



# slaying the red tape myths

Debunking the employers' 'red tape' claims

## **'Red tape' is strangling business - reality or myth?**

Hardly a day goes by without some media story about the growing burden of 'red tape' and how this is strangling business and threatening the UK's economic position.

The source of most of these stories are the employers' organisations like the CBI, the British Chambers of Commerce and the Institute of Directors. They claim that their members are worried about the growth of legal regulation in the UK.

The president of the CBI told their 2004 annual conference that the UK was an "over-protected, over-regulated society"<sup>1</sup>, whilst a CBI report claims that 'red tape' has increased since 2000, with businesses citing it as a major obstacle to growth<sup>2</sup>. The Institute of Directors claim that employment law in particular is stifling business<sup>3</sup>.

According to the British Chamber of Commerce 'business burdens barometer' the Government has introduced £50 billion worth of extra red tape since 1997<sup>4</sup>. This would be a very worrying claim if it were proved to be true. However, a separate estimation by the Forum of Private Business put the figure at £17 billion - just over a third of the BCC estimate. In fact, both of these estimates have turned out to be gross exaggerations.

Nobody is in favour of sloppy, inefficient or unnecessarily complicated legislation. Where such problems can be identified they should be dealt with quickly. But complaints of red tape are rarely about the detail of specific legislation, instead they are a whinge about regulation in general.

This is because some employers' organisations promote the myth of a 'red tape' crisis to try to dissuade the government from improving minimum standards for people at work, consumer rights and safety; decent business ethics, and protection for the environment and safety. The anti-'red tape' campaign is, in fact, just a campaign for weaker laws concealed by PR spin.

This is revealed by those who attack 'red tape' deliberately confusing the costs of administering new rules and the costs and benefits of actually implementing the measures.

Take the minimum wage as an example. Administering the minimum wage costs very little. Some employers will have to pay their workers more, but that is the intention of the law and can hardly be classed as red tape. The minimum wage brings benefits to low paid workers, to taxpayers in general because the cost of in-work benefits is reduced, and to employers themselves because the morale of their workforce is increased. Other measures also have beneficial labour supply effects, such as the right to paid holidays set by the Working Time Regulations.

This report examines employer 'red tape' claims and finds them wanting. There is no clear link between regulation and the strength of the economy, jobs and productivity. Therefore it is both desirable and possible to protect people properly *and* to have a successful economy. In short, employer red tape rhetoric is bogus.

- **Myth - Regulation will make the UK uncompetitive and will harm jobs**

Since 1997, the Labour Government has introduced a new set of minimum employment standards. These include the National Minimum Wage and the right to four weeks paid annual leave in the Working Time Regulations, stronger protection against unfair dismissal and maternity and paternity rights.

At the same time as these new rights were being introduced, employment levels in the UK rose sharply. Between 1997 and 2005 the total number of employee jobs increased by 2.1 million (9.6 per cent)<sup>5</sup>.

Crucially, the number of jobs in some of the industries with a high concentration of low paid workers has also increased as the UK labour market has become more regulated.

**Table 1: Growth industries with a high concentration of low pay**

<i>Industry</i>	<i>Autumn 1997</i>	<i>Autumn 2005</i>	<i>change (+ per cent)</i>
Retail	2,358,000	2,715,000	+357,000 (+15.1%)
Investigation and security services	99,000	144,000	+45,000 (+45.4%)
Hairdressing and other beauty treatments	99,000	124,000	+25,000 (+25.2%)

Source: ONS Labour Force Survey Microdata Service

The table above shows that the number of jobs in some sectors associated with low pay has actually increased since 1997. This is strong evidence against the 'red tape' theory.

Neither have the new regulations made business unprofitable. In fact, the average net rate of profit for UK companies is now 13.5 per cent<sup>6</sup>, which compares favourably with the 9.6 per cent return that companies earned in 1992.

Although official statistics are now a little dated, UK profitability is high by international standards. In 1999 net rates of return to UK corporations exceeded those in the US, Germany, Japan and the Netherlands.

Nor has regulation blunted the UK's entrepreneurial culture. The number of VAT registered businesses increased by 190,000 between 1997 and 2005<sup>7</sup>. This 11.7 per cent increase took the total number of UK businesses up to 1,820,000.

Clearly the UK economy is not the overregulated disaster area that some employer's bodies make out.

- **Myth - the UK is too heavily regulated compared with other economies**

In fact, according to the authoritative Organisation for Economic Cooperation and Development, the UK is still quite lightly regulated. The most recent assessment of the UK economy by the OECD confirms the positive picture:

*“Over the last decade macro-economic performance has been impressive: GDP growth has been robust and cyclical fluctuations in output have proved smaller than for almost any other OECD economy; whilst inflation has remained close to target. This performance is a testament to the strength of the institutional arrangements for setting monetary and fiscal policy as well as to the flexibility of labour and product markets.” (OECD Economic Surveys, UK, November 2005).*

As the OECD assessment points out, the UK has by international standards very flexible product and labour markets. The OECD survey went on to say:

*“The UK is among the leading economies in the OECD in terms of liberal product market regulation and ranks highly in most aspects of labour market flexibility. Recent OECD work that constructed a composite policy indicator of flexibility ranked the UK the highest among all OECD economies”.*

The OECD has developed measures of the administrative burdens on business and whether regulation is more or less strict. The UK ranks lower than virtually any other OECD economy on all the indicators. These include the administrative burden on corporations, on sole proprietors, and on start-ups, and sector specific administrative requirements. Details of the indicators for 2003 are given in the tables below that compare the UK against the other major industrialised economies in the OECD (G7).

**Table 2: Administrative burdens compared across the G7 economies**

2003		OECD administrative burdens index (6=most burdensome, 0 = least)					
Corporations		Sole proprietors		Sectoral		Start-ups	
Italy	2.8	Italy	2.8	Japan	2.3	Italy	2.4
Germany	2.3	Germany	2.3	Italy	2.1	Japan	1.9
France	2.0	Japan	2.3	France	1.6	France	1.9
Japan	1.5	France	2.0	Germany	1.4	Germany	1.6
US	0.8	US	1.3	US	1.0	US	1.0
Canada	0.8	Canada	1.3	Canada	0.9	Canada	0.9
<b>UK</b>	<b>0.8</b>	<b>UK</b>	<b>0.5</b>	<b>UK</b>	<b>0.6</b>	<b>UK</b>	<b>0.7</b>

Source: *Product Market Regulation in OECD Countries*, OECD Working Paper no 419, April 2005.

Furthermore, there is no clear relationship between a country's regulatory regime and their productivity record. Successful, high productivity businesses take the 'high road' rather than just trying to be as cheap as possible. Such businesses do not spend their time campaigning against decent standards of regulation, but welcome them because they prevent them being undercut by 'cowboys'. This is hard to explain if lack of regulation were the main route to labour market success.

Table 3 below shows how the labour productivity of the major European Union countries, the US and Japan have moved since 1997 in comparison with the EU - 15 average. Some countries with very strong labour standards and a high degree of regulation have continued to improve their position.

The position of the UK is a matter of particular interest. We have enjoyed a raft of new workers rights since 1997, but our productivity position relative to the EU as a whole has improved.

**Table 3: labour productivity per hour worked**

Country	Productivity per hour 1997	Productivity per hour 2003	Change against EU 15 average
Norway	121.4	139.7	+18.3
Belgium	120.5	122.9	+2.4
France	111.3	114.8	+3.5
Ireland	100.9	114.8	+3.9
USA	105.3	110.5	+5.2
Germany	104.3	103.2	-1.1
Sweden	95.2	98.1	+2.9
Denmark	99.9	97.9	-2.0
UK	87.3	94.1	+6.8
Japan	74.2	75.8	+1.3
EU-15	100.0	100.0	-

Source: Eurostat (latest figures available for all countries 2003). Purchasing Power Parity Measure EU-15 Labour Productivity = 100

- **Myth - employers are more worried about red tape than anything else**

Listening to the employers' chorus of complaints about 'red tape' you would be forgiven for thinking that there are thousands of unnecessary regulations in the UK. Indeed, one employers' organisation has called for a 'bonfire of regulations'.

Yet when asked to identify bad or useless regulations the employers have had great difficulty in identifying suitable candidates for the chop. A recent Government Consultation by the Better Regulation Executive drew less than 100 responses, whilst an exercise carried out by the British Chambers of Commerce, a leading campaigner against 'red tape', resulted in fewer than 30 responses<sup>8</sup>. As the BCC has 135,000 member businesses, this represents a response rate of 0.02 per cent.

Government research<sup>9</sup> suggests that the methodology used for employer organisations surveys is flawed; in they are most likely to be answered by a group of small business employers who are over-pessimistic about regulation.

When the Government conducted a robust survey with a properly controlled sample of small businesses it produced a strikingly different result. 1 in 6 small business owners were concerned about new employment rights. However, twice as many (1 in 3) thought that new employment rights had helped their businesses, 1 in 5 said that they had set standards for them to follow and 1 in 10 said that they had raised staff morale.

- **Myth - All employment law is 'red tape'**

Some employers' organisations still oppose decent rights for working people, such as the national minimum wage and the right to paid annual holidays. However, they realise that such views are very unpopular; therefore they prefer to talk about

'red tape' in general since this lets them off the hook of having to specify the employment rights they actually want to do away with.

However, it is simply wrong to conflate the costs of introducing and administering a particular law with the costs of the benefits that it brings. For example, the single biggest item in the British Chamber of Commerce mythical £50 billion of red tape is their claim that the Working Time Regulations have cost the UK £15.9 billion. The major impact of the UK regulations so far has been to give low paid workers paid holidays - it would be both inaccurate and churlish to call this 'red tape'

In fact, the original risk assessment that this figure was based on was subsequently withdrawn by the DTI. However, the biggest single part of the predicted cost of the Working Time Regulations was the right to four weeks paid annual leave. This right led to 2 million employees having paid holidays for the first time and a further 4 million gaining an increase in their entitlement. The majority of the gainers were women part-time workers.

Although the amount of extra holiday given by this increase was the equivalent to giving every UK employee an extra two days off per year, employers did not complain about this at the time, but chose to focus on retaining the opt-out from the 48-hour week.

It would of course be perfectly valid for employers to suggest how the cost of introducing and maintaining a new employment measure such as the right to four weeks paid annual leave could be reduced - although it would be difficult to find significant savings in this case as the law is actually quite efficient.

Table 4 below looks at the regulations that the British Chambers of Commerce say cost UK business the most. Taken together, these regulations account for 62 per cent of the BCC's alleged £50 billion pounds of red tape.

**Table 4: What employers say is 'red-tape' - some misleading claims.**

<i>Law</i>	<i>What the law does</i>	<i>TUC comments</i>
Working Time Regulations	Workers entitled to: 4 weeks paid annual leave, 1 days rest per week, 11 hours rest per day 20 minute break if they work more than 6 hours per day Maximum average 48 hour week (but workers can opt-out) 48 hour weekly limit on nightwork Free health check for night workers	The entitlements have been set to prevent employees harming themselves or others through overwork. The targets have been set using scientific evidence.
Vehicle Excise duty (Reduced Pollution) Amendment Regulations	Under the 1998 regulations, UK Heavy Good Vehicle and bus and coach owners can get a reduction on their VED if it meets a set of environmental rules that are better than the standard of particulate emissions required by EU emissions directive. The 2000 amendment tightened the standard. The reduced pollution rebate is currently worth up to £500 for Goods Vehicles and £335 for Buses.	TUC unions have many members in road haulage and bus and coach services. They are in favour of better environmental standards.
The Data Protection	All employers that keep information on people must	Sensitive data about

Act 1998	comply with the Data Protection Act. Some businesses must register under the Act and ensure their information is properly managed. But others only need to observe data-protection principles - enforceable rules of good practice for handling personal information.	individuals must only be used for proper purposes. Safeguards the fundamental rights of individuals.
<i>Law</i>	<i>What the law does</i>	<i>TUC comments</i>
Control of Asbestos at work Regulations 2002	These regulations tighten earlier rules on the use of asbestos at work. In short, they introduce a duty to manage asbestos by risk assessment procedures, environmental information and health monitoring, and establishing warning systems to deal with an emergency in the workplace related to the use of asbestos in a work process or the removal or repair of asbestos-containing materials.	Asbestos is a deadly source of cancer. It must be properly managed or people will die unnecessarily.
National Insurance: Service Provision Through Intermediaries (Inland Revenue Reg 35)	Stops employers and workers avoiding National Insurance Contributions and incomer tax by employing through intermediary service companies.	Outlaws tax evasion from bogus self employment
Disability Discrimination (Providers of Service) Adjustment of Premises Regulations	Service providers must modify their premises to make them accessible to disabled people, to the extent that this is reasonably practicable.	Disabled people should have access to commercial premises. The law only asks for reasonable alterations.

It seems to us to be entirely right that workers should have paid holidays, and that they should be protected from asbestos, that citizens should have the right not to have their personal details misused, that disabled people should be able to enter commercial premises, and that the government should crack down on tax avoidance and vehicle pollution.

The British Chambers of Commerce red tape list also includes:

- The Groundwater Regulations 1998
- The Fire Precautions (Workplace) (Amendment) Regulations 1999
- The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs (England and Wales) Amendment Regulations 2000
- The Maternity and Parental Leave (Amendment) Regulations 2001
- The Proceeds of Crime Bill 2001
- Police Powers to Close Disorderly Premises 2001
- The Dangerous Substances and Explosives Atmospheres Regulations 2002
- The Money Laundering Regulations 2003
- The Electricity and Gas (Energy and Efficiency Obligations) Order 2004

- The Road Transport (Working Time) Regulations 2005

There seems to be little point in simply listing all the legislation that has been enacted since 1997 unless the BCC wants some of it to be amended or repealed. The BCC should say clearly why each of these measures feature on their 'business burdens barometer' and what they think should be done about them.

### **Measuring the costs and benefits of regulation.**

Regulatory Impact Assessments (RIAs) make some estimation of the likely costs and benefits of new laws. However, they need to be interpreted with a very great degree of caution since they are never complete enough to actually tell the reader whether the new law delivers a net benefit. The Government has actively been trying to improve the quality of its RIAs but the task is quite a difficult one in technical terms. Furthermore, the earlier RIAs have not been revisited, so they are even less accurate. This criticism includes the RIAs for the right to paid annual leave (1998) and for the National Minimum Wage (1999).

The problem is that RIAs usually estimate costs in a mechanical way. For example, the RIA for the 48-hour limit on weekly working time simply took the number of hours worked above the limit, divided the total by 48 hours, and assumed that the new law would mean that x amount of extra workers would need to be hired.

What actually happened was that employers and unions used their brains and there has been a trend away from long hours and towards greater efficiency.

But costs are only half of the story. RIAs tend to say that there will be some benefits to the employer, to the worker and to society as a whole (better health and safety reduces the burden on the NHS, for instance), but rarely make any attempt to cost these benefits.

It follows that they are not a good indicator of the cost of legislation as a whole - let alone the administrative cost of legislation, which might be argued to be red tape.

Our recommendation is that the Government should put more effort into calibrating the benefits of new laws as well as the costs. Good RIAs would help to ensure good policy making, but poor RIAs are rather a hostage to fortune to the anti 'red-tape' brigade.

### **Conclusions**

When the UK deregulated its labour markets in the 1980s, both employers and employees suffered real pain. The so called Thatcher 'economic miracle' of the late 1980s came crashing to the ground again in the early 1990s recession, which

saw unemployment rise above three million and homeowners trapped in negative equity by a dramatic fall in house prices.

All the evidence shows that businesses succeed because they have a good product or service to sell, which is delivered in a well-organised way. Such employers care little for regulation. In contrast, deregulation favours 'cowboy' employers who want to race each other to the bottom of the hill.

The truth is that some of the world's most productive economies combine good rights at work, strong trade unions and low unemployment. The idea that wealth creation only comes about when few have rights is simply wrong in a modern knowledge economy.

Furthermore, if you actually ask employers about the impact of specific regulations, such as the National Minimum Wage, more think that they have been helped than hindered.

Many employers now recognise that sensible regulation has an important role in establishing a level playing field, so that good employers are not undermined by the bad. The National Minimum Wage, for example, prevents employers from competing by dragging wages down to the lowest possible levels.

Some employer organisations, such as the Engineering Employers Federation now believe that similar arguments apply to the provisions of pensions, as recommended by the independent Pensions Committee<sup>10</sup>. The argument is a simple one, unless there is an element of compulsion, employers who provide an occupational pension are put at a competitive disadvantage by those who don't. Clearly this is an area where sensible regulation would help both employers and workers.

## **Recommendations**

Employers' organisations need to move the debate on to more sensible ground. Arguing that all regulation is red tape has little resonance, and does not reflect the real position of most of their members, who recognise the need for decent standards.

1: The Government needs to look again at the way it undertakes regulatory impact assessments. At the moment they are unhelpful at best and many are actually misleading. We need to develop measures that balance the costs and benefits for employers, workers and society.

2: The TUC has argued for a stronger involvement of trade unions and employers as social partners in designing and implementing regulation, especially in the labour market. Where this has been done the outcome is often better designed and commands wider support than when regulation is left entirely to the Government.

Many European directives offer more flexibility if implemented through collective agreements between trade unions and employers. Positive employer support for a stronger social partner role would do more to reduce unnecessary or badly designed regulation than misconceived red tape campaigns.

3: There is a strong argument for making all regulations easily understood and implemented, and for giving SMEs extra support and help so they can comply with them. Regulations need to be regularly reviewed to make sure they are still relevant and keeping pace with the way that workplaces are changing.

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<sup>1</sup> 'Report of the 2004 Annual Conference', CBI 2005

<sup>2</sup> 'Confusing and Inconsistent Government Support Services are Letting Down Small Businesses' - CBI Press Release, 2006

<sup>3</sup> Bosses Still Stuck in Red Tape, IOD Press Release 2004

<sup>4</sup> BCC Website, March 2006

<sup>5</sup> ONS Labour Market Trends, February 2006, Table B1.

<sup>6</sup> Source: ONS. 3<sup>rd</sup> Quarter 2005

<sup>7</sup> Source: DTI Small Business Service

<sup>8</sup> Ministers Reject the £50 billion cost of Red Tape, Financial Times, 1 March 2006, p4

<sup>9</sup> 'Small Firms' Awareness and Knowledge of Individual Employment Rights', DTI, 2002

<sup>10</sup> 'A New Pension Settlement for the Twenty-First Century'. The Second Report of the Pensions Commission (2005)

<http://www.pensionscommission.org.uk/publications/2005/annrep/annrep-index.asp>