



Statism by Stealth

New Labour, new collectivism

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CHAPTER ONE

INTRODUCTION

The statesman who should attempt to direct private people in what manner they ought to employ their capitals, would not only load himself with a most unnecessary attention, but assume an authority which could safely be trusted to no council and senate whatever, and which would nowhere be so dangerous as in the hands of a man who had folly and presumption enough to fancy himself fit to exercise it.

Adam Smith¹

DESPITE OUTWARD APPEARANCES, there is still today a great divide in politics – the divide over the moral and practical case for the size of the state. The intellectual argument may have been largely won by Conservatives. Yet this is not preventing the growth of the state’s influence under New Labour. It is increasingly clear that Labour’s rhetoric – “what counts is what works”, the “Third Way”, “communitarianism” – is clothing for the reintroduction of a level of government intervention in our lives that has few apologists. The rhetoric has enjoyed plenty of analysis; the new statism it conceals deserves rather more.

This interventionism has deep roots. Much of the post-war political and economic agenda derived from drawing the wrong conclusions from wartime experience of central planning at home and from observing the early decades of socialist planning abroad.

As late as 1960, James Callaghan was saying:

I have not the slightest doubt that the economic measures and the Socialist measures which one will find in the countries of Eastern Europe, will become increasingly powerful against the unco-ordinated, planless society in which the West is living at present”.²

¹ *Wealth of Nations*, Book 4, Chapter 2, 1776.

² Hansard, 15 December 1960, Col 679.

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Few observations have been more wrong, or their consequences more pernicious.

For over a quarter of a century after the war, Labour was the intellectually self-confident party – even when it was defeated at the polls. The Conservatives were on the intellectual defensive, despite electoral success. The liberal critique of planning was a minority view.³ In power, the Conservatives retained many of the socialist programmes they inherited, including most of the nationalisation programme, and greatly expanded others, particularly in the field of social housing. When free market policies were introduced, they often came by stealth, cloaked in the rhetoric of ‘the middle way’.

The intellectual, political and economic revolutions of the 1980s and 1990s, in Britain and abroad, have reversed these roles. These days, Labour rarely talks about socialism, or about ideology of any kind. Its 1997 manifesto was explicit about this: “What counts is what works”.⁴ The “Third Way” is Labour’s middle way: only stealthily is socialism implemented.

Taxation is the clearest example. Shortly before the 1997 election Tony Blair denied that there would be any tax increases at all.⁵ There has been only a gradual awakening amongst the electorate that this promise has been broken. The pain of higher taxation, and the distorting effects of a plethora of new reliefs, was disguised not only by the early buoyancy of the economy after 1997 but also by stealthy implementation.⁶

Just as important has been the increasing number of “authoritarian” measures introduced by the Government, to which

³ The best articulation of this minority view at the time was Friedrich Hayek’s in *The Road to Serfdom*, originally published in 1944.

⁴ Labour Party 1997 Election Manifesto, *New Labour: Because Britain Deserves Better*.

⁵ “We have no plans to increase tax at all”, Tony Blair, *Financial Times*, 21 September 1995.

⁶ See K. Marsden, *Miracle or Mirage? New Labour’s Economic Miracle in Perspective*, CPS, 2001, for a full list of stealth taxes introduced.

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civil liberties groups are alerting us. Often an *ad hoc* response to popular concerns, these have a cumulative effect which greatly extends the power of the state. The recently introduced power effectively to intern terrorist suspects is the most controversial example. The extension of surveillance powers under the Regulation of Investigatory Powers Act 2000 and the granting of a power to restrict free movement of football supporters based only on a suspicion of involvement in violence⁷ are similarly potent. There are many other examples, big and small.⁸

A new statism of regulation and coercion

This paper concentrates on measures which are on the whole less salient than those which catch the attention of civil liberties and human rights lobbyists, less visible even than stealth taxes. The Labour Government's extension of the size and influence of the state is also being implemented through government regulation and coercion. There are two main categories: new rules imposed on business, and increased central direction and intervention in the public sector. Rules limiting the freedoms and rights of shareholders and companies are New Labour's 21st century substitution for nationalisation. Central control in the public services is growing, reversing the decentralising measures which had been introduced, often in a piecemeal fashion, during the Conservative years.

⁷ The Football (Disorder) Act 2000; the Football (Disorder) Bill 2001/02 seeks to retain these powers indefinitely.

⁸ The Regulation of Investigatory Powers Act provides for UK-wide statutory authorisation for the interception of communications, surveillance methods and access to encrypted data. The Criminal Justice and Police Act 2001 provides for the indefinite retention of DNA samples and fingerprints taken from suspects. The Crime and Disorder Act 1998 introduced child curfew orders to take children off the streets at night as well as parenting orders, imposing obligations in an area hitherto considered the responsibility of families. See Appendix 1 for a more comprehensive list of measures.

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What follows is not an exhaustive examination of all such regulation and intervention, still less a comprehensive critique of Government policy. It is little more than an incomplete catalogue, an attempt to contribute to an audit of what we believe will come to be seen as the reintroduction of statism by stealth.

Nor is any systematic attempt made here to restate the moral or economic case for a smaller state.⁹ This has been comprehensively done elsewhere, most notably in the publications of the Institute of Economic Affairs. Over many decades such writings have pointed the way not only to the benefits of a smaller state for higher economic performance but greater personal freedom as well.¹⁰ The prolonged Blairite interlude has not so far thrown up an intellectual contradiction of this case. Attempts to provide theoretical or intellectual substance to ‘the Third Way’ have largely been abandoned, even by those sympathetic to it.¹¹

It is not, for the most part, the intentions of the Labour Government which this paper challenges. Not all of the measures examined are iniquitous. The objectives of many are meritorious. The problem is that each represents greater state control. Taken together, they amount to a major extension of government power and influence. The cumulative effect of such an approach will weaken our economic performance and imperil our liberty.

⁹ Andrew Tyrie has discussed some of the implications of these arguments for the level of public spending and how to tackle the vested interest groups which seek to thwart its control in *The Prospects for Public Spending*, Social Market Foundation, 1996.

¹⁰ In addition to IEA publications some important recent economic contributions include those by Tanzi and Schuknecht, *The Growth of Government and the Reform of the State in Industrial Countries*, IMF working paper 95/130, 1995; also by Robert Barro, *Determinants of Economic Growth: a cross country empirical study*, MIT 1997. The economic arguments will never be uncontroversial but the weight of the empirical evidence is significant. The best statement of the moral case remains Hayek’s in *The Road to Serfdom* (1944).

¹¹ See, for example, Steven Lukes, *The Third Way*, SMF, 1999.

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CHAPTER TWO

REGULATION AND INDUSTRIAL POLICY

This Government is all about legislation and bureaucracy. It seems to be about beating up business rather than working with business.

A construction industry executive at the 2001 CBI Conference.

OVER THE PAST FIVE YEARS, New Labour has created a new form of industrial policy. It is one imposed largely by sophisticated forms of regulation and coercion of business. Much of this has been justified by the espousal of the notions of ‘the stakeholder society’ and ‘corporate social responsibility’. The consequence of their imposition, as David Henderson, former Chief Economist at the OECD has argued, will be a reduction in competition and competitiveness and a restriction of economic freedom.¹²

Despite appearances, industrial policy illustrates the divide between the two parties in the 21st Century, just as it did in the 20th. Labour’s abandonment of the historic pledge to take the commanding heights of the British economy into common ownership¹³ was a crucial moment for Tony Blair. It symbolised an apparent reconciliation to the reality of the success of free enterprise and the limitations of a socialist industrial policy. However many of the same instincts which lay behind the old Clause 4, still inform policy. Control is now sought in new ways.

¹² See David Henderson, *Misguided Virtue. False Notions of Corporate Social Responsibility*, IEA, 2001;

¹³ From 1918 to 1995 Clause 4 of the Labour Party’s constitution read: “To secure for the workers by hand or by brain the full fruits of the industry and the most equitable distribution thereof that may be possible on the basis of common ownership of the means of production, distribution and exchange and the best obtainable system of administration of each service”. This was replaced by a “statement of aims and values.”

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In piecemeal form, business and industry are experiencing a return to high levels of intervention. This chapter seeks to catalogue some of the new dirigisme.

New Labour, New regulators

Regulatory regimes introduced by the Conservatives usually had the objective of extending competition in the market in order to increase consumer choice. It was understood that, while efficient markets require a regulatory framework, regulation was seen as a means to achieve competition, not as an alternative to it.¹⁴ Or as Hayek put it: “planning and competition can only be combined by planning for competition, not planning against competition.”

His worry was that politicians had begun “supplanting competition by a different and irreconcilable principle. The question was no longer one of making competition work and of supplementing it, but of displacing it altogether.”¹⁵

This Government’s approach to regulation displays much less understanding of the value of competition. Instead, frequent intervention by the regulators to facilitate government objectives is now evident. Ministers apparently summon regulators to their offices to demand action on this or that area of their remit. Political control over what are supposed to be private companies undermines the effective operation of the market. The use of informal political pressure can be more pernicious than formal nationalisation. As Tom Winsor, the Rail Regulator, pointed out:

The regulators of the privatised industries have far more actual power over the industries they regulate than ministers ever had in the past. The regulators’ instruments of control are far sharper and more focused than any tool that a minister could use against the semi-autonomous boards of a nationalised industry.¹⁶

¹⁴ See K. Boyfield, *The Politics of Regulation*, European Policy Forum, 2000.

¹⁵ F. Hayek, *The Road to Freedom*, Routledge, 2000.

¹⁶ See K. Boyfield, op. cit.

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The Government's regime for the electricity and gas industries is typical of the new regulatory environment. The Utilities Act, which became statute in July 2000, created a new super-regulator (OFGEM) whose task is to broker a deal on price levels with the utility providers. The goal of a free market has been replaced with the systematic use of central direction.

The Act also marks the start of a shift in responsibility for the costs of social policy, from government to shareholders in private companies. The social responsibilities which the Act places on the companies include an obligation "to ensure that disadvantaged consumers benefit from improved efficiency and greater fairness".¹⁷ It gives Ministers significant powers to direct the regulator on matters of policy. Principal amongst these is "fuel poverty" – the problems people have paying for the fuel they need to keep their house warm. Rather than address this problem openly – for example, by giving poorer pensioners a bigger rise in their state pension or the heating allowance – part of the cost is now to be channelled to the private utility companies and their shareholders.

An effect of the Act is to impose a new tax on shareholders and consumers. But this tax does not appear on the Government's balance sheet, nor is the Government required to account for it in the normal way. Shareholders and consumers are not made aware of the dividends foregone or the higher bills to be paid in order to pay for these social transfers. The terms of both the privatisation and the relationship between the consumer and the utility companies has been altered without consent or even an attempt to make those affected aware of it. Sir Michael Spicer, the Minister who took several privatisations through Parliament, commented:

¹⁷ See Sections 1, 10, 14 and 95 of the Act.

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Democratically elected governments have the right to implement the social policies that were mandated by their election victory. But those social policies should be stated explicitly in their election manifesto and then implemented through social legislation. Any political party is free to campaign on a redistributive social agenda; what is not acceptable is to use the vehicle of commercial sector legislation to smuggle in redistribution by the back door, all the time camouflaged by the rhetoric of competition and consumer protection.¹⁸

Such social policies should be, and should be seen to be, the responsibility of government.

The Government's approach may well ultimately be self-defeating. The very existence of a wide-ranging authority armed with a social agenda and discretionary powers reduces the company's profitability. Concern about a burdensome regulatory atmosphere also translates into a significant increase in the cost of capital, at a time when many utility companies need to increase investment. It therefore prejudices the credibility of any future privatisations – why should would-be shareholders trust the prospectus describing the regulatory regime when it can so easily be set aside? – as well as the efficient running of existing ones.

The damage has been reinforced by the Government's one-off “windfall tax” of over £5 billion on the utilities. Raids of this nature on private companies lead to an atmosphere of market uncertainty from which the consumer is always the loser.¹⁹ The recent fall in utility share prices and the departure of both Severn Trent (now restored following the high-tech share slump) and Thames Water from the FTSE 100 last year is at least partly

¹⁸ M. Spicer, “Socialism on the sly”, in *The Rape of the Constitution*, Keith Sutherland (ed), Imprint Academic, 2000.

¹⁹ £2.2 billion in windfall taxation was raised from electricity companies, £1.7 billion from water companies and £1.5 billion collectively from BAA, Railtrack, BT and BG/Centrica.

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attributable to the impact of heavy regulation.²⁰ The market capitalisation of a number of utility firms (including Yorkshire Water and Hyder) has fallen beneath the value of their regulated asset base. Regulation has increased the already high entry costs for any potential competitor in the existing market. As the former electricity regulator Stephen Littlechild warned, standardising practice through regulation “will discourage innovation by reducing incentives to compete”.²¹

The original principle of the utility regulators – that regulation should decrease over time²² – has been accorded a lower priority. It was intended by the Conservative Governments who set up the utility regulators that, as more suppliers entered the market, there would be less need for regulation. Consumers’ interests would increasingly be safeguarded by the market. There is no doubt that competition has increased enormously: since 1989 the market share of the two big energy suppliers, National Power and Powergen, has fallen considerably. Prices for consumers have fallen in tandem. But regulatory withdrawal has been slow to follow, with only small nods in this direction from OFGEM.²³

The growth of the regulators’ budgets is also revealing. The combined costs of the water, telecommunications, energy and rail regulators have increased from £49.9 million in 1996-97 to £105.5 million in 2000-01. This represents only the direct cost to the public purse: it excludes the large and rising administrative and compliance costs for firms dealing with the regulator. OFGEM

²⁰ Thames Water was taken over in 2001 by the German utility company, RWE.

²¹ See K. Boyfield, *op. cit.*

²² See, for example, the speech of Lord Wakeham, then Secretary of State for Energy: Hansard, 12 February 1990, col 28.

²³ Recent suggestions by OFGEM that some elements of regulation may be relaxed in the light of greater competition have yet to be acted upon and fall well short of the withdrawal which was originally envisaged on privatisation.

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now employs more people than the old Department of Energy did in the days of nationalisation.²⁴ The consumer is paying for this in higher prices.

Banking and financial services

The Government's approach to Britain's banks tells a similar story. The Cruickshank Report into banking services in the UK²⁵ did a good job in drawing attention to some of the anti-consumer practices of the major banks. However, the Government's response to the report pointed in the wrong direction. It chose to introduce more regulation rather than encourage openness and competition.

One of the Government's major proposals may inhibit market forces, openness and competition and deserved rather greater scrutiny for its regulatory impact than it received. There are to be new standards for the comparability of costs, access and terms imposed for credit cards and basic bank accounts ("CAT standards"). These are being proposed despite high and increasing levels of competition in these markets. Arguably, better provision of information is all that is required rather than new bureaucratic standards. Indeed, the Cruickshank report explicitly stated that cost limits were not wise in this area:

There is an important difference between the Government's CAT standards and the Review's proposal: the Review does not believe that the Government should set a price guide or limit for benchmarks. This can only serve to distort competition, rather than illuminate the choice between the offerings of different suppliers.²⁶

Nonetheless, the Government is intending to press ahead with such cost benchmarks for basic bank accounts and is currently considering similar proposals in relation to credit cards.

²⁴ See K. Boyfield, *op. cit.*

²⁵ *Competition in UK Banking: A report to the Chancellor of the Exchequer*, HM Treasury, 2000.

²⁶ *Ibid.*

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Another regulatory and cost burden has been introduced by cajoling the clearing banks to take on as new customers up to 2.5 million people – those who do not currently have access to a bank account. This is as part of the Government's strategy to combat financial exclusion. Considerable pressure has been placed on all the major banks to make accounts available to this group and to market them vigorously even though the banks have hitherto judged that these accounts would be loss-making.

In addition to pressurising banks to provide basic accounts at uncommercial rates, the Government has also made it clear that it expects the banks to make a major financial contribution to the creation of a 'Universal Bank'. The banks' contributions will amount to a coerced gift. Under the proposals the banks would be required to make their basic accounts accessible at post office counters, and the post office would be able to refer their customers to the banks for account opening purposes. For those who do not wish to have an account, the post office would provide an alternative account so that all benefits can be paid electronically. The electronic payment of benefits creates a public expenditure saving for the Treasury. Nonetheless, banks will be required to pay for much of the cost of servicing these accounts, via their contribution to the creation and running of the 'Universal Bank'.

Attempting to ensure universal access to banking facilities is a legitimate goal of social policy, but is one which should be met by paying the banks from the public finances for the public service they are being asked to provide. Instead, it is being done by corralling the banks into moving towards universal access, even where it may not make commercial sense for them to do so. It is shareholders and existing bank customers who will pay, not the Government. It is regrettable that the banks have not been defending their customers and shareholders more vigorously, although their reticence is explicable in the light of the coercive approach the Government has adopted. The threats of legislative intervention are unmistakable. As Melanie Johnson, the Economic Secretary to the Treasury, stated:

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We do not want to have to legislate, as some have urged, to compel banks to serve all sections of the community; but if voluntary action is unproductive and monitoring shows insufficient progress, it may be necessary to consider other options.²⁷

Financial Services Regulation

The financial services industry has benefited hugely from global liberalisation. Over 30 per cent of foreign exchange and derivatives trading now goes through the City of London which also controls more than half the world market in internationally traded bonds. Over 1 million people are employed in this field. The biggest beneficiary of this success has been the consumer, as the highly competitive marketplace has driven down costs and boosted choice, while Britain as a whole has benefited from the large number of jobs created.²⁸

In 1999, the Government created a super-regulator for the financial services industry – the Financial Services Authority – replacing the old self-regulatory approach with a new statutory system.²⁹ Its goal of preventing financial scandals is certainly a worthy one, but there comes a point where attempting to regulate malpractice out of existence causes more damage than it prevents. The legislation manages that trade-off inadequately.

The FSA's statutory objectives run as follows: promoting market confidence; maintaining public awareness; the protection of consumers and the reduction of financial crime. This set of objectives creates an unbalanced scheme of regulation. All the incentives point towards trying to prevent damaging headlines and wipe out scandal. There is no balancing incentive to maintain and promote competitiveness and competition. Practitioners (and the

²⁷ See Treasury Press Release 190/00, 16 November 1999.

²⁸ See *London's Contribution to the UK Economy*, Corporation of the City of London, Annual Reports 2000 and 2001.

²⁹ For a detailed examination of the deficiencies of the legislation, see M. McElwee & A. Tyrie, *Leviathan at Large*, Centre for Policy Studies, 2000.

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Treasury Select Committee) appealed to the Government to include this countervailing objective. But the Government refused and the legislation was enacted without such a provision. The result is a regime which threatens to generate excessive regulation, at a high cost to the industry and to consumers.

Communications

Another major growth industry of the past decade has been the telecoms and IT sector. With the break-up of state monopolies and in a climate of low regulation, the market has flourished, benefiting both consumers and the economy as a whole. However regulatory threats now hang over the industry – once again in order to achieve one of the Government’s political objectives.

The Prime Minister has stated that “the knowledge economy must be for the many and not the few.”³⁰ A junior DTI Minister, Michael Wills MP, had already told the House of Commons that “the market will not necessarily provide in all areas and the Government will have to step in”.³¹ This ignores a basic premise of the new economy: with tiny fixed unit costs and little apparent operation of the law of diminishing returns, the market should be able to supply all effective demand. But Mr Wills meant something more pernicious: that the market would not achieve the Government’s social policy objectives, and that consumers and shareholders – not the Government – would be expected to pick up the bill.

The Government has set a target for universal internet access by 2005, and laid out a number of schemes to achieve this goal, including hiring out reconditioned computers to poorer families and making sure that there is adequate public access from libraries. However, in October last year, the Government admitted that it had no clear idea what “access” meant and that therefore its 2005 target

³⁰ See “Blair wants internet access for all”, *Guardian*, 7 March 2000.

³¹ Hansard, 9 June 1999, col 619.

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was meaningless.³² Meanwhile the Chancellor had adopted a more actively interventionist approach. In a speech in February 2000 he made it clear that he wanted to see internet access costs drop to American levels by 2002. He warned the industry of regulatory action unless this deadline was met.³³ Threats were preferred to opening the market up to greater competition.

It is not just threats but regulatory action which is on the increase. On a par with the FSA and with OFGEM will be the new regulator for the communications industry – Ofcom.³⁴ Like its brother Leviathans, Ofcom threatens to allow political influence without political responsibility. It appears that there will be no clear accountability for Ofcom, with responsibility split between the Department for Culture, Media and Sport (DCMS) and the DTI.

Ofcom will have one advantage over the FSA – its remit does include the promotion of competition. Yet even this objective may be disingenuous, related to the Government’s reluctance to relax the cross-media ownership rules. These date from the early days of the information age when large companies seemed likely and able to build up large market shares in different media. But entry costs are falling. As the number of media outlets increases, the monopoly characteristics of these big firms diminishes of their own accord. The “promotion of competition” in this context, may well have the effect of inhibiting firms from merging to compete globally.

So far, there is little evidence that the Government will fulfil its pledge to regulate the media “with a lighter touch”. Ofcom’s powers are large, including the power to draw up “detailed rules” to enforce “acceptable community standards”, the power to enter premises and confiscate documents, the power to block take-overs and mergers, the power to fine companies up to 10 per cent of their turnover and impose civil penalties on individuals.

³² “Blair’s net access claims condemned”, *Daily Telegraph*, 19 October 2000.

³³ “Removing the barriers to net growth”, *Guardian*, 16 February 2000.

³⁴ See G. Trefgarne, *Ofcom is watching you*, Centre for Policy Studies, 2001.

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Ofcom will become a regulator for a great deal of the new economy. It will be created at the very time when the vast expansion of media outlets makes regulation both more difficult and less necessary – the need for a regulator diminishes when three television channels have given way to 300.

A media regulator demands, of course, particular scrutiny. Ofcom will not only control the delivery mechanism but also content. As Peter Preston, former editor of the *Guardian* put it, the regulator will not be overseeing the delivery of electricity and gas, but exercising judgement on “shades of truth”.³⁵ The lack of parliamentary scrutiny of its new powers (no mention is made in the White Paper of any such scrutiny, or, indeed, of any complaints or appeals procedure) is thus a source of concern.

Other industrial intervention

The recent Railtrack debacle was an example of attempted statism by stealth, both in timing and method. The renationalisation of Railtrack – contemplated by the likes of Clare Short before the 1997 General Election – would have been an honest, if ill-considered, policy. Instead, the Government has found an alternative method of resuming control.

Post-privatisation, the railways’ performance, despite shortcomings, was improving. Passenger numbers increased by almost a third. Punctuality was improving. In 1998 there were no fatalities caused by train crashes for the first time since 1902.³⁶ Railway staff casualties fell. But on winning power New Labour exhibited considerable hostility towards the industry. An additional layer of regulation was erected on top of the company, which became subject to supervision not just by the rail regulator, Tom

³⁵ See “We must keep a close eye on Chris Smith’s big brother”, *Guardian*, 18 December 2000.

³⁶ See M. Pollitt and A. Smith, *The Restructuring and Privatisation of British Rail: was it really that bad?*, Cambridge Department of Applied Economics, November 2001.

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Winsor, but also by the Strategic Rail Authority, then headed by Sir Alastair Morton.³⁷ The company began to experience increasing difficulties in attracting investment as the markets became uneasy at the level of regulatory and political interference. The company and its directors were subjected to public vituperation from Ministers.³⁸

In the week that the bombing of Afghanistan began Stephen Byers pulled the rug from under Railtrack's feet and announced what amounted to its renationalisation without offering any compensation to shareholders – the first nationalisation of a major industry since the steel industry was nationalised by Harold Wilson. The expropriation from shareholders – who include 250,000 small investors – has been flagrant, and the actions of Ministers are likely to be the subject of litigation.

More important is what the Government's actions indicate about their understanding of how an industry should be run. The Government's current plans appear to involve the appointment of "stakeholders" to run the network. These will include trade union representatives, representatives of the passenger lobby and a raft of political appointees. This is not an environment conducive to attracting top class private sector management, or investment.

The City is increasingly sceptical of Government interference. In view of the risks which are now clearly inherent in dealing with the Government, investors will be more wary about injecting capital. Railtrack's credit rating was cut by Standard & Poors from A to CC after Mr Byers' announcement. The likely consequence across a wide range of industries is a higher cost of borrowing to cover the additional government regulation risk, as is becoming evident in the negotiations for the London Underground PPP. Providers of capital may demand a guarantee of the stability of the credit rating. This would have the effect of preventing any genuine risk transfer.

³⁷ The company was also under the supervision of the Health and Safety Executive (Railways Inspectorate).

³⁸ Note, in particular the speech of John Prescott, then Secretary of State at the DTER, at the 1997 Labour Party Conference.

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The nationalisation of Railtrack was the most blatant and direct intervention by the Government into a major industry in recent years. It has also intervened in several others by means of subsidy and protection. The effects can be equally pernicious – distorting markets, discouraging innovation and inhibiting flexibility. Taxpayers are forced to pay for the production of an increasing number of things that they, as consumers, do not want.

The clearest example is coal, an industry with a special place in Labour Party history and mythology. After the calamity of the miners' strike of 1985, the pits were gradually brought towards commercial viability by the Conservative Government and the much smaller remaining industry was eventually privatised in 1994. It was clear that the size of the coal industry would remain restricted by its relative uncompetitiveness and by its environmental impact, compared with newer forms of energy.

However, in 1997 one of the first acts of the Labour Government was to order a moratorium on permissions for new gas-fired power stations, even though they are cleaner and more efficient, against the wishes of the generating companies. Despite this assistance, the industry continued to struggle.³⁹ In 1999, RJB Mining, the company which had bought most of the pits, let it be known that it was considering closing a number of them. In response to this threat, the Government offered a £110 million subsidy package – roughly the value of RJB itself.

This decision overturned the previously announced policy of the then Trade and Industry Secretary, Stephen Byers, who had stated that he would “not prop up failing industries”.⁴⁰ Lawyers had warned the Secretary of State that the subsidy broke EU rules. The announcement went ahead anyway.

³⁹ See “Coal: A burnt out case”, *Economist*, 11 April 1998.

⁴⁰ See “Government dogged by old interventionist instincts”, *The Times*, 4 May 2000.

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In 2000, a £530 million launch aid package was also granted in the form of a cheap loan to British Aerospace for the new “superjumbo”, the A380. While other European countries have been struggling to wean their national carriers and suppliers off state subsidies, Britain’s aeronautics industry had been doing better in a more commercial environment.

Making the announcement, Mr Byers indulged his interventionist instincts, speaking of “supporting innovation and productivity” and stating that “this was the largest ever government investment in a product of this kind”.⁴¹ The terms of the deal have not been made public, prompting suspicions that it may breach the terms of an accord with the US on aircraft financing.

The *Economist* noted that “chillingly similar phrases were used to justify the British government’s support of Concorde in the 1960s”.⁴² On that occasion, the British taxpayer ended up paying a subsidy equivalent to £3,300 for every passenger who has ever travelled on Concorde. New Labour’s Wilsonian enthusiasm for technology and prestige projects threatens more of the same.

The car industry has also been bailed out. £43 million was given in 1998 to Ford to enable production of the Jaguar X400, and £152 million to BMW in 1999 to keep Rover’s Longbridge factory open. Furthermore, when BMW decided that it could not sustain the losses it was incurring at Rover, the Government had no qualms about interfering in the sale, elbowing aside the apparently more financially sound Alchemy consortium in favour of the Phoenix bid.

⁴¹ DTI Press Release 2000/173, 13 March 2000.

⁴² See “Subsidies in the air”, *The Economist*, 18 March 2000.

REGULATION AND INDUSTRIAL POLICY

CHAPTER THREE

BUSINESS AND RED TAPE

THIS GOVERNMENT – like most others – has frequently announced its intention to “cut through the red tape” or “have a bonfire of the regulations” or “bear down on the burdens on business”.⁴³ New Labour have fallen over themselves to articulate this point.

The opposite, however, has happened. Regulation of businesses has increased substantially under Labour. The British Chambers of Commerce have estimated that the cost of regulations introduced since 1997 has amounted to £15 billion.⁴⁴ The new regulation has taken two main forms: new statutory requirements, which turn businesses into unpaid tax collectors and social workers, and the burden introduced by new or enhanced regulatory authorities.

The Director General of the CBI, Digby Jones, has complained that levels of regulation are now the biggest single deterrent to inward investment,⁴⁵ while the Government’s Better Regulation Task Force noted that the problem was now so bad that no one within government could list all the regulations applicable to a particular sector, let alone calculate the cumulative burden.⁴⁶

⁴³ See e.g. Hansard, 22 May 1997, col 131W; Hansard, 28 November 2001, col 952.

⁴⁴ BCC Press Release 10 May 2001. This includes an estimate for £1.6 billion for the cost of the EU Pollution Directive 98/69/EC, which, the BCC notes, will not be fully implemented until January 2006.

⁴⁵ See “CBI issues red tape alert”, *Guardian*, 5 September 2001.

⁴⁶ See *Local Shops: A Progress Report*, Cabinet Office, July 2001. The Small Business Service is currently examining the feasibility of measuring the cumulative burden of regulations.

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Tax collectors and social workers

The practice of pressurising companies to perform those tasks which are more properly the responsibility of government – both by involving them in implementing the Government’s political agenda and by transferring the costs to them – has already been illustrated. The phenomenon goes much wider than just the utilities and the banks, however.

The Working Families Tax Credit (WFTC) is an example. Its title is a misnomer. By the accounting rules favoured by the EU and the OECD, this is not a tax credit at all, but a benefit. By reclassifying it, the Government escapes its inclusion in the social security budget. The cost of administration has also been transferred outside the public purse. This cost, which now has to be met by private business, is huge. It falls disproportionately on small businesses. The Government itself estimates that total recurrent costs will be £109 million per year, with one off start up costs of £46 million.⁴⁷ The House of Commons Library has established that the cost for small employers runs to £300 per year per employee.⁴⁸

The British Chambers of Commerce were particularly troubled by the idea that businesses should be forced to assume this sort of burden:

The increasing tendency for government to use employers’ payroll to administer tax and benefits acts as a barrier to job creation in small firms and puts them at a serious disadvantage against larger competitors. Reducing the role of business as an unpaid tax collector must be a priority for government if small firms are to be given the freedom to thrive and grow.⁴⁹

This role will be extended in the next few years. The Chancellor recently announced that the WFTC will be replaced by

⁴⁷ See N. Boys Smith, *No Third Way*, Politeia, 2001.

⁴⁸ See IoD Reg Alert, October 2000.

⁴⁹ BCC Press Release 10 March 2000.

BUSINESS AND RED TAPE

two separate tax credits – the employment tax credit and the child tax credit. The change itself will create a great deal of paperwork and the Institute of Directors has predicted that the changes “will greatly increase the number of employers who have to grapple with the tax credits system”⁵⁰. The effect of placing this burden on employers may also prove counter-productive. The Government intends to use the employment tax credit as a means of shifting responsibility for the payment of New Deal 50+ payments (payments made to those over 50 who return to work after six months of unemployment) to employers. The effect of this is to discourage employers, particularly smaller employers, from taking on the very people the scheme is designed to help. Information provided by the National Association of Citizens’ Advice Bureaux suggests that people lose their jobs because small employers cannot cope with the administrative cost.⁵¹

Businesses are also now expected to administer stakeholder pensions taken out by employees. Only firms with fewer than five employees are exempt. All other firms which do not provide an occupational pension scheme are obliged to set up a scheme to which employees may contribute directly from their pay. The administration of the scheme is thus passed to business. A recent report by an Independent Financial Adviser, Torquil Clarke, suggested that the cost could be up to £1.6 billion per year – far above the Government’s initial estimates.⁵²

Businesses are involved in the administration of the repayment of student loans and compulsory time-off for training for 16 to 17 year olds.⁵³ Student loans were formerly repaid directly to the Student Loans Company. The administrative burden has now been shifted to employers, through the PAYE system. The DfES’s own estimates suggest that the start-up cost

⁵⁰ IoD Reg Alert, April 2001.

⁵¹ Ibid.

⁵² Quoted in N. Boys Smith, op. cit.

⁵³ See Ruth Lea, *The Work Life Balance and All That*, IoD, 2001.

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will be between £45 and £85 million, with year on year costs of between £16 million and £26 million by 2015.⁵⁴

Employers are also expected to deal with a new scheme entitling 16 and 17 year olds not qualified to NVQ level 2 to “reasonable paid time off” to study or train. The likely cost predicted by the DfES runs to between £60 million and £130 million in lost wages, in addition to an extra 10 to 15 per cent due to the extra cost of obtaining cover for these workers.⁵⁵

Further costs – again attributable to the Government’s social agenda – have been caused by the raft of “family friendly” policies it has introduced. Some of these may have laudable intentions, but, once again, the cost of social policy is to be borne by business which will reduce competitiveness, probably by more than the cost of achieving similar objectives through public spending. The latter would also have increased accountability and transparency. Such policies include the extension of maternity leave and the introduction of paternity leave, extensions to trade union rights, and extended rights for part time workers.

New business regulators

As noted in other parts of this paper, private nursing homes, private hospitals, the financial services industry, the telecommunications industry and nursery schools have all been subjected to renewed regulation. There are also many less prominent examples of new regulators, a few of which are mentioned below.

The already heavily regulated food industry has been given another layer of central bureaucracy with the formation of the Food Standards Agency in April 2000. Plans to charge a flat rate licence fee to all food vendors (including pubs, restaurants etc)

⁵⁴ See *Education (Student Support) (Repayment) Regulations 1999, Regulatory Impact Assessment*, DfES, 1999.

⁵⁵ See *Investing in Young People: Time for Study or Training, Regulatory Appraisal*, DfES, 1997.

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were scrapped after they were dubbed a “food poll tax”.⁵⁶ The red tape created by the new regulator is additional to that administered and extended by existing authorities in this area: health authorities, local authorities and the Department for the Environment, Food and Rural Affairs.

Restrictions have been placed on “temp to permanent” fees charged by employment agencies.⁵⁷ These were traditionally charged when employers took on agency staff on a permanent basis, preventing employers from using agencies as a cheap method of locating staff. The Government’s plans ignore the effect of competition in the market – a glance at the Yellow Pages reveals the number of employment bureaux available to employers. The primary effect of the measures is likely to be the opposite of that intended: a reduction in the flexibility of the labour market, to which the current large number of employment agencies make an important contribution. Particular damage will be done to smaller agencies, who rely on the fee income.

Abattoirs too have been subjected to new regulation.⁵⁸ While this appears legitimate in the light of recent food scares, the increased regulatory burden has led to the closure of many smaller abattoirs. This in turn has led to increased travelling distances for animals, with accompanying implications for animal welfare and the spread of disease.

The Private Security Industry Act 2001 created the Security Industry Authority and requires private detectives, bouncers, doormen, wheel-clampers and key-holders to acquire a licence to operate. The Act is very simple: it enables the Authority to draw up all terms of the licence and enforce them. It also requires the Authority to comply with any guidance given by the relevant

⁵⁶ See “Levy to fund new food agency is scrapped”, *Daily Telegraph*, 12 June 1999.

⁵⁷ See “All change for temps”, *Guardian*, 9 April 2001.

⁵⁸ IoD, Reg Alert.

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Minister.⁵⁹ The Authority will regulate the activities of an estimated 300,000 privately employed security operatives and is expected to become operational in 2003.⁶⁰

⁵⁹ See Section 2 of the Private Security Industry Act, 2001.

⁶⁰ See *“Top jobs for security industry authority announced”* Home Office News Release 28 September 2001.

BUSINESS AND RED TAPE

CHAPTER FOUR

EDUCATION

THE STATE HAS BEEN the principal supplier of education in the UK since the war. However, within this structure, the degree of state intervention has varied considerably. The comprehensivisation programme of the 1960s and 1970s greatly increased the scope for direct intervention and the growth of uniformity. It was a political agenda in which both major parties colluded.

The record of the Conservatives in government was mixed. The National Curriculum was introduced for good reasons, but there is no doubt that it represented a major intrusion of the state into the classroom. Other reforms, though, were designed to give schools and teachers more independence. The success of grant maintained schools showed how schools can flourish when set free of political restraint.

The Government's approach to education policy has largely been to centralise. Often it appears that the Secretary of State decides that a certain circumstance must change, and simply issues a diktat on the subject. The motives are generally good, the effects often less so. Compliance from all schools is expected promptly. Neither the implications for the long-term quality of education, nor the administrative burden are being adequately examined at present. Some of these diktats are examined below.

Class sizes

Labour's 1997 manifesto pledge was to cut class sizes for infant classes to 30 or less. It has almost been met. But it is not often observed how it has been achieved. To implement the pledge the

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Government simply assumed the right, in the School Standards and Framework Act of 1998, to tell schools and LEAs to cut class sizes, and then did so.⁶¹

In order to achieve this, heads, governors and LEAs have diverted resources away from those areas which they think are most pressing for the individual school and towards reducing infant class sizes. A consequence has been a rise in class sizes for other age groups.⁶² The longer term implications of this approach may be greater than the simple trade-off between class sizes for different age groups suggests. The experience of the grant maintained sector was that higher standards are promoted by operational freedom.

School exclusions

The Government's initial approach to dealing with exclusions was similar. It set a target – of reducing exclusions by a third by 2002 – and ordered LEAs to meet it. This obligation was passed on to schools by allowing LEAs to deduct, from a grant for schools,⁶³ between £3,000 and £6,000 for each pupil permanently excluded. The Government denied that this was a fine,⁶⁴ but there is no doubt that headteachers viewed it as such.⁶⁵

Last May the DfES announced that exclusion levels had fallen by 15 per cent. However, John Dunford, leader of the Secondary Heads Association, pointed out that:

⁶¹ For a discussion of the 1998 Act see S. Williams, *Levelling Down*, Centre for Policy Studies, 1998.

⁶² For example, while the figures for Key Stage 2 have fallen, the average class size in maintained secondary schools is now 22.2 compared to 21.9 in 1997 (see *Class Sizes in Maintained Schools in England: January 2001 (Provisional)*, DfEE, April 2001).

⁶³ The Social Inclusion: Pupil Support, Drug Prevention and Youth Service Grant.

⁶⁴ See Hansard, 8 June 2000, col 415.

⁶⁵ See *Social Inclusion Pupil Support Grant – A Consultation Response*, Local Government Association, 1999.

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There has been a price to pay for the reduction. This has been paid by heads and teachers who have had to cope with pupils who would have been excluded in previous years.⁶⁶

The fear is that pupils at these schools may have received a poorer education as a result. In response to protests from the teachers' union, the Government partly reversed the policy.⁶⁷ Later that year, David Blunkett admitted that the earlier policy had been a mistake.⁶⁸ In May 2001 Mr Blunkett announced that he would not set further targets to reduce exclusions. Eventually, in January 2002, the Government announced it was giving schools back the power to exclude violent and disruptive pupils.⁶⁹

Plans, plans, plans

The Government has rightly wanted to concentrate on improving skills in the 3Rs. But instead of allowing good schools to get on with it, the Government has loaded more and more paperwork on them to ensure that they follow detailed practices devised and promulgated in Whitehall.

The headteacher of a high-performing school in King's Lynn who was invited to an awards ceremony in Downing Street told the press what he intended to say to the Prime Minister:

I'll be telling him to allow schools to concentrate on the real business in hand... Until last year, we were a grant maintained school financed through a government funding agency. We sent them financial information on two sides of A4 paper once a quarter and had a full

⁶⁶ See "Record drop in pupil exclusions", *The Times*, 11 May 2000.

⁶⁷ See DfES Press Release 2000/0202.

⁶⁸ See "Blunkett: I was wrong", *Daily Telegraph*, 14 December 2000; *Times Educational Supplement*, 1 December 2000. The target, however, was not removed, and it was achieved in 2001.

⁶⁹ This represents a reversal of the 2001 manifesto pledge to reduce "truancy and exclusion by a third by 2002".

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audit of the balance sheet at the end of the year. Now we are asked to send 26 pages of A4 every month.⁷⁰

The DfES now obliges schools and LEAs to complete 18 different plans to comply with statutory obligations and secure funding.⁷¹ These are the:

- Education Development Plan
- Literacy Plan
- Numeracy Plan
- Information and Communications Technology Plan
- Schools Organisation Plan
- Early Years Development and Childcare Plan
- Class Sizes 30 Plan
- Special Educational Needs Development Plan
- Lifelong Learning Plan I
- Lifelong Learning Plan II
- Asset Management Plan
- Admission Plan
- Post-OFSTED Action Plan
- Quality Projects Management Plan
- Education Action Zone Plan (where applicable)
- Behaviour Support Plan
- Supporting People Plan⁷²
- Local Performance Plan

The Government's own Better Regulation Task Force confirmed the impression, commenting that:

There is a widespread and deeply held view that increased red tape is acting as a distraction from the drive to raise standards.⁷³

⁷⁰ See "Red tape warning: Head teachers' plea to Blair", *Guardian*, 14 March 2000.

⁷¹ See A. Povey, *Plans, Plans, Plans*, op. cit.

⁷² This is required from local authorities by the DTLR.

⁷³ Better Regulation Task Force, *The Burden on Head Teachers in the Public Sector*, April 2000.

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The Task Force agreed that “schools have to make a large number of returns to LEAs, to different parts of the DfES and to other public bodies. Many of these returns, it noted, duplicated others. It added that the “DfEE [as it then was] themselves are struggling to catalogue all these returns”.⁷⁴

This is not surprising. It is estimated that 2600 plans must be produced every year in England and Wales. Completing them all is estimated to take 1,000 man years.⁷⁵

In November 2001, the Government announced legislative plans which were presented as giving greater autonomy to schools. Closer inspection revealed that the plans created yet more red tape and vested yet more powers in the Secretary of State. Peter Smith, the General Secretary of the Association of Teachers and Lecturers commented that:

Under the guise of deregulation and freeing schools to innovate, the real effect of this Bill will be to give the Secretary of State huge powers, under regulations which are rarely subject to Parliamentary scrutiny. Far from being a liberal revolution, Whitehall is tightening its grip over schools.⁷⁶

Teaching and homework

The Government's core initiative on the 3Rs has been its literacy and numeracy strategies. The National Literacy and Numeracy Strategies state that pupils from reception year to year 6 must spend an hour and three quarters per day learning key skills. This builds on some of the initiatives piloted by the Conservatives. The idea may have had attractions but its implementation has been over-prescriptive. Instructions from Whitehall set out how teachers must teach for each minute of this hour.

The literacy hour must be divided into four components:

⁷⁴ Ibid.

⁷⁵ See A. Povey, *Plans, Plans, Plans*, Centre for Policy Studies, 1999.

⁷⁶ See “School bill ‘a rag bag which hands power to ministers’”, *Guardian*, 24 November 2001.

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- 15 minutes of “shared text work” (i.e. reading aloud);
- 15 minutes of “focused work” (including grammar, phonics, punctuation and spelling);
- 20 minutes of “guided reading” (i.e. silent reading);
- 10 minute “wrap-up session”, in which pupils should review what they have done and tell the class about it.

The approach to the numeracy hour is similar. It must be split into an introductory session of oral and mental work, a middle section which starts with whole class teaching and continues with whole class or group work, and a final plenary session.

These schemes substitute the judgement of Whitehall for that of the teacher in the classroom. While many teachers have welcomed the focus on basic skills, they resent the level of prescription involved. The NUT has commented that:

For teachers to be enthusiastic about new developments in the literacy strategy their professional judgement and experience must contribute to those developments.⁷⁷

The same approach has been taken to homework. No doubt homework should be encouraged, but should Whitehall be setting specific benchmarks for the amount to be given each night?

DfES guidelines state that five and six year olds should be given an hour’s homework a night, rising to between 90 minutes and 150 minutes for 15 and 16 year olds.⁷⁸ OFSTED inspectors will be expected to monitor homework when they inspect schools. Teachers have protested at such rigid rules. The Association of Teachers and Lecturers said that the policy “smacks of Big Brother.”⁷⁹

⁷⁷ NUT, *The Expansion of the National Literacy Strategy*, 1999.

⁷⁸ *Homework Guidelines for Primary and Secondary Schools*, DfES, 1998.

⁷⁹ See “Blunkett’s homework regime for all pupils”, *Daily Telegraph*, 22 April 1998.

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Moreover, it was announced last September that the Government was to issue free booklets to parents – at a cost of £7 million – to help them help their children with homework. The guides turned out to be a mixture of the anodyne – the suggestions included turning off the television at homework time – and the political. The NASUWT refused to endorse them on the ground that they contained political propaganda.⁸⁰

Nursery schools

The Conservative Government introduced nursery vouchers to give parents the widest possible choice of nursery provision for their children. This system was immediately abolished by the incoming Labour Government, returning power and funds to the LEAs.

Moreover, the DfES also decided to introduce a national curriculum for nursery schools for three and four year olds.⁸¹ As of September 2000, toddlers have been educated according to Whitehall's curriculum, which sets achievement targets in six areas:

- personal, social and emotional development;
- communication, language and literacy;
- mathematical development;
- knowledge and understanding of the world;
- physical development;
- creative development.

The Government's guidance for these targets is set out over 125 pages, which contain detailed prescriptions of what those caring for the young must do.⁸²

⁸⁰ See "Parents offered free school books", *Daily Telegraph*, 13 September 2000; see also www.dfes.gov.uk/parentsmag.

⁸¹ See "Blair's early learning centres", *Guardian*, 4 October 1999; "Eyes on the early years", *Guardian*, 4 August 1999.

⁸² *Curriculum Guidance for the Foundation Stage*, QCA, 2000.

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Miscellaneous intervention in education

Regulation also extends to the minutiae of school life. The Government has introduced minimum legal standards for school meals. The serving of chips is limited to three times a week in primary schools. Red meat must be served twice weekly in primary schools and at least three times weekly in secondary schools. Fruit-based desserts must be made available twice a week.⁸³ Responsibility for children's nutrition has been taken from parents and schools without any debate as to why they are not to be trusted with it. Several Labour MPs criticised the new regime for being too weak.⁸⁴

Another draconian piece of legislation resulted from the curfew initiative. Child curfew orders were introduced by the Crime and Disorder Act 1998. These enabled local authorities to introduce local curfews for children under the age of ten (later extended to fifteen). However, the powers granted by the Act are held to be impractical to implement and have hardly been used.

⁸³ See "Healthy diet back on school menu", *Daily Telegraph*, 13 July 2000; "Schools told to ban daily diet of chips", *Daily Telegraph*, 2 April 2001.

⁸⁴ See "Pupils' diets 'a disgrace'", *BBC News Online*, 22 June 2000.

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CHAPTER FIVE

HEALTH

THE CREATION OF NHS TRUSTS in 1990⁸⁵ and the gradual unburdening of hospitals from central and health authority control allowed them to become more responsive to local needs, to develop centres of excellence in particular areas, and to become much more efficient. Overall levels of care improved when hospitals were given more responsibility.

In many respects Labour has reversed this gradual decentralisation. As the *Health Service Journal* commented last year:

Milburn's instincts are to keep managers on a short leash and exert tight central control over the service.⁸⁶

The Government's initiative on waiting lists was an early and salient example. Pressure was exerted on NHS managers to prioritise waiting times, even if the judgement of medical staff and managers suggested that other policies were more appropriate or effective. This was acknowledged in part by Alan Milburn when he became Secretary of State, who claimed that the priorities were to be changed.⁸⁷ The evidence is, however, that hospitals continue to be placed under pressure to ensure that the Government's waiting list pledge is fulfilled, even it means prioritising minor complaints,

⁸⁵ NHS Trusts were created by the NHS and Community Care Act 1990. The first Trusts came on stream in 1991.

⁸⁶ *Health Service Journal*, 24 February 2000.

⁸⁷ See "Waiting lists ripped up as NHS targets cancer", *Guardian*, 17 October 1999.

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which are quicker and cheaper to deal with in large numbers.⁸⁸ A number of hospitals were found to be adopting irregular procedures in an attempt to meet the Government's targets. Those doctors who disagree with the Government's approach have reportedly been eased out of their positions.⁸⁹

Successive NHS "crises" have appeared to bolster the Government's determination further to increase control. A "Modernisation Board" will – as the *Guardian* put it – "monitor the implementation of the national plan and blow the whistle if it is being subverted by the forces of conservatism in the health service".⁹⁰ The stated intention is to ensure consistency of internal hospital policy and practice across the country. However, the effect will be that the job of a Trust manager becomes directly controlled by Ministers, civil servants, quangos and task forces – all of them in London.⁹¹ The Board is to be complemented by a £250 million fund for those hospitals which follow best practice laid down by the Department of Health.⁹² A hospital (or GP practice) which chooses to set its own practice guidelines and does not follow the Whitehall formula can expect to forfeit additional funding.

The language used to describe these reforms is sometimes wildly at variance with their centralising effect. Alan Milburn has said that "patient power" will be brought to bear where once faceless administrators held sway.⁹³ The reverse is often the truth. The original draft of what is now the Health and Social Care Act

⁸⁸ See "Slight drop in hospital waiting lists", *Daily Telegraph*, 10 November 2001; "Hospitals admit to waiting list manipulation", *Guardian*, 5 June 2001; "Fall in hospital waiting lists cheers Milburn", *Guardian*, 29 November 1999.

⁸⁹ See "£2.8 million for NHS Trust chiefs to take early retirement", *Scotsman*, 4 August 2000.

⁹⁰ See "Patient power to help modernise the NHS", *Guardian*, 4 June 2000.

⁹¹ See "Too much for one man: Mr Milburn needs to reshape his new deal", *Guardian*, 24 February 2000.

⁹² See "Cash reward for 'good' hospitals", *Independent*, 12 July 2000.

⁹³ See "Labour unrest over NHS Plan", *Guardian*, 26 November 2001.

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attempted to abolish Community Health Councils, which have represented patients' interests for 26 years. This section of the Bill was dropped to secure the legislation's passage through the House of Lords before the 2001 general election. It has returned, though, as part of the new NHS Reform and Health Care Professions Bill, which completed its Committee stage at the end of 2001.

The Community Health Councils are to be replaced by a plethora of bureaucratic bodies, including Patient Forums, the Patient Advice and Liaison Service, Local Authority Overview and Scrutiny Committees, the National Commission for Patient and Public Involvement in Health and the Modernisation Board. This extraordinary structure will only add to the confusion and red tape within the health service.

General Practitioners have also felt the Government's hand on their shoulder. Ministers' initial response to the Harold Shipman murders indicated a determination to act against single doctor practices.⁹⁴ After consultation, the arrangement which finally emerged is less draconian. Doctors are to be subject to tighter regulation, including the introduction of contractual quality standards for General Practitioners. Compliance with these standards will be regulated by a new government body, the National Clinical Assessment Authority.⁹⁵ The NCAA will operate alongside another body, the Commission for Health Improvement (CHI), with extensive powers. It too monitors doctors' work and hospitals' clinical arrangements. The NHS Reform and Health Care Professions Bill, currently before Parliament, will extend the CHI's role further, to include powers to "inspect" NHS organisations. Completing the list of new health bureaucracies is the National Patient Safety Agency, which will monitor "near misses".

⁹⁴ See "Strict new rules for GPs after Shipman deaths", *Daily Telegraph*, 2 February 2000.

⁹⁵ See Department of Health, *The NHS Plan: a plan for investment, a plan for reform*, July 2000; Department of Health, *Assuring the quality of medical practice*, January 2001.

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All this amounts to a bewildering array of new regulatory agencies, some with far-reaching powers. The Government appears to recognise this and it has created another agency to bring clarity to the regulatory framework. The role of the Council for the Regulation of Health Care Professionals will apparently be to regulate the regulators.⁹⁶

Extending government control over doctors' work will not only add to their paperwork, but may well also serve to diminish their independence. As the *Economist* put it, there is a "danger that these uncompromising sounding initiatives will alienate doctors and frighten patients without bringing about really significant improvements in clinical performance".⁹⁷

The involvement of the private sector

The Prime Minister has recently suggested that health care in the UK might in the future mean greater use of the private sector.⁹⁸ The terms of such involvement are far from clear: his own Health Secretary spoke of the NHS as the "monopoly provider of health care in the UK" and has suggested that the private sector will only be permitted to take a peripheral role.⁹⁹

Many of the Government's other initiatives in this area, moreover, are likely to extend state control over health care. It has, for example, decided to ban doctors from working in the private sector for seven years after they qualify as consultants.¹⁰⁰

⁹⁶ The Council for the Regulation of Health Care Professionals will be created by the NHS Reform and Health Care Professionals Bill.

⁹⁷ See "Health – the king is dead", *Economist*, 17 June 2000.

⁹⁸ See "Blair faces 'privatisation' revolt", *Independent*, 25 June 2001.

⁹⁹ See "Milburn's pledge on NHS services", *Guardian*, 27 June 2001. Last December, the Secretary of State announced the increased use of private sector facilities for NHS patients who have been waiting for more than six months for heart surgery: see Hansard, 6 December 2001, col 483.

¹⁰⁰ See "Golden handcuffs on offer to consultants", *Guardian*, 22 February 2001.

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The state's regulatory role has also been greatly extended in care homes and private hospitals. The Care Standards Act 2000 sets out all the areas in which Ministers may now make regulations – for private hospitals, care homes and boarding schools.¹⁰¹ It sets up the new Care Standards Commission, empowered to regulate all private and public care homes. While care homes have long been subject to some degree of regulation, the new Commission enjoys unprecedented powers. Persons wishing to become care workers will have to register with another new body, the General Social Care Council.¹⁰²

The regulations neglect the fact that private homes operate in a competitive market – keeping down the cost to the elderly and infirm and raising the standards of care. Standards in private homes are on average higher than in the state sector. The primary effect of greater regulation may be to place extra costs on care homes, which must be passed on to the elderly and infirm and which may ultimately be passed back on to the state sector. The Chief Executive of the National Care Homes Association has predicted extensive closures.¹⁰³

Public health

Smoking has been a particular target of New Labour. Governments have long made efforts to reduce the number of people who smoke, but they have generally acknowledged that they must balance this impulse against the claims of individual freedom. The Government appears to have less regard for such balancing.

¹⁰¹ The standards were published by the Department of Health in March 2001. They cover a number of controversial areas, stipulating, for example, room sizes.

¹⁰² The registration of care workers is being completed in phases and is expected to take some years. The register is expected to be opened in late 2002.

¹⁰³ See "Closing the door on comfort and care", *Daily Telegraph*, 6 January 2001.

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In September 2000, the Health and Safety Executive (HSE) – which falls under the supervision of the Department of Health – announced a Code of Practice which required employers to ban smoking in the office unless they install ventilation systems or segregate smokers in a separate room. The ban also applies to bars and restaurants. The HSE can prosecute anyone who does not comply with the Code.¹⁰⁴

Tobacco advertising will also be banned by the Government, with the Labour-controlled Scottish Executive leading the way. Though the crusade was somewhat compromised by the exemptions given to Formula 1 and to snooker, and despite legal challenges, the Government's proposed ban on tobacco advertising and sponsorship is now going through Parliament and should take effect in 2003.¹⁰⁵ The Government is also pressing hard for a Europe-wide ban. Other measures which have been mooted by Ministers have included a new Tobacco Regulatory Authority to police cigarette manufacturers, and raising the minimum age for the purchase of cigarettes to 18.¹⁰⁶ Tessa Jowell, the former Health Minister, has spoken in favour of banning smoking in all public places.¹⁰⁷

Alcohol is also to be targeted. The Department of Health is currently drawing up a National Alcohol Strategy. Reports indicate that, under the new scheme, employers will be told to develop an alcohol policy at work, monitor their staff's drinking habits, and discipline those who drink too much – even after office hours.¹⁰⁸

¹⁰⁴ See "Safety chiefs outlaw office smoking", *The Times*, 6 September 2000.

¹⁰⁵ *Tobacco Advertising and Promotion Bill*, introduced in the House of Lords, July 2001.

¹⁰⁶ See "Tobacco firms face new curbs", *Guardian*, 15 June 2000; "Ban on cigarettes for under-18s", *Daily Telegraph*, 27 November 2000.

¹⁰⁷ See "On message with a mission", *Observer*, 25 June 2000.

¹⁰⁸ See Hansard, 13 April 2000, col 284w; "Firms told to sack heavy drinkers", *Sunday Telegraph*, 6 August 2000.

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The health of teenage girls and the media's portrayal of women also became the subject of Tessa Jowell's attention. She summoned magazine editors, modelling agency bosses and clothes designers to a "superwaif summit" in Downing Street to discuss the issue of the thinness of models. The DTI was already said to be drafting regulations to halt the perceived "use and abuse" of anorexics by the modelling industry and require it to use people with "normal" body shapes".¹⁰⁹ Ms Jowell explained before the summit that:

Young women themselves, their mothers, grandmothers have all told us that they want to see more women with a wider range of body shapes and sizes and more women from ethnic minorities as models in magazines.¹¹⁰

At the press conference following the summit, Ms Jowell announced that the magazines had agreed to a code of conduct banning the use of models deemed to be unhealthily thin and encouraging editors to use a wider range of body shapes. The Broadcasting Standards Commission was said to have agreed to monitor all television channels to ensure that there were not too many images of thin women.¹¹¹

The next day, however, the editors of four of the UK's leading women's magazines – *Vogue*, *Elle*, *Cosmopolitan* and *New Woman* – clarified in an open letter that they had never agreed to take part in any regulatory code. They stated in their letter that: "As far as we are all aware, there was no agreement to set up a new self-regulating body". The Broadcasting Standards Commission, moreover, also denied what had been said about its role: it was merely considering commissioning some research on the topic.¹¹²

¹⁰⁹ See "Labour takes on the superwaifs", *The Times*, 10 April 2000.

¹¹⁰ See "Minister holds superwaif summit", *BBC News Online*, 21 June 2000.

¹¹¹ See "TV curb on thin women to help anorexics", *The Times*, 22 June 2000.

¹¹² See "Editors reject magazine code on thin models", *The Times*, 23 June 2000.

STATISM BY STEALTH

CHAPTER SIX

CULTURE, MEDIA, AND SPORT

FOR MOST PEOPLE, their leisure time is the part of their life which seems most demonstrably their own. The scope for government interference would seem to be small. In this area too, though, New Labour has decided to bring the weight of the state to bear.

The BBC

Government regulation of the media industry has been examined in Chapter 2. While this development may slowly undermine the strength of our telecommunications sector, a more immediate assertion of political power over the media has taken place in relation to the BBC.

The BBC's reputation rests on its acknowledged impartiality. The appointment of Greg Dyke as Director General by the Government cast this into doubt. He was an active Labour Party supporter and donor until a few years ago. His predecessor, John Birt, was briefly the Prime Minister's "Crime Tsar" and now works on the delivery of transport policy in Number 10. The new Chairman of the Board of Governors, Gavyn Davies, is a long-standing Labour Party donor and a personal friend of Gordon Brown.¹¹³

Whatever the merits of the individuals, the appointment of strong Labour supporters and donors to the two most important posts in the BBC has created the impression that the institution has been politicised by the governing party, prejudicing its impartiality.

¹¹³ His wife also works for the Chancellor.

CULTURE, MEDIA AND SPORT

The appointment of Lord Ryder of Wensum, a former Conservative Chief Whip, as Vice Chairman of the Board of Governors, can scarcely be expected to act as a counterweight.¹¹⁴

Museums

The National Lottery has brought about a renaissance in most of Britain's museums and art galleries. Many have undergone impressive refurbishments in recent years and the major London galleries and museums attract huge crowds at weekends. Each has worked hard to establish its own identity and individuality.

At the start of 2000, the Government decided to place them all under the control of a national quango. The "Museums Tsar" is to co-ordinate policy and funding for museums and galleries from the centre. Matthew Evans (now ennobled) is the first Chairman of Resource, known originally as the Museums and Galleries Commission or "Museums Tsar". Lord Evans' background was in publishing rather than in museums. He had already been appointed to a number of other quangos by Ministers.

Lord Evans began the process of imposing a new "social agenda" on the museums and galleries. He made it clear that he expected them to prioritise the Government's "inclusiveness" agenda. In his first speech he demanded that "museums fundamentally change what [they] do". He called for museum exhibits to be displayed in pubs and shops to increase access.¹¹⁵

Lord Evans appears to see museums as still no more than collectors and preservers of artefacts. However, many are now interactive, and are major research centres. The freedom to pursue their own projects has contributed to the creation of such a diverse range of museums and galleries in Britain today.

¹¹⁴ The post of Vice-Chairman of the BBC is very much a part-time job, carrying a salary of £26,000 a year.

¹¹⁵ "Dust off fusty image, museums told", *Guardian*, 19 January 2000.

STATISM BY STEALTH

Compliance with Labour's social agenda reached new heights when, in May 2000, it emerged that Ministers had informed museums that they were unhappy with the ethnic and class composition of their attendance figures.¹¹⁶ As part of an "efficiency and effectiveness" review, the DCMS announced that museums would be obliged to meet a target for the ethnic and class background of their visitors. Directors of the Tate were told that continued funding for their ambitious projects was dependent on meeting the targets.

Museums were taken aback by the Government's demands. While all of them made it clear that they were committed to the widest possible participation, they pointed out the difficulty in making sure that the "right" people visited. Museums have been working to broaden their appeal for a long time, by, for example, producing guides and leaflets in minority languages and developing community programmes. After sustained protest, the requirement was dropped in the last funding round for museums.¹¹⁷

Film subsidies

The British film industry is something of a curate's egg. While British actors, actresses and directors consistently punch above their weight, films made in Britain with British money have been scarce in recent decades. The Government has sought to rectify this by pumping public money into British film projects. The results show how hard it is for a Whitehall quango to pick winners.

In 2000 the Government set up a new body to distribute subsidies for British films, the Film Council, headed by "Film Tsar", Alan Parker. An early announcement of £22 million investment was made. However, the change is less substantial than it appears. Most of the people running the new scheme are the same people who

¹¹⁶ See "Museums angry over order to increase ethnic visitors", *Sunday Telegraph*, 21 May 2000.

¹¹⁷ See "Galleries' relief as ethnic quota rule is dropped", *Daily Telegraph*, 25 March 2001.

handed out grants under the auspices of the Arts Council. The difference now is that they have much more money at their disposal. In the past five years they have distributed almost £100 million of lottery money to spend on British film projects.

However, the 200 films which received subsidy recouped only £6 million at the box office.¹¹⁸ More funds are being made available, with an increase in tax reliefs recently announced by the Chancellor, a further £60 million of lottery funding for investment in film development and production, and other smaller schemes for training and the encouragement of digital technology.¹¹⁹ Nonetheless, all this support may be relatively ineffective. The problem with government support for the film industry is that it completely ignores the primary conclusion of the Middleton Committee on Film Finance: that what the British film industry lacks is effective distribution and exhibition. The reason why so many films have garnered so little revenue is that they remain on some dusty shelf, and are never seen in cinemas.

Football

Notwithstanding the huge success of British football clubs, the Government is increasing regulation of the industry. The Government has set up a new statutory watchdog, the Independent Football Commission, with the task of scrutinising ticket prices, merchandising, customer care and accessibility to

¹¹⁸ See “Help for British film makers taking on Hollywood”, *Guardian*, 2 May 2001; “Honest truth about lottery films”, *Guardian*, 6 January 2001. Failures have included:

- *The Secret Laughter of Women* – received just under £1 million, made £2,832;
- *The Food of Love* – received £800,000, made £1,507;
- *A Kind of Hush* – received £750,000, made £5,800; and
- *Los Angeles Without a Map* – received £870,000, made £3,641.

¹¹⁹ See Hansard 30 November 2001, col 1149-50W.

STATISM BY STEALTH

grounds.¹²⁰ The regulator has been told to draw up a Code of Best Practice and put in place a complaints procedure to deal with those clubs who contravene it.

Soccer, it seems, has become a political football. The Prime Minister chose to comment on the controversy over Glenn Hoddle's "reincarnation" remarks, contributing to the pressure which led to his resignation.¹²¹ The then Education Secretary was one of four Labour MPs who called publicly for the dismissal of the Sheffield Wednesday manager, Danny Wilson, during a poor Premiership campaign.¹²² Their action led to a complaint to the Sports Minister by the League Managers Association.¹²³ Mr Wilson was sacked soon afterwards.

Fox hunting

Fox hunting may well be banned in the course of this parliament. A ban in Scotland has been introduced by the Scottish Parliament. Despite a neutral report by Lord Burns on the subject,¹²⁴ the Labour Party repeated its pledge to give MPs the opportunity to ban hunting in the 2001 election manifesto¹²⁵ and the Prime Minister recently reaffirmed the Government's determination to act.¹²⁶ There seems little doubt that the large Labour majority will vote to do so.

¹²⁰ See DCMS Press Release 236/01; see also "Watchdog to check on soccer", *Guardian*, 9 December 1999.

¹²¹ See "Hoddle gets red card from Blair", *Daily Telegraph*, 2 February 1999.

¹²² See "How Labour meddlers turned sights from boxing to soccer", *Daily Telegraph*, 16 January 2000.

¹²³ See "Managers ask for action over MPs", *Daily Telegraph*, 18 January 2000.

¹²⁴ *The Final Report of the Committee of Enquiry into Hunting with Dogs in England and Wales*, Stationery Office, 2000.

¹²⁵ *Ambitions for Britain: Labour's General Election Manifesto 2001*.

¹²⁶ See Hansard, 27 February 2002, col 701.

CULTURE, MEDIA AND SPORT

CHAPTER SEVEN

THE TSAR PHENOMENON

THERE CAN BE A LOT IN A TITLE. New Labour's period in office has seen the rise of a new form of governmental authority: the "Tsar". Appointed in many areas, they have been particularly prominent in health care. Their number includes the Drugs Tsar and his deputy, the Cancer Tsar, the Heart Tsar and the Mental Health Tsar.

The Tsars appointed are often of a high calibre, but the very notion of the "Tsar" is a cause for concern. Their role is said to be to co-ordinate and control practice in their given area. While a degree of co-ordination is always welcome, the imposition of standard practice from the centre can stifle innovation and progress.¹²⁷ Charities in particular have expressed concern that their agenda is effectively being "nationalised".¹²⁸

Inadvertently, Tsars can do considerable damage to accountability. Instead of the well-understood system of ministerial accountability, many of the areas they cover now stand at one remove from parliamentary scrutiny. In theory, Ministers remain responsible for the areas of their work on cancer, mental health, or whatever. However, in practice, unlike Civil Servants, some of whose responsibilities they are assuming, they are free to account for themselves to a wider public in the media to the extent that they feel appropriate. In many cases their existence implies

¹²⁷ See, e.g. "Encouragement, not coercion", *Guardian*, 2 November 2001, which notes complaints of "bullying" by the Homelessness Tsar.

¹²⁸ *Ibid.*

STATISM BY STEALTH

that effective government can no longer be achieved without bypassing well-established lines of governmental responsibility and parliamentary accountability. The phenomenon has deep roots and pre-dates New Labour, reflected in the growth of quangos,¹²⁹ although the Government's unprecedented decision to create over 300 new Task Forces has exacerbated the accountability problem. These developments place particular responsibility on parliamentary select committees to develop effective scrutiny, not only of well-established quangos, but the myriad of new task forces and the new team of Tsars as well.¹³⁰

The list of Tsars includes:

Architecture Tsar	Sir Stuart Lipton
Cancer Tsar	Mike Richards
Car Tsar	Lawrie Hughes
Drugs Tsar	Keith Hellowell
Deputy Drugs Tsar	Mike Trace
Digital TV Tsar	Barry Cox
Education Tsar	Heather du Quesnay
E-Government Tsar	Andrew Pinder
Emissions Trading Tsar	Chris Fay
Equal Pay Tsar	Margaret Wall
Export Tsar	Sir David Wright

¹²⁹ For a comprehensive survey of the growth of quangos and the problems for parliamentary accountability they pose, see *Mapping the Quango State*, March 2001, a report of the Public Administration Committee prepared with the assistance of Professor Stuart Weir of Democratic Audit.

¹³⁰ The Tsar phenomenon has spread beyond Whitehall to local government: Glasgow has appointed a "Youth Tsar" and a "Refugee Tsar"; Edinburgh an "Architecture Tsar"; Liverpool two "Heritage Tsars"; and the Wirral a "Science Tsar". One of the more surreal suggestions was made by Nick Brown MP who in a speech to the National Pig Association has suggested the creation of a "Pig Tsar".

THE TSAR PHENOMENON

Faith Tsar	John Battle
Film Tsar	Alan Parker
Heart Tsar	Roger Boyle
Homelessness Tsar	Louise Casey
Hospital Food Tsar	Loyd Grossman
Marketing Tsar	Carol Fisher
Mental Health Tsar	Louis Appleby
Museums Tsar	Lord (Matthew) Evans
Older Peoples' Tsar	Ian Philip
Rail Tsar	John Bowker
Red Tape Tsar	Lord (Chris) Haskins
Rural Tsar	Lord (Chris) Haskins
Shipyards Tsar	To be appointed
Smuggling Tsar	Martin Taylor
Transport Tsar	Lord (John) Birt (previously the Crime Tsar)

CHAPTER EIGHT

CONCLUSION

It is seldom that liberty of any kind is lost all at once.

David Hume

THE LAST WORD can perhaps go to the Government's own Performance and Delivery Unit, Downing Street's in-house think tank. Its report in March 2001, *Better Policy Delivery and Design: A Discussion Paper*, made the following observations:

Too many initiatives, too many targets; too many programmes; too little consistency; too little clarity about promises...

Central control is too often used as a default option, particularly in response to crises ... [leading to] demotivation, a failure to tailor local services to local needs, and excessive red tape...

There is considerable evidence that the regulatory burden on some public service managers and front line staff has grown unacceptably heavy...

Excessively directive methods of government that appear to treat front-line deliverers as unable to think for themselves, untrustworthy or incompetent, undermine the very motivation and adaptability on which real-world success depends...

Scarce resources, time and experience [are diverted] away from direct delivery and into inspection and measurement... [Methods of audit are] too focused on micro issues rather than strategy and strongly skewed against entrepreneurship...

[What is needed is] a combination of clear objectives and freedom for those with local knowledge to adapt to circumstances...

CONCLUSION

New Labour's interventionism is increasing. Social agendas masquerading as business guidelines, unprecedented numbers of Whitehall directives to schools, hospitals and other public service providers, task forces and Tsars: these are some of the new instruments of state planning and control. They are eroding our liberties. They are undermining Britain's economic performance. They are shifting power away from individuals and businesses to government. Taken together, they represent a significant extension of state power – a new statism – for which few thought they were voting and which growing numbers will want to reverse.

STATISM BY STEALTH

APPENDIX 1

AUTHORITARIAN MEASURES

- Restriction of jury trial
- Consideration of ID cards
- Curfews
- Anti-social behaviour orders
- Restriction of free movement of suspected football hooligans
- Extension of double jeopardy, prosecution right of appeal and appeals against perverse verdicts
- Collection of DNA database
- Extension of powers to take DNA samples and fingerprints
- Mandatory drug tests for offenders
- Giving some police powers to civilian staff
- Internment provisions of Terrorism Act
- Regulation of Investigatory Powers Act

APPENDIX 2

PRIVATE SECTOR REGULATION, SUBSIDY OR COERCION

- Airbus subsidy
- Coal subsidy
- Film subsidy
- Car industry subsidies
- Interference in Rover sell-off
- Increased regulation of utilities
- Imposition of social goals for utilities
- Windfall tax
- Creation of OFGEM
- Renationalisation of Railtrack
- New Regulator for railways
- Coercion of banks – Universal Bank and basic bank accounts
- Creation of FSA
- CAT standards for credit cards
- Creation of OFCOM
- Huge increase in regulators' budgets
- Coercion to extend Internet access
- Regulation of private detectives, bouncers etc
- Regulation of employment bureaux
- Regulation of abattoirs
- Creation of Food Standards Agency
- Administration of student loan repayments
- Administration of time off for training for 16 and 17 year olds
- Costs of “family friendly” policies
- Superwaif summit
- Ban on tobacco advertising
- Working Families Tax Credit administration
- Employment Tax Credit to be introduced
- Child Tax Credit to be introduced
- Administration of stakeholder pension schemes

APPENDIX 3

PUBLIC SECTOR REGULATION OR COERCION

- 18 new “plans” imposed on LEAs/schools
- Exclusions policy
- Class size limits
- Literacy Strategy
- Numeracy Strategy
- Homework “guidance”
- Abolition of nursery vouchers
- National curriculum for nursery schools
- School meal regulations
- Regulation of nursing homes – creation of Care Standards Commission and General Social Care Council
- Waiting lists/times targets in hospitals
- Creation of NHS “Modernisation Board”
- Creation of NHS Patient Forums
- Creation of National Clinical Assessment Authority
- Creation of Patient Advice and Liaison Service
- Creation of National Commission for Patient and Public Involvement in Health
- Creation of Commission for Health Improvement
- Creation of National Patient Safety Agency
- Creation of Council for the Regulation of Health Care Professionals
- Ban on private practice for 7 years for new qualified consultants
- Ethnic quotas for Museums

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