which businesses need more inspection, and release resources to improve broader advice services.

Previous Government studies have stressed earned autonomy, where good performers are visited less often, or have less onerous reporting requirements, as a key requirement. A DTI report in 2002[7] said that small businesses were not clear what regulators expected of them. Regulators often fail to communicate their requirements simply and effectively to business. According to the Small Business Research Trust, 50% of small businesses who try to find advice on regulation are unsuccessful in locating it.[8] This is supported by surveys of business opinion. Of those surveyed by the Environment Agency for a recent report, 40% said they wanted more guidance from regulators on their duties[9] (SME-environment, Environment Agency 2003). The FSB's recent members survey revealed that 54% of business people are dissatisfied with the complexity of legislation. Additionally, it is astonishing that the lack of clarity of regulations is still a key complaint when it comes to national regulators. As the Hampton Review pointed out, the last time that any national regulator won the Plain English Campaign's Plain English award was in 1992.[10]

How much does gold-plating add to the burden?

In the search for creating a better regulatory environment for businesses, the Government recently acknowledged that enforcement and inspection have not been the only areas of controversy. There has been much debate involving trade associations and Whitehall officials about the so-called issue of gold-plating. Rules

[6] See *Hampton Review*, p.4
[7] See *Cross cutting review of government services for small businesses*, DTI, October 2002,
[8] See *Quarterly Survey of Small Business in Britain, Small Business Research Trust Survey*, 2001-2003
[9] See *SME-nvironment*, Environment Agency, 2003
[10] See *Hampton Review*, p.7

agreed at the EU level are vital for the proper functioning of the single market. But they can also hamper competitiveness and productivity if they add a differently sized burden in individual member states because they have been implemented in different ways. Gold-plating, as defined by an ongoing audit by HM Treasury, is part of a larger category of over-implementation which also includes double-banking or regulatory creep. As the Government has acknowledged, "it may arise in a number of ways, including: extending the scope of European legislation; bringing in EU-derived obligations into force earlier than required; failing to streamline the overlap between existing legislation in force in the UK and the new EU-sourced legislation; or uncertainty created by lack of clarity about the objectives or status of regulations and guidance"[11].

There has been considerable debate in recent years about what proportion of regulation is driven by EU regulation. According to a report by Open Europe, 77% of the major regulations passed in the UK since 1998 were wholly or partly driven by EU regulation. The same study, quoting the Government's own Regulatory Impact assessments, claimed these EU regulations had cost UK business £30 billion[12]. Meanwhile, a document signed by Gordon Brown, the then French Finance Minister Francis Mer and Hans Eichel, the then German Finance Minister stated that "approximately half of all new regulations that impact upon businesses in the UK originate from the EU".[13] However, Denis MacShane, when he was Europe Minister, contradicted this last year when he commissioned a note from the House of Commons research department which found that since 1998 only 9% of all statutory instruments implemented in the UK were the result of EU legislation. The arguments continue, with contradictory figures produced to justify every shade of opinion and little agreement on basic points of fact.

The manner in which the UK and other EU member states implement European legislation has been the subject of a number of pamphlets. A report by the British Chamber of Commerce[14] in 2004 was followed by a pamphlet by the European Movement.[15] However, while these reports sought to define gold-plating as the source of over-regulation, there has until recently been very little specific evidence and estimation of the costs and burden it may represent to business. Similarly, there have been very few specific examples of European legislative instruments where such gold-plating has actually occurred.

This drive to understand the burden on business better has been mirrored at the European level: concerned with the competitiveness agenda, there has been a concerted effort by the EU to drive ahead the Better Regulation Agenda and the Barroso Commission has made it a key priority for its term in office. Angela Merkel is known to be keen for it to play a central part on the agenda for the forthcoming German Presidency of the EU. Gordon Brown acknowledged the gap in the

[11] See Donaldson Review, *Implementation of EU legislation*, 2006, Chapter 1
[12] See *Less Regulation, 4 ways to cut the burden of EU red tape*, Open Europe, p.5
[13] Op.cit. p7
[14] BCC report, on gold-plating 2004
[15] Also see DTI Study 1993, *Review of the Implementation and Enforcement of EC Law in the UK*, and a report by Robin Bellis, *Implementation of EU legislation* , 2003 as quoted in the Davidson Review

understanding of how the regulatory burden may be increased through gold-plating when he announced an audit into gold-plating to be chaired by Lord Davidson.[16]

Davidson Review

The interim report of this review, which was published in July 2006, had over 160 written responses and will provide a detailed analysis of specific directives that have been implemented into UK law in its final report later this year. It is the first time that the Government has provided such in-depth analysis and it is the aim of this pamphlet to inform the recommendations of the final report. Unlike this research, the Davidson review has had responses from large and small businesses and their concern is therefore not always the same. For example, whereas large businesses may be dismayed that regulations are too detailed as they have their own legal departments to offer advice, smaller businesses may find such regulations desirable because they may otherwise have to hire an outside consultant at much extra cost. The current Government's position on the transposition of EU directives is covered in the Cabinet Office's Transposition Guide but, given the pending conclusions of the Davidson review, is likely to be updated later this year.

Why may Britain be different?

Before analysing the jointly chosen FPC/FSB directives in more detail, it is important to make some more general comments about the difficulty businesses face when confronted with EU legislation. In his excellent pamphlet, *Britain's Voice in Europe: Time for a Change*, [17] Rt Hon Denis MacShane, the former Europe Minister, argued that Britain is not currently maximising its influence over the way the EU makes its decisions. He argued the House of Commons had an inadequate system for dealing with EU legislation and MPs were currently not encouraged to represent their constituent's interests in the EU. "Business in particular needs to take a new interest in EU law-making by working with MPs and MEPs at an early stage to identify any problems or to overcome opposition to directives that are in Britain's economic…interests…To achieve the ambitions we want for Britain, a completely new approach to European politics and EU decision-making is required."[18]

Mr MacShane proposed innovations within the parliamentary system with a greater involvement of MPs with EU legislation through a new committee structure. His calls for reform are backed by Sir Digby Jones, the outgoing Director General of the CBI, who argued in an earlier FPC pamphlet[19] that parliamentary scrutiny needed to be earlier, involve more consultation with outside interest groups, must be more transparent and be joined up. If the burden on businesses is to be significantly reduced, it is crucial that the general failure to engage with EU issues is overcome. An

[16] See details in the *Davidson Review*. Additional reading can also be found in the report by the National Audit Office, *Lost in Translation? Responding to the challenges of European Law*, 2006
[17] See Denis MacShane, *Britain's Voice in Europe: Time for a Change*, Foreign Policy Centre, 2006
[18] op.cit. p.4
[19] See Sir Digby Jones, *UK Parliamentary Scrutiny of EU legislation*, Foreign Policy Centre, 2005, p8

important step in that direction is for national parliaments to work more closely with the European Parliament – particularly in Britain where, so far, there has largely been a disconnect between the two.

Another explanation why there is a tendency to over-implement European legislation could be that the UK legal culture may be more detailed and descriptive than its continental counterparts and regulations thus end up being more detailed than they are in other countries. This difference in legal culture is particularly relevant where directives are descriptive and only set minimum standards and it is up to the individual member states to determine how far they want to go. This rigorous legal approach can be compounded by the regulatory approach of enforcement agencies in this country. As the Hampton Review established, the regulatory system in the UK has a complicated structure.[20] Regulatory inspection and enforcement is divided between 63 national regulators, 203 trading standards offices and 408 environmental health offices in 468 local authorities. Different regulatory bodies are structured in different ways and responsibilities may be split between local and national regulators. As mentioned above, as a result, national regulators may not always be focussed on the cumulative burden that regulations have on business and this decentralised structure will have to be taken into account when seeking to reduce over-implementation of European legislation in future.

Finally, it is important to stress the significance of the perceived lack of consultation when directives are being transposed into UK law. The failure of Government to consult has been a complaint of all stakeholders, not only business, and it may be an area ministers may want to consider separately.

Methodology

This project analysed eight directives that were selected after the FSB was advised by its own members which regulations have proven particularly burdensome. After an initial screening, a survey was sent out to FSB members focussing specifically on the areas of the legislation where there may have been over-implementation. 1131 members completed the survey.

Given the parallel timing, this report based its definition of "over-implementation" on that of the Davidson review. It agrees with the Davidson review that the key focus of over-implementation is on areas where the UK has discretion in how it applies European legislation. This report will not comment on whether the directives are desirable or whether they are good or bad for business. The Government is legally obliged to implement EU Directives in a timely manner and this review has therefore also discarded arguments that called for "under-implementation". Similarly, some trade unions have taken the government to court complaining about under-implementation particularly in the areas of employment regulations but, again, this review only focuses specifically on whether over-implementation, as defined above, has occurred.

[20] *Hampton Review*, p.6

In the next section, the FPC provides the analysis for these eight European legislative instruments. The examinations of each legislative instrument required careful research, taking into account responses by relevant government departments and trade associations. It has also taken into account the responses from the survey and provided case studies for each legislative instrument.

There may be cases where over-implementation may be desirable because of the risk involved, particularly where health and safety regulations are involved. This review has taken into account such cost-benefit considerations in delivering a final verdict. This is particularly relevant because the results of the survey provided evidence of the cost incurred to businesses by over-implementation. For example, while a directive may have been over-implemented, it may not actually have hugely affected the conduct of business and changing the regulation may prove to be more costly. On the other hand, small businesses may have chosen not to expand or make staff redundant as a direct result of the way that a European legislative instrument has been implemented.

Eight Directives in Focus:

I: The Part-time Workers (Prevention of Less Favourable Treatment) Regulations

This research focuses firstly on the Council Directive 98/23/EC of 7 April 1998 on the extension of Directive 97/81/EC on the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC to the United Kingdom of Great Britain and Northern Ireland. **The Part-time Workers (Prevention of Less Favourable Treatment) Regulations,** which initially transposed this directive in 2000, gave part-time workers the right in principle not to be treated less favourably than full-time workers of the same employer who worked under the same employment contract.[21] However, the UK Government introduced an amendment to the Part-Time Workers Regulations in October 2002, allowing individual part-timers to compare themselves to a full-time colleague irrespective of whether either party's contract is permanent or fixed-term.[22] In addition, 'the directive provides that Member States can exclude from the scope of national regulations part-time workers who work on a casual basis. The UK did not take advantage of this provision.'[23]

One problem for employers arising from this regulation has been the calculation of public holiday entitlement. Public holidays are not a statutory right. The issue of public holiday entitlement is very much a grey area. It is dependent on each employer as to whether he/she gives all public holidays to part-time workers, a pro rata entitlement to part-time workers or no public holidays to part-time workers. The

[21] *Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded UNICE, CEEP and the ETUC –Annex: Framework agreement on part-time work* and *Statutory Instrument 2000 No.1551. The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000*.

[22] Department of Trade and Industry, *Amendments to the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000*.

[23] The Confederation of British Industry, *CBI Submission to the Davidson Review of Implementation of EU Legislation in the UK* (May 2006), p.12.

employer must bear in mind, however, that he/she is obliged to treat part-time workers, regardless of their contract, as favourably as full-time workers and this should ultimately govern the decision that is made. It is in his/her best interest to abide by this requirement in order to minimise the chance of being taken to an Employment Appeals Tribunal (EAT) by a part-time worker. Yet, this can prove to be costly to a business if, in order to avoid legal proceedings, it has to grant a number of public holidays to a casual worker who only works occasionally.[24]

Employment Appeals Tribunal rulings on this subject differ from case to case, as was proven when a part-time worker brought legal proceedings under the Part-Time Workers Regulations against a business support services firm.[25] However, while legally this remains a grey area, from a sheer regulatory view, it can be argued that gold-plating did occur because the UK did not take advantage of the provision in the Directive which stated that casual workers can be excluded from the scope of the national regulations. The directive was thus over-implemented.

Another area where the directive has been over-implemented is to do with the obligation of employers to respond within 21 days once a part-time worker has claimed that he/she has been treated less favourable. The Department of Trade and Industry has admitted that the requirement to provide a written response within 21 days was not part of the Directive and a matter for domestic policy. The reasons for

[24] The Government is currently consulting on increasing the minimum statutory annual holiday entitlement from 20 to 28 days, to include all Bank and public holidays. This is a Labour manifesto commitment and will be introduced in stages from 2007. Therefore if employers are granting more holidays to casual workers, costs of this could increase as holiday entitlement is extended.

[25] The EAT looked at the issue of public holidays and how part-time workers should be treated. There are eight public holidays a year - four always fall on a Monday, three are variable and could fall on a Monday, and one will always fall on a Friday (Good Friday). The part-time worker worked for a firm which provides business support services seven days a week. He worked part-time on Wednesdays, Thursdays and Fridays. The firm's standard employment contract for both full-time and part-time employees provided that they were only entitled to public holidays that fell on the employee's normal working day. As the part-time worker did not work on a Monday, he did not receive the benefit of the majority of public holidays. He brought proceedings under the Part-Time Workers Regulations claiming that he was treated less favourably than a comparable full-time worker and had suffered a detriment because of the way in which the provisions of his contract related to public holidays. The tribunal considered two issues: first, whether the term relating to public holidays resulted in him receiving less favourable treatment and second, if so, whether that treatment was on the ground of being a part-time worker. The tribunal looked at the treatment of the full-time workers in his team who all worked on Mondays and who all had paid time off on public holidays. They found that the part-time worker was treated less favourably than the full-time workers and had suffered a detriment. In relation to the second issue concerning the grounds for the treatment, the tribunal looked at the nature of the firm's business, its policy regarding public holidays and the fact that it had applied its policy in the past to a full-time employee who had worked Tuesday to Saturday and who did not have the benefit of public holidays which fell on a Monday. They also looked at part-time workers who worked on Mondays who did have the benefit of this. The tribunal concluded that the reason for the part-time worker's treatment was because he did not work on Mondays rather than because he worked part-time. The part-time worker appealed to the EAT who dismissed the appeal. The treatment of public and bank holidays in relation to part-time workers is a problematic area. This decision suggests that if a part-time worker does not work on Mondays an employer is not obliged to give him or her time off in lieu pro rata to the number of days worked. However, this case involved a business that operated seven days a week, which meant there were also full-time workers who did not work Mondays. The situation may be viewed differently in businesses that operate five days a week, where full-time workers will always have the benefit of public holidays but part-time workers who do not work on Mondays will suffer a disadvantage. DTI guidance suggests that best practice is to give all workers a pro rata entitlement to days of in lieu depending on the number of days/hours a week they work.

including it were to "provide an intermediary step between the initial complainant and the tribunal."[26] Furthermore, the department argued, the 21 days allowed the part-time worker in question to establish whether he/she had a case against their employer without adding too much management time. This provision clearly extends the original scope of the Directive and has been gold-plated.

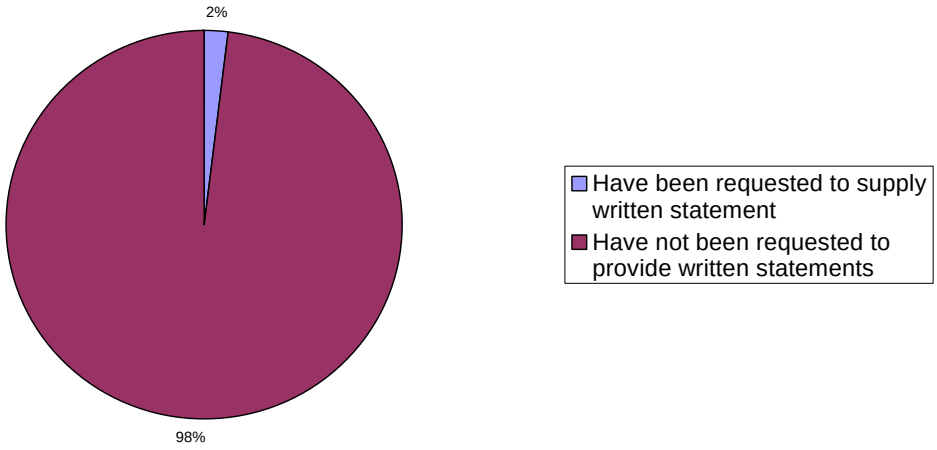
Nearly a quarter of all businesses who responded to the survey said that the new amendments deterred them from employing part-time staff, despite the fact that only 1 of the 1131 respondents had actually been taken to a tribunal by an employee. This dramatic finding illustrates a crucial point that will be difficult for any government to measure: even though the actual impact or cost of a regulation may not affect many businesses, the psychological deterrent of such a provision may have significant and wide-ranging unintended consequences.

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000: Findings from the Survey:
(The analysis below refers to the 2002 UK amendments to the Regulations)

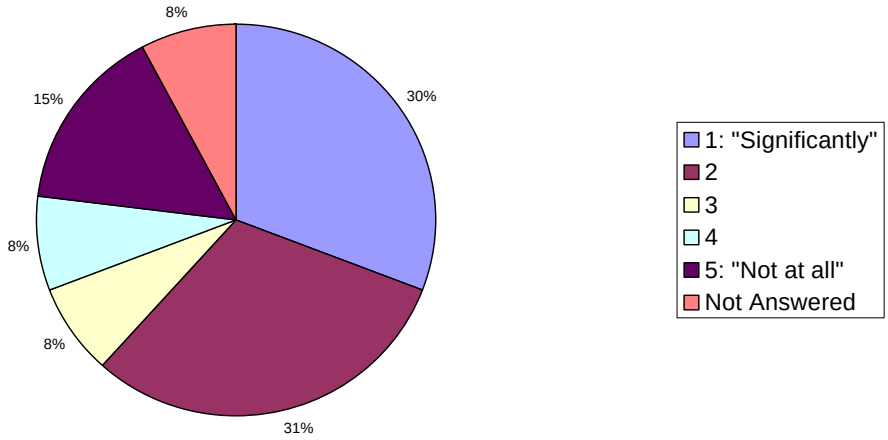
- 634 respondents [56%] said they employ or have employed part-time staff since 2002.
- 13 of these [i.e. 2% of those who employ or have employed part-time staff] have been requested to supply written statements within 21 days to part-time workers who believe they have been treated unfairly in comparison to a full-time worker.
- Of these, 3 respondents said that this had "significantly" increased the administrative burden, and 4 said that this had fairly significantly increased the administrative burden.
- Of the 13 who have been asked to supply written statements to part-time workers, 4 respondents said that this had increased costs "significantly" and another 4 said that this had increased costs fairly significantly.
- Only 2 respondents had been taken to an employment tribunal by part-time employees still dissatisfied after receiving this statement.
- 1 of these was ordered by the tribunal to pay compensation to the employee.
- ***Nearly a quarter of all businesses said that the new amendments deterred them from employing part-time staff.***

[26] Response to FPC communication

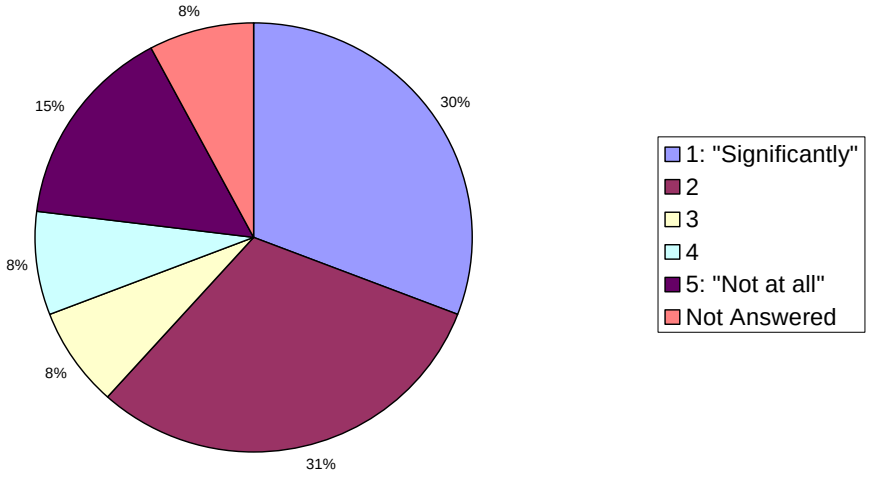
9. Have you ever been requested by a part-time worker to offer a written statement explaining unfair treatment?
(nb question only applies to 634 respondents who have employed part-time staff since 2002)



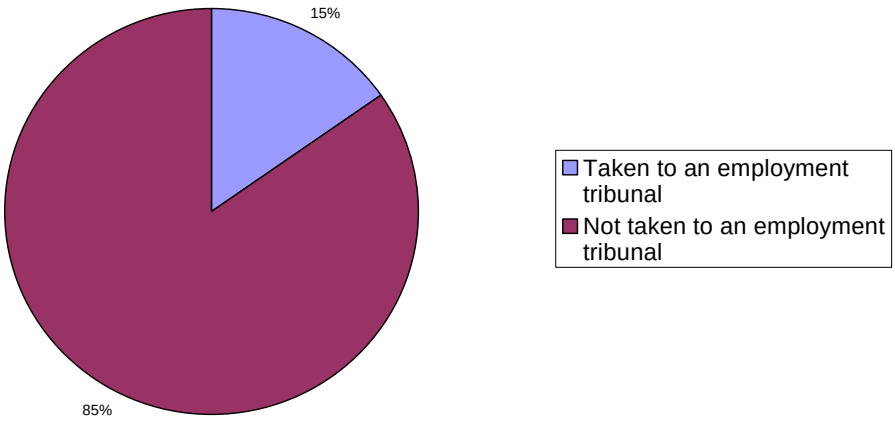
10. If yes, how was your business affected? a) Administrative burden increased?
(nb. Question only applies to 13 respondents who have had to provide written statements to part-time employees)



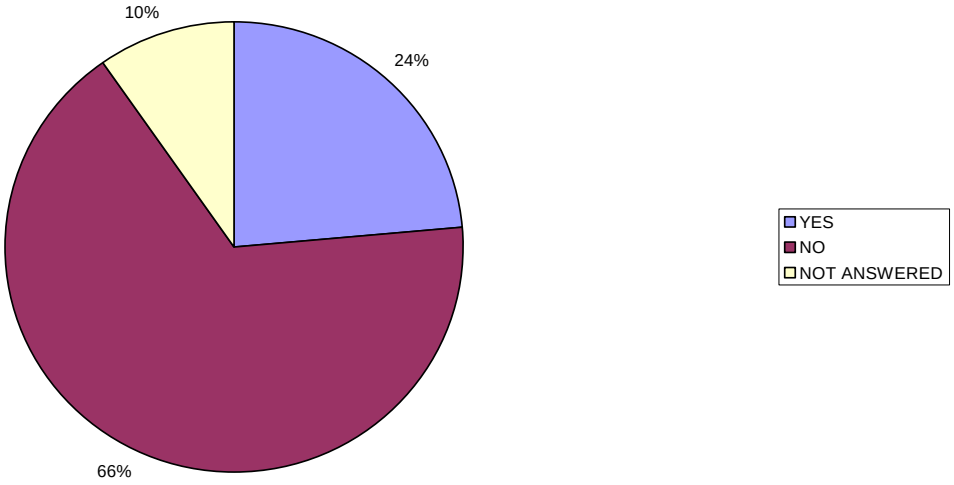
10. If yes, how was your business affected? b) Costs increased?
(nb. Question only applies to 13 respondents who have had to provide written statements to part-time employees)



11. Has your business ever been taken to an employment tribunal by part-time employees still dissatisfied after receiving this statement?
(nb. Question only applies to the 13 respondents who have had to provide written statements to part-time employees)



13. Have you been deterred from employing part-time staff since the amendment to the regulations came into force?
(nb.Question applies to all 1131 respondents)



Case study

PETER MORGAN
MORGAN MASONRY LTD
www.morganmasonry.co.uk

Based in Cornwall, Morgan Masonry has established a sound reputation over the years as specialist supply and fix masons across the United Kingdom. With five fulltime members of staff and one part time employee, Morgan's offers the supply, manufacture and fixing of granite, marble and slate.

Peter Morgan is proud of Morgan's development; "we are able to offer a very high standard of craftsmanship to our customers" notes Peter. "This is primarily because we directly employ our specialist craftsmen which, may sound obvious but is actually quiet rare in today's stone industry."

Morgan Masonry has built up a prestigious client list, working on shopfronts for Abbey National, stone walling for Sainsbury's and London Zoo among others, as well as undertaking restoration work for English Heritage including The Royal Courts of Justice in London. Like the 40 percent of small businesses that would like to employ more people, Peter would like to take on more staff. "I can see an opening for more

part time staff, but inflexibility in regulations regarding part time workers really does put me off."

This is affecting business growth, "we certainly have enough work to justify taking on more part time staff, but not under the terms of this regulation." "This is a pity," notes Peter, "in the past many full time staff started out with us as part timers, it's a good way of nurturing skills and growing the business, but that won't be happening now."

Peter has seen how his counterparts in other European countries operate under less restrictive regulations and he fears for the competitiveness of his own business. "Its frustrating to see stone masons in other countries being able to operate under more flexible rules," laments Peter. "The quality of our work is as good if not better, but we can't compete with them with these restrictive regulations – I thought there was supposed to be a level playing field within the European Union!"

"This is just another example of bad regulation," concludes Peter, "it's bad for our business."

II: **The Money Laundering Regulations 2003**

The Money Laundering Regulations 2003 transposed Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering. The main change under the directive is the extension of the regulations to a wider range of businesses and professional activities thought to be particularly vulnerable to use by money launderers.

The legislation imposes some important new obligations upon professionals from a wide range of sectors, including tax advisers, accountants, auditors, insolvency practitioners and legal advisers. These obligations relate to the need of such professionals to make reports to the authorities on money laundering and the need to have systems in place to train staff and keep records.[27]

Some in the financial services industry complain that the statutory instrument extends the scope of the EU directive by not only including the Proceeds of Crime Act 2002, but also the primary law in relation to terrorism in section 18 of the Terrorism Act 2000 and the secondary law on money laundering. This extension is an over-implementation of the directive because it includes these extra pieces of legislation. In this particular case, however, it may be argued that due to the current heightened terrorist threat, the over-implementation of the directive is a desirable policy outcome. Nonetheless, it is increasingly complicated for small and medium size enterprises (SMEs) to interpret the transposed legislation correctly.

According to industry sources, it is important that financial services firms fully understand and abide by the statutory instrument and the Money Laundering

[27] HM Treasury, *Full Regulatory Impact Assessment. Money Laundering Regulations 2003*, p.2 and HM Revenue & Customs, *Money Laundering Regulations 2003*.

sourcebook, which is issued by the Financial Services Authority (FSA). To be in breach of either set of regulations or indeed both would mean that firms run the risk of being penalised by the enforcing body – the FSA.

The Money Laundering sourcebook, which is valid until 31 August 2006, covers much of the requirements that are in the statutory instrument but is packaged in a different way. This can lead to confusion especially for SMEs which often do not have the necessary resources to research the requirements fully.

The FSA, in its Money Laundering sourcebook, elaborates three areas of both the directive and statutory instrument. Arguably this is unnecessarily burdensome for industry. The first area refers to requirement ML5 of the sourcebook which, unlike the directive, places legal responsibility on firms to be aware of typologies of public bodies in the UK and abroad depending on the nature of their business. These include typologies of SOCA (Serious Organised Crime Agency) formerly known as NCIS (National Criminal Intelligence Service), the Bank of England sanction lists, government lists and the FATF (Financial Action Task Force) findings. Businesses are obliged to visit the websites of these public bodies frequently in order to ensure that they are up to date on issues such as the latest methods of money laundering, e.g. cloning credit cards.

The second area, which is embellished, is requirement ML6 of the sourcebook, which does not simply state that members of staff should receive training, but it also stipulates a time period. Staff should be trained regularly and at least every 24 months on how to deal with money laundering issues including their responsibilities under the firm's arrangements and the law.

The third requirement, which poses an added burden on businesses, is ML7 of the sourcebook. It states that each firm must employ a money laundering reporting officer (MLRO). Yet, unlike the directive and the statutory instrument, it imposes an additional task upon the MLRO. He/she is required to write a report each year on the way in which that particular firm is complying with the sourcebook. These three requirements are examples of gold-plating because they go beyond the minimum necessary.

There have been complaints that High Value Dealers must also comply with the Money Laundering Regulations 2003. Regulated by HM Revenue & Customs (HMRC), a High Value Dealer is defined as 'a person who carries on…the activity of dealing in goods of any description by way of business (including dealing as an auctioneer) whenever a transaction involves accepting a total cash payment of 15,000 euros or more.'[28]

As a result, there are a number of disadvantages to operating as a High Value Dealer. High Value Dealers are required to report all potential cash transactions that raise suspicion of money laundering to the NCIS (or SOCA as it is now termed). If a business wishes to submit a report, it must complete a National Criminal Intelligence Service Standard Disclosure Report Form or a Limited Intelligence Value Report Form as soon as any suspicion of money laundering emerges.

[28] *Statutory Instrument 2003 No.3075. The Money Laundering Regulations 2003*

This procedure is inconvenient for businesses. Once a report has been submitted, a business has to wait seven working days to receive authorisation from NCIS (SOCA), following which it is able to proceed with the transaction. In order to carry out a transaction quickly, it is often easier for firms to accept a cheque which will take three to four days to clear as opposed to waiting seven days for authorisation from NCIS (SOCA).

If a business decides to accept another form of payment such as a cheque, debit card or bankers draft, a report does not need to be submitted to the NCIS (SOCA). This could deter high value dealers from continuing to operate because of the inconvenience of having to wait seven days for authorisation. These provisions have to be regarded as regulatory creep, although they may be justifiable in the light of the present threat from terrorism.

HMRC rules also do not define clearly enough the requirements that need to be followed. This is especially onerous on SMEs with relatively small numbers of staff. Businesses have to implement anti-money laundering rules according to individual understanding. It is only when businesses are inspected by HMRC that they discover whether they have interpreted the rules correctly. If they are found to be in breach of the rules, they could face a penalty or a fine. Confusion, ambiguity and penalties could be avoided if HMRC issued clearer rules. Additionally, the potential cost implications are illustrated by the FSB survey which found that a significant number of firms have been deterred from dealing in high-value goods.

Furthermore, as the findings of the FSB survey have shown, this is an interesting case-study in how risk could be managed more efficiently by regulators. Significantly, only 3 of the 25 who had been asked by HMRC to give details into the way in which they combat money laundering were financial services firms. Additionally, 9 out of the 25 who had been asked by HMRC to give details into the way in which they combat money laundering were also asked to give information not related to money laundering. The form-filling needed in providing this extra information is another burden for business.

Money Laundering Directive 2001: Findings from the Survey
(The analysis below refers specifically to the UK's interpretation of this Directive)

- 25 out of all 1131 respondents (i.e. 2%) said that they had been asked by HMRC to give details into the way in which they combat money laundering.
- The majority of those questioned by HMRC are High-Value Dealers: 16 of the 25 who have been asked for details into the way in which they combat money laundering deal with transactions of £11,000 (€15,000) or more.
- Only 3 of the 25 who had been asked by HMRC to give details into the way in which they combat money laundering are financial services firms.
- ***9 out of the 25 who had been asked by HMRC to give details into the way in which they combat money laundering were also asked to give information not related to money laundering.***

- ***47 out of all 1131 (i.e. 4%) respondents say that they have been deterred from dealing with high-value goods by the threat of money-laundering related inspections by HMRC.***
- Of the 47 respondents who said they had been deterred from continuing to deal with high value goods 16 are in fact High-Value Dealers by profession.

Case Study:

FUNDACAR LTD
ANDY TONG, OWNER AND DIRECTOR

Andy Tong is only too familiar with the UK's money laundering regulations. Until recently he ran a company that sourced finance for people wanting to buy cars. Andy's business employed three people and had a first year turnover of £250,000, but the additional burdens imposed by money laundering regulations made his business unviable.

"I had no problem with the actual money laundering regulation, which was all commonsense," notes Andy, "the real difficulties stemmed from all the additional reporting that was required."

Fundacar Ltd never actually handled cash, but operated as an intermediary finding finance for people with poor credit ratings who wanted to buy a car. "We operated in a niche market," says Andy, "we found finance for people who, through a job loss or illness, had incurred poor credit ratings."

Andy had no objection to complying with money laundering regulations, "these are obviously necessary," notes Andy, but Fundacar soon found itself being asked to submit information not related to the specific money laundering regulation. "We were visited by three separate inspectors and asked to give over information totally unrelated to money laundering."

It was not long before the administrative burden became too great. "I found myself jumping through hoops for the FSA, the OFT and for the Department for Trade and Industry," says Andy. "I actually found the FSA reasonably helpful, but combined with a range of other regulators and all of their forms and requirements the burden was just too great."

After eighteen months the company stopped trading. "It was so disappointing," says Andy "we had built up a good reputation and operated strictly according to the Money Laundering Regulations, but the additional bureaucracy was simply too disruptive and time consuming."

III: **The Work at Height Regulations 2005**

The Work at Height Regulations 2005 transposed Directive 2001/45/EC of the European Parliament and of the Council of 27 June 2001 amending Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at height.[29] The regulations apply to all work at height where there is a risk of a fall liable to cause personal injury. They place duties on employers, the self-employed, and any person who controls the work of others (e.g. facilities managers or building owners who may contract others to work at height).[30]

Businesses must follow a simple hierarchy for managing and selecting equipment for work at height; that is, avoid work at height where possible; use work equipment or other measures to prevent falls where work at height cannot be avoided and where the risk of a fall cannot be eliminated; use work equipment or other measures to minimise the distance and consequence of a fall should one occur.[31]

Industry sources have told the FPC that the statutory instrument extends the scope of the directive from just covering temporary workplaces to including both temporary and permanent workplaces. Two particular areas of the statutory instrument infer the application of the regulations to permanent workplaces. Article 3 states, 'the requirements imposed by these Regulations on an employer shall apply in relation to *work*.' *Work* in this context is understood as both temporary and permanent work. Article 13 covers the inspection of places of work at height. 'Every employer shall so far as is reasonably practicable ensure that the surface and every parapet, *permanent* rail or other such fall protection measure of every place of work at height are checked on each occasion before the place is used.'[32]

Extending the scope of the directive means that businesses are faced with a wider range of equipment that they have to inspect. Moreover, the directive and the regulations require employers to conduct more risk-based assessments than were previously required and they must justify the selection of work equipment. Even though penalties are not stipulated in the regulations, the need for employers to conduct inspections is actually a legal requirement. If employers do not abide by these requirements, they could face a fine (up to £5,000 in a Magistrates Court, unlimited in a higher court), imprisonment or be charged with corporate manslaughter. Rigorous safety standards are a hugely important and highly necessary part of daily life. But more common sense is needed in setting safety regulations, particularly as far as small businesses are concerned.

The extent to which businesses have been affected by the way this directive has been transposed is illustrated by the FSB survey which found that more than a quarter (28%) of businesses covered by the regulations feel the assessments required had a "significant" impact on their businesses. Crucially, nearly the same number of respondents, (161 of the 569 businesses affected by the regulations (i.e. 28%)), said that, at some stage, they had to employ an external person for risk assessments leading

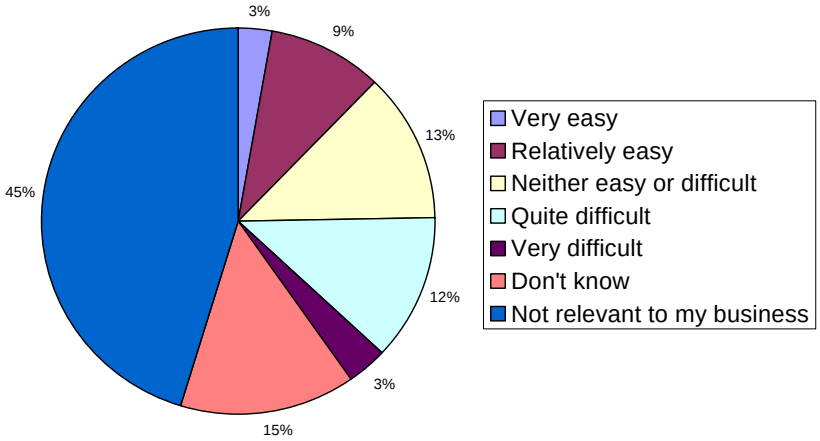
[29] (second individual Directive within meaning of Article 16(1) of Directive 89/391/EEC)
[30] Health and Safety Executive, *The Work at Height Regulations 2005. A Brief Guide,* p.4.
[31] Health and Safety Executive, *The Work at Height Regulations 2005.*
[32] *Statutory Instrument 2005 No.735. The Work at Height Regulations 2005.*

to extra costs. It is therefore fair to argue that this directive has not only been over-implemented but it has also led to extra burdens on business.

Regulations on work at height 2005: Findings from the Survey:

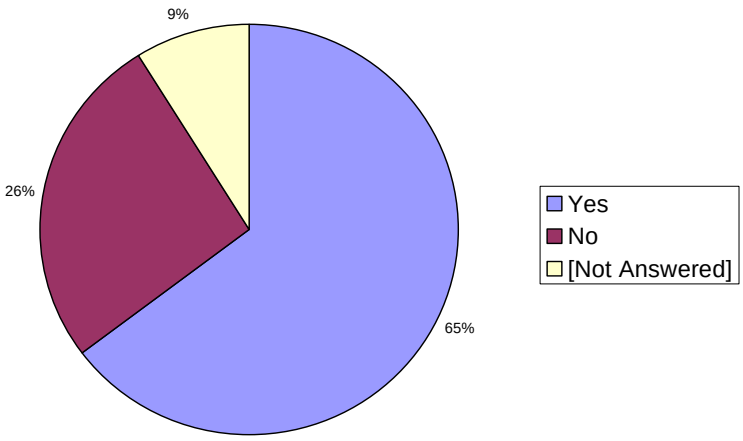
- 1041 businesses responded to the questions on work at height regulations.
- 472 of these said that the regulations were not relevant to their business.
- 33 said the Work at Height Regulations and the Health and Safety Executive rules were "very difficult" to understand; 127 said they were "quite difficult" to understand.
- ***Of the 569 businesses affected by the regulations, a significant majority (369) feel the need to go beyond the scope of the directive to protect themselves legally against every eventuality***: the directive states that only working platforms that could cause a fall from a height of more than two metres need to be inspected. Despite this, 65% of all affected businesses feel the need to assess all work equipment, highlighting the high level of risk-aversion felt by small businesses in the face of possible legal challenge.
- ***159 of the 569 businesses affected by the regulations (i.e. 28%) say that the requirement to carry out continual risk-based assessments on all equipment and document the findings has had a "significant" impact on the business;*** 203 (i.e. 36%) say that the requirements have had a "moderate" impact.
- Those companies that keep records for longer than three months after a construction projects are completed were asked why they do so. The general explanation was for company reference purposes, and many said they did so in case of future problems, litigious or otherwise. In the words of one respondent, documents are kept "to cover my ass".
- ***161 of the 569 businesses affected by the regulations (i.e. 28%) have, at some stage, had to employ an external person for risk assessments.***
- When asked how much the cost of hiring an external person for risk assessments was, businesses gave figures which ranged from £150 one-off payments, to £40,000 per annum fees.

29. How easy to understand are the Work at Height Regulations 2005 and the Health and Safety Executive rules?
(nb. This analysis covers the 1041 small businesses who answered questions on these regulations)



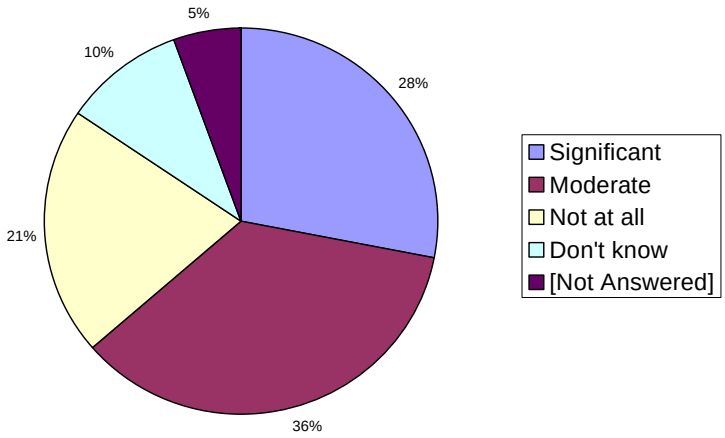
30. The directive states that only working platforms that could cause a fall from a height of more than two metres need to be inspected.

Despite this, do you find that you assess all work equipment in order to protect yourself legally against every eventuality?

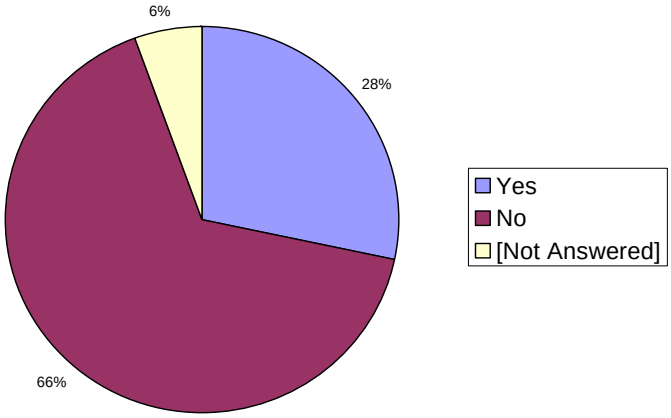


(nb. This analysis only covers the 569 businesses affected by the regulations)

31. How has the requirement to carry out continual risk-based assessments on all work equipment and document your findings impacted on your business?
(nb. This analysis only covers the 569 businesses affected by the regulations)



33. Have you had to employ an external person at any stage responsible for risk assessments, e.g. a health and safety consultant?
(nb. This analysis only covers the 569 businesses affected by the regulations)



Case Study:

One UK manufacturing business had already employed a health and safety manager when the Work at Height Regulations were introduced in 2005. Yet, in trying to comply with the requirements, it experiences a number of administrative and cost burdens on a daily basis. This manufacturing business believes that the burden of documentation is immense. The firm stores documentation which dates back to 10 years ago, despite the fact that this goes beyond the requirements of the Health and Safety Executive (HSE) and the Work at Height Regulations. This amounts to a lot of paperwork but it is deemed necessary in order not to be found missing any information by the HSE. Considering the fact that the HSE is the enforcing authority, the firm wants to avoid running the risk of receiving fines or penalties. According to this particular manufacturing business, the HSE industry guidance on the Work at

Height Regulations does repeat the content of the statutory instrument to some extent. Even though the guidance is wordier, it is important to bear in mind that the HSE, as a statutory body, has made understanding the regulations easier. Yet, since the introduction of the regulations, inspections of both temporary and permanent workplaces have become time-consuming and cost burdensome. The firm highlights the fact that every situation regarding work at height has to be risk assessed and a decision has to be made on the use of each piece of work equipment. This decision usually involves the maintenance manager, the maintenance manager's supervisor and the health and safety manager, which can be a lengthy procedure. Time delays, as a result of these regulations, have increased by 5-10%. Permanent machines such as machines with gantries three metres above the ground undergo a thorough inspection every month and, in addition, employees undertake a basic risk assessment every time they use any machine.

IV: **The Control of Asbestos at Work Regulations 2002**

The Control of Asbestos at Work Regulations 2002 transposed the Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work.[33] The regulations lay down the minimum requirements for the protection of people exposed to asbestos. They include the requirement for those with responsibility for the maintenance and/or repair of non-domestic premises, to identify and manage any risk from asbestos within their business.[34]

According to specialists in the treatment of hazardous materials, all forms of asbestos are classified as Class 1 Carcinogens. It adds that each business must keep records of asbestos management for a period of 40 years because of the long-term effects that asbestos can have. In fact, effects can even be experienced after 60 years of last being exposed to asbestos. As the specialists highlight, the management programme that a business undertakes may consist of leaving asbestos in situ by simply closing access to an area off; labelling and assessing deterioration of the materials with time; minor repairs; encapsulation; raising awareness of all personnel concerned or full asbestos removal.

Since the introduction of the regulations, several crucial areas of possible over-implementation have been identified. The regulations state that the duty holder, who is generally the facilities manager, the estates manager or the building owner, is required to carry out a risk assessment of whether asbestos is or is liable to be present in the business premises. All business premises, which were constructed or refurbished before 1999, must undergo a risk assessment. In order to reduce costs to a business, the risk assessment might indeed be undertaken by the duty holder. However, the implications of reaching the wrong conclusions can be grave. There is a possibility that, as a result of a risk assessment conducted by a duty holder, all materials are presumed to contain asbestos (until proven otherwise). Alternatively, a

[33] (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)
[34] Health and Safety Executive, *HSE and Asbestos*.

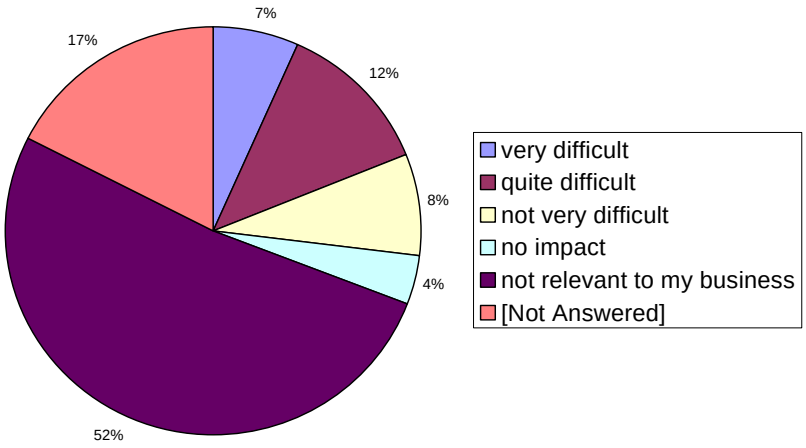
duty holder might miss asbestos materials which could lead to workers becoming exposed to asbestos as a consequence of disturbing materials through ignorance. In light of these potential pitfalls, most duty holders seek professional advice.

While this regulation may be costly to business because of the need for a comprehensive risk assessment, there is no evidence that it has been over-implemented from the EU directive. The necessity to assign a duty holder may not be exactly spelled out in the Directive, but there can be no question that it is in its spirit as it demands a clear chain of responsibility. As the findings of the survey show, however, this is a clear example of how small businesses feel over-burdened by regulation they find difficult to understand and therefore difficult to comply with. There is no case for relaxing the current Asbestos rules, but both workers' safety and businesses' competitiveness would be improved by clearer explanation and guidance of the rules in place.

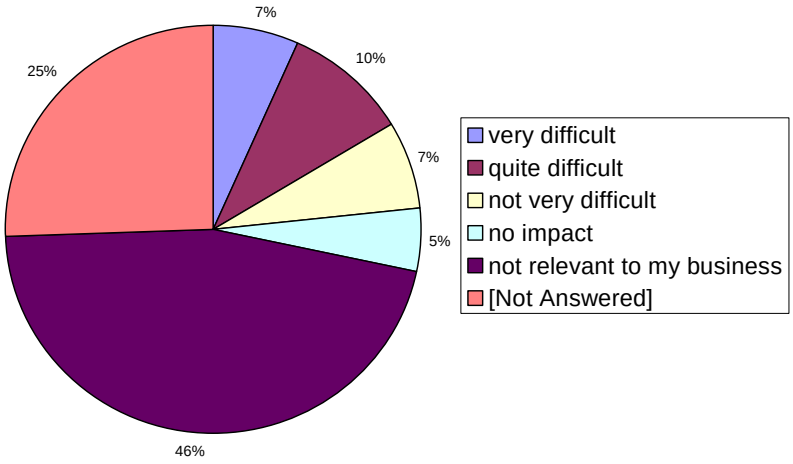
Control of Asbestos at Work Regulations 2002: Findings from the Survey:

- Of all 1131 respondents, around half said that the Control of Asbestos at Work regulations 2002 were not relevant to their business.
- ***76 respondents (i.e. 7%) said that the Control of Asbestos at Work regulations 2002 were "very difficult" to understand.*** This constitutes about 22% of those for whose businesses the regulations were relevant. Another 137 said that they were "quite difficult" to understand.
- ***74 respondents (i.e. 7%) said that the Control of Asbestos at Work regulations 2002 were "very difficult" to comply with.*** Another 111 said they were "quite difficult" to comply with.
- A sizeable minority of small companies complained about insurance companies' requirements: when asked whether they felt that insurance companies require more asbestos safety checks than necessary, 147 (13%) said "yes", although more than double that number said "no"; when asked whether administrative requirements have been affected by the insurance companies' requirements, 90 said that they had "increased significantly", and another 187 said that they had "increased moderately", although double that number said that they had been not increased "at all".

26 (a) How difficult are the Control of Asbestos at Work regulations 2002 to understand?
(nb. This analysis covers all 1131 small businesses who responded to the survey)

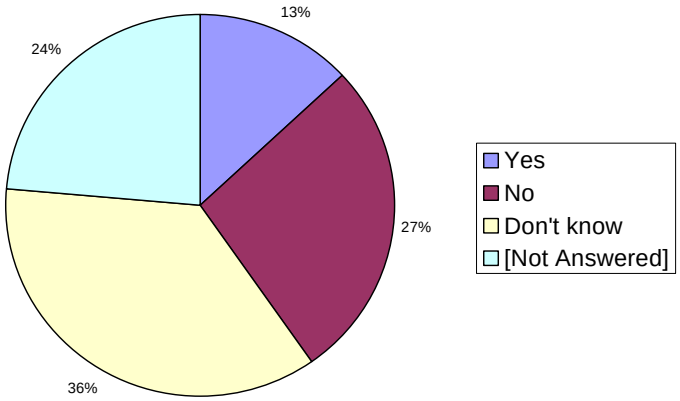


26 (b) How difficult are the Control of Asbestos at Work regulations 2002 to comply with?
(nb. This analysis covers all 1131 small businesses who responded to the survey)



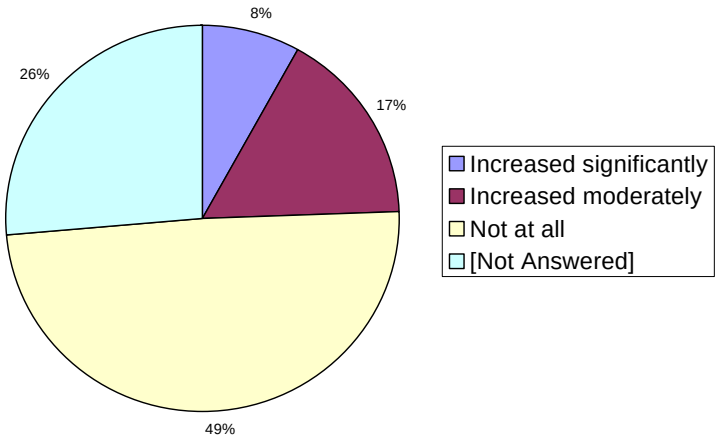
27. Do you find that the insurance companies rather than the Health and Safety Executive require you to carry out more asbestos safety checks on your premises than you feel necessary?

(nb. This analysis covers all 1131 small businesses who responded to the survey)



28. How have your administrative requirements been affected by the insurance companies' requirements?

(nb. This analysis covers all 1131 small businesses who responded to the survey)



Case Study:

ASBESTOS SERVICES PARTNERSHIP LTD
MICK HENNESSEY, DIRECTOR
www.aspsurv.co.uk

Mick Hennessey is the director of Asbestos Services Partnership Ltd (ASP Ltd), a medium sized business based in South Yorkshire providing advice on and removal of asbestos.

Business is good for Mick, "the government estimates that it will take another fifty years to remove all existing asbestos, but this is a conservative estimate." The nature

of Mick's business means that he benefits from the complexities of asbestos control, but even he agrees that current regulations are too confusing.

"Dealing with asbestos is complicated enough," says Mick "but poor definitions and constant change to the regulations cause needless confusion. It's very difficult for businesses to know what is categorized as a risk from one year to the next."

ASP Ltd also provides training and awareness raising courses to businesses who appoint duty holders charged with monitoring asbestos risk. "In my experience businesses come to us for help because government fails to offer enough advice on the regulations it writes" notes Mick.

Mick also believes that costs could be cut. "A business cannot remove asbestos from its premises until it has a certificate from the Environment Agency. This registration can cost up to £50 and businesses have to reregister every year."

There are other ways in which poor regulation can add costs to businesses in this area. "It is pretty clear that confusion over asbestos control regulations has led some insurers and estates agents to insist on over implementation," says Mick.

V: **Control of Substances Hazardous to Health (Amendment) Regulations 2003**

The Control of Substances Hazardous to Health (Amendment) Regulations 2003 transpose Directive 2000/54/EC of the European Parliament and of the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work.[35]

The main aim of changes in the Control of Substances Hazardous to Health (Amendment) Regulations 2003 to the biological agents provisions is: to make clear to employers that they do have duties to protect their workers against biological agents; and clearly separate general duties relating to all hazardous substances from those only relevant to people working intentionally with biological agents. The regulation re-classifies 17 dioxins by explicitly defining them as carcinogens and extends it to mutagens (which may cause genetic damage). To avoid confusion which chemicals may be hazardous, the regulations were updated in 2005. Under the new regulations, there is now a simpler occupational exposure limit system. Whereas businesses previously had to be aware of two limits for chemicals, the maximum Exposure Limits (MELs) and occupational Exposure Standards (OESs), there is now a single type of limit - the Workplace Exposure Limit (WEL). All the MELs, and most of the OESs, were being transferred into the new system as WELs and retained their previous numerical values.

Small businesses, in particular, have expressed concern that the new system may have extended the scope of the original directive and the new limits are stricter than intended. Similarly, a lack of clarity, having two different sets of regulations followed in a relatively short space of time, may give cause for concern that there has been regulatory creep. However, again there is reason for caution. While the 2005 updated regulations clearly strengthened the provisions of the original directive, ie what was --

[35] (seventh individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)

good practice has now been replaced by guidelines which are legally enforceable, the principle that employers should protect their workers is clearly in the directive. As a result, employers that already complied with COSHH would still be able to do so by continuing to apply that good practice. According to industry insiders, the problem for small businesses has been the previous lack of clarity. They cite that small businesses are often not even aware that they are using chemicals and find regulations too complex to understand.[36]

This is backed up by the findings of the survey: nearly half of businesses that have workers exposed to carcinogens or mutagens were not actually aware what the exposure limits were. Of those who were aware, the majority felt that their administrative burden and costs had increased. Interestingly, a majority of those respondents who said that their employees are exposed to carcinogens or mutagens at work but who said that they are unaware of the new exposure limits nonetheless said that the new limits had increased administrative burdens and costs. Thus, even without knowing the new regulations, they still feel that administration and costs have increased. It is therefore crucial to understand that what small businesses perceive as regulatory creep is often a lack of clear regulations in the first instance and then the perceived burdening with further regulations to clarify the first set of provisions.

As good practice was replaced with guidelines that could potentially lead to penalties for businesses, it is understandable that they feel there has been over-implementation when it is in fact a case of unclear regulations. The importance of clarity of communication and adequate guidance in avoiding this kind of reaction to regulations cannot be over-emphasised.

Control of Substances Hazardous to Health (Amendment) Regulations 2003: Findings from the Survey:

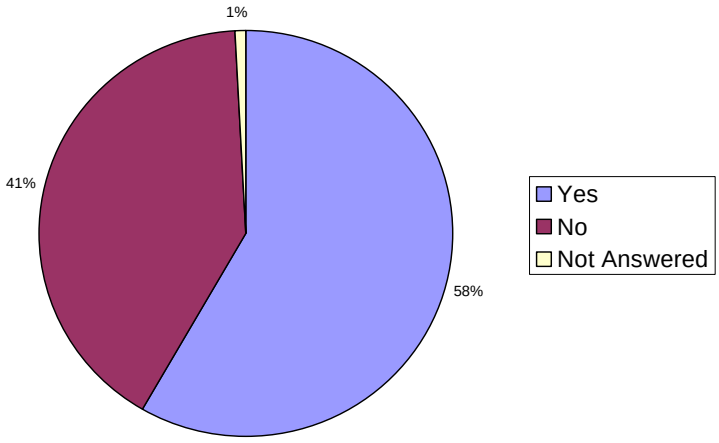
- 103 Respondents to the survey said that one or more of their employees are exposed to carcinogens or mutagens at work.
- 42 of these said they were ***not*** aware of the principles of workplace exposure limits which were introduced under the updated 2005 Control of Substances Hazardous to Health regulations.
- Of the 60 who were aware of the new principles of workplace exposure limits, ***the majority felt that the administrative burden had increased*** as a result: 18 felt that administration had increased "significantly" and 21 felt that it had increased "moderately".
- And of the 60 who were aware of the new principles of workplace exposure limits, ***the majority said that costs had increased*** as a result of the new limits: 5 said that costs had increased "significantly" and 32 said that costs had increased "moderately" as a result of implementing the new limits.
- Interestingly***, even those not aware of the new limits said that they had increased both administration and costs***: a majority of those respondents who said that their employees are exposed to carcinogens or mutagens at work but who said that they are unaware of the new exposure limits nonetheless said that the new limits had increased

[36] This was backed up by the findings of the Hampton Review, see earlier footnote

administrative burdens and costs. ***Thus, even without knowing the new regulations, they still feel that administration and costs have increased.*** 27 of the 42 respondents who are unaware of the new limits also felt that the administrative burden had increased as result; 24 of the 42 who were unaware of the new limits also said that costs had increased due to the new regulations. These regulations are ***perceived as costs*** even when the business is unaware what they contain.

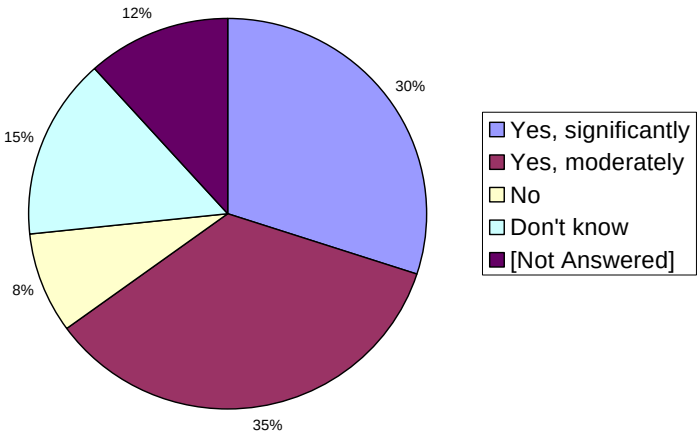
23. Are you aware of the principles of workplace exposure limits which were introduced under the updates 2005 Control of Substances Hazardous to Health regulations?

(Nb. This analysis applies only to the 103 respondents whose employees are exposed to hazardous substances at work)

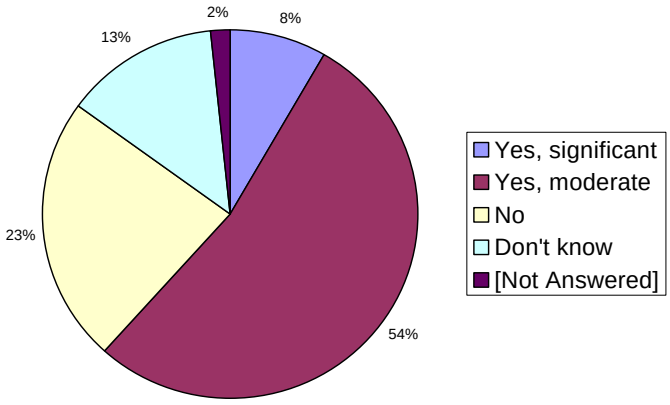


24. If so, do you feel that the administrative burden has increased?

(Nb. Analysis only applies to the 60 respondents who were aware of the new limits in the updated 2005 regulations)



25. Have there been any extra costs to ensure that your business is compliant with the new workplace exposure limits principles?
(Nb. Analysis only applies to the 60 respondents who were aware of the new limits in the updated 2005 regulations)



***Case study*:**

A C NELSON & ASSOCIATES - OCCUPATIONAL HEALTH, SAFETY & ENVIRONMENTAL MANAGEMENT ADVISORS
ANDY NELSON, FOUNDER
www.safetyhealthenvironmental-she.co.uk

A. C. Nelson and Associates are based in the South West of England. Formed in 2001, they provide advice to employers on their duties and responsibilities under current and pending safety and environmental legislation.

Andy Nelson works with a variety of clients from heavy manufacturing and process operations to local authorities. “We help our clients to operate an enhanced level of safety performance to benefit their workforce and business efficiency, and of course to ensure legal compliance,” says Andy.

In the area of COSHH, Andy provides risk assessments and procedures to be followed by his clients to ensure ongoing compliance. However, he does not believe that the 2005 Amendment to COSHH constitutes an example of gold plating.

“Frankly speaking, COSHH is not a particularly good example of gold plating,” notes Andy. “It is certainly a rigorous piece of legislation and I can understand why businesses have difficulty comprehending the various changes, but in my view it has not been over implemented.”

In Andy’s opinion the latest amendment to COSHH actually simplifies the exposure measurement and control process. “These are not obscure requirements or complex legal arguments – these are basic matters of common sense,” says Andy.

“A better example of gold plating is the regulation covering Display Screen Equipment,” notes Andy. This regulation covers the health implications of working

with computer screens. "The regulations introduced by the government in this area represent a sledge hammer to crush a nut."

"Too often the charge of gold plating is made about safety legislation when in fact businesses are simply reacting to necessary but additional costs," says Andy. "This is counter productive when there are real and costly examples of gold plating that deserve to be pinpointed."

VI: **Insurance Mediation Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation**

The Directive aims to tighten the requirements in insurance mediator's disclosure and documentation obligation. The IMD was published in January 2003 and was incorporated into UK law in January 2005. The Financial Services Authority (FSA) became the 'competent authority' in terms of UK implementation – an initiative that fundamentally changed the nature of regulation for the insurance mediation sector. It effectively moved from self-regulation to being a statutory regulated industry.

When the FSA was established the Government called on the insurance mediation industry to regulate itself effectively; and prior to January 2005 there was no statutory or mandatory regulation of the sector. As the British Insurance Brokers' Association (BIBA) has pointed out, many insurers are concerned that the FSA is not the appropriate body to perform this role and "believe that this decision has led to insurance brokers and intermediaries being 'shoe-horned' into a pre-existing regulatory regime that was never designed for this purpose"[37]. They claim the UK is unique amongst EU Member States in having a single regulatory body responsible for the whole of the financial services sector, including insurance mediation. Elsewhere in the EU, determination of the 'Competent Authority' for the insurance intermediary sector has been made on the basis of being the most appropriate regulatory vehicle for the sector. According to industry research, those firms engaging in insurance mediation activities are now subject to the FSA's Handbook of Rules and Guidance – a hugely complex regulatory framework which has proved extremely difficult and costly for many of smaller businesses to implement.[38]

[37] See BIBA submission to the Davidson review

[38] According to the BIBA submission, on average 3.7% of a company's annual income is spent on meeting regulation. However, for companies with less than £100,000 in income that figure rises to 5.20%, compared with 1.13%.for companies with an annual income of more than £100,000,000.

The chart below indicates the proportion of income which firms spend each year on regulation. The smaller the company the greater the proportion of their annual income is spent on regulation. (Source BIBA)

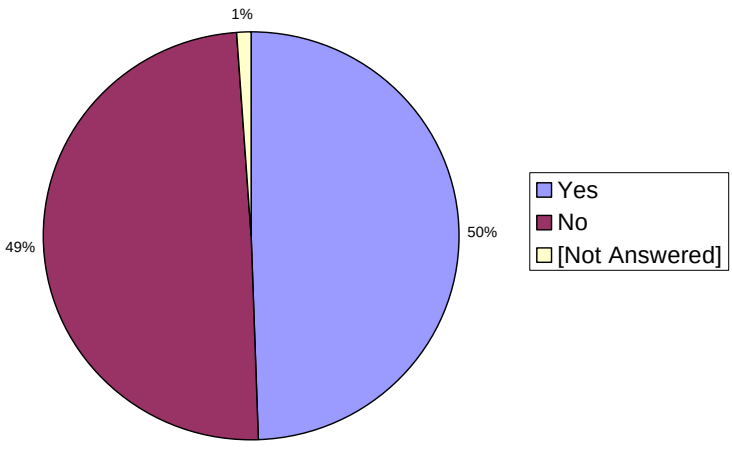
Annual Income	***Percentage spend on regulation***
Up to £100,000	*5.20%*
£100,000 - £1,000,000	*4.02%*
£1,000,000 - £5,000,000	*3.17%*
£5,000,000 - £15,000,000	*2.12%*
£15,000,000 - £100,000,000	*3.50%*
£100,000,000 +	*1.13%*

HM Treasury and the FSA in its initial response to the Davidson review did not deny that the stringent requirements amounted to gold-plating and went beyond the scope of the original directive but said it had done so with stakeholder support.[39] There can be thus no doubt that the directive was over-implemented but, as the Government response shows, this was intentional. As insurers have pointed to the extra costs and administrative burden that has occurred as a result of over-implementing this directive (backed up in our survey by the views of an overwhelming majority (78%) of those insurers who have registered with the FSA), it is now likely that the FSA will review its criteria. It is currently carrying out a review of the *Insurance: Conduct for Business Rules* and will consider the scope for removing detailed rules and for deregulation. It will report in 2007, and if insurers can prove that their costs have increased disproportionately, it is likely that the rules will be changed.

Insurance Mediation Directive 2002: Findings from the Survey:

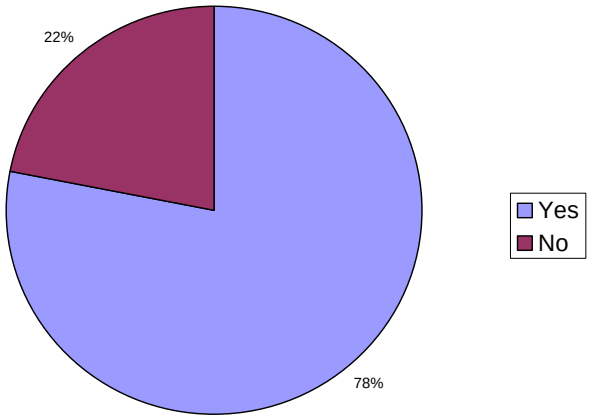
- 83 businesses said they offer insurance to customers.
- ***Only half of these (i.e. 41) have registered with the FSA.***
- ***The vast majority of these (32 out of 41, (i.e. 78%)) say that registration with the FSA has increased their administrative costs.***
- Of all the 1131 businesses who responded to the survey, 105 (i.e. 9%) said that they had been deterred from offering insurance because of having to register with the FSA. This includes 17 who are already offering insurance (i.e. 20% of those offering insurance have been deterred from continuing to do so because of having to register with the FSA).

44. If so [i.e. if your business offers insurance], have you registered with the FSA?
(nb. This analysis only covers the 83 businesses who offer insurance to their customers)

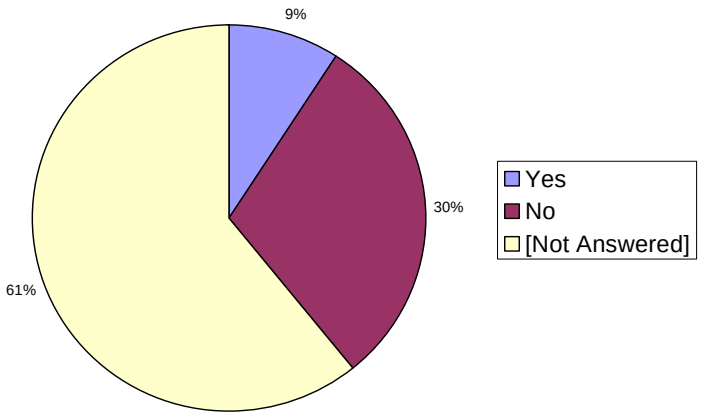


[39] See Davidson Review, Annex A, p63

45. Has registration with the FSA increased the administrative costs to your business?
(n.b. This analysis only covers the 41 businesses who offer insurance and have registered with the FSA)



46. Have you been deterred from offering insurance to your customers because you have to register with the FSA?
(n.b. This analysis covers all 1131 businesses who responded to the survey)



Case Study:

MEDICAL FEES INSURANCE AGENCY LTD
DAVID WORTH, OWNER AND DIRECTOR
www.mfia.co.uk

David Worth is the owner and director of Medical Fees Insurance Agency Ltd (MFIA), a small firm of specialist independent health insurance intermediaries based in Leicester. David has worked in the insurance industry for over 35 years and his company has annual turnover in premium terms of approximately £1 million. MFIA holds agencies with all the leading medical insurance companies and provides a

personal bespoke advisory service to both individual and corporate clients. However, regulations linked to insurance mediation have significantly increased the administrative burden placed on insurance firms and increased costs to a sector dominated by SMEs.

"When we signed up to voluntary regulation by the General Insurance Standards Council our annual costs were £200.00," notes David, "but with the introduction of statutory regulation by the FSA we have had to pay out £1200 for our initial registration, in addition to £600 each year in annual fees."

The administrative requirements are equally burdensome. "Every 6 months we have to submit a detailed return to the FSA on our trading activities," says David, "this is very time consuming and also adds to our accountancy costs." MFIA is also required to send out more paperwork to clients, which also increases postal expenses.

David has been dismayed by elements of these regulations, "the insurance industry is currently working in a straight-jacket," concludes David, "hopefully we can move on to a less prescriptive regulation in the next few years."

VII: **Fire Precautions Regulations (1999)**

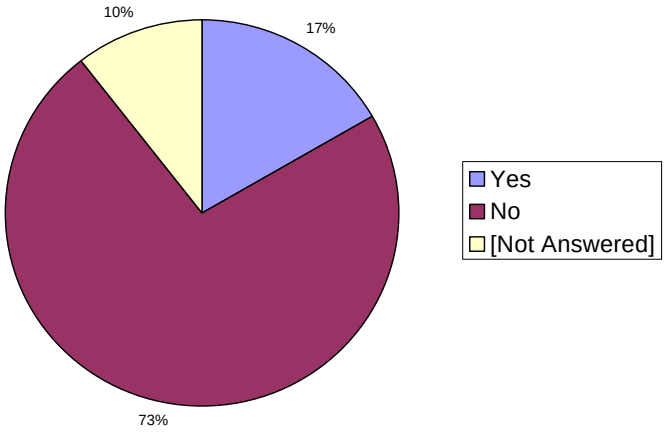
The Fire Precautions Regulations (1999) transposed the Council Directive 89/39/EC Safety and Health of Workers at Work and Council Directive 89/654/EC Minimum Health and Safety Requirements for the workplace. This directive aims to ensure a higher degree of protection of workers at work through the implementation of preventative measures to guard against accidents at work and occupational diseases, and through the information, consultation, balanced participation and training for workers and their representatives. New fire regulations were first introduced in 1997. They were updated in 1999 to make it clear that all businesses needed a fire certificate and were not exempt. Previously businesses that were low risk may have thought they did not need the certificate and there have been complaints that the updated set of regulations amounted to regulatory creep.

This lack of clarity over what was required of them is illustrated by the FSB survey which found that nearly three quarters of businesses were not clear when the regulations were first introduced whether they needed a certificate. It is not surprising that businesses complain about extra costs (20% of all businesses surveyed said that this had increased costs) as they now have to hire consultants, train staff and fulfil increased administrative duties. However, rather than regulatory creep, this is a classic case of bad regulation that had to be updated and left businesses confused. Thus, while there is no doubt that the burden on businesses grew as a result of this regulation, there are no grounds for arguing that the Directive has been over-implemented.

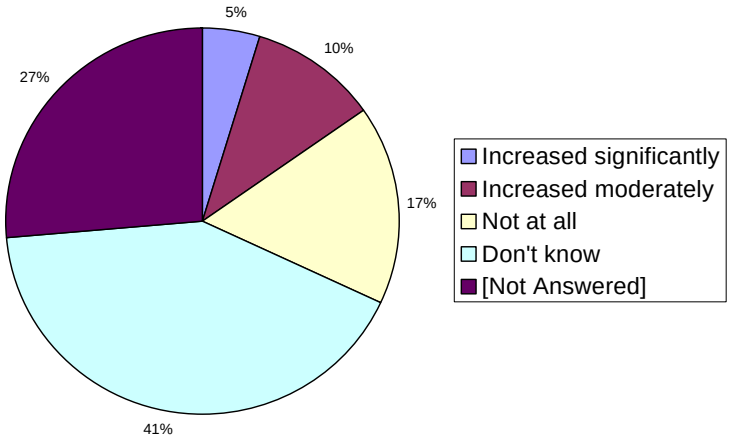
Directive on Safety and Health of Workers at Work and Directive on Minimum Health and Safety Requirements for the workplace: Findings from the Survey:

- ***The vast majority of businesses were not sure whether they needed a new certificate when the Fire Precautions Regulations (1999) were first introduced***: 825 (i.e. 73%) of all 1131 respondents said that it was not clear whether they needed a new certificate.
- 54 businesses (i.e. 5% of all respondents) said that the administrative burden of obtaining a certificate "increased significantly"; 118 businesses (i.e. 10%) said that the burden "increased moderately".
- The costs of this burden ranged from £0 to £10,000.
- Employers are also required to make a formal assessment of risks of whether anyone will be hurt if a fire occurs and of whether safety arrangements are satisfactory or action needs to be taken. ***227 (i.e. 20%) of all businesses surveyed said that this had increased costs***, including by increasing administration, hiring consultants and outside assessors, new training costs and taking up time.
- The Fire Safety regulations: an employer's guide recommends 33 detailed questions and requires employers to prepare an emergency plan. 66 businesses (i.e. 6%) said that compliance with this regulation has had a "significant" impact on their business; 232 (i.e. 21%) said compliance has had a "moderate" impact.

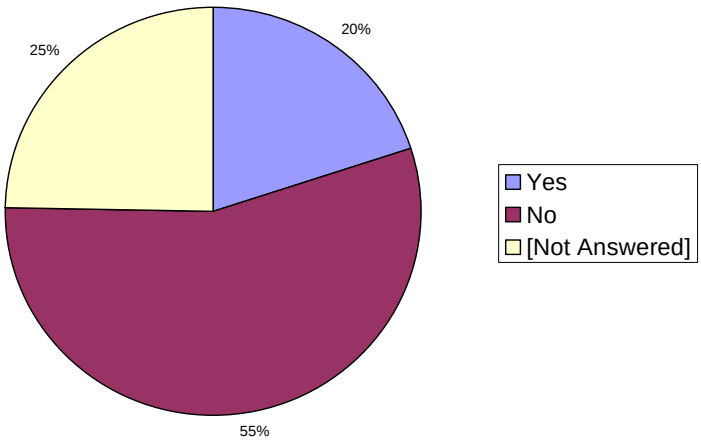
35. When the Fire Precautions Regulations (1999) were first introduced, was it clear to you whether your business required a new certificate under the regulations?
(nb. This analysis applies to all 1131 businesses who responded to the survey)



38. How did the administrative burden of obtaining a certificate compare to the present arrangements?
(nb. This analysis covers all 1131 businesses who responded to the survey)



40. Has the formal risk assessment increased costs to your business?
(nb. This analysis covers all 1131 businesses who responded to the survey)



Case Study:

BENCHMARK FABRICATIONS LTD
JONATHON FRASER, OWNER
www.bench-mark.co.uk

Benchmark Fabrications manufactures products ranging from ticketing systems through to leaflet holders, poster frames and pavement & forecourt signs. Based in Hertfordshire, Benchmark employs around a hundred people.

Benchmark's owner, Jonathan Fraser has direct experience of dealing with fire precautions regulations. "Our business spans a number of disciplines from metal work

to plastics and injection mouldings, so there is an inherent fire risk in what we do," notes Jonathan.

"I don't object to the regulations, most of which are common sense, but I am amazed by the level of documentation required. I am currently working my way through the latest guidance note, which runs to 148 pages," says Jonathan, "I'm having to do this because the previous regulations have been updated, so we duplicate our efforts, adding to administrative costs and time in lost labour."

"This regulation, and the accompanying guidance, will undoubtedly add costs to the business," admits Jonathan. "We might have to employ expert advice to deal with this, but this just adds to costs still further. Frankly speaking, I don't know if we will have the funds to seek professional advice on this."

"Obviously we will do what is required of us, but I really do wonder what we pay our taxes for when I spend more and more of my time ticking the boxes that government inspectors used to take care of. It would be nice to see a government refund on every hour I spend on understanding and implementing this regulation," concludes Jonathon.

VIII: **The 2002 Landfill Regulations**

The 2002 Landfill Regulations transposed the Council Directive 199/31/EC on the landfill of waste and lay down strict requirements for landfill construction and operation, and sets challenging national targets for the reduction of biodegradable waste going to landfill for 2010, 2013 and 2020. The targets in the Directive relate to bio-non degradable municipal waste and the Government has extended the targets to industrial and commercial waste. The targets are part of the Government's Waste Strategy 2000. As DEFRA explained in its Review of England's Waste Strategy: "We see merit in setting future targets because these would send clear signals to the commercial markets on the scale of the disposal activities envisaged, while leaving them free to decide the balance of activities to achieve this objective."[40] But industry insiders have complained that it was unnecessary to set targets and the Government should have given businesses projections instead and the targets amounted to gold-plating.

The strength of businesses' frustration with the targets is illustrated by the FSB survey which showed that the majority of businesses have not prepared to meet the new targets and feel that Government is not doing enough to prepare them to meet the challenge. The question remains whether businesses would have the same extra costs and administrative burden if the targets were projections. It is clear from their responses that Government has so far failed in its goal of encouraging them to deliver on a bigger scale as most of them had not yet prepared to meet the new challenges. As the targets amount to gold-plating, albeit a desirable case of gold-plating from DEFRA's point of view, it remains to be seen whether it had the intended benefits or served to alienate businesses instead.

[40] See DEFRA Review of England's Waste Strategy. P24

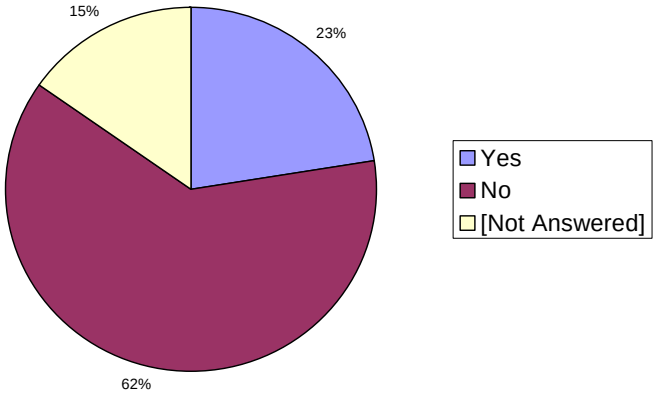
There are also two other examples of possible over-implementation referred to in the Davidson review (one dealing with the Environment Agency's automatic objection to a landfill being located on or in a major aquifer; the other to the use of inert materials for the restoration of mineral extraction sites)[41] but neither example was mentioned during the FPC's research so no comment is made in this report.

Directive on the Landfill of Waste 1999: Findings from the Survey:

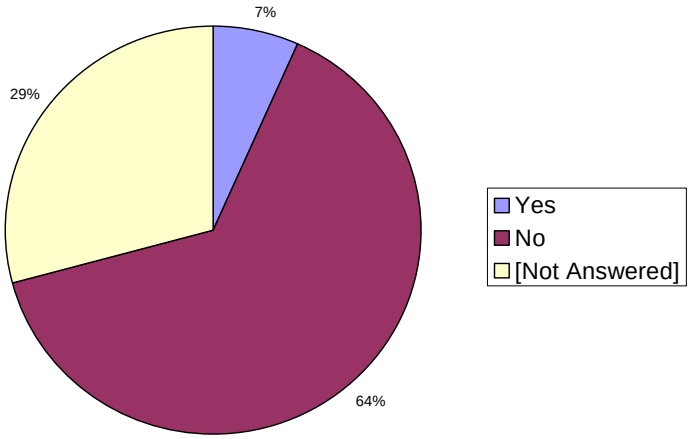
- ***The majority of businesses who responded to the survey have not prepared to meet the new waste targets.*** 702 businesses (i.e. 62% of the 1131 respondents) said that they had not prepared to meet the new targets.
- ***An even larger majority of businesses think that the Government is not providing enough support to meet these targets***. 728 respondents (i.e. 64%) said that the Government is not offering them enough support in meeting the new targets.
- 156 respondents (i.e.14%) say that the new targets have affected their business.
- Most of these complain that ***the regulations increase time and training costs as well as worsen the administrative burden***. Many point out that they have had to buy new equipment, while others criticise the logic of the regulations themselves. One irate businessman who runs a Pet cremation firm pointed out that "Ash from my cremator has to go to landfill. This [the new regulation] is ridiculous."
- ***A tiny minority*** of the 156 respondents who said that the new targets had affected their business claimed the effect was positive. Four businesses (a recycling company, a composting firm, a safety services firm and a door manufacturer) said that new contracts and opportunities had opened up to them as a result of the new regulations. Two other companies noted small miscellaneous benefits.

[41] See Davidson Review, Annexe 1 p48

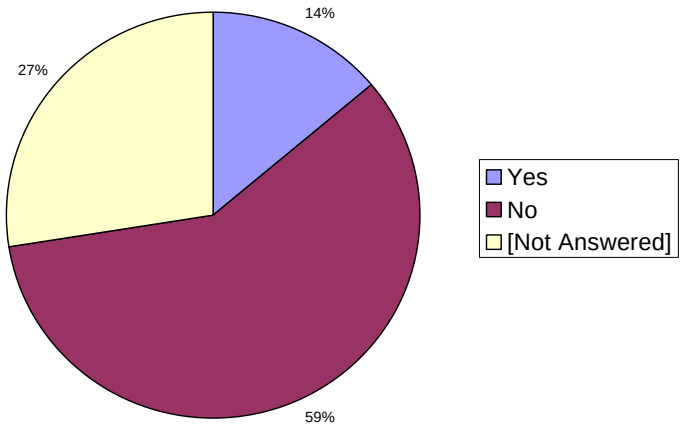
47. Under the new regulations, your business is required to reduce the waste it puts into landfill sites. Have you prepared your business to meet the targets required by the new regulations?
(n.b. This analysis covers all 1131 respondents)



51. Do you think the Government is providing you with enough support to meet the targets?
(n.b. This analysis covers all 1131 businesses who responded to the survey)



52. Has your business been affected as a result of these targets?
(n.b. This analysis covers all 1131 businesses who responded to the survey)



Case Study:

FISHNETS LINGERIE
OLIVIA WELLS, OWNER AND MANAGER
www.fishnets-lingerie.co.uk

Olivia Wells established Fishnets Lingerie four and a half years ago. Based in Whitby, North Yorkshire, Fishnets is a successful customer focused business, "we offer something for everyone in the way of fun, sexy and comfortable lingerie," says Olivia.

Fishnets is keen to do its bit for the environment, but as Olivia points out, they are fighting a losing battle. "The waste sent to us is increasing not decreasing. We are told by our local council that it is illegal for us to recycle by giving boxes and packaging to customers who ask for them so we have to pay the council to dispose of it even though it could be re-used many times over."

Olivia estimates that her business spends in excess of £400 a year to dispose of waste. "This might not sound like much," notes Olivia, "but on the one hand our suppliers are increasing the use of packaging and on the other hand our local authority is failing to help us deal with the waste this generates. The imposition of targets just makes it all more difficult for us to deal with."

"I am all in favour of limiting the amount of packaging we use, says Olivia, "and we try our best not to pass the problem onto customers but I just don't think current regulations are tackling the problem at its root cause further up the supply chain."

Small businesses like Fishnets Lingerie are bearing the brunt of this regulation and like many entrepreneurs Olivia feels overwhelmed, "I don't think the authorities are doing enough to help us meet the waste targets that they themselves have set."

Conclusion:

The focus of this project has been two-fold. Firstly, the detailed analysis of eight directives in order to examine how real the issue of over-implementation is for British businesses. Secondly, and equally importantly, this report sought to establish how damaging this over-implementation may have been to businesses' productivity. In other words, how much has the UK's competitiveness been reduced by the way the directives are transposed into domestic law.

After careful analysis, several points need to be raised. There can be no doubt that there are a number of cases where Whitehall has extended the scope of the original directive. This may be because it fitted better with ongoing departmental priorities or because the policy outcome was regarded as desirable. But whatever the explanation, it is clear that in several instances - the Money Laundering Directive or the Insurance Mediation Directive to name a couple - there has been over-implementation.

It is also important to note that European Directives on health and safety do not cover the self-employed. For example Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work does not include self employed in the definition of 'employer'. However, when the UK comes to implement those directives in UK legislation it extends the provisions of the directive to include the self employed. The Health and Safety at Work Act 1974, in placing duties upon persons 'at work', specifically includes the self employed. This is supported by case law. Another example would be the EU Directive on Physical Agents, when transposed into the Control of Vibration at Work Regulations 2005, was extended to the self-employed.

This is clearly an example of over implementation and such a blanket extension of legislation to the self employed can result in unnecessary regulatory burdens for those in low-risk sectors. For example, a freelance journalist has to act as his own fire marshal, doing a full fire risk assessment. The counter argument to this is that the self employed should develop an understanding of health and safety risk assessments, policies and systems to ease the step change if and when they take on employees, but it remains the case that this is an instance of over implementation by the UK government.

There are a number of steps, as outlined in the list of recommendations, that the Government should take to avoid such over-implementation in future if it is serious about reducing the burden on small businesses. This is in no way a judgement on whether businesses may or may not be in favour of the content of a particular directive: the report focus is solely on how directives have been implemented and crucially, how they are being enforced.

Apart from form-filling, the main concern of small businesses is how the enforcement and inspection is carried out and whether the requirements are more stringent than in other countries - hence making them less competitive. Additionally, there is a danger of over-implementation of another kind if the enforcement agencies have such rigid inspection criteria that they do not focus on those businesses that pose the greatest risk. There is therefore extensive scope for improving Regulatory Impact Assessments (RIAs). As mentioned above, it is too early to assess how thoroughly the findings of

the Hampton Review will be implemented but if they are followed, this should benefit businesses significantly. At present, the Government conducts RIAs in advance. Yet it is important that RIA's are not isolated exercises at the transposition phase of a directive but that they are also conducted retrospectively. They should not only look at potential costs but at real costs that have emerged as a result of a particular regulation.

It is tempting to consider the setting up of a body similar to the Dutch Advisory Board on Administrative Burdens (Actal) that acts as a watchdog and facilitator and aims to cut 25% of the overall business burden by 2007. Actal requires ministries to quantify the administrative burden when they make legislation and also study existing legislation. The German Chancellor Angela Merkel in July 2006 announced a similar initiative and set up an independent body that assesses the burden of all new legislation on business and has pledged to make the Better Regulation agenda a key priority for the forthcoming German Presidency.

These bodies focus on cutting red tape on all legislation but they also examine whether any over-implementation has taken place. Given the fact that the Government has already committed itself to this agenda by setting up the Davidson Review, it seems likely that the UK may in future have a similar body. For future legislation, if combined with improved and retrospective RIAs, this may be desirable although it is important to bear in mind the decentralised structure of regulatory bodies in this country. As the report mentioned above, there are many small regulators at national level that find it difficult to join up their activities and information. As the Hampton Review found, "it is more difficult and more expensive to have comprehensive risk assessment system if data is split across several regulators with similar areas of responsibility. In such circumstances, a holistic view of business risk becomes difficult if not impossible".[42]

If the Government does pursue the idea of setting up a similar body, it is therefore important that it works outside the structure of existing regulators and is able to attain the level of information needed when it conducts retrospective RIAs. One way forward may be to extend the scope of the Local Better Regulation Office (LBRO) which was set up following the publication of the Hampton review. The LBRO is not a new regulator. At present, its aim is to minimise burdens on business and work in partnership with local authorities and the national regulators to deliver a more consistent and co-ordinated approach to business inspection and enforcement. The Government should examine whether it may be sensible to add new functions to this body to avoid over-implementation and develop more effective risk assessment in future.

The Government should also consider whether representatives of this new body should attend legislative sessions on an EU level to identify potential problem areas. At the same time, MEPs should play a more active role in overseeing the legislative process, both during the stage of policy formulation and communicating the directives once transposed. They may even be involved in transmitting feedback between their national regulators and Brussels.

[42] *Hampton Review*, p.6

The better regulation debate has gathered considerable momentum at EU level since the Lisbon Council in 2000 and subsequent report by the Mandelkern High Level Group in late 2001[43] However, while there has been a series of initiatives, involving the Commission, Council and the Parliament, progress is still slow. In July, Commission Vice President Guenter Verheugen voiced his disappointment with the lack of progress on the better regulation agenda, specifically in terms of simplification of existing legislation. He called for specific administrative burden reduction targets set for member states during the German Presidency early next year, suggesting a figure of 25%. Additionally, recent reports by the European Parliament have highlighted the importance of rapid and effective transposition and implementation of EU directives.[44]

As the Davidson Review will provide an extensive and detailed analysis of all Directives which have been over-implemented, it should be in a position after the pre-Budget report later this year to suggest which regulations need to be reviewed to reduce costs and the administrative burden on business. This report was intended to be complimentary to the Davidson Review and fully endorses its findings so far. Once it reports, the Government should consider setting up the new central body that will conduct these assessments in advance and then updates them to take account of real costs. This should ensure that the burden of new regulations is reduced.

But the challenge for the Government goes beyond addressing the costs of regulation for businesses. As the FSB survey has shown, it is not only real costs but also perceived costs that affect businesses' competitiveness and willingness to grow. The part-time workers regulation illustrated this in the most dramatic manner: while only one business respondent had actually been fined for failing to comply with the requirements of the regulation, nearly a quarter of all businesses said that the regulation had deterred them from taking on part-time staff. This finding illustrates how crucial it is for the Government to succeed in its drive to achieve the Better Regulation Agenda. Unless businesses trust Government that it is sincere and effective in its ability to cut red tape, small businesses in this country will continue to struggle. Similarly, unless the Government finds clearer ways of communicating and explaining regulations to the relevant businesses, many will continue to feel overburdened when new regulations appear. As the response to the Fire Precautions Regulations reveals, many complain about the increased costs of new regulations when in fact the problem is the lack of clarity in previous regulations. The Government must inspire confidence that new regulations are supported by adequate risk assessments and communicated through clear guides. Otherwise, businesses will continue to be hampered by their own fears about what regulations contain, thus stifling their own productivity as well as that of the wider UK economy.

[43] See http://www.smallbusinesseurope.org/en/basic307.html

[44] The European Parliament adopted four reports related to better regulation at its plenary session on 16 May: Arlene McCarthy's (PES, UK) on the implementation of internal market legislation, Beert Doorn's (EPP, NL) on better lawmaking, Giuseppe Gargani's (EPP-ED, Italy) on simplification and Monica Frassoni's (Greens, Italy) on monitoring the application of community law. Recommendations in McCarthy's report include setting up better regulation 'task forces', monitoring of the quality of impact assessments by a 'dedicated quality control function' and ensuring that member states are not 'gold-plating' EU legislation.

The report's recommendations:

- The Government should consider setting up a central body, independent of Government, to assess the potential burden of all new legislation.
- This body, which will conduct improved risk assessments that focus resources on the most relevant businesses as outlined in the Hampton Review.
- There should be retrospective RIAs, examining not only envisaged costs but also real costs to businesses.
- This body should be involved in the legislative process at all stages. There is a case for its representatives to attend legislative meetings on an EU level and identify potential problematic areas early.
- MEPs should play a more active role in overseeing the legislative process, both during the stage of policy formulation and communicating the directives once transposed. They may even be involved in transmitting feedback between their national regulators and Brussels.
- Clear and unambiguous language of regulations should be a key priority for legislators as many small businesses complain about confusion as to what is required from them.
- Once the Davidson review is published, the Government should outline a series of step it will take to review existing legislation that has been over-implemented.
- The Government should consider ways in supporting Germany in its effort to make the Better Regulation agenda a priority of the EU.
- EU member states should abide by their 2003 agreement to publish concordance or conformity tables when transposing EU Directives. As set out in the agreement between the Council of Ministers, the Commission and the European Parliament in 2003, concordance or conformity tables should be compulsory and should be communicated to the European Commission.

About the Foreign Policy Centre

The Foreign Policy Centre is a leading European think tank launched under the patronage of the British Prime Minister Tony Blair to develop a vision of a fair and rule-based world order. We develop and disseminate innovative policy ideas which promote:

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- Partnerships with the private sector to deliver public goods
- Support for progressive policy through effective public diplomacy
- Inclusive definitions of citizenship to underpin internationalist policies.

The Foreign Policy Centre has produced a range of seminal publications by key thinkers on subjects ranging from the future of Europe and international security to identity and the role of non-state actors in policymaking. They include *After Multiculturalism* by Yasmin Alibhai-Brown, *The Post-Modern State and the World Order* by Robert Cooper, *Network Europe* and *Public Diplomacy* by Mark Leonard, *The Beijing Consensus* by Joshua Cooper Ramo, *Trading Identities* by Wally Olins and *Pre-empting Nuclear Terrorism* by Amitai Etzioni.

The Centre runs a rich and varied events programme which allows people from business, government, NGOs, think-tanks, lobby groups and academia to interact with speakers who include Prime Ministers, Presidents, Nobel Prize laureates, global corporate leaders, activists, media executives and cultural entrepreneurs from around the world. For more information, please visit www.fpc.org.uk

About the Federation of Small Businesses

The Federation of Small Businesses (FSB) is the UK's largest lobby organisation representing the self-employed and owners of small businesses. Founded in 1974, it now has over 195,000 members across all industries, trades and services. It is a non-party political lobby group that exists to promote and protect the interests of all those who own and manage their own businesses. FSB members together employ 2.5 million people and turnover of over £10 billion a year.

The FSB is a member of the European Small Business Alliance (ESBA) and also has its own office and representatives in Brussels.

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