



[www.taxpayersalliance.com](http://www.taxpayersalliance.com)

**EMBARGOED UNTIL 00.01 AM MONDAY 27<sup>th</sup> OCTOBER**

**RESEARCH NOTE 36**

## **BRUSSELS OR WHITEHALL: LOCATING THE SOURCE OF THE UK'S REGULATORY BURDEN**

With the UK economy entering a severe economic downturn, costs imposed on businesses are an increasingly large concern. The TaxPayers' Alliance (TPA) has frequently highlighted the growing burden and complexity of business taxes, but regulations also impose costs of around £150 billion a year on the UK economy, with thousands of new regulations being added to the statute book each year. These are costs that businesses struggling with the credit crunch can ill afford.

This new, comprehensive study of the sources of the UK's regulatory burden shows that blame cannot be laid at one door. Both the EU and Whitehall are at fault: the EU, quite simply, passes too many laws, and Whitehall civil servants too often make EU laws even longer.

The key findings of the report are:

- Between 1998 and 2007 the **EU added an average of 942 new laws each year; a total of 9,415.**
- **Last year 3,010 EU laws went onto the UK statute book.**
- There are **currently 16,980 EU acts in force.**
- **At least 770 pages of UK Statutory Instruments will be needed to enact the 76 Directives** passed by the EU in 2007. Assuming this as an average per year, then **EU directives alone have necessitated over 7,700 pages of UK law since 1997.**
- Despite the **enormous** amount of EU legislation, **UK gold-plating and poor enforcement practices exaggerate the burden of regulation.**



Ben Farrugia, a Policy Analyst at the TaxPayers' Alliance, said:

*"Regulations are an enormous burden to business, particularly in a time of financial hardship. The EU's addiction to regulating and Whitehall's compulsive gold-plating have added billions to business costs in recent years. Both the legislative process which has created this regulatory tangle and Britain's relationship with the EU needs a serious rethink."*

To arrange broadcast interviews, please contact:

**Susie Squire**

Campaign Manager, The TaxPayers' Alliance

[susie.squire@taxpayersalliance.com](mailto:susie.squire@taxpayersalliance.com); 07974 691 865

To discuss the research, please contact:

**Ben Farrugia**

Policy Analyst, The TaxPayers' Alliance

[ben.farrugia@taxpayersalliance.com](mailto:ben.farrugia@taxpayersalliance.com), 07980 589 905

## Introduction

The number of regulations in the UK has increased massively over recent years. More than 23,000 new regulations were added to the statute book between 1997 and 2003 alone – an average of nearly 15 per working day.<sup>1</sup> Health and safety requirements have doubled between 1980 and 2008, from 5,932 to 10,360.<sup>2</sup> From the production of a sandwich to the building of a new home, every aspect of economic activity now falls under the regulator's glare.

Each new regulation brings with it an additional burden to UK business; recent estimates put the cost of regulation at between 10 and 12 per cent of GDP – around £150 billion a year.<sup>3</sup> Such regulation is beginning to blunt the UK's competitive edge.

But what is driving the relentless rise in regulation? Conventional wisdom holds that the European Union is responsible; Tony Blair and Gordon Brown have both asserted that "half of all [...] new regulation comes from the EU", and the Open Europe think tank has suggested that over 70 per cent of UK law originates in Brussels.<sup>4</sup> Pro-EU groups, however, believe the source is Whitehall itself, highlighting the frequent elaboration and embellishment of EU law by British civil servants, adding unnecessary additional burdens to simple regulations.<sup>5</sup>

In fact the EU and Whitehall are both equally culpable. The EU over-legislates, and often drafts that law badly. In turn, UK governments use EU directives as vehicles for their own policy agendas, attaching numerous additional clauses and extending its scope (a practice known as 'gold-plating'). Differing cultures of compliance and enforcement between member states then translate minor regulatory differences into significant disparities in regulatory costs.

Assessing the current evidence, and through a detailed examination of specific examples, this paper concludes that gold-plating is a central feature of the EU-UK legislative process. But the real problem lies more in the differing levels of regulatory implementation and enforcement across the European Union than with gold-plating.

---

<sup>1</sup> Tate, John & Clark, Greg (2005), 'Reversing the Drivers of Regulation: The European Union', *Policy Unit, Conservative Research Department*, p.17

<sup>2</sup> Barbour Index

<sup>3</sup> Sir David Arculus, 4 July 2005, Speech to the Financial Services Authority. Cost based on 2008-09 GDP.

<sup>4</sup> Speeches to CBI conference, 2006 – <http://news.bbc.co.uk/1/hi/business/6189220.stm>; Open Europe (2005), *Less Regulation: 4 ways to cut the burden of EU red tape*, p.9

<sup>5</sup> Stephen, David (2004), 'Regulation by Brussels? The Myths and The Challenges', *European Movement Policy Paper 2*

## 1. Regulation in the UK

Any regulation entails a cost. Compliance demands that businesses familiarise themselves with the legislation, keep records and undertake inspections. Additionally, regulation can limit opportunities and require businesses to hire new staff or buy new equipment. The British Chambers of Commerce estimates that major business regulations passed since 1998 have cost UK business just under £66 billion, a calculation based on the Government's own Regulatory Impact Assessments.<sup>6</sup>

There is also a cost to the taxpayer too. The 62 national regulators identified in the Hampton Review of 2005 cost over £3.2 billion in 2004, while local authorities spent just under £1 billion carrying out regulatory functions.<sup>7</sup>

The total cost of regulation in the UK is unclear, but Sir David Arculus – former head of the Government's Better Regulation Commission – suggested in 2005 that it lay somewhere between 10 and 12 per cent of annual GDP, or around £150 billion, roughly equivalent to the yield from income tax.<sup>8</sup> This suggests that the UK's regulatory regime has now become too large, potentially blunting the economy's competitive edge.

The OECD's indicators of product market regulation confirm this assertion. While almost all European countries have cut red tape since 1998, the UK has been considerably less proactive. Its use of 'command and control regulation' has actually increased, pulling it from 9<sup>th</sup> to 21<sup>st</sup> in the OECD rankings of its 30 members, alongside ex-communist countries such as Hungary and the Czech Republic. In its 'general involvement in business operation' the UK has slipped from 6<sup>th</sup> in 1998 to 14<sup>th</sup> in 2003, being overtaken by both Germany and the Netherlands.

While the UK in 2003 remained the least regulated economy in the EU, Denmark, Sweden and Finland were close behind; if the pre-2003 trend continued up until today, all three would now be less regulated economies than the UK. Competitors have closed the regulatory gap, eliminating the advantage UK business long enjoyed.<sup>9</sup>

---

<sup>6</sup> British Chambers of Commerce (2008), *Burdens Barometer 2008*

<sup>7</sup> Philip Hampton (2005) 'Reducing administrative burdens: effective inspection and enforcement', *HM Treasury*, p. 14

<sup>8</sup> Sir David Arculus, 4 July 2005, Speech to the Financial Services Authority. Cost based on 2008-09 GDP. Income tax revenue taken from HM Treasury, Budget 2008, Table C6.

<sup>9</sup> Sheey, John (2006), 'Regulation in the UK: is it getting too heavy?', *ECFIN County Focus* Vol. 3, Issue 7, pp.5

## 2. Tied down by red tape

So why has the UK fallen from its enviable position as the rich world's least regulated economy? In part it is a victim of its own success; the economic progress fostered by the UK's deregulation encouraged others to do the same, and the OECD figures reflect the fact that developed economies are now working towards a regulatory position the UK had attained by 1998.

This is little consolation to UK business though. While rival European economies are becoming less regulated, the UK appears stuck in the mud, with new regulations adding £66 billion onto business costs in the last decade alone.<sup>10</sup>

The cause of the UK's regulatory burden is twofold.

### 2.1 The European Union

A joint paper signed by the French, German and UK governments suggests that approximately half of all new regulations affecting businesses originate in the EU, a figure backed up by both the OECD and House of Commons Library.<sup>11</sup> Gunter Verheugen, the EU's Enterprise Commissioner, told the Financial Times in 2006 that the cost of EU law to European business is £405 billion a year.<sup>12</sup> Open Europe estimates that 77 per cent of the major regulations passed in the UK since 1998 were wholly or partly driven by EU law.<sup>13</sup>

As the table below shows, the past decade has seen hundreds of European legislative instruments added to the UK statute book; a net increase of 9,415 since 1998.

Table 1: EU legislative instruments enacted into UK law

Year	Total EU legislative instruments enacted	Total repealed instruments	Net increase
1998	1,085	1,408	-323
1999	1,740	1,401	+339
2000	1,450	1,027	+423
2001	1,496	285	+1,211
2002	1,626	833	+793
2003	1,557	615	+942
2004	1,477	750	+727
2005	1,534	560	+974
2006	3,255	943	+2,312
2007	3,010	993	+2,017
<b>Total</b>	<b>18,230</b>	<b>8,815</b>	<b>+9,415</b>

<sup>10</sup> British Chambers of Commerce (2008), Burdens Barometer 2008

<sup>11</sup> Vaughne Miller (2007), EU Legislation, House of Commons Library Standard Note, SN/IA/2888

<sup>12</sup> Financial Times (October 10, 2006) 'Uphill Battle Against Brussels Bureaucracy'

<sup>13</sup> Open Europe (2005), Less Regulation: 4 ways to cut the burden of EU red tape, p.9

The total bulk of active EU law now stretches to over 170,000 pages and comes in three main forms.<sup>14</sup>

- **Decisions** are the least significant, constituting a very small percentage of the total and often addressed towards specific members.
- **Regulations** make up the bulk of EU law, with 1,564 being passed in 2007 alone. These become UK law automatically, without the need for members to translate into national law.
- **Directives** – 76 of which were adopted by the EU in 2007. These require members to transpose them into national law, making them the ideal vehicle for any potential gold-plating.

The financial cost of EU regulation – and EU derived regulations – vary from one to three per cent of UK GDP.<sup>15</sup> Taking a middle point of two per cent (similar to Dutch and Danish estimates of their EU burden), this implies a burden of around £30 billion in 2007-08.<sup>16</sup>

However the process of 'transposing' EU directives into UK law makes it difficult to reach firm estimates of the cost of EU regulation. Each member interprets the directive differently, allowing for elaboration and embellishment (gold-plating). Denis MacShane MP, providing substance to the belief that the UK's regulatory problem is home-grown, commissioned research which revealed that only 9 per cent of statutory instruments (SIs) implemented in the UK since 1998 were the result of EU legislation.<sup>17</sup> Even when this methodology was refined to take account of the fact that most SIs deal with local road and highway issues, only 15 per cent of those passed between 1987 and 1997 had a link to European law, implying that the burden from the EU was significantly less than people assumed.<sup>18</sup>

As Open Europe rightly pointed out though, "this measure adds little to the debate on regulatory burdens."<sup>19</sup> Simply counting statutory instruments – with no sense of their relative importance – is not an illuminating measure, unable as it is to account for the actual burden particular regulations impose.

No entirely satisfactory measure has been developed that can provide a firm answer to 'how much UK regulation comes from the EU'. Open Europe's use of targeted parliamentary questions yielded the fact that many of the most burdensome regulations originate in the EU,<sup>20</sup> but it remains unclear if the burden is actually from the EU or rather from Whitehall's tendency to elaborate and over-enforce EU laws.

---

<sup>14</sup> Open Europe, Just how big is the aqis communataire?, Briefing note, January 2007, p.1

<sup>15</sup> Milne, Ian (2004) A Cost Too Far, Civitas, pp. 6-9

<sup>16</sup> 2008-09 GDP used

<sup>17</sup> Vaughne Miller (2007), EU Legislation, House of Commons Library Standard Note, SN/IA/2888

<sup>18</sup> Edward Page (1998), The Impact of European Legislation on British Public Policy Making, Public Administration Vol 76, pp. 803-809

<sup>19</sup> Open Europe (2005), Less Regulation: 4 ways to cut the burden of EU red tape, p.8

<sup>20</sup> Ibid.

## 2.2 UK gold-plating

Since joining the EEC in 1973, Whitehall and the UK government have consistently 'gold-plated' EU legislation during its transposition into national law, making regulations more burdensome than the EU intended them to be.

Gold-plating involves over-implementing an EU directive, going beyond the minimum necessary to comply with the requirements of European legislation by:

- Extending the scope, adding in some way to the substantive requirement or substituting wider UK legal terms for those used in the directive; or
- Not taking full advantage of any derogations which keep requirements to a minimum; or
- Providing sanctions, enforcement mechanisms and matters such as burden of proof which go beyond the minimum needed; or
- Implementing early, before the date given in the directive.

The issue has attracted considerable attention over the last decade. Pro-EU groups seize upon it as proof that the "real story is not over-regulation from Brussels", but rather "the use made by the British Executive of the legislative powers it gained from Parliament in 1972".<sup>21</sup> But as with ascertaining how much UK law originates in Europe, working out the exact extent of gold-plating has proved surprisingly difficult.

Early studies deployed simple but illustrative techniques, such as comparing the number of legislative instruments in an EU directive with the number of relevant UK statutory instruments (SIs), or considering differences in page lengths.

For instance, the 76 Directives passed in 2007 run over 746 pages. If the 39 Directives already transposed into UK law required 255 pages to enact, we can estimate that EU directives in 2007 will add over 770 pages to the UK statute book. Assuming this as an average per year, then EU directives alone have necessitated over 7,700 pages of UK law since 1997.

This method does not identify gold-plating however. At best it indicates where gold-plating may occur. Aware of this limitation, recent research has tried to develop more complex methodologies. Three studies in particular deserve mention.

A British Chambers of Commerce report from 2004, *How Much Regulation is Gold Plate?* built on the idea of comparing page numbers, but instead

---

<sup>21</sup> Stephen, D (2004) Regulation by Brussels: The Myths and the Challenges, European Movement Policy Paper 2, pp.3

considered differences in word counts, establishing an average 'transposition ratio' for four large member states.<sup>22</sup>

Their analysis revealed that the average UK relative elaboration ratio over 100 directives (passed from 1998-2002) was 3.3, or 334 per cent; "i.e. the UK adds two and one third as much verbiage, and perhaps regulation, as it needs to".<sup>23</sup> This compares to a ratio of 3.1 for Germany, and just 0.93 for France.

However, as the authors themselves admit, this method still only identifies elaboration, not gold-plating: "A comparison of transposition ratios does not take into account whether or not the elaboration of EU law actually increases, reduces or has no impact on the regulatory burden."<sup>24</sup> Longer transposing measures do not necessarily equate to an additional regulatory burden. It does increase the chances, but due to the vagueness of much EU law, longer may mean more precise. UK law may also include provisions relating to the devolved administrations, which would either increase the number or length of implementing documents.

The only robust way to identify gold-plating is a detailed analysis of each individual directive and its UK implementing instrument. Two reports attempted to do this in 2006, the first from the Federation of Small Businesses (FSB) and Foreign Policy Centre, the next from the Government's Davidson Review.

The FSB paper – *Burdened by Brussels or the UK? Improving the Implementation of EU Directives* – looked at the eight 'most burdensome' regulations in the UK (as voted by the FSB's members). The report concluded that "there can be no doubt that there are a number of cases where Whitehall has extended the scope of the original directive".<sup>25</sup> However it noted that where over-implementation occurred it could have been because it fitted better with UK government priorities. It also appeared that the burden often arose out of a lack of regulatory clarity rather than from elaboration and extension.<sup>26</sup> It did note, however, that it was perhaps issues of enforcement that were the real problem; over-stringent inspections and reporting requirements arguably make the UK less competitive.

The Davidson Review came to very similar conclusions. Acknowledging that examples of over-implementation existed, it stressed that the policy background behind implementation – in addition to its enforcement on the ground – had to be considered before a judgement on gold-plating could be

---

<sup>22</sup> Ambler. T, Chittenden. F & Obodovski. Mikhail (2004) 'How Much Regulation is Gold Plate? A Study of UK Elaboration of EU Directives', *British Chambers of Commerce*

<sup>23</sup> Ibid. p.18

<sup>24</sup> Thomas. R & Lynch-Wood. G (2008), 'Transposing European Union Law in the United Kingdom: Administrative Rule Making, Scrutiny and Better Regulation, *European Public Law*, Vol 14 : 2

<sup>25</sup> Schaefer. S & Young. E (2006), 'Burdened by Brussels or the UK? Improving the Implementation of EU Directives', Foreign Policy Centre and the Federation of Small Businesses

<sup>26</sup> Ibid. p.46



made.<sup>27</sup> It suggested that gold-plating was not as common as many assumed and that accusations more often reflected dissatisfaction with the regulation itself.

Critically, the review also noted that what matters for many businesses is differential implementation across the EU, rather than over-implementation.<sup>28</sup> Little academic research has been carried out into the differing levels of enforcement, but anecdotal evidence strongly suggests that Britain is one of the most stringent enforcers.

---

<sup>27</sup> Davidson Review (2006), Final Report: Implementation of EU Legislation, p.13-15

<sup>28</sup> Ibid.

### 3. UK regulation in focus: gold-plated and over-enforced

As the BCC, FSB and Davidson reports concluded, the only viable way to measure gold-plating is to scrutinise in detail particular UK regulations. We have selected three recent laws to explore in greater depth, each of which has had a significant impact on the general public and business. We find that in each case stringent EU directives have been made worse by substantial UK gold plating and poor enforcement.

#### 3.1 Home Information Packs (HIPs)

Introduced to implement Directive 2002/91/EC on the energy performance of buildings, HIPs require all UK home sellers to provide (among other things) an energy performance certificate for the property.

The original directive totals 7 pages. The section of the 2004 Housing Act that specifically transposed the directive stretched to 15. Since then the regulations have been adapted and amended, once in 2006 and twice in 2007.

Just on a general level, the very notion of Home Information Packs goes considerably further than the minimum standards set out in the original EU directive, which called only for an energy certificate. Focusing simply upon the energy certificate itself though, the UK law still goes significantly beyond what is required; while the directive demands that a certificate be produced every 10 years, in the UK a new one has to be made with every sale. There is no requirement for the establishment of a central government register of all energy certificates, nor stringent fines for non-compliance, but both are aspects of the UK regulation.

Due to the burden this directive has imposed on all member states, implementation across the EU has been patchy. The UK, however, is one of the few to transpose ahead of schedule, and with some of the most burdensome additions. But the lack of effective enforcement measures and the failure of the government to train enough inspectors means that the regulations are unlikely to have the desired impact. HIPs will entail a huge cost without realising any of the promised benefits.

The necessity of the original directive is questionable, UK transposition saw it unnecessarily gold-plated (adding to the burden) and poor enforcement has negated the benefits – a common pattern in the UK's regulatory process.

### 3.2 Landfill Regulations

Requiring 39 pages to transpose the 19 pages of EU Directive 1999/31/EC, the UK Landfill Regulations of 2002 are now a classic example of gold-plating. By increasing the categories for defining waste, setting strict rules for the monitoring of landfill sites and establishing timetables for reporting, the burden of these regulations far extends beyond what was mandated by the EU.

The burden of the original directive was considerable, obliging the UK to reduce the amount of landfill waste by 25 per cent by 2010, a 50 per cent cut by 2013 and 65 per cent reduction by 2020.<sup>29</sup> These targets are backed up with the threat of considerable fines. But where the EU directive sets out no specific rules for reporting, UK operators must report annually to the Environment Agency (Britain's largest regulator) and the public are liable to prosecution even if they *give* their waste to a person not registered with them as a 'waste carrier'.

Implementation of the directive was also predictably over-eager; in 2003 the UK was the only member state to notify the Commission that it was successfully implementing all aspects of the directive. By 2005 the UK was one of only two member states making use of all the provisions.

But the regulations have had implications for general public, too. In order to avoid fines from the Environment Agency, many local authorities are now limiting household rubbish collection to once a fortnight, and are planning even more intrusive measures to limit their liability, such as microchips in bins and council snoopers. The directive, the gold-plated regulation and its onerous enforcement have imposed a huge cost on business and reduced the quality of public services.

### 3.3 Motorcycle Tests

Efforts to harmonise road standards across the EU led to the 2000/56/EC directive on driving licences. Implementation of this 13 page document was unusually slow for the UK, eventually being transposed into the 18 page Motor Vehicles (Driving Licences) Regulations of 2003. The new regulations have caused consternation within the motorcycle licensing industry.

While the directive lays out strict new rules itself, the UK law imposes the toughest test levels possible. However the most costly aspect has arisen out of the poor communication between the Driving Standards Agency (DSA) and the EU Commission.

The directive requires riders to perform certain manoeuvres at 31.5 miles an hour, above the average speed limit on local roads. Consequently, 62 test centres are to be built across the country to accommodate the new test,

---

<sup>29</sup> Open Europe (2008), The EU and You: How the EU affects everyday life in the UK, p.4



entailing a huge cost to the taxpayer, as it is the taxpayer funded Driving Standards Agency which will be footing the bill.<sup>30</sup> Moreover, as the UK already has among the most stringent road safety laws in the EU, the new regulations add little but an administrative cost. The Motorcycle Industry Association has expressed concern that the only outcome of the changes will be to force up the price of training and licences, and thus deter possible candidates.

---

<sup>30</sup> [www.dsa.gov.uk/Category.asp?cat=405](http://www.dsa.gov.uk/Category.asp?cat=405)

## 4. Alleviating the burden

Any long term solution to the UK's excessive regulatory burden must fundamentally address the relationship between Brussels and Whitehall. But local options exist which might redress the worst excesses of the current system, alleviating the burden on British businesses.

### 4.1 A European Union (Transparency) Bill

On 8<sup>th</sup> October 2008, amid the chaos of the global banking crisis, Labour whips successfully prevented the passing of the European Union (Transparency) Bill put forward by Conservative MP Mark Harper.<sup>31</sup>

This Bill would have required Ministers to state explicitly whether legislation being brought forward was in response to an EU decision, regulation or directive.<sup>32</sup>

Such a measure would make clear which – and how much – legislation comes from the EU, ending the confusion over where particular legislation has originated and enabling more informed debate. It would also introduce a new degree of openness into an overly opaque legislative system. The Bill should be reintroduced and enacted as soon as possible.

### 4.2 Regulatory sunset clauses

'Post-implementation' reviews of regulations are too infrequent and poorly executed. An increased use of 'sunset clauses' – a legal instrument which requires legislation to lapse after a specified period – would force governments to constantly assess and justify the burden of regulation.<sup>33</sup>

At the end of the prescribed life of a regulation, the presumption should be to abolish it unless a firm case can be stated for its continuation. At very least sunset clauses would provide opportunities for improvements to be made to the legislation.

The Government's own Better Regulation Task Force itself recommended the increased use of sunset clauses in 2005.<sup>34</sup>

---

<sup>31</sup> The Bill was defeated 202 votes to 169, a government majority of only 33.

<sup>32</sup> Taken from the website of Mark Harper MP - <http://www.markharper.org.uk/record.jsp?type=news&ID=152>

<sup>33</sup> Better Regulation Task Force (2005), Regulation – Less is More, p. 45

<sup>34</sup> *ibid*

### 4.3 A real European Union Scrutiny Committee

Parliamentary scrutiny of the EU is seriously lacking in Britain. MP's have no power to affect the actions of the European Commission or UK Government when in Brussels. The existing House of Commons European Scrutiny Committee is relatively weak in comparison to similar committees in Europe and needs to be strengthened.<sup>35</sup>

Lessons should be learnt from Denmark, where a powerful EU scrutiny committee – the *Europaudvalget* – considers all proposals for legislative acts put forward by the EU Commission, regardless of subject. The Danish PM is also required to report to the Committee, in person, prior to and after participating in any EU Council or conference.<sup>36</sup>

The interests of Danish citizens and taxpayers are thus well represented by their Parliament, and excessive regulation is prevented before it can become law. The Danish government's activities in the EU are monitored and circumscribed, unlike in the UK, where the government acts without restriction. The British Parliament should follow Denmark's lead and establish a robust scrutiny committee, capable of holding ministers to account for their activities in Brussels and responsible for assessing whether proposed EU law is in the interests of the UK.

---

<sup>35</sup> Open Europe (2006), 'Getting a grip: Reforming EU scrutiny at Westminster', p.19

<sup>36</sup> House of Lords European Select Committee (2002), 'European Union: Scrutiny', *First Report*, Appendix 4