



THE BRITISH
CHAMBERS OF
COMMERCE

Deregulation or Déjà Vu?

UK Deregulation Initiatives 1987/2006

Tim Ambler, London Business School

Francis Chittenden, Manchester Business School

A report published by the British Chambers of Commerce



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The British Chambers of Commerce

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Editorial Note

The opinions expressed in this report are those of the authors and may not necessarily represent those of the British Chambers of Commerce.

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Foreword



The British Chambers of Commerce has been at the forefront of the debate on regulation and red tape. On an annual basis we have produced a Burdens Barometer, which topped £50bn for the first time last year. In addition our regular reports on the Regulatory Impact Assessment (RIA) system have shaped the dialogue on how to improve and cement the RIA as a key tool in policy making within government. For the quality of this work we are indebted to Tim Ambler (London Business School) & Francis Chittenden (Manchester Business School). To add to this they have now produced this paper on Deregulation.

When I first looked at their paper, two points were immediately obvious to me, as I am sure they will be to you.

First, is that this is the first time that anybody has looked at Deregulation in any detail, which is surprising when you consider how long the debate on regulation and improving business competitiveness has been raging within government, both the current and previous administrations.

Second, is the way the history of deregulation has largely been ignored and, probably as a result, repeats itself without progress being made. This study has succeeded in establishing an historical narrative throughout various government initiatives which casts serious doubt on the need for government to legislate to deregulate. The report also shows some warning signs that the current well intended initiatives will go the same way as earlier attempts. We trust that these signs will be heeded in time and that history will not be allowed to repeat itself, once again.

We hope that in publishing this report we will be opening up a strand of the debate on regulation which has not been afforded enough attention to date.

A handwritten signature in black ink that reads "David J. Frost". The signature is written in a cursive, slightly stylized font.

David Frost
Director General
British Chambers of Commerce

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Executive Summary

This report reviews UK government approaches to deregulation over the 20 years 1987-2006. As it happens, this period divides evenly across Conservative and Labour administrations. On this sample, behaviour does not seem to be much influenced by party. Both approach *deregulation* (removing existing laws) with enthusiasm, learn little or nothing from previous efforts, and have little if anything to show from each initiative. This is in marked contrast with managing *regulation* (justifying new laws) where the process has followed consistent incremental learning. One may not like the outcome of the development of regulatory processes, e.g. Regulatory Impact Assessments, but it has had a clear trail of improvement. As this report shows, the same cannot be said for deregulation initiatives.

The Labour government introduced with much fanfare a 2001 Act that produced just 27 deregulations in the ensuing four years while over 600 new regulations came in. The 2001 Act was broadly the same as the 1994 Act of the Conservative government which produced just 26 deregulations in the ensuing four years. It is too soon to judge whether the Legislative and Regulatory Reform Act 2006, or attempts to reduce administrative burdens, will be effective although this paper notes some encouraging and some warning signs.

So far as we know, this is the first review of UK deregulation initiatives and as such it is not as definitive as we would like. We welcome comments and criticisms and aim to follow this initial report with a version revised in the light of the input we get and further research.

Less regulation reduces direct costs of compliance and administration and indirect costs of management and the diversion of attention from the marketplace to dealing with governance. The overall impact of regulation on innovation, competition, productivity, GDP and business profitability is probably negative but there are arguments both ways and little definitive empirical evidence. The deterioration in UK productivity performance in the last 10 years may be associated with the acceleration of regulation. Our best estimate is that halving existing business regulation could release a minimum of £50bn per annum of value added into the economy. About half of this would accrue to government in higher taxes. The benefits of deregulation could, thus, be shared roughly equally between the public and private sectors.

After reviewing the history, we conclude that, even though it is too soon to be sure of the outcome of the current deregulation initiatives, the overwhelming sense of *déjà vu* coupled with the government's determination not to learn from previous deregulation initiatives makes it likely we will achieve the same outcome, namely not very much. We draw attention to flaws in techniques such as "Business as Usual" and the "Standard Cost Model" which allow government to manipulate deregulation performance benchmarks and thereby avoid substantive deregulation.

We consider other possible approaches to deregulation, and believe that the current EU interest in deregulation makes a combined approach feasible but much of the proposals below could be achieved in isolation. We make these recommendations:

- At the EU level: area by area to consolidate (codify) existing legislation, removing all directives and leaving the minimum number of regulations. Within that, the codification should also empower the removal of the consequentially redundant UK legislation.
- Where EU legislation does not prevail, consolidate (codify as for fire safety) minimum regulations leaning towards principles rather than particulars. Enforce by applying sunset clauses by sector to ensure the deregulation takes place within reasonable timeframes.
- Recognise that UK Statutory Instruments (SIs) provide the UK deregulatory solution and are already invested with the authority to repeal and/or amend both primary and secondary legislation (1994 Act).
- Reserve SIs strictly for secondary regulation and deregulation, renaming the other 90% "Administrative Orders" with minimal Parliamentary scrutiny. The scrutiny for SIs should be increased with a single Joint Committee replacing the various existing but ineffective committees.

- Return to the concept of a Cabinet Minister whose sole responsibility is codification and deregulation in EU and UK and who reports annually on plans and performance.
- Roll back the Business as Usual (BAU) exercise that has led to significant reductions in the admin burdens targets. The original announcement by Gordon Brown of a 25% reduction in administrative burdens without mentioning BAU should be re-affirmed.
- Use the BAU exercise as a springboard for removing every regulation where it has been found that business would meet the obligation in the absence of regulation.
- Give the Administrative Burdens Reduction Exercise teeth by using the current Comprehensive Spending Review to link future departmental funding to performance against simplification plan targets.

Deregulation or Déjà Vu?

UK Deregulation Initiatives 1987/2006

Introduction

Politicians, not just in the UK, talk deregulation but do not practice it. Is the talk merely cynical spin or do governments try to deregulate but fail? This report indicates that the latter is more likely, explores the reasons and suggests what might work better.

We first outline the scale of the problem and then take a long view of deregulation initiatives by the UK government over the 20 years 1987-2006. As it happens, this period divides evenly across Conservative and Labour administrations. We review what was achieved (answer: not much) and whether there is any difference between the parties in power (answer: not much). Little seems to be learned from previous deregulatory experience. The Labour government introduced with much fanfare a 2001 Act that produced just 27 deregulations in the ensuing four years while over 600 new regulations came in. The 2001 Act was broadly the same as the 1994 Act of the Conservative government which produced just 26 deregulations in the ensuing four years. Einstein's definition of insanity was repeatedly doing the same thing and expecting a different result.

The EU is about to embark upon a process of deregulation. Their approach is based around assessing the administrative burdens of regulation and attempting to reduce them. This approach is novel and is also being adopted in the UK, as well as Austria, Czech Republic, Holland, Denmark and Germany. However, in the UK we can already see that the process is being managed in ways that are reminiscent of earlier deregulation initiatives and we discuss this in detail later. We hope that the EU and other member states are not as blissfully unaware of recent history as the UK government.

By "deregulation" we mean a reduction in the stock of laws and regulations that act as a burden on business to a greater or lesser extent. This stock may be EU or UK legislation or the rules set by UK regulators, such as the Financial Services Authority. Whilst there is no shortage of research into the creation of regulation, i.e. new regulations and the process of creating them, we were surprised to discover little research on deregulation. We do not discuss deregulation in the sense of privatisation, i.e. shifting activities from the public sector, or structural changes such as liberating airline operations in the US.

The structure of the report is:

- Research into deregulation.
- The scale of the problem.
- Overview of UK initiatives over the 20 year span.
- The 1995 deregulation initiative.
- The 2001 deregulation initiative.
- The two main 2006 deregulation initiatives.
- Approaches to deregulation.
- Recommendations for deregulation in future.
- Conclusions.

Research into Deregulation

One pressure for deregulation arises from the perception that regulation is essentially anti-competitive, for example it suits large companies but acts as a barrier to entry for new and smaller firms.¹ It may stimulate innovation in the sense of cunning ways to take advantage of the regulations² but not necessarily in the sense of meeting underlying consumer needs or building demand. Management attention is shifted from customers and the marketplace to conforming to arbitrary rules. There is also a sense that, now that nationalisation of industries is out of fashion, the state can gain control, at less cost, through regulation. This purports to benefit other stakeholders in society although if it reduces jobs, competitiveness, productivity and growth, it may not actually do so.

Clearly some level of regulation is essential but the optimal level of regulation overall, and the particular impacts by topic and sector, are far from clear. Perhaps the best test case has been provided by the major deregulatory activity in New Zealand during the 1980s. The case history, or at least one version of it, is recounted by Osborne and Plastrik.³ The new government were frustrated by civil service obstruction of piecemeal deregulations and opted instead for deregulation en bloc leaving the civil servants to rescue such regulations as were deemed essential. Most researchers have applauded the “big bang” as a success⁴ whereas others regarded it as a failure.⁵ The former tend to have taken an economic and the latter a social perspective. Some reached mixed conclusions.⁶

The perception of excessive regulation in the UK arises from a growing, and arguably accelerating, rate of regulation nationally coupled with regulation by the EU. This too has accelerated with three significant steps: joining the EU and having to catch up, the single market initiative and the social chapter which the Major government resisted but then the pent up regulations were added to the overall level when the Blair government accepted it. The EU now talks of deregulation, or at least of consolidating the myriad *acquis*, and there are signs of a reducing tide of new regulations, but not an ebb.

In reviewing deregulation in the UK, Vogel traces the beginning of formal government initiatives to Keith Joseph in the Department of Trade and Industry (DTI) whose lead was picked up by Lord Young in the late 1980s.⁷ The Enterprise and Deregulation Unit has been through numerous transformations. By 2006 it had become the Better Regulation Executive. It symbolises a philosophical step change when Labour came to power when the search for deregulation was replaced by a search for “better” regulation. The extent to which that has made any difference in practice is open to question.

¹ David Willetts (1993), *Deregulation*, The Social Market Foundation, Occasional Paper #1.

² Robert Blackburn, David Smallbone, Mark Hart (2005) Exploring the Unforeseen Effects of Regulation on Small Firms: compliance, resistance and response patterns, Institute for Small Business Affairs Annual Research Conference, November.

³ David Osborne and Peter Plastrik (1998), *Banishing Bureaucracy*, Chapter 4, Plume (Penguin) Middlesex, 75-90.

⁴ Collins, Simon (1989), *Rogernomics: The Economic Aftermath*, The Making of Rogernomics, Auckland University Press, 190-192
Carter, Michael (1995), *Looking back to 1984*, Univ. of Canterbury.

Shultz, George P. (1995), *Economics in Action: Ideas, Institutions, Policies*, American Economic review: Papers and Proceedings, 85(May), 1-8.

Economist, *All blacks in the Red*, 25 May, 1996, 80

Wolf, Martin (1996), *Lessons from the Antipodes*, Financial Times, 12 March, 1996, 20.

Brash, Donald T. (1999), *New Zealand's Remarkable Reforms*, FMF Occasional Paper No. 2, The Institute of Economic Affairs.

Goldfinch, Shaun (2004), *Economic Reform in New Zealand: Radical Liberalisation in a Small Economy*, The Otemon Journal of Australian Studies, 30, 75-98.

⁵ Kelsey, J. (1995), *The New Zealand Experiment*, Auckland University Press, Wellington.

McIntyre, Lyndy, *The failed New Zealand IR Experiment - Lessons for Australia*, NZNO communications advisors with the New Zealand Nurses' Organization.

⁶ Goldfinch, Shaun (2004), *Economic Reform in New Zealand: Radical Liberalisation in a Small Economy*, The Otemon Journal of Australian Studies, 30, 75-98.

McMillan, John (1998), Managing Economic Change: Lessons from New Zealand, *World Economy* 21, 827-843.

⁷ Steven K Vogel (1996), *Freer Markets, More Rules: Regulatory Reform in Advanced Industrial Countries*, Cornell University Press.

According to Vogel (p.128) "The purpose of the Unit was to attack excessive regulation by all government departments." The idea was to "embed" one person in each department to promote deregulation in that department. In practice they rapidly went native and "turned into double agents more loyal to their departments than to the Deregulation Unit."

The Scale of the Problem

According to the Government's own quango⁸, the Better Regulation Task Force (BRTF), the annual burden of regulation on UK business is £100bn.⁹ That looks like a suspiciously round number but our own detailed research which shows £11.4bn. for 2004/5¹⁰ just from regulations introduced since 1998, could be seen as supporting it, in the sense that the latest year could be about 11% of the total. But these are the direct costs and exclude the indirect costs such as reduced innovation and diversion of management attention from the marketplace.

What benefits exactly does the British taxpayer get from restricting business in this way? The truth of the matter is that we have very little idea. The Competition Commission does not know the impact of regulation on innovation, competition, competitiveness or productivity, still less the opportunity cost of regulation. We have so much accumulated regulation, we hypothesise, because government thinks that is what it is there to do and in reaction to events and lobbyists. According to the Better Regulation Commission the current environment of over-regulation is threatening the natural resilience of our society as well as the UK's competitiveness¹¹.

It may not be coincidence that accelerating regulation coincides with declining UK productivity. Of course, some of this is relative: if we had the same regulations as the rest of the EU, applied in the same way and occupying as much management attention, then only our position relative to the rest of the world would be at risk. This could be an important first step: jettisoning all business regulation not required by Brussels. Indeed, we should recognise that all business regulation not required by Brussels is, ipso facto, gold plate.

Whether the cost of regulation is £100bn or £150bn. per annum, or a great deal more if all indirect effects are taken into account, we still do not know how much is excessive, i.e. what could and should be saved. Our best estimate is that halving existing business regulation could release a minimum of £50bn per annum of value added into the economy. About half of this would accrue to government in higher taxes. The benefits of deregulation would, thus, be shared roughly equally between the public and private sectors.

The £11.4bn. estimate of the current annual cost of recent regulations is drawn from Regulatory Impact Assessments (RIAs) which have every interest in keeping the figures low. We will show a conspicuous example of that error later. The point here is that if the RIA figures are low, then the £100bn. total is definitely too low. £100bn. is equivalent to 8% of GDP which is consistent with Peter Mandelson's¹² estimate of 4% of GDP from EU directives and regulations. EU sourced regulation represents about half of the burden by value.

Brussels estimates¹³ put just the administrative burdens of regulation at about 3.7% of GDP for the EU as a whole and 1.5% for the UK. However, these figures must be treated with caution. We give two examples to explain this caution. The EU paper on the Administrative Burden of regulation¹⁴ provides the following information for Denmark and Holland (the only two countries for which this data was then available):

⁸ Quasi non-governmental organisation.

⁹ *Regulation – Less is more*, Better Regulation Task Force, March 2005.

¹⁰ British Chambers of Commerce, Burdens Barometer, 2006, less the equivalent for 2005.

¹¹ Risk, Responsibility and Regulation: whose risk is it anyway? Better Regulation Commission, October 2006.

¹² Speech to the Annual CBI Conference. Birmingham, 8 November 2004.

¹³ Measuring administrative costs and reducing administrative burdens in the EU, MEMO/06/425, Brussels, 14th November 2006.

¹⁴ Measuring administrative costs and reducing administrative burdens in the EU, MEMO/06/425, Brussels, 14th November 2006.

Table 1: Reported administrative burdens of regulation in Denmark and Holland

The distribution of administrative costs in DK and NL		
Share of administrative costs by origin of legislation	DK	NL
Category A: originates directly in international law	28%	43%
Category B: international origin but implemented nationally	15%	13%
Category C: national origin	57%	44%
Administrative burdens for companies as a % of gdp	1.9%	3.7%

Source: Denmark and Netherlands baseline measurement

On the basis of this information the total administrative burden of EU regulations that do not have to be transposed into national legislation costs Denmark 0.53% of GDP (1.9% * 28%), and Holland 1.6% of GDP (3.7% * 43%). Bearing in mind we are looking at the application of the same EU regulations on similar economies, it is hard to explain this huge difference other than the Standard Cost Models used for measuring administrative burdens are not consistent and/or not statistically representative and so international comparisons based upon it are meaningless¹⁵.

Secondly, it seems rather unlikely that the UK has less than half the average EU burden, given the fact that half of UK regulation is common to the rest of the EU and our propensity for elaborating EU rules, e.g. the farm payments system. Reverse engineering provides a possible explanation for how Whitehall supplied this unlikely figure to Brussels.¹⁶ Their £18bn (1.5%) should have been about £38bn. (3.2%, still below EU average) as this paper will show.

We can also see hope in the EU as awareness of over-regulation and more relaxed [majority] voting rules should permit more EU regulations to be jettisoned. However, as this paper later reviews, current government thinking in Whitehall and across the EU, is to target the *administrative* cost burden. In other words, how can compliance be retained more efficiently with less cost to business and, incidentally, Whitehall and local government?

The Hampton Report makes some useful suggestions in that direction. Again, we do not know the proportion of total costs due to administration and policy costs, the main source of the burden of regulatory costs, have not been consistently divided across those two headings. The BRTF estimated that 30% - 40% of the total £100bn. annual cost was administrative and the balance compliance. We can estimate from DTI and other sources that the total Whitehall admin burden is about £38bn.¹⁷ which is consistent with the BRTF estimate.

We review the progress of the current UK government initiative on reducing admin burdens later in this paper. For now we just need to draw attention to the dangers of focussing on the administrative cost when the regulations themselves should go. Putting a huge effort into making the unnecessary more efficient merely adds to the costs of what should no longer be there at all.

¹⁵ Cabinet Office (2005) 'Measuring Administrative Burdens: UK Implementation of the Standard Cost Model', May.

¹⁶ Taking the DTI Simplification Plan (December 2006) gives £5.3bn. as the net admin burden but that is after deducting costs ascribed to "Business As Usual" (BAU). The flaws in that argument are discussed later. Grossing the £5.3bn. up by the 40% PriceWaterhouseCoopers' DTI share of Whitehall burden excluding HMRC gives £13bn. We also know KPMG estimated HMRC costs as £5bn. This gives a total of £18bn. i.e. 1.5% GDP.

¹⁷ From other sources we know that the DTI admin cost pre BAU was calculated by PwC at £13bn. So total UK admin burdens are estimated at (£13bn * 100/40)+£5bn = £37.5bn.

Overview of UK initiatives

A taste of the déjà vu of deregulation is given by a Shadow Small Business Minister's complaint that, despite government assertions that "deregulation was especially important in relation to small firms, by reducing compliance costs and the burdens on business", the Minister "had to admit that he had introduced three times as many regulations relating to the Department of Trade and Industry as had been revoked. If we look at the Government's overall record, we find that over the past three years approximately 13 times as many regulations have been introduced as have been replaced."¹⁸

The Minister's response was: "I deal now with the remarks of the hon. Membermy alter ego in terms of the small business world. She spoke about deregulation, and I concur with much of what she said. Small businesses do suffer from over-regulation, but the Government are doing what they can to remove any burdens. The deregulation unit is doing sterling work in trying to ensure that any regulations are the least burdensome possible. However, in order to show the spirit of co-operation that I bring to all things, if the [Shadow Minister] would like to tell me of any regulations that she would like removed, I would be only too willing to give them my active consideration. In view of her comments about extra regulations, she must have a huge list of them which will no doubt be on my desk at 9 am on Monday."¹⁹

That was in 1996 and the government was Conservative, but a similar exchange could well have been scripted today. What now seems surprising is that so much deregulation was believed to be going on in 1996. Both sides accepted, in that debate, that regulations were being removed at the rate of 1,000 per annum. We have not been able to find evidence for anything like that number. There may have been confusion with Statutory Instruments many of which are temporary and not regulations.

This is the usual sequence of events:

1. Government agrees that there is excessive regulation and requests examples of regulations that can go.
2. Industry finds it hard to substantiate examples because they are inured to the regulations, it is time consuming, they doubt anything will change, it is not a single regulation that is causing difficulty but the cumulative total and many are interconnected.
3. Eventually a list is compiled.
4. The civil service welcomes the list and expresses enthusiasm. It then takes many months, behind closed doors, to consider each item. They reject those they can and express good intent and more study for most of the others. A very few regulations are promised to be axed so that the Minister in charge can claim it was all a great success.
5. Announcements are made or responses provided in answer to parliamentary questions about the number of proposals implemented or rejected. However, it should be noted that the civil service regards as "implemented" anything where the policy has changed, i.e. they have agreed it can be implemented. That does not mean it is implemented, i.e. axed, in practice.

Deregulation had been a policy objective of the Government since 1979, and it took on a new urgency in 1983 with renewed scrutiny of the regulatory activities of central and local government. Table 2 shows the major initiatives since 1985.

¹⁸ Mrs. Barbara Roche (Hornsey and Wood Green): Hansard, 6 Dec 1996 : Column 1338

¹⁹ The Minister for Small Business, Industry and Energy (Mr. Richard Page): Hansard 6 Dec 1996 : Column 1350

Table 2: UK Deregulation Initiatives since 1985

YEAR/PUBLICATION/ EVENT/ SOURCE	COMMENT
<p>1. 1985 (March)</p> <p>White Paper: <i>Burdens On Business</i></p> <p>(<i>Lifting The Burden</i>, London, HMSO, 1985)</p>	<p>Proposed: (a) Mandatory assessments of the costs of complying with departments regulatory proposals ('compliance cost assessments' or CCAs); (b) Regular reports by Departments to a small task force in the Cabinet Office which would act as a focus of expertise, assist in preparing CCAs, audit progress, review selected proposals, and conduct occasional reviews of particular subjects (c) deregulation units in each regulatory Department, reporting to a nominated Minister.</p>
<p>2. 1986 (May)</p> <p>White Paper: <i>Building Businesses . . . Not Barriers</i>, London, HMSO, 1986</p>	<p>Covered: (a) targets or objectives (for deregulation); (b) CCAs; (c) regular 'forward looks' and reports to the EDU; (d) the need for 'adequate records of the effect of regulations - old as well as new - on businesses'; (e) the role of the EDU; and (f) detailed procedural 'guidelines' for Departmental Deregulation Units (DDUs), including the need to consult the Department of Trade and Industry and other relevant Departments on regulatory proposals.</p>
<p>3. 1988 (November)</p> <p>White Paper: <i>Releasing Enterprise</i></p>	<p>It had been decided that the EDU was still needed 'to monitor and report progress and to maintain and increase the momentum of change . . . to help spread experience and skills into departments'. Reviewing existing regulation would benefit from a more systematic approach' - each Department would 'nominate one or two areas of its responsibilities, of significance for business, to be examined as part of a rolling annual programme of work.'</p>
<p>4. 1992 (July)</p> <p>Prime Minister's Deregulation Seminar</p>	<p>Reaffirmed the Government's commitment to deregulation.</p>
<p>5. 1993 (February)</p> <p>Deregulation Seminar</p>	<p>Prime Minister announced the establishment of seven Task Forces, to advise Ministers on: (a) priorities for the repeal or simplification of existing Regulations and enforcement methods so as to minimise the costs on business; and (b) the best way of developing and maintaining consultation on the introduction and enforcement of new Regulations including those arising from EU measures.</p>
<p>6. 1993 (July)</p> <p>Deregulation Seminar</p>	<p>Prime Minister announced: (a) the introduction of the Deregulation and Contracting Out Bill; (b) a review to eliminate duplication between enforcement agencies; (c) publication of Working with Business (a code of practice for enforcement agencies); and (d) a 'small business litmus test' (ie, separate consultation with small businesses) for all new Regulations.</p>

YEAR/PUBLICATION/ EVENT/ SOURCE	COMMENT
<p>7. 1994 (November <i>Deregulation And Contracting Out Act 1994: An Explanatory Guide</i> (DTI, January 1995)</p>	<p>Provided 'a mechanism to change primary legislation for the purpose of removing or reducing burdens on business or others, provided that necessary protection is not removed . . . To amend or repeal legislation . . . which imposes a burden and in doing so to set up a new regulatory system which is less burdensome than the existing regime.'</p>
<p>8. 1995 (May) <i>Deregulation: The Way Forward</i> (DTI, 22 May 1995)</p>	<p>Announced that a new Cabinet Committee had been set up 'to drive forward work on deregulation'.</p>
<p>9. 1996 <i>Government Response to the Deregulation Task Force Report 1996</i> (Cabinet Office)</p>	<p>Accepted the view that 'putting the right regulatory culture in place is central to keeping burdens on business to a minimum'. The risk assessments required on all regulatory proposals had to be 'personally certified by the responsible Minister'. Departments had to send monthly returns to the Cabinet Office Deregulation Unit listing all Regulations produced that month, identifying which affected business, and setting out the resulting costs and savings. There was a checklist 'to ensure that EC requirements are not over-implemented'.</p>
<p>10. 1997 <i>House of Commons Hansard Written Answers for 30 Jul 1998</i></p>	<p>Abolished the De-regulation Task Force. Established The Better Regulation Task Force.</p>
<p>11. 1999 <i>THE FUTURE OF THE DEREGULATION PROCEDURE</i> <i>Deregulation - First Special Report</i></p>	<p>The proposed extensions of the order-making power are potentially far-reaching and place an even greater importance on the effective functioning of the deregulation procedure. Report therefore does not agree to any dilution of the procedural safeguards of the deregulation process.</p> <p>The Deregulation procedure can be used to put through important legislation, subject to rigorous scrutiny, but without taking up time on the floor of the House.</p>
<p>12. 2000 <i>Government Response to the Deregulation Committee's Special Report on the future of the Deregulation Procedure</i></p>	<p>The Government intends carrying forward the following proposals as described in the consultation document: (a) the proposal to allow deregulation orders to impose limited additional burdens in the interests of the greater good; (b) allow the use of deregulation orders to clarify the law; (c) allow the use of deregulation orders to remove or reduce burdens on government; (d) allow the order-making power to apply to legislation passed after 1994.</p>

Table 2: UK Deregulation Initiatives since 1985 *continued*

YEAR/PUBLICATION/ EVENT/ SOURCE	COMMENT
<p>13. 2001 <i>Regulatory Reform Act 2001</i></p>	<p>The main provision of the Regulatory Reform Act removes some of the barriers to wider application of the deregulation order-making power under sections 1-4 of the Deregulation and Contracting Out Act 1994 (the 1994 Act). The new order-making power in the Act is wide enough, but no wider than necessary, to deal with regulatory reform measures which the Government wishes to achieve.</p>
<p>14. 2003 <i>The Operation Of The Regulatory Reform Act 2001: A Progress Report</i></p>	<p>The report remarked on procedural issues surrounding the Act's operation and discussed practical arrangements for the handling of regulatory reform orders. It also commented on the slow progress of the Government's programme of regulatory reform order-making to date, and examined ways in which future regulatory reform orders could be identified.</p>
<p>15. 2006 <i>Legislative and Regulatory Reform Act</i></p>	<p>This Act has two other sections (enforcement and EU technicalities) but the major part sets out to correct the failure of the 2001 Act. Allegedly this was ineffective because ministers' powers were limited to deregulation and the process was too cumbersome.</p>

The 1994 Act was probably the most significant during the Conservative governments which is why we give it most attention as representing that era. Although David Miers claims "The parliamentary consensus is that the deregulation procedure is a success"²⁰, it only resulted in 26 deregulations, from 53 firm proposals, in four years. As noted earlier, the 2001 Act of the Labour government resulted in 27 deregulations in four years. We discuss both initiatives below but the image of Whitehall labouring mightily and producing a mouse is hard to resist. This seems to have little to do with party politics and everything to do with the difficulty of turning a regulation factory into a deregulator.

Clearly some of these initiatives are more substantive than others. As noted above, they are mostly characterised by Whitehall calling on the private sector to provide examples of regulations to be culled. When the private sector fails to do so, substantively, Whitehall shrugs its shoulders and repeats the cycle when the regulatory clamour once again reaches the level that requires a response.

The 1995 Deregulation initiative

The 1994 Deregulation and Contracting Out Act was the most ambitious initiative during the Conservative government of the 1980s and 1990s. As part of this initiative, John Major called a deregulation seminar at 10 Downing Street in February 1994. The ground had been well prepared and the outcome was detailed study by eight Task Forces, with a coordinating body chaired by Lord [John] Sainsbury of Preston Candover who has long had an interest in regulation stemming from his experience of chairing Sainsbury's, the supermarket group.

²⁰ David Miers (1999), *The Deregulation Procedure: An Evaluation*, King-Hall Paper for The Hansard Society for Parliamentary Government, May.

The Task Forces produced 605 “proposals for reform” which Table 3 (below) analyses by department along with the conclusions. Implemented, in the heading to column three, is shown in inverted commas to indicate that it was accepted as a policy change but it may or may not have been enacted.²¹

The following analyses are all drawn from the summary document. Even though this was thorough and, running to 210 pages comprehensive, it had to express some quite detailed recommendations each in a paragraph or two.

Table 3: 1995 recommendations by department and outcome

Departments	Number	Accepted and “implemented”	Accepted in principle but ongoing examination	Partly Accepted	Rejected
Inter-departmental	54	17	20	14	3
Agriculture, Fisheries and Food	46	9	23	5	9
Employment	13	2	10	1	0
Health and Safety	76	41	29	4	2
Environment	130	63	34	17	16
Health	13	4	7	0	2
Home Office	17	3	6	1	7
Social Security	23	3	8	2	10
Trade and Industry	66	24	21	11	10
Transport	43	6	17	7	13
Treasury	124	39	17	17	51
Total	605	211	192	79	123

- Environment (130) and Treasury (124) have the largest number of proposals.
- Health (13), Employment (13), and Home Office (17) have the fewest proposals.
- Rate of acceptance highest for Health and Safety (54%), Environment (49%), Treasury (32%), and Health (31%).
- Rate of rejection highest for Social security (44%), Home Office (41%) and Treasury (41%).

At first glance, that looks impressive but we need to look more closely.

²¹ There is some doubt about the number of Task Forces and recommendations. This report relies on Lord Sainsbury’s personal volume showing 605 recommendations but the DTI claimed that there were 795 recommendations of which 521 were accepted, 178 rejected and 96 under consideration. Source: *Competitiveness: Forging Ahead* (1995), Presented to Parliament by the President of the Board of Trade and the Chancellor of the Exchequer, the Secretaries of State for Transport, Environment and Employment, the Chancellor of the Duchy of Lancaster, and the Secretaries of State for Scotland, Northern Ireland, Education and Wales, May. We are extremely grateful to Lord Sainsbury for providing this information and giving access to his files.

As shown by Table 4 below, the majority, 339, were expressions of good intent. In other words, broad statements were accepted but they were unspecific about exactly what should be deregulated and/or when. Three examples are:

- Government should pressure the EC Commission to ensure all EC fisheries policy is enforced properly throughout EC. Unacceptable if policy only enforced in UK. The response was that MAFF continues to press EC Commission to ensure EC rules applied consistently throughout the community. [15]
- Ensure that the admin burden on producers [farmers] is as light as possible. This produced an oleaginous response from MAFF about how helpful they were being. [89].
- Avoid making new EC Directives [178]. This was described as “implemented” but we have treated it as a statement of good intent.

Another 89 required new regulations or changes in EU legislation, i.e. they were outside the government’s control. 48 proposals would have increased the burden of regulation, although the net effect may have been reduction. Some members of these task forces appear to have been captured by the Whitehall culture.

This analysis cannot be definitive as the distinction between, for example, a proposal for a deregulation and one that is merely good intent can be hazy. It is possible that rather more than 53 could be seen as deregulations and rather fewer than 339 seen as specific (as opposed to good intentions) but the reverse is also possible as we gave the benefit of doubt to a number of the 53.

Table 4: 1995 recommendations by department and type

Departments	Number of Proposals	Deregulations	Revisions	Good intent	New Regulations and/or EU related	No. that increase bureaucratic burden
Inter-departmental proposal	54	1	1	35	22	16
Agriculture, Fisheries and Food	46	2	9	26	18	2
Employment	13	0	0	11	2	2
Health and Safety	76	5	12	52	8	4
Environment	130	3	23	88	18	13
Health	13	4	4	5	1	1
Home Office	17	4	8	3	3	2
Social Security	23	3	16	2	1	1
Trade and Industry	66	9	19	30	8	4
Transport	43	6	12	22	4	0
Treasury	124	16	39	65	4	3
Total	605	53	143	339	89	48

Of the 53 proposals that we identified as recommending actual deregulations, 14 were accepted, 22 were rejected and 17 were still under continuing review a year after they were recommended. We can assume that they were safely buried and consider just the 14 in more detail, see Table 5. Those that seem to be genuine deregulations, as distinct from amendments or procedural changes, are marked *, i.e. eight of the 14.

Table 5: 1995 recommended Deregulations which were accepted

Proposal #	Description
55*	Licences to sell or produce milk unnecessary were abolished in May 1995.
114	Section 1(1) of the Health and Safety Act at work 1974 stood in the way of revoking unnecessary regulations individually. The 1994 Act was used to remove it.
166*	Domestic clients and certain types of small construction projects were removed from the Draft Construction (Design and Management) Regulations 1994. This could be seen as an amendment of new regulation rather than repeal of an existing one.
329*	Revoke requirement for a UK product licence for exports of certain biological medicinal products which cannot easily be tested. Repealed 11 April 1994.
330*	Remove requirements to list products individually on manufacturers' licences for medicinal products.
347*	Shops Act 1950. Restrictions on weekday evening trading removed using the 1994 Deregulation Act.
407*	On-site generation of electricity. Businesses no longer required to use 51% of the generation on-site.
417*	Section 43 of the Weights and Measures Act. The 1994 Act was used to repeal the requirement for pubs to serve a full liquid pint of beer, i.e. the head was allowed as in practice.
420	Price Marking Order 1991. An (Amendment) Order provided for the use of a price concession chart as an alternative to dual marking of loose products sold by reference to metric units.
424	Weights and Measures (Quantity and Abbreviations of Units) Regulations, 1987. Requirement for precedence to be given to imperial units removed for dual-marked products
451	Registration of improvements in local bus services simplified.
503	Building Societies Section 96 (Bonus Payments on Mergers). Government agreed to raise maximum from 1% to 5%.
505*	Provision repealed requiring building societies to send recorded delivery written notice to mortgagor where they have sold a repossessed property.
569	Excise Goods (Holding, Movement, Warehousing and REDS) The requirement that the paperwork should accompany the goods at all times was accepted in theory but the implementation seemed to be little changed.

We have tried to reconcile this outcome with that reported by David Miers' claim of 26 deregulations, noted above. His, and our, 53 potential deregulations can be analysed from Annex B of the 2001 Act as shown by Table 6 below (three seem to have been discarded before this analysis).²²

Table 6: Summary of proposed orders according to Miers

	Total	Accepted	Amended	Rejected	Withdrawn
1994-1995	8	4	3	1	0
1995-1996	19	12	7	0	0
1996-1997	16	7	7	2	0
1997-1998	7	3	3	0	1
Total	50	26	20	3	1

Comparing Miers' 26 with our analysis indicates that he may have been generous and the number of actual deregulations may have been less than ten.

The 2001 Deregulation initiative

The performance of the Regulatory Reform Act 2001 was reviewed by the Cabinet Office in 2005. The full title of the Act is:

An Act to enable provision to be made for the purpose of reforming legislation which has the effect of imposing burdens affecting persons in the carrying on of an activity and to enable codes of practice to be made with respect to the enforcement of restrictions, requirements or conditions.

The last part of that intention (sections 9 – 11 allowed Ministers to issue statutory codes of practice for regulatory enforcement) is an example of an Act created ostensibly for deregulation giving powers for more regulation, or more burdensome regulation. Whitehall is a regulatory machine: when it gets orders to go into reverse (deregulate), the civil servants try to turn the vehicle around before doing so. By common consent, statutory codes are more burdensome than voluntary ones and we should be looking to self-regulation before legal regulation.

Even where Regulatory Reform Orders (RROs) were to be introduced under the Act, it was stated:

"RROs must always remove or reduce burdens. However they can also:

- impose new burdens;
- re-enact existing burdens; and
- remove inconsistencies and anomalies in legislation."²³

"RROs may create new burdens, but every RRO must remove or reduce at least one burden. There is no need for the burdens removed to outweigh the new burdens created. However the new burdens must be proportionate, and the RRO as a whole must be desirable and fairly balanced."²⁴ In other words, the net effect of an RRO was

²² David Miers (1999), *The Deregulation Procedure: An Evaluation*, King-Hall Paper for The Hansard Society for Parliamentary Government, May.

<http://www.opsi.gov.uk/ACTS/en2001/01en06-d.htm>

²³ Review of the Regulatory Reform Act, 2001, Cabinet Office, 2005, p.11.

²⁴ *Ibid.*, p.22

envisaged as being allowed to increase the burden, with only the Minister deciding if it was desirable. Ministers were not required to justify these judgments.

The Cabinet Office concluded that the 2001 Act simply had not been implemented, which in the case of legal codes of practice was just as well, and cast around for reasons, or perhaps excuses, for the defective implementation²⁵.

By the end of 2005, 27 RROs (listed as Appendix A) had been developed which the Cabinet Office considered disappointing. Some of these were transient and reflected past practice, e.g. relaxation of pub opening hours for the New Year celebrations. These 27 compare with 63 deregulatory opportunities identified at the time the Act was passed²⁶ and one presumes the government could have identified a few more in the four years following.

One should note that in the same period that produced 27 RROs, the UK government created over 600 Regulatory Impact Assessments for new regulations.²⁷

The impetus did not increase in 2006: by October only two had been added. The first makes the registration of designs slightly easier, e.g. designers no longer have to show the design is novel. The second gives more powers and autonomy to the Forestry Commission. Both were more in the nature of revision rather than deregulation. Design registration comes under the Patent Office and is quite a popular service running at about 100 designs per month. It is far from obvious why either the Patent Office or the Forestry Commission need to be part of government. Rather than fiddling with detailed rules on, e.g., filing designs, both institutions could be privatised and made self-sustaining.

The failure of the 2001 Act was ascribed to convoluted processes (probably fair) and its limitation to deregulation. As can be seen above, the latter was hardly the case and it is ludicrous to suggest that deregulation cannot be achieved if one is limited to deregulation.

We are not suggesting that this ineffective implementation of deregulation legislation is deliberate. As noted above, governments and civil servants are programmed to regulate since that is what they do. The habit is so ingrained that their approach even to deregulation is still to achieve it by regulation. The question is how old regulators can learn new tricks.

2006 Deregulation initiatives

2006 saw a considerable increase in deregulatory interest and activity. The Cabinet Office section dealing with regulation, the Better Regulation Executive (BRE), was strengthened in both numbers and quality. Deregulation was more strongly emphasised as part of their role. The first part of the year saw the introduction of the Legislative and Regulatory Reform Bill. All departments have been required to publish their plans for simplifying regulation and a separate but overlapping exercise addresses the reduction in the administrative burdens associated with regulations, i.e. as distinct from the compliance and policy burdens.

It remains to be seen how much all this activity will actually yield in deregulation. Some indicators may be apparent in 2007 but it may be 2008 or 2009 before we know for certain.

Taking these activities in order:

²⁵ Review of the Regulatory Reform Act 2001, Cabinet Office, Better Regulation Executive, p6 and p42.

²⁶ Regulatory Reform: The Government's Action Plan, Cabinet Office, February 2002

²⁷ Tim Ambler, Francis Chittenden and Kapil Ahuja, "Regulators: Box Tickers or Burdens Busters?" British Chambers of Commerce, April 2006.

The Legislative and Regulatory Reform Act 2006

This has three intentions: deregulation, streamlining regulatory enforcement/compliance, and technical matters some of which deal with EU and UK legal interaction. Welcome as the second and third intentions are, this paper is only concerned with the first.

As noted above, the new Act was intended to improve implementation by increasing powers for Ministers, largely by moving authority from Parliament. This was to apply not just to deregulation but almost any (Treasury matters aside) new regulation. It took a few months for the penny to drop but, once it had, the government was forced to amend the Bill to reduce the extent of this power transfer but the confusion between new regulation and deregulation remains. In fairness to the government's position:

- Simplifying a regulation means revising it. Regulations are rarely simply repealed. Maybe they should be, but it is hard to distinguish a revision, which by its nature is a mix of old and new, from new regulation.
- Parliamentary time and attention is in short supply and can, on purely technical or procedural grounds, obstruct deregulation.

We do not find the second argument convincing. In our evidence to the House of Lords Merits of Statutory Instruments Committee²⁸ we showed that about 2,000 Statutory Instruments are, in effect, rubber stamped by both Houses each year. The House of Lords Committee does attempt to consider each of them, but the lower House does not even seem to give lip service to that, rather necessary, oversight. Few if any Statutory Instruments have been rejected by Parliament. The worst sanction has been to hold them up briefly for further consideration. Their Lordships appear to see their role as assisting, i.e. subservient to, government departments. They also seem to have very little time to consider each Statutory Instrument.

The net conclusion is that whilst primary legislation (requiring Acts of Parliament) may indeed be constraining for repealing or amending previous Acts, secondary legislation (Statutory Instruments) is no barrier at all. It seems to us that it would be perfectly simple to deal with all deregulatory activities through Statutory Instruments. Under existing procedures, either House could reject any deregulation that they considered required primary legislation. If Statutory Instruments were used only for substantive issues and a new category of "administrative orders" were introduced for temporary measures such as road closure orders this might provide the opportunity for the relevant parliamentary committees to pay more attention to important Statutory Instruments.

What is more peculiar is that the 2001 Act appears to duplicate the 1994 Act and that specifically appears to allow Statutory Instruments to be used to repeal and/or revise both primary and secondary legislation. We are not lawyers and may be misunderstanding the rules but, if our understanding is correct it would seem that neither the 2001 nor the 2006 Acts were needed. We have quizzed politicians on this point and simply been assured that the lawyers must have some reasons for the two later Acts. The doubt needs clarifying but it seems at least possible that politicians are hiding behind technicalities to excuse the failures of implementation.

In our opinion, the new Act is papering over the failure of the 2001 Act and is replacing one set of complications by another. When questions were asked, in summer 2005, whether government had reviewed the experience from previous initiatives before embarking on the new one, the answer was "no". The mission was to be seen to be doing something.

The deregulation intention of the 2006 Act gave rise to two main initiatives: specific examples of laws that could be removed or burdens lightened and reducing the admin burden based on external costings provided largely by PwC and KPMG. This latter approach is novel, but that does not necessarily mean it will succeed.

²⁸ Tim Ambler and Francis Chittenden (2006), *The Management of Secondary Legislation, Volume II: Evidence*, House of Lords Paper 149-II, 192-196.

Call for examples where Deregulation needed

The call for examples has always been where the system fell down in the past. As the Sainsbury documents testify, it is really very difficult to pick out from the complexity of modern business life those particular laws that could be removed without causing the rest to collapse. They all had some reason when they were created and some, often vague, "right" to protect. The whole system is the problem, not individual regulations. Those creating protective regulations, and the finance industry is a good example, have little recognition of the marketplace, brands and reputations and these are the best protectors of best practice.

Nevertheless valuable examples have been sent into the Cabinet Office and published by the IOD (two volumes)²⁹ and BCC³⁰. Obviously there is some overlap between these contributions. Business has arguably been more responsive than on previous occasions and many of the case studies seem obvious areas for action.

The Cabinet Office summary in January 2007 is worth quoting in its entirety:

*"The portal has received **155** proposals with at least an additional **318** received through other methods including email and direct correspondence. Proposals have been varied in their subject matter covering a wide cross section of regulation and a range of government departments and agencies.*

Broad areas of regulatory activity, as identified via the portal that might be simplified include:

Employment law

Pensions law

PAYE regulation

VAT regulation

Building Regulations

Animal Welfare

Health and Safety

*Of these proposals, at least **44** have so far been accepted and are being taken forward by departments. For example, in response to a simplification proposal through the portal, the Health and Safety Executive have committed to look at whether it can amend or remove the requirement to purchase and display an HSE approved poster and consider alternative ways of providing information to employees. This could provide more accessible methods of providing information and save businesses approximately £12m per year. This would particularly benefit business with multiple premises.*

The Department for Transport have committed to include amendments to legislation concerning bus lane registration in London and road use charging regulations. Car hire companies are currently unable to transfer liability for London bus lane penalty charge notices and London congestion charges. This is a key irritant for the industry. A fairer approach to liability could save the industry £8m per year."³¹

We do not yet know the outcome but it is certainly possible that déjà vu will prevail, namely that business will say they provided good and substantive examples but claim the civil servants frittered them away. On past form, government will cite the low volume and quality of responses as evidence that there is not really a deregulatory problem. Pragmatically we should recognise that these results are as good as this approach gets: one can be pleased with that success or look for another approach.

²⁹ In their own words: regulation case studies from IOD member, Institute of Directors, 2004.

In their own words, Volume 2: More regulation case studies, Institute of Directors, July 2006.

³⁰ Red Tape: The Real Story, British Chambers of Commerce, November 2006.

³¹ Cabinet Office email to Tim Ambler, 16 January 2007.

Reducing the admin burden through departmental simplification plans

A substantial effort is being put into measuring the administrative burdens including the use of consultants (costing £20M). The arrangements are set out in a paper published by the Cabinet Office.³² Once these costs have been established, the plan is that departments will commit to annual reductions year by year. In setting these targets, both existing and new regulations should be considered. Furthermore, new regulations should bear this strategy in mind.

As discussed above, the BRTF estimated³³ that regulation costs the country around £100bn. per annum and 30% - 40% was purported to be administrative costs, which includes paper work, bureaucracy, and red tape. Based on their analysis, the BRTF recommended that the UK should adopt the “Standard Cost Model” (SCM) process of measuring the administrative burdens of regulation and setting targets to reduce them. Whilst this approach could reduce administrative burdens in the UK, there is a risk that policy makers may be focused only on administrative costs and not the holistic costs of regulation, including the policy costs. However, the £833m of savings in policy costs identified as a by-product of the administrative burdens reduction exercise³⁴ are to be welcomed. One wonders how many more savings could have been found if policy costs had been included in the exercise.

PwC was contracted to calculate the admin costs for all Whitehall departments except HMRC. We understand that the total was about £32.5bn. and therefore about £38bn. if HMRC is taken into account.

Having aggressive targets (across the board reductions of 25%) on just the administrative costs may result in the transfer of additional burdens to policy costs. If targets are purely based on one aspect of an issue, officials may exercise power to creatively structure policies to fulfil their immediate targets, at the expense of elements that are not subject to monitoring. Thus it is essential to apply targets to overall objectives³⁵ (total regulatory costs in this case), if strategic objectives are to respond to targets and incentives. Inserting the “innovation” of reducing the reported administrative burden by “business as usual costs” that are determined by a panel of experts is just one example of creative policies that will blunt the effectiveness of initiatives that address only part of a larger problem and the £38bn of administrative costs have now been reduced to just £19bn³⁶ after excluding the Business as Usual Costs. Is there a sense of déjà vu here?

The SCM, as adopted in the UK, has provided a very high level estimation of the total Administrative Burdens resulting from regulations on business. However, because of the small sample sizes that are part of the SCM design, it will not be possible to interpret the figures as equivalent to the true cost of administrative burdens to UK business. Rather the resulting numbers form an “index” against which progress towards reducing the cost of administrative burdens can be gauged.

As a consequence the ability to judge progress will be dependant upon whether it is possible to objectively gauge the impact of changes to the administrative burdens that exist, as well as any additional admin costs resulting from new regulations. For example, where the need for an information obligation is removed, valuing the impact should be fairly straightforward because data on the cost of the obligation will have been measured and will comprise part of the overall “index”. However, in a more complex situation where, say, a number of information obligations are retained, but merged with one another to improve administrative efficiency, measuring the savings will be more difficult.

³² Administrative Burdens - Routes to Reduction, September 2006.

³³ *Regulation – Less is more*, Better Regulation Task Force, March 2005.

³⁴ Simplification Plans: A Summary, (2006) Better Regulation Executive, December.

³⁵ A.A. Atkinson, R.S. Kaplan and S.M. Young. (2004) *Management Accounting (International Edition)*, 4th Edition, Pearson Education.

³⁶ The BRE states that the costs amount to circa £14bn after BaU, Simplification plans: a summary, BRE December 2006. To this we have added £5bn based upon KPMG data collected for HMRC. The KPMG data did not include BaU.

Departments may use estimates based upon their own judgment, or those of an “expert panel”. However these estimates will inevitably be subject to inaccuracy. The department(s) involved will find it impossible to replicate the original study, because of the level of churn in the business population and the fact that sample sizes have been too small to be representative and cannot, therefore, be replicated. As a consequence the only way to realistically gauge the extent of improvement will be to survey another sample of businesses based upon the existing information requirement and then re-sample using the amended requirement and express the difference as a proportion or percentage that can then be applied to the original cost “index”. This is a potentially demanding process, especially if Ministers are keen to announce “progress”. In addition, there is a danger that the close attention given to those businesses that are involved in the re-sampling will render them unrepresentative of businesses in general, thus casting doubt on the results.

A better overall solution to measuring progress would be for government to establish a new large scale annual survey of administrative burdens in order to collect useful information that can be measured over time. There are several other studies of this kind that provide useful data for policy formation, e.g. the Family Resources Survey, the Annual Survey of Hours and Earnings. The National Audit Office is currently in the process of conducting the first of these surveys, with the objective of establishing the benchmark against which the progress made by departments can be objectively monitored. We welcome this response that resulted from an invitation for the NAO to monitor departmental simplification plans and the progress that they achieve against these³⁷ and to report their findings to Parliament. Even so it must be recognized that this process is fraught with potential difficulties and its’ effectiveness will be heavily dependent upon the skill with which the survey is executed.

However, it must be recognised that, although the SCM is being adopted by a number of countries, it is a relatively new approach. Evidence from Holland, the first country to adopt the model is encouraging, but as yet objective evidence of the impacts is limited. In Denmark the baseline measurement exercise has just been completed and in the UK the results of this exercise were published alongside the Chancellor’s Pre-Budget Statement on the 5th December 2006.

It is worth taking a closer look at two specific examples:

- the DTI simplification plan which represents 40% of the non-HMRC burden, is from a business friendly department and an enthusiast for the process.
- The DWP estimates of the admin burden inherent in the new pension rules, is an example of the difficulty that Departments will face in creating net reductions in regulatory burdens.

DTI

The DTI burdens reduction plan³⁸ quantifies the benchmark for the 25% reduction which the government has established and shows how that can be achieved. 87% of the burden lies in employment, consumer and company law. The gross administrative burden was reduced to exclude “Business As Usual” costs by consulting a panel of business experts about what business would do if the regulation was removed. The resulting net burden is shown as £5.3bn. and the current planned savings £700m., or 14%. The plan is reticent about the gross burden or how the reduction was justified. We know from other sources³⁹ that it was £13bn. and one can see how helpful it must have been to reduce the benchmark by 59%.

³⁷ Pre-Budget report 2005

³⁸ DTI Better Regulation Simplification Plan, December 2006, URN 06/1436

³⁹ DTI- ABME Phase 3 Report, 30th June 2006, page 14.

The legitimacy of this deduction seems open to challenge and should have been openly discussed in the plan:

- If business would do something anyway, and the compliance costs therefore discounted, then the regulation itself is redundant and should be repealed. If on the other hand, the regulation is required for compliance, then the costs should all be taken into account.
- "As Usual" assumes the status quo, namely the current regulated environment. One cannot speculate with any certainty what would have happened if the regulation had never been enacted. Yet this is the correct basis for comparison.
- As the Better Regulation Commission pointed out in their recent report⁴⁰, leaving regulations in place makes business less competitive by reducing incentives to act creatively in deciding the nature of the information to prepare and the way that this is assembled.
- It is true that removing a regulation will not necessarily result in changing business practices back, since it is the change that costs money. A major objection to new regulation is the cost of the administrative change. Changing back simply doubles this change cost. But it is not legitimate to use this systematic inertia to conclude that continuing a regulation has no cost. Business does make changes from time to time and would be able to take advantage of less regulation at a later date. Sustaining the "redundant" regulations will probably also have public sector costs, as the department periodically reviews and updates the regulation.
- Further, examination of the questionnaires⁴¹ that were approved by the Better Regulation Executive before being used by PwC, leads to the conclusion that some business as usual costs may have been included, but only at the margin. It is stretching the imagination to believe that (based on the DTI's claims) more than half of the time and external costs needed to provide the "information obligations" required by regulation relate to activities that business respondents would have undertaken anyway. In addition PwC discarded one third of the data collected, and "expert panels" contributed to evaluating more than a quarter of the information obligations⁴². Presumably responses judged to be unreliable were thereby excluded and expert panels did not fall into the trap of including business as usual costs? A more likely explanation of the DTI's reduction of the PwC results by more than 50% is that civil servants from a Department that, unlike HMRC, have not previously been subject to rigorous independent assessment of the compliance costs that they create for business were surprised by the scale of the results that PwC produced. Rather than losing face with colleagues and especially their EU counterparts they invented the "Business As Usual" device to scale back the results that they would have to publish.

The Plan outlines no fewer than 77 actions which should produce an £819m saving from which it deducts £115m new burdens since May 2005 to give the £704m noted above. The 77 actions include some sensible simplification but also some evidence that the DTI has been rather creative in its approach:

- 23 of the 77 actions had already taken place before the date of the plan.
- Some items had been included which have nothing to do with reducing admin costs, e.g. savings from reducing the utility consumer quangos, such as Postcomm, themselves introduced by the government; benefits to jobs from the EU Services Directive and changes in gas capacity.
- Some wishful thinking that if only more companies used the standard forms and information on government websites, costs would be eliminated. Under procurement, for example, the saving results from assuming five times more suppliers will use the Website. Providing employment, or redundancy, terms using the DTI standard form is assumed to make savings. This claimed saving is wrong in theory and practice. This support is available

⁴⁰ Risk, Responsibility and Regulation: whose risk is it anyway? Better Regulation Commission, October 2006.

⁴¹ DTI, Administrative Burdens Technical Summary, Appendices 1 and 2, p39 and p50, June 2006

⁴² DTI, Administrative Burdens Technical Summary, pp34 and 35, June 2006

now and is not a reduction in regulatory burden and if people do not use it, one can presume that it is perceived as more burdensome and more baffling than the alternative. It is stretching a point to claim that providing yet more “helpful” advice on regulations will reduce their burden.

- 47 of the 77 “administrative burdens reductions” have no, or negligible, predicted saving. Some are good intentions for exploration.

The Plan concludes with “(vii) Administrative burdens: top 10 obligations” shown below as Table 7 although the total is ours and we excluded the last column which has been covered in the discussion above.

Table 7: Top DTI Burdens

Regulation	Obligation	Burden (after BAU) £m
1. Employment Rights Act 1996	Providing statutory information for third parties	586
2. Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004	Returns and reports	172
3. Employment Rights Act 1996	Providing statutory information for third parties	142
4. Flexible Working (Procedural Requirements) Regulations 2002	Providing statutory information for third parties	137
5. Working Time Regulations 1998	Keeping records	124
6. Consumer Credit Act 1974	Providing statutory information for third parties	111
7. Conduct of Employment Agencies and Employment Businesses Regulations 2003	Providing statutory information for third parties	101
8. Weights and Measures (Packaged Goods) Regulations 1986	Statutory labelling for the third parties	96
9. Trading Schemes Regulations 1997	Keeping records	91
10. Copyright, Designs and Patents Act 1988	Providing statutory information for third parties	83
Total		1643

These “top” burdens only represent about one third of the total. It is noteworthy how much of this relates to “information for third parties”. One wonders how many third parties spend their time looking at all this information and how useful that is for anyone. Maybe productivity would immediately increase if the workforce did not engage itself in this way.

The whole exercise reminds us forcibly of the civil service approach to the 1994/6 initiative, déjà vu or death by a thousand cuts.

DWP

In December 2006 the DWP issued its latest White Paper on the proposed National Pension Scheme, based on Lord Turner’s report. The RIA published with the White Paper showed that DWP estimates⁴³ the ongoing

⁴³ Personal accounts: a new way to save, Regulatory Impact Assessment, DWP, December 2006

administrative costs to business as £95m per annum, an average cost of just £112 per business per year, i.e. less than £10 per month or just £9.50 per employee per year or 80 pence per employee per month

Based upon a careful analysis⁴⁴ of the administrative tasks that an employer will need to undertake in order to deduct and pay over contributions required by the Personal Accounts (PA) system⁴⁵, it is considered that the administrative cost to employers of operating the PA system will be very similar to the costs of operating PAYE⁴⁶ and these are well known.

The cost to employers of operating the PAYE system is about £1.3bn, equivalent to £920 per year for each employer, or £130 a year per employee, just over £10 per month. It is impossible to believe that these tasks can be done for 80p per employee per month, £10 per month is more realistic. A comparison with the recently published Admin Burdens data for the PAYE system also shows that the costs of collecting National Insurance Contributions, adjusted for the tasks required for the PA system would amount to £1bn.

The underestimation of costs by the DWP is a good example of the lack of understanding in government departments of the impact of regulation on business in general, and small firms in particular. The DWP's target saving under the ongoing Administrative Burdens reduction exercise is just £118m. Even if these are achieved the administration of the PA system will outweigh any savings to business and more than double the existing regulatory burden presently caused by the DWP⁴⁷. No net saving can be expected to result from the DWP, and this analysis ignores the very significant policy cost to employers of contributing to the Personal Accounts for their employees.

An inventory of approaches to Deregulation

This research has identified nine approaches to deregulation, some of which could be used together:

1. Follow the Dutch model to identify the admin (as distinct from compliance) cost of salient regulations and then progressively reduce admin burden. This is part of the present UK government approach and seems massively complex. Industries have to identify the costs, separate the compliance [policy] cost from the admin cost and then subtract what they would have had to spend if the regulation did not exist. This should reduce compliance costs but does not necessarily lead to removing regulations.
2. Invite those complaining to identify the most burdensome regulations and suggest solutions, i.e. put up or shut up. This is another other part of present UK government approach.
3. Require each government department to draw up simplification plans. This could involve actual deregulation or simply be an extension of (1) above. See comment on 6 below.
4. Consolidating associated laws and amendments which have grown over time to a single simplified and reduced set for each department/directorate. Present EU Commission proposal.
5. Put a terminal date (sunset clause) on all UK regulations not required by the EU, sector by sector, leaving the relevant department time to rescue what needs to be rescued, as used in New Zealand.

⁴⁴ Sloan B and Chittenden F (2006) Modelling the Incidence of Direct Taxation on SMEs: A Tool for Tax Policy Analysis, Key Note Paper presented to the 29th ISBE Conference, Cardiff, November.

⁴⁵ Chittenden, F and Sloan B (2006) Options for the Chancellor's Last Pre-Budget Statement?, Manchester Business School, December.

⁴⁶ Chittenden, F., Kauser, S., and Poutziouris, P (2005) PAYE-NIC Compliance Costs: Empirical Evidence From The UK SME Economy, International Small Business Journal, 23(6), 635-656.

⁴⁷ Department for Work and Pensions - Simplification Plan 2006-07, December 2006.

6. Set up taskforces of senior business people to identify redundant regulations. This was the John Major [1995] approach and the 2006 processes work out in much the same way. It is very time consuming and although it is too soon for conclusions on the current process, it seems likely that little real change will result.
7. Handpick senior civil servants to lead a de-regulation process. One clear lesson from the Thatcher era was that inviting business people into the intricacies of Whitehall can be expected to fail. Privatisation and downsizing the civil service only worked when the initiatives were led by experienced civil servants.
8. Introduce a system of regulatory budgets, i.e. maximum burden that can be placed on business, thus requiring deregulation to make budgetary space. This is similar to the one in one out system once proposed by Better Regulation Task Force, though they seem later to have discarded the idea.
9. Replace detailed regulations by statement of principles, i.e. closer to continental practice where EU directives are often just copied out. This leaves discretion with the compliance officials in the first place and therefore firms need to be able to appeal to the courts (or some independent mechanism).

The Dutch have made remarkable claims for the success of their accounting approach to reducing the administrative burdens. This is not, of course, deregulation per se but just a means of making compliance less expensive. One has to wonder about priorities here. Government and firms could be investing huge efforts to streamline regulations which should be abolished, not streamlined. Indeed, this can be seen as regulation protection rather than deregulation. The contrary argument is that business objects to the burden so if the burden is reduced the regulation is not a problem.

The problem of over-regulation is not just the administrative costs of compliance: it is government interference in the market, reducing competition and raising costs for consumers. The huge bureaucracies now involved have to be funded by someone. Inevitably it is the consumer cum taxpayer who foots the bill.

The last option could be seen as a shift from traditional English practice (compliance with the detailed wording) to continental practice (compliance with spirit or intention) but as the EU Court has been bringing the two systems closer and directives have become more precise, the gap is smaller than it was. One of the reasons Whitehall elaborates directives is pressure by large firms for clarity and certainty. They have large departments coping with regulations and, not unreasonably, want precision. But this tilts the effects of regulation still more in favour of large firms and against competition from small firms and new entrants. Elaboration makes it even more difficult for small firms to cope with the myriad regulations and paperwork for each one so they become even more dependent on the interpretation by compliance officials. It may be making the point too strongly but there is a trade-off between competition and complexity. Replacement of detail by principle seems attractive for all parties except large firms.

Perhaps the main success story of the 2001 Act was fire safety. By addressing the sector as a whole, about 50 pieces of legislation were reduced to one risk-based regime. It is possible the EU Commission could codify the vast number of *acquis* in this way, as they have said they intend to. That could accompany parallel reviews, sector by sector, for the UK since, in areas legislated by the EU, it is hard to understand why the UK needs additional legislation at all. It certainly reduces the UK's competitiveness relative to other EU members.

Recommendations for Deregulation in future

Since so much UK regulation is now EU in origin, and should be if one accepts the principle of the single market, we believe that an EU perspective should be taken in the first instance. The logical consequence of EU being a single market, is that the UK has a single set of commercial rules. Accordingly, it could be argued that, all UK commercial law beyond EU requirements are gold plate and can and should be removed. But there is no reason for any EU laws to be incapable of change, and it should now be easier to repeal any regulation that a quorum of member states wishes removed.

The positive signs from Brussels may be misleading but at least an attempt should be made to convert them to reality. Revised voting arrangements (majority voting) should, in time, make repeal of regulation easier.

Our recommendations, in brief, are:

- At the EU level: area by area to consolidate (codify) existing legislation, removing all directives and leaving the minimum number of regulations. Within that, the codification should also empower the removal of the consequentially redundant UK legislation.
- Where EU legislation does not prevail, consolidate (codify as for fire safety) minimum regulations leaning towards principles rather than particulars. Enforce by applying sunset clauses by sector to ensure the deregulation takes place within reasonable timeframes.
- Recognise that UK Statutory Instruments (SIs) provide the UK solution and are already invested with the authority to repeal and/or amend both primary and secondary legislation (1994 Act).
- Reserve SIs strictly for secondary regulation and deregulation, renaming the other 90% "Administrative Orders" with minimal Parliamentary scrutiny. The scrutiny for SIs should be increased with a single Joint Committee replacing the various existing committees.
- Return to the concept of a Cabinet Minister whose sole responsibility is codification and deregulation in EU and UK and who reports annually on plans and performance.
- Roll back the Business as Usual (BAU) exercise that has led to significant cuts in the admin burdens reductions targets. This is a classic example of civil servants watering down commitments made by Ministers. The original announcement by Gordon Brown⁴⁸ of a 25% reduction in administrative burdens without BAU should be re-affirmed.
- Use the BAU exercise as a springboard for removing every regulation where it has been found that business would meet the obligation in the absence of regulation, thus releasing the creativity and competitiveness of British business and freeing up civil servants to concentrate on matters of importance.
- Give the Administrative Burdens Reduction Exercise teeth by using the current Comprehensive Spending Review to link departmental funding to performance against simplification plan targets. The NAO is already collecting data on departmental performance in reducing the major administrative burdens, so independent and objective data will be available to monitor progress.

If it turns out that the EU is not cooperative, then much of the above would still be applicable and should form Plan B.

Conclusions

Perhaps the biggest single problem with new regulation, and the absence of deregulation, lies in the deep-seated confusion between making a policy decision and changes in reality. King Knut sought to demonstrate this over a millennium ago: issuing a new regulation to eliminate tides had very little impact on tidal flows. In much the same way, Whitehall is seized by the need to produce hundreds of new regulations each year which have no impact on reality beyond complicating and adding costs to business. It is amazing that we managed to do business all these years hitherto, without them. We know the vast majority are unnecessary and yet we cannot seem to find a way to do without them.

⁴⁸ Meeting the productivity challenge, Pre-Budget Report 2006, para. 3.40, page 48 available at http://www.hm-treasury.gov.uk/media/571/B7/pbr06_chapter3.pdf.

In 1994, 2001 and 2006 major deregulation legislation was enacted. All three Acts were much the same in intent and execution. The first two failed and there is already evidence that the third will do the same. Policy decisions do not necessarily change the real world. Yet politicians fail to recognise this and imagine, that if no change resulted, there must have been some flaw in the earlier Act. We understand that the 1994 Act which enabled Statutory Instruments to repeal or amend both primary and secondary legislation, therefore provided all the tools necessary for deregulation. Politicians when tackled with that told us that they supposed the lawyers must have had some reason for the later Acts. The fact that they do not appear to know is interesting⁴⁹ and the consequential déjà vu as each deregulation initiative repeats itself, leads us to the conclusion, perhaps unfairly, that proposing new legislation is simply a cover for incompetence.

Consciously or unconsciously, the civil service has traded on this for years. They are judged on lawmaking and statements of intent, not on results. Any business manager knows that there is the world of difference between planning and implementation. Large companies are closer to Whitehall in that catharsis can follow the final agreement of a long fought over plan, never mind what, if anything, then happens. Planning provides the illusion of progress.

The bottom line seems to be that any of the alternative methodologies noted above could work if only governments, both EU and UK, were sufficiently determined to make deregulation happen.

⁴⁹ The exchange between Barbara Roche and Richard Page which opened this paper, was extraordinary. New regulations affecting business arrive at roughly 300 per annum as that seems to be the limit of the regulation factory. Deregulations take place at a much smaller rate, 20 a year to be generous. So the notion that 10,000 new regulations have been introduced “over the past few years” and 3,000 removed, as both sides seemed to be the limit of the regulation factory. Deregulations take place at a much smaller rate, 20 a year to be generous. So the notion that 10,000 new regulations have been introduced “over the past few years” and 3,000 removed, as both sides seemed to have accepted, was fanciful.

Appendix A

Regulatory Reform Act 2001 achievements to date – Regulatory Reform Orders and benefits delivered

- *Special Occasion Licensing* – allowed pubs and clubs to open late on New Year's Eve 2001.
- *Voluntary Aided Schools* – clarifies whether a school governing body or local authority is responsible for carrying out building work on voluntary aided schools.
- *Golden Jubilee Licensing* – allowed pubs and clubs to open late over the Golden Jubilee.
- *Vaccine Damage Payments* – extends the scope of people who are allowed to claim such payments.
- *Invalid Care Allowance* – extends the scope of people who can claim this allowance, and the length of time for which this can be claimed.
- *Renewal of Private Sector Housing* – removed most of the restrictions on local authorities' powers to give assistance for home repair and allows them the alternative of offering loans.
- *Permanent Special Occasion Licensing* – allows pubs and clubs to stay open late for all future New Year's Eves, which is estimated to save the licensing industry £9 million per year.
- *Abolition of 20 Member Limit* – removed a law dating from the 19th century which restricted professional and other groups from forming partnerships of more than 20 people and is estimated to save about £10,000 per relevant partnership.
- *Credit Unions* – reduces some of the restrictions on credit unions' operational powers enabling them to develop their role as complementary providers of financial services with a strong community focus.
- *Housing Annuality (Rent Increases)* – amended the existing procedure for assured periodic tenancies by allowing landlords to set a fixed day for rent increases. The RRO reduces the administrative burdens on landlords and provides greater clarity for tenants.
- *Housing Management Delegation* – gave local authorities greater freedom to delegate housing arrangement functions without having to obtain the consent of the Secretary of State, allowing them more flexibility with housing management functions.
- *Housing Cash Incentive Schemes* – removed requirement for local authorities to seek annual Secretary of State approval for allocating grants to tenants to buy other properties privately, to free up existing council housing for other households in housing need.
- *Sugar Beet Research* – removes the burden from industry of seeking Ministerial approval of the annual sugar beet research programme.
- *British Waterways (BW)* – extended BW's existing powers to sell untreated water to enable it to treat water and engage in other water services and clarified limitations on BW's borrowing by a joint venture company in which it has a minority interest and is not a subsidiary.
- *Business Tenancies* – modernised and streamlined procedures for renewing or terminating business tenancies and is estimated to save businesses approximately £19 million a year.

- *Gaming Machines* – allows people to use banknotes and smart cards to play gaming machines. Players will benefit in the form of more choice and convenience and the industry will benefit through reduced maintenance and other costs.
- *Sunday Trading* – reduced the burdens imposed on large shops and local authorities by removing the notification and registration procedure for their Sunday opening hours. It also removed restrictions on the sale of methylated spirits on a Sunday.
- *Museum of London* – allows the Museum of London to exhibit in Greater London, and not just inner London. This has facilitated a merger with the Museum in Docklands.
- *Patents* – delivered reforms necessary to tie-in UK patent law with that of other countries contracted to the World Intellectual Property Organisation's Patent Law Treaty. The proposals also simplify security and public safety provisions of the UK law, and provide a uniform criterion for the signature of transactions of patents.
- *Welsh Ombudsman* – enables the Welsh Ombudsman to undertake investigations as Local Commissioner, and allows one person to take on these two roles along with the role of Health Service Commissioner for Wales.
- *Unsolicited Goods and Services* – reduced the administrative burden for directory publishers, by relaxing authorisation requirements when businesses decide to advertise in directories.
- *Prison Officer Strikes* – removed the regulations prohibiting prison staff from taking industrial action. A contractually binding agreement already existed, making this legislation unnecessary.
- *Trading Stamps* – repealed the Trading Stamps Act 1964. It updated and harmonised the legal framework which reduced compliance costs for retailers and scheme promoters, while maintaining necessary protection for consumers.
- *Joint Nature Conservation Committee (JNCC)* – simplified administrative procedures within the JNCC to remove constraints on it, e.g. to enable it to employ its own staff, receive monies direct from the Government and enter into contracts in its own name.
- *National Health Service (NHS) Charities* – removed an anomaly whereby NHS bodies are required to submit accounts to both the Charity Commission (under the 1993 Charities Act) and the Department of Health (under Section 98 of the 1977 NHS Act). Savings will accrue to the NHS charities through reductions in bureaucracy and the simplification of accounting and auditing requirements for smaller funds.
- *Fire Safety* – simplifies and rationalises existing fire safety legislation, which is spread over approximately 50 pieces of legislation. It has created one simple risk-based fire safety regime applying to all buildings that the public might use.
- *Deeds and Documents* – clarifies the law relating to execution of deeds and documents by and on behalf of companies and corporations. The measure removed a number of technical difficulties and inconsistencies, which existed in previous law. The reforms will benefit businesses and the voluntary sector by removing doubt and reducing the cost of legal advice.



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