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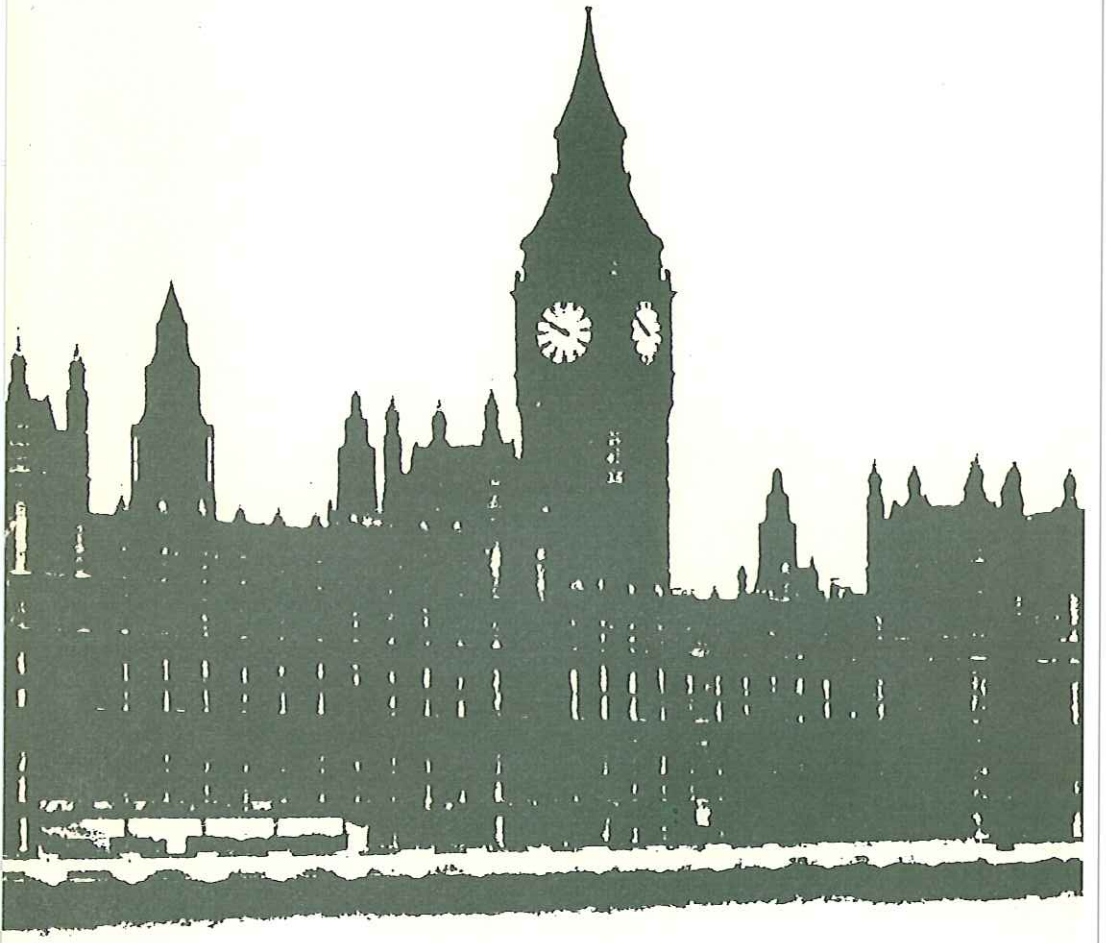
Policy Study No. 76

Business still Burdened

more regulations for the scrapheap

Teresa Gorman



CENTRE FOR POLICY STUDIES

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8 Wilfred Street, London SW1E 6PL
1985

The Author

Teresa Gorman is the founder and Managing Director of BANTA, a science education company which provides biological teaching aids to schools and nursing colleges at home and overseas. She is Chairman of the Alliance of Small Firms and Self-employed People (ASP), which was set up to inform government of the effects of legislation on businesses. Since 1982 she has been a Conservative member of Westminster City Council. She frequently contributes articles on economic and political matters to the *Daily Telegraph* and the *Daily Mail*.

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Foreword

For decades there has been a stark contrast between the ability of the European economies (including that of Britain) to create new jobs, and that of the USA.

We cannot have it both ways. Either we opt for a less regulated economy, which will allow the entrepreneur to create new jobs, or we stay as we are, cosily regulated but creating far fewer jobs than we should.

This excellent study tackles the problem head on. Teresa Gorman rightly identifies the young business (up to twenty employees) as being in need of wholesale exemption from burdensome laws and regulations. This is wise. I hope that Lord Young will take the point.

No doubt organisations such as the CBI which represent large firms will cry 'foul'. As Teresa Gorman points out, big business can cope with bureacratic regulations; it has the resources and the staff. Smaller firms do not, so the playing field is tilted against them. So exempting small and growing businesses is merely levelling-off the playing field. It is plain common sense and national self interest if we aim to build a thriving small business and self-employed sector in Britain.

Teresa Gorman is a dedicated and experienced campaigner. This paper will be an invaluable help to Ministers as they start to lift the burden from business.

Michael Grylls MP
Chairman, Small Business Bureau

Contents

Summary of recommendations

If small businesses are to prosper and create growth, wealth and employment, further and significant deregulation is needed. In this study we urge:

1 exemption of small firms from vexatious regulation;
2 greater reliance upon mandatory insurance as a substitute for governmental regulation;
3 more freedom for small firms to make voluntary contracts of employment with their staff, including agreements that they work in a self-employed capacity; and
4 a simplification – and easing – of VAT

More specifically:-

(a) If government departments require information, they should pay for it, as they do for goods and services of any other sort; and *very* small firms should be freed from the obligation to supply all but the most essential information.

(b) As the burden of administration of VAT is heavy, and the returns from small firms are low, the VAT threshold should be raised to £100,000. But firms with a lower turnover should be given the right to register for VAT if they so wish.

(c) Customs and Excise should publish estimates of the likely costs of compliance with any new regulations.

(d) Small firms should be freed from 'job protection' legislation.

(e) Anyone who wishes to adopt self-employed status should be free to do so.

(f) Statutory sick pay should be abolished and replaced by a statutory requirement for employees to have insurance against sickness. They should have the right to join any scheme that they chose.

(g) A deposit of £200, to be awarded towards the costs of whoever wins the case, should be required from each party going to an Industrial Tribunal.

(h) Employers should insure against claims relating to Health and Safety. Inspection of premises should become the duty of those who supply this insurance, rather than of government inspectors.

(i) In the area of planning: action against technical breaches of planning regulations should be taken only if nuisance is claimed; planning permission should be deemed granted unless it is refused within a stipulated period; in the longer term, issues should be resolved through independent arbitration and common law rather than by statutory regulation.

(j) Use Classes should be liberalized along the lines proposed by the Property Advisory Group; thus allowing householders greater freedom to start up businesses in their own homes.

(k) Occupational licenses at present in the discretion of local authorities should be minimized, as they typically function so as to restrict competition. Such controls as are necessary (e.g. that the owner of a pet shop should have no conviction for cruelty to animals) should be effected through the law.

(l) The study concludes with a recommendation that VAT be greatly simplified.

1
Small is over-regulated

The thin blue line.

We look to small businesses and the self-employed to produce growth, employment and wealth. In Britain today, about six million people work for small firms. And there are some 2,590,000 self-employed people. Small businesses contribute hugely to the economy. Firms with under 200 employees contribute 20% of GNP and employ 25% of the workforce.[1] Yet relative to our population we have fewer small firms than any other major industrialized nation, and markedly fewer in the employment category 'Employers, Self-Employed and Family Workers', relative to the size of our working population, than, for example, France or West Germany.[2]

What can be done to redress this? The Government has tried to assist self-employed people and small firms, and approved several schemes designed to give incentives to people to start working for themselves (for example, through the Enterprise Allowance Scheme).

But these embryonic businesses will prosper and employ other people only if there is further and significant deregulation.

Unfortunatly, it is the demands from government which new businesses encounter that limit their ability to grow (or even to survive). For example, if small businesses wish to build up staff, they should be able to do so in a more flexible way; and to lay people off, without penalties, if they need to do so.

Without much more deregulation, small firms cannot make the contribution to Britain's problems of which they are capable: one equivalent to that which they have made in the United States, where they have greatly reduced unemployment.

From *Worried to Death* to *Lifting the Burden*

In October 1983 the Centre for policy studies published a policy study, *Worried to Death*, written by Russell Lewis and myself. This study outlined the many bureaucratic regulations to which small businesses were and still are subjected, and recommended a number of ways in which government should help the private sector flourish through comprehensive deregulation.

The Government was sympathetic to the case we advanced. In the Autumn of 1984, an Enterprise Unit was set up in the Cabinet Office, with Lord Young at its head, the task of which was to develop

specific proposals for deregulation, and thereby to encourage enterprise. And in March 1985, the Department of Trade and Industry published a wide-ranging report, *Burdens on Business*, which took specific note of the arguments in *Worried to Death*.[3]

In the introduction to the former document, Norman Tebbit, then Secretary of State at the Department, wrote (p. iii):

> Most businesses, large or small, need to cope with regulations; they have to, if they are to survive. Each separate area of government intervention, considered in isolation, may seem modest in the demands it makes on them. But this report looks at the problem as a whole. It makes clear that the cumulative burden of regulation is a serious brake on enterprise and employment. Government requirements add significantly to business costs – particularly costs to management time. They deter new business start-ups and expansions.

The document identified 'ten priority areas'. These included: Value Added Tax; PAYE/National Insurance systems; statutory sick pay; planning controls; building regulations; fire prevention requirements; health and safety at work; and terms and conditions of employment. Many welcome remedies were proposed. For example:- increasing employees' qualifying periods in cases of unfair dismissal from one to two years in firms employing fewer than twenty people; demanding cash deposits from complainants in unfair dismissal cases; abolishing minimum wage rates for persons under twenty-one years old; relaxing planning controls through the creation of simplified planning zones, and lifting from most small businesses the burden of acting as VAT collectors.

Burdens on Business went on to advocate that a 'task force' be established in central government, composed of men and women with practical business experience as well as civil servants. One duty of this group would be to scrutinize each new regulatory proposal, applying to it a cost/benefit analysis, as is routinely done in the United States.

The document led many in the small business community to hope that at last the Government was listening to them, and was going to give priority to large-scale deregulation. Hence the disappointment when the Government's White Paper, *Lifting the Burden*, was published last summer.

For the White Paper tinkers with problems which need radical treatment. It lays emphasis on helping firms to bear burdens, rather than on removing them. This approach may be of some assistance to

larger 'small' firms. But it does not help the very small firm with a tiny staff and modest turnover.

The White Paper did however contain a few useful proposals. For example, it recommended the abolition of road service licensing for local buses; it promised to seek EC agreement to the raising of the VAT threshold; it recommended the abolition of statutory restrictions on shop opening hours and Sunday trading, and undertook to review the Use Classes Order which regulates how use of land and buildings may be changed without requiring planning permission.

All in all, the proposals of the White Paper take only a few short steps in the right direction. The purpose of this Study is to explain and to illustrate once more just what some of the problems are that face the small firm, and to suggest some practical ways in which these burdens can be further lightened.

Our approach

Three themes run through our proposals:-

First, small firms should be exempt from as much vexatious legislation as possible. A similar measure has been used with great success in Italy, where small businesses now boom[4].

Second, greater reliance should be placed on mandatory insurance as a substitute for governmental regulation. Self-employed people and employers could be required to insure against injury to employees and clients, and against violations of other people's property rights. By these means, the onus for making judgements would be placed upon insurance companies (and on the courts) rather than on public officials. Insurers have a vested interest in encouraging their clients to take adequate steps to avoid causing harm to others. But they would be less likely than would public officials to impose compliance costs which are disproportionate to the risks to be avoided.

Third, more freedom should be given to small firms and the self-employed to make voluntary contracts of employment with their staff, including agreements that they work in a self-employed capacity. This would help them to avoid the inflexible regulations which currently so bedevil small firms.

No special pleading

The present Government has declared its support for small businesses louder than any of its predecessors. But so far in practice it has largely resorted to more legislation and more expenditure of taxpayers' money. Even as I write, new regulations flood in from Whitehall: the

Data Protection Act; changes in Statutory Sick Pay; and the implementation of European Community Legislation which demands that wages be determined by tests of comparability of work – to take a small sample. All are measures which can be used to turn small businessmen into criminals or bankrupts – through no fault of their own. The regulations have clearly been drawn up without a proper understanding of what their consequences will be, and without adequate consultation with the spokesmen of small business.

Is this special pleading for small businesses? No. Certainly, regulation should be cut to a minimum for *all* firms. But at least if a firm is larger, there is more turnover to provide a cushion to ease the pains of meeting governmental regulations. A larger firm is also better able to employ specialists in tasks such as the administration of PAYE. Although value added tax may sometimes daunt even a tax specialist, there is no comparison between his problem and the burden which is placed on a tiny firm if its hard-pressed owner has to take on such tasks himself.

2
Generator of wealth or unpaid civil servant?

Small is beautiful

Many small businessmen and the self-employed work very hard, and for a relatively low return given the number of hours that they put in. No one forces them do this. They do it for several reasons: a principal one being that they value their independence more than they value security and a regular wage. And clearly, if their activity is useful and productive, they are no burden on the State. Quite the contrary: the new ideas and new services which they generate and the employment which they provide to others are invaluable. We should therefore make it as easy as possible for them to start up in business and to flourish.

But what happens in reality? They are burdened with the onerous task of administration of tax and of VAT on behalf of the Government, and with requests by government departments for statistical information. Why should someone who may be excellent at his or her trade be expected to have any aptitude for such work? What is worse, in meeting such government demands, time and money are diverted from productive activity – activity which provides their only source of income.

Forced labour

Suppose that, tomorrow, the government decided that it would like a fleet of lorries built, and passed legislation to the effect that civil servants should do it, for nothing, in their spare time. Imagine the outcry. This would hardly be silenced if they were told that, should they employ someone to assist them, they would get a measure of tax relief. Yet who thinks twice about asking the owners of small firms to undertake clerical work for the government, without pay, just because the outcome is deemed valuable?

Let us consider an example:–

Mike Fisher, of Whale Tankers Ltd (which makes tanker lorries), recently received a purchase inquiry form for 1984 from the Government Business Statistics Office. The five-page form contained 42 detailed questions and was accompanied by three pages of instructions, in tiny print, on how to fill it in. The information required was an in-depth analysis of nine thousand purchase invoices –

covering the entire past year. In Mr Fisher's case, these invoices were housed in box files, and they occupied four shelves, eight feet long. And what was asked?

The first question enquired how much ferrous metal, in primary and secondary form, his firm had used during the year, excluding castings, forgings, pressings, stampings, wire and scrap.

Question 2 required the same information about non-ferrous metals. Question 8 asked the value of the nuts, bolts, screws, washers, rivets etc. which had been used. Question 16 wanted to know the same thing about insulated wire, cables, strips and strands; whilst Question 3 asked about plastics, semi-manufactured, in sheet, rod, tube, foam and transparent cellulose film.

This information may be useful to some government department. But information is not a free good. Mr Fisher estimates that it would have taken a qualified senior manager 94 hours to dig out the information for which he was asked, at a cost to his firm of £2,350.

We propose that, if government departments require information, they should pay for it, as they do for goods of any other sort. This would remove from businesses like Mike Fisher's an onerous and arbitrary form of taxation. (It is arbitrary in that the person who demands this information has no care or knowledge of what it will cost his victim to supply it.)

Nor is this the only point to consider. For unless government departments have to pay for information, they have no rational basis upon which to assess whether or not they need it. They might well like to have it to hand. But is it worth what it costs to provide it? For the provision of information was at the expense (in Mike Fisher's case) of the provision of tankers. It makes sense for government to obtain the information only if it is worth more to them – i.e. to all of us – than are the tankers. And such a decision can be made only if the cost of providing the information is assessed.

Clearly, had the Government suddenly to pay for all the information that it is at present getting free, the consequences would be devastating. So as an interim measure, we propose that the unpaid work for which the Government can ask be limited to a fixed sum, and that it be required to pay for anything over and above this. If the cost of the forced labour were spelled out, it might concentrate the mind of government wonderfully. And if each department proposing to ask business for further information were obliged to take a minute to assess its cost, they might have second thoughts about asking for it, and allow Mr Fisher and his ilk to get on with their proper and productive work.

But if a firm is very small, even measures such as these would be of little help. For they do not compensate for the disruptive effect that such paperwork can have on the operation of tiny businesses. Often the hard-pressed owner-manager is the only person who can fill in the forms. And he cannot afford the time. Payment here is beside the point. Very small firms should therefore be exempted from the requirement to supply information, or what they are required to supply must be kept to an *absolute* minimum.

Taxation and VAT

The paperwork which lands on the desk of a businessman when he ventures to employ someone is daunting. Much the same problems arise with the collection of the Government's taxes, PAYE and VAT. It is not the paying of the tax that is a problem, so much as the work involved in acting as an unpaid tax collector, and in keeping abreast of the attendant flood of forms, regulations, and information. The lighter such burdens are made, the more productive small businesses can be.

What does this mean? First, tax forms should be comprehensible. Paperwork should demand as little time (and money) to complete as possible. It is not enough that the legislation be clear to the drafter of a bill, that civil servants understand it (though this would help), or even that it is comprehensible to a professional adviser. For if someone owns a small business or if he is self-employed, he may have no talent whatever for paperwork, and may be unable to afford proper professional assistance.

Small is ignorant?

It is easy for those who are *not* self-employed or running small businesses to be patronizing. (Witness the heading 'Small Is Ignorant' to the Economist's report[5] on a recent Gallup Poll commissioned by Legal and General on small businessmen, which disclosed that 35% of those interviewed did not know what capital transfer tax is.) But what reason is there to suppose that those with entrepreneurial flair (or those who do an excellent job as painters and decorators) will also have an aptitude for filling in government forms? In any large firm, there is a division of labour. There is no reason whatever to suppose that an excellent managing director or salesman is capable of doing the firm's VAT returns. So why do we tolerate a state of affairs in which a small businessman can scarcely survive unless he is a master of skills which have nothing to do with his trade?

Indeed, it is probable that many very small enterprises deliberately refrain from expanding, just because to do so would lead

to their getting lost in the maze of Value Added Tax. The immense burden here is the task of understanding the legislation itself, of working out whether or not it applies, and of keeping up-to-date with changes in the regulations.

There might be some excuse for the Government if the return for the tax on small businesses justified the loss of productive time. But it does not. Yield from VAT on small firms is small. Thus, of the £116bn raised by VAT in 1981, 92% was collected from the 20% of businesses with turnovers exceeding £100,000[6]. And VAT transactions other than at the point of retail sale pile on the paperwork without yielding anything to the Government at all. As the National Federation of the Self-Employed and Small Businesses correctly say in their pamphlet, 'VAT: the Myth and the Reality':

> 'none of the yield [from VAT] is provided from transactions between registered traders and ... such transactions ensure, on balance, that part of the yield is repaid in advance of its being received.'

The threshold at which VAT is payable should be lifted to £100,000 a year turnover. On the figures presented above, if all firms under that figure were exempted, 8% of VAT revenue would in the short term be lost to the Treasury. But a huge burden of paperwork would have been removed: one which serves to make small firms less competitive, and less able and willing to grow. It is worth underlining the point – recently made by Dr Bernard Juby – that a firm with a turnover of under £100,000 can hardly afford to employ more than six people; so that one is here dealing with very small firms. In addition, as he has also pointed out, 87% of all businesses have a turnover of less than £100,000[7]. So savings for Customs and Excise if they were no longer obliged to deal with vast numbers of tiny companies would be very considerable indeed.

But the suggestion of a £100,000 threshold has met with some opposition.

First, some of those who operate medium-sized businesses (for example in the building trade) argue that exemption would give an unfair advantage to their smaller competitors. But the size of this 'advantage' is reduced by the tax that non-VAT companies would have to absorb on their raw materials. Agreed, on the one hand any cut-off point is arbitrary and distorts competition. But, on the other, those who insist that small non-VAT firms would provide unfair competition forget the disproportionate burden they face if they *are* registered for VAT. The present low registration level also tempts people to hide in

the black economy. There they escape *all* forms of taxation, and certainly constitute unfair competition for those who are registered and pay tax.

Secondly, some – including the National Federation of the Self-Employed – believe that such a measure would hit some traders who no longer had to charge VAT, but nonetheless still had to pay VAT on goods purchased from suppliers. Once de-registered, they could no longer claim back payments of input VAT. But all that needs to be done to meet this objection is to allow firms whose turnover is below £100,000 to register for VAT if they so wish.

However, even if the case for these reforms was as clear to government as it is to businessmen, we acknowledge that there are constraints on any British Government. Many issues in relation to VAT are decided on a European rather than a national basis. Radical change cannot at present be hoped for. But the Government should take note of the strength of our case, and itself champion, in Europe, measures which will release the initiative and productivity of small businesses and the self-employed.

In the meantime there *are* changes the British Government could make to lighten the burden imposed by VAT.

First, it is essential that those who frame the relevant regulations should understand the nature of the tasks that they impose on others. The Institute for Fiscal Studies has published some interesting estimates of the cost – in time and money – of compliance. We suggest that Customs and Excise be required to publish similar estimates of the costs of compliance with any new regulations that they wish to impose. This would force them to consider the consequences of what they propose. It may make them ask themselves whether their new regulations could not be simplified. And it would also bring to the attention of politicians the size of the burdens which were being imposed, and provide them with an argument – in Britain and in Europe – why corrective legislation should be enacted.

Second, the quantity of information requested for VAT could be reduced. Details of these proposals are to be found in Appendix A.

Finally, in the area of direct taxation, we propose that the simplified PAYE scheme at present available to domestic employers should be extended to all firms employing fewer than twenty people.

3
The small businessman as employer

It is above all to the small business sector that Government looks for new sources of employment. But at the very same time, the Government is responsible for measures which severely limit the ability of small businesses to take on new employees. Here as with VAT, EC-generated regulation poses particular problems – although British governments have been complicit.

At the heart of the problem is paternalistic legislation which has not been thought through. We may mention statutory sick pay, redundancy pay, most legislation in 'equal opportunities', 'equal worth' and 'employment protection', and the present EC proposals to give more rights to those employed in part-time work. Many of these measures to provide so-called security for employees emanate from European politicians and functionaries steeped in collectivist traditions. Their ideas may seem humane and sensible to those whose thinking has been coloured by years as an employee in some government bureaucracy. But they make very little sense for a small firm that needs to face the rigours and uncertainties of the market place.

If someone is personally and wholly dependent on the market-place for his livelihood, talk of employment protection rights, sick pay (other than as provided through insurance) and so on is other-worldly. For against whom can he claim such rights? But things are in much the same case for small firms: there is little padding between them and the market in which they are earning their living. The opportunities and hazards of the market affect them directly, and give their owners little room for maneuvre.

In a large organization, costs of paternalist legislation may be absorbable without too much difficulty. And for government employees, and those in the nationalized industries – some 11m people – the costs simply come out of the taxpayer's pocket. But in a small organization, they make a direct and sometimes fatal impact on the price of its product.

Secondly, a small firm often has a particular relationship to its owner/founder. Its activities are likely to be more the product of his particular vision (or lack of it!) than will be the case in a large organization. Harmony of personalities and flexibility on the part of the employee is of great importance; and as the firm grows and

develops, it may be necessary for employees to change their patterns of work. For in a small firm there will (literally) be less room than in a larger enterprise to move people around in order to avoid problems to do with personalities. All this suggests that, although employees' contractual rights should be safeguarded, paternalistic legislation imposing extra job-protection is likely to be counter-productive in the small firm.

Irksome and inappropriate legislation may have dire consequences for employment in small firms, and has given many would-be employers pause. After all, the self-employed person or the small businessman is under no obligation to provide employment. In some European countries it is almost impossible to dismiss an employee. Nor is Britain much better off. The last way to encourage an employer to take on additional staff is to give his employees yet more rights. So much should be obvious. Yet the Government is even now being forced by EC regulations to give additional rights to part-time and short-term contract workers. These will make some small businesses decide that the better course is *not* to expand.

Let us look at some of these problems in more detail.

Self-employment

A small business is... small. From time to time it will require specialist services which cannot be provided by its own staff. And it may often need some additional work done, in circumstances where it makes no sense to take on an additional employee. Small firms will therefore often wish to use the services of people who are self-employed.

Such arrangements are most desirable. Both parties gain from participating in a contract acceptable to each. The owner of the small firm is also able – by using self-employed workers – to sidestep many of the burdens with which this study deals. And if workers are self-employed rather than employees, they may, if things go well, be led to set up small firms of their own, thus providing work for other employees and using the services of yet other self-employed people.

In addition, as a recent report from the Institute of Directors makes clear,[8] the entire economy should benefit greatly if self-employment became more widespread.

Who would think that, with the Government promoting self-employment through the Enterprise Allowance Scheme, it would take steps which *discourage* self-employment. Yet the fact is that, between 1979 and 1983, 107,000 people were involuntarily reclassified as employees by the Inland Revenue, who had previously been self-employed[9].

It might seem that the difference between the state of self-employment and employee is a private matter: one between the individual and his tax inspector. But to a trader looking for help for the first time, it is of enormous practical significance. For once a trader who before used the services of a self-employed worker on a freelance basis becomes classified as that worker's employer, he is made responsible for the administration of his tax return through the complicated PAYE system. Not only that. The 'employer' then also becomes subject to a myriad of regulations, including Employment Protection and Health and Safety at Work Acts.

In addition, the 'employer' may be made liable to pay up to six years of back taxes and national insurance contributions in relation to the reclassified person. These penalties undoubtedly deter many a would-be job-creator. Better, perhaps, not to expand the company after all. And what of the temptation to enter the Black Economy?

There are also costs to those who are reclassified. Many people, formerly self-employed, are required to have income tax deducted at source, at standard rate, with no allowances, making it necessary for them to negotiate a refund with the Inland Revenue at the end of the year.

The criteria used by the Inland Revenue when assessing someone who enters into a 'contract for services', and who thus qualifies as self-employed, are complex; and entire classes of self-employed people have been rendered 'employees' at a stroke.

Self-employment should be encouraged rather than frowned upon. It brings economic benefits, and fosters entrepreneurship and independence – the very qualities this Government lauds.

We propose that anyone who wishes to adopt self-employed status should be allowed to do so – with no by-your-leave.

Statutory sick pay

Statutory sick pay was introduced in 1983. It transferred from the DHSS to the employer the obligation to pay sick pay. True, he can set off these monies from what he would otherwise be paying in National Insurance contributions and PAYE. But his cash-flow may be badly affected. As we explained in *Worried to Death*, the introduction of this measure caused havoc, especially amongst small businesses[10]. They were hit hard by the flood of paperwork that it generated. At first, the employer's obligation was for eight weeks. Recently, it has been extended to 28 weeks – an example of how burdens are being made heavier, not lighter.

The Alliance of Small Firms presented the Government with their detailed objections to SSP prior to its introduction in 1983[11]. Having seen SSP in operation it would have no reason to change its mind. The National Federation of the Self-Employed has also recently voiced its opposition[12]. In response to predicted and predictable problems, fifty-two changes have already been made in the scheme. *Lifting the Burden* included a tentative proposal to allow employers to opt out of administering SSP – 'provided they paid their sick employees at least as much as the appropriate SSP rate' (p. 21). But many small businessmen simply cannot afford to pay an employee who is sick (up to a possible twenty-eight weeks) without recompense from the DHSS. His employment in the first place probably depended on a calculation of the extra profits his work would generate. And if the employer needs to take on an additional, temporary worker to cover for the man who is off sick, the wage bill will grow – and the profits decrease.

This means in practice that the would-be employer will simply not take on the risk when profits are tight. He will employ only those whom he feels it is safe to employ. Others – in particular the disabled and those whose health record is in the least doubtful – whom he could usefully employ will be left without jobs.

The necessary reform is both simple and radical. SSP should be abolished and replaced by a statutory requirement that employees should insure themselves against sickness. They should have the right to decide which scheme and which company to adopt (it might or might not be one arranged by the employer). Such a measure would encourage in all workers the habit of taking direct responsibility for decisions which affect their own lives. It would 'privatize' one more portion of governmental activity. Last but not least, it would free managers to *produce*. (The survey in *Burdens on Business* indicated that 'a large amount of management time is spent on [sick pay]' (p. 39).)

Employment protection

Can legislation designed to protect employment really guarantee jobs? After all, a small firm is itself unprotected against a thousand uncertainties.

An employee who wishes to claim unfair dismissal may refer the matter to an Industrial Tribunal. Such claims occupy most of the time of the Industrial Tribunals and ACAS; 90.5% in 1981[13]. Preparation of such cases involves the employer in considerable work and expense, let alone the time taken up in attending the tribunal itself. For a small firm, heavily dependent on the activities of its owner, this may be

devastating. In 1981, only 8.6% of cases eventually reached the tribunal and were won by employees. The hearings cost the taxpayer in the region of £7m. And, to cap it all, even if an employer is vindicated, he will usually have to pay his own costs – even in cases where the employee has been warned, in a pre-hearing assessment, that his case is poor.

All this may make an employer reluctant to dismiss inefficient staff – which in turn affects the morale of other employees and damages the ethos of the whole enterprise. It will make him reluctant, too, to take on new staff: at least, unless he takes out insurance against possible awards to employees under 'unfair dismissal' legislation – which thus adds to his firms' overheads, and blunts its competitive edge.

The White Paper lists several measures already taken to modify 'employment protection' legislation. These include: raising to two years' service the qualifying period for complaints against unfair dismissal (for firms with twenty or less employees); removing the onus of proof from employers in unfair dismissal cases and the introduction of pre-hearing assessments at industrial tribunals in order to identify and discourage weak claims in advance[14].

These measures are welcome. But they do not go far enough. When they were in opposition, the Conservatives strongly opposed the Employment Protection Act, dubbing it the 'unemployment protection law'. Yet this piece of socialist legislation remains on the statute books, and is possibly the greatest job-killer in the country.

A deposit of £200, to be awarded towards the costs of the party which wins the case would help to discourage vexatious cases from being brought to the tribunal.

Under the Employment Protection (Consolidation) Act of 1978, the employee also enjoys a number of other 'rights', some of which belong to him after only four weeks of employment.

These rights include:-
Time off from work, with pay, to engage in Trade Union activities
Time off for public duties
Time off for ante-natal care
The right not to be dismissed because of pregnancy
Redundancy payments
No (unfair) dismissal because of medical suspension
No dismissal on grounds of sex or race discrimination
Time off to look for work after notice of being made redundant

This list includes measures said to be desirable on social grounds. But why should the employer be expected to pay for them? There is also a failure to think such measures through. It is a generous idea to give employees time off to look for work, and so on. But such rights bear hard upon a small business. And even if the costs were paid for by government, the hours spent by members of the staff exercising their rights can raise immense problems, and may even necessitate a temporary doubling-up.

There is a *prima facie* case for exempting the small firm from all employment protection legislation. For in a small business, the choice is usually not between 'protected' and 'unprotected' employment, but between a job and no job at all.

Equal opportunities legislation

Consider the specific case of equal opportunities. Legislation extending special rights to women in full-time employment has limited the freedom of the employer to make decisions on the basis of his/her own personal and business priorities. It has also created a disincentive to the recruitment of women on a full-time basis. For employers know that once a woman has been on the payroll for a year, then if she becomes pregnant her job must be kept open until she returns. Even when a pregnant woman has not been working for the qualifying period relating to unfair dismissal, she may still have recourse to the courts by way of the Equal Opportunities Commission, if she can prove an element of sexual discrimination in the refusal of her boss to keep her job 'on ice' until after her child is born.

In recent years, there has been a large increase in the number of women in part-time employment[15]. Insofar as this represents an arrangement that suits both the women and their employers it is, of course, welcome. But some proportion of it must represent the denial of opportunities for full-time work to women – an unintended consequence of equal opportunities legislation. If women in full-time work are given such rights through legislation, then in a market economy it follows that this must diminish the number of jobs offered to them.

It is striking that, after years of Equal Opportunities Legislation, the proportion of women in top jobs has not increased[16]. And women's average gross hourly earnings as a proportion of men's (excluding the effects of overtime), for full-time employees aged 18 and over, have declined. The differential between men's and women's average gross weekly earnings has also widened during the period 1978-1984[17].

Even more jobs, and not only those performed by women, will be lost under regulations introduced on 1 January 1984[18]. Numerous test cases are being brought under the new clause of 'equal pay for work of equal value'. The union APEX, for example, is submitting over one hundred claims in the Birmingham area alone. A cook employed at Cammell Laird shipyard claimed that her job was of equal value to those of a painter, a thermal insulation engineer and a joiner, on the strength of the fact that she had undertaken an equivalent four year apprenticeship and had obtained comparable qualifications[19]. Her case was backed by the EOC and she won. She is now paid £30 per week more.

If industrial tribunals and the courts are to decide what individual employees should be paid (rather than the employers to whom they have freely agreed to hire their labour) it is likely that pay will greatly increase. This may well close many small businesses. And all employers will hesitate to take on new workers, realising they may be forced in the future to pay them more than they had budgeted for.

What is wrong with this legislation, and why it must be repealed, is that it seeks to impose upon a market economy ideas about the value of work which bear no relation to what that work can command in the market-place. There is no way whatever in which reward on the basis of merit – which is what this idea of 'value' amounts to – can sensibly be estimated in a large-scale market economy[20].

Finally, any attempt to react by increasing the rights of those in part-time employment must be sternly resisted. They – just like the self-employed – are of the greatest use to small businesses. If their rights are increased – say, by according them additional job security – the consequence will be that fewer such people are employed. Small businesses will then find it more difficult to expand or take on more full-time workers. And that, surely, would benefit nobody.

4
Business and the interests of others

The activities of the entrepreneur are properly restricted when they impinge on the rights of other people: no small businessman should complain if he is barred from an activity which causes damage or is a serious nuisance to others. In the areas of health and safety, conditions at work, and the protection of the environment, these issues have usually been handled by means of powers given to central or, more often, local authorities and their inspectors. Who, it was thought, could be better suited to look after such matters? For local knowledge and 'accountability to the community' seemed of decisive importance.

A disaster for many small businesses has ensued. Consider the following cases – which are not untypical.

The Inspector Calls

Paul Symonds is a High Street butcher in Battersea, London. His shop has been in the family, serving local people, for sixty years. In March 1985 he received a visit from a Food Inspector, and then later, a Safety Officer, who ordered him to stop using a metal staircase which connects his cold store to his shop, on the grounds that it was unsafe for the purpose for which it was being used. In fact, the staircase had been in operation for only ten years; it had not been the scene of any accident, and it was not thought to be in any way defective by the staff.

As a consequence of the officer's order, Mr Symonds had to rent alternative storage at £100 per week. The additional time and labour it took to transport the meat to the shop also added to his costs. He was told that he could open his own cold store only if alterations were made, costing thousands of pounds, for which planning consent had first to be gained. He contemplated closing down.

Basil Saunders, a West Indian baker from London, suffered a similar experience with his local Environmental Health Department. His speciality was baking bread and pasties in a traditional West Indian manner. He supplied both direct customers and other retailers, and provided much-needed employment to six young people in a depressed inner-city area.

In 1984 he received a visit from health officers acting on a telephone call from somebody claiming to have found a piece of string in one of his buns. (It later transpired that the complaint was made by an ex-employee of Mr Saunders who had just been dismissed.) As a

result of the officers' inspection, notice was served on him to install expensive extractor equipment, to alter his methods of bread making, to tile the walls and to make several changes to his shop.

Mr Saunders could not afford to make such extensive changes to his premises. Certainly, the premises were old-fashioned, but this is not in itself inappropriate for a 'traditional' baker. And he had, in the eight years since opening his business, baked millions of cakes and loaves without any reported harm to anyone.

Just before Christmas – when his bakery was at its busiest – he had another call. This time it was a pest control officer. He said the premises were infested with cockroaches. A closure order was served. But when pest control specialists were called in, they found no evidence of infestation whatsoever.

Under constant pressure from letters and visits from the authorities, Mr Saunders closed his business. He is now unemployed.

Decisions in such cases depend upon the recommendations of local authority inspectors and officials. These in turn will be dictated by standards laid down in some text, which may have little relevance to a small backstreet business. The inspectors may also have little sympathy with, or understanding of, with the running of a small firm. As government officials, they may well find it hard to adapt attitudes which have been shaped by work in an environment remote from market forces. Consequently, decisions are sometimes taken on the basis of a very literal-minded interpretation of the regulations, with no real concern for what the consequences of their decisions will be on the business, its employees or its customers.

What can be done?

We should cease to think of legislation as a way to prevent error. Instead, we should insist that accidents are covered by adequate insurance, as with cars. Thus, in order to trade, a firm would need to take out insurance cover in respect of possible claims in the relevant fields.

Those who provided the cover would clearly insist on inspecting the premises. It would be in their interest to be vigilant. But it would also be in their interest to see that their customers continued in business – and, indeed, prospered. Local authority inspectors have no such interest.

Planning

This is another large area in which problems arise, with which *Lifting the Burden* deals at some length.

Everyone knows that many firms start up in the back parlour or in the garden shed. But few people realize how often this contravenes planning regulations. Consider the case of John McNamara.

John McNamara built up his firm of consultant engineers over ten years, and it provided work for 30 people. But his local council ordered him to leave the house on which his business is based. Other private houses in the same area have already been converted to commercial use. As far as we can tell, his business did not create any nuisance for residential neighbours. The Council, however, claim that Mr McNamara had committed a technical offence against the Surrey Structure Plan and have served an enforcement notice on him.

The delays in obtaining planning permission of any kind are so well-known that examples are otiose. But Slough Estates Limited, an international industrial development group, estimate that to obtain permission for a 50,000 ft factory with a workforce of 150, takes eight months on average. In 1981, the London Boroughs of Barnet, Brent, the City, Enfield, Havering, Hillingdon, Richmond, Sutton and Waltham Forest all dealt with less than half the applications they received within the statutory period of eight weeks. Kingston managed to deal with only 22%, Bromley with only 21% and Hackney with only 14% within eight weeks. Every application involves a charge, whether planning permission is granted or not[21].

The Government is not unsympathetic to these problems, and the White Paper makes some sensible suggestions.

Chapter Three of *Lifting the Burden* is introduced by the following words:

> 'The town and country planning system has not changed in its essentials since it was established in 1947. In many ways it has served the country well and the Government has no intention of abolishing it. But it also imposes costs on the economy and constraints on enterprise that are not always justified by any real public benefit in the individual case. (3.1)'

The White Paper also later states that:

> 'the developer is entitled to his permission unless there are sound, relevant and clear cut reasons for refusal: that is to say, planning permission is not to be refused for arbitrary or irrelevant reasons ... if the planning authority consider it necessary to refuse permission, the onus is on them to demonstrate clearly why the development cannot be permitted. (3.4)'

And it reminds us that there is a '... presumption in favour of development unless that development would cause demonstrable

harm to interests of acknowledged importance.' (3.5) And that this has been emphasised in a number of government circulars – notably in Department of the Environment Circular 22/80 'Development Control: Policy and Practice'.

The White Paper also promises changes such as the creation of Simplified Planning Zones (SPZ), which will give local planning authorities the opportunity to specify what is allowed locally so that development can take place without need for planning permission (3.6.i). It promises the issuing of a booklet to help small firms understand planning control (3.6.vii.a). And it suggests it might be possible to amend standing legislation so as to enable those who live in Council accommodation to work from home '...if evidence of restrictions being used unreasonably is established' (3.6.vii-d).

These suggestions will be very welcome if local authorities act on them. But will they simply ignore what they don't fancy? The fate of Michael Heseltine's directive about new uses for agricultural buildings shows what can happen. Much firmer instructions may be needed: giving local authorities an 'opportunity' may not be enough.

Local authorities and small businessmen

Under the present system, decisions on planning issues (and, as we have seen, on health and safety issues) are in the hands of local authorities, greatly to the detriment of small businesses.

Decision-making is slow, and often seems arbitrary. Sometimes it seems as though no one wishes to take the final responsibility. Sometimes, too, the basis upon which local authorities take decisions is less than just. Who has not heard of local politicians placing the interests of pressure groups above the rights and wrongs of the issues with which they deal?

Three changes are needed:–

First, we urge that where a technical breach of planning regulations occurs, action should be taken only if nuisance is claimed.

Second, that authorities should be given time-limits for the processing of planning applications, and that an application would be deemed granted unless it was rejected within a specified period.

Third, that a system of independent arbitration should be set up to settle disputed cases. Existing methods of appeal are cumbersome, and judgements are thought often to turn on politics (and even personal prejudice) rather than on the rights and wrongs of the case.

In the longer term, we hope that more and more questions will be resolved through independent arbitration or common law rather than by statutory regulation.

Use classes order

The Use Classes Order comprises a series of classifications of kinds of building and land use, drawn up in order to simplify decisions on development. It allows changes of use to take place within the use classes, which otherwise would require planning permission. The White Paper proposed a revision of the Use Classes Order. In June 1985 the Department of the Environment asked that the Property Advisory Group set up a sub-group to carry out:

> 'a wide-ranging and fundamental review of the Use Classes Order... with the object of modernising and recasting it, taking into account on the one hand the need for flexibility in the use of land and buildings and on the other the environmental and other public interests which are the proper concern of planning control (see their Report, November 1985, p.1)'

The report of the Property Advisory Group appeared in November 1985, and has been issued by the Department of the Environment for consultation. We welcome all their suggestions for the liberalization of use classes. In particular:–

(a) They suggest that Category 1 (shops) might be widened, so as to make it much easier to provide financial and similar services of a retail nature in shopping areas.

The pros here seem to outweigh the cons (such as a possible increase in the drabness of streets, and a loss of shops to office-like premises). This is a prime case for following the principles of liberalization. It should as far as possible be ordinary citizens' needs as expressed through the market rather than planners' and politicians' views as to what they *ought* to have that should shape the use of such premises. The whims of the authorities should not prevent financial and other professional services being as easily accessible as any other good for which we shop. Too many ordinary people are at present strangers to such services because they are not presented in store-front guise.

(b) Most welcome is the suggestion (11.06 of their report) that, subject to demands of traffic, a householder would be allowed to carry on in his or her own home any activity which satisfies certain criteria. These are, *inter alia*, that 'the processes carried on... are such as could be carried on in any residential areas without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, soot, ash, dirt or grit' (11.05).

Predictably, a spokesman for the Royal Town Planning Institute comments:[22]

> 'The main effect of these proposals would be to allow light industrial workshops to be set up in any home. Not only is this likely to be unacceptable in suburban areas, but even more so in inner city areas where housing conditions need to be improved rather than worsened...One wonders whether the authors of the report would find it acceptable if housing next door to them were to be used in this way – not only during week days but at weekends and at night... The Institute is sceptical of proposed exclusions of business use on the grounds of 'noise, vibration, smell, fumes, smoke, soot, ash, dust or grit' and the generation of vehicular traffic 'of a type or amount which is detrimental to the amenity of the area'...The proposed safeguards on amenity grounds are not specific enough to help a householder to know whether his proposed use will cause a nuisance.'

But these comments could not be wider of the mark. For the criteria which the Royal Town Planning Institute claims are insufficiently specific are – with one exception[23] – precisely those which are already used in determining whether a proposed use of a building qualifies for the use class 'Light Industrial', and thus as suitable for pursuit within a residential area[24].

One might add that some of the RTPI's wilder fears are unlikely to be realized if these proposed revisions are accepted. For the Advisory Group have put more severe restrictions on the use of residential properties than those that apply to the 'light industrial' category (and which, as we shall later argue, are themselves in some respects unduly restrictive): e.g. the main use of the premises must remain residential (11.08); an upper limit – they suggest five – is to be placed upon the number of staff engaged upon the premises for business purposes (11.07), and there is no automatic right to sublet parts of the residence to third parties to enable them to carry out business (11.08).

When the RTPI's spokesman writes of 'inner city areas where housing conditions need to be improved rather than worsened', it is fair to draw his attention to the results of town planners' efforts to improve housing conditions. Housing alone does not make for a good neighbourhood. It is often a mixture between 'light industrial', office, shop and housing usage of premises which makes a district in a city attractive to live in, and makes for a real sense of community[25]. And people have been living next door to, or over, shops and workshops for centuries.

(c) In certain respects, the Property Advisory Group's recommendations are insufficiently radical:

(i) The Property Advisory Group say (3.04) that they 'assume and expect' that simplified planning zones and flexible planning permissions 'will not be employed to decrease or whittle down the general freedom which the UCO permits'. Assumptions and expectations are not good enough. Steps should be taken – if necessary through legislation – to deprive local planning authorities of the power to make such use of these amendments to the 1971 Act.

(ii) Why should it be left to the Planning Authorities to decide whether or not a warehouse should be turned into a shop? Oddly, the Property Advisory Group offer no argument for this opinion, which contrasts with their admirable willingness elsewhere to rely on the operation of market forces, and their (justifiable) suspicion that planning authorities might block worthwhile development.

(iii) Some of their suggestions about the alternative use of houses are also open to objection:

First, there is their proposed limitation of staff to five persons (11.07). This stipulation is arbitrary, as it is unrelated to the size of the premises or the character of the area in which they are situated. The problem which gives rise to the suggested limitation – the control of traffic – would be better addressed directly (as in their first clause relating to this topic).

Second, they appeal to 'the point of view of preserving the housing stock as an important national resource devoted to that purpose'. Clearly, there is a need for housing. But there is also a need for premises in which light industry and offices can be started up at reasonable cost. All talk of private resources as 'national', invites suspicion. Why *should* they be devoted to this purpose or that, unless in conformity with the preferences of individual citizens? Some indication of these is available through the market. But whence comes the information on which the advisers' principles are based?

(d) Finally, in discussing 'The effect of a revised UCO on planning applications', the authors wish to see emphasis and repetition of the Secretary of State's opinion – that local authorities should not use their planning permission powers in respect of new building in such a way as to cut down the scope of the UCO 'by imposing conditions that would restrict the use of a building to a range of classes narrower than the Use Class within which that use would otherwise fall' (14.02).

We would again go further, and recommend that legislation be enacted to deprive local authorities of the power so to act.

Liberty not licenses

One further field of regulation which deserves brief consideration is that of licenses. A business or an occupational license is now a prerequisite to entry into many occupations.

Limits are set on those entering a variety of occupations by local authorities. For example, they are needed by those owning pet shops, operating taxis, hairdressing, selling milk, operating pubs and off-licenses, and running bingo parlours, cinemas and theatres.

Another form of licensing is through the membership of professions. Most professions are able to restrict their membership tightly – and thereby achieve a position which, from their point of view, is ideal. Not only do they control entry (often by powers given to them by statute, which forbid other people competing with them in certain fields), but they also police their own rules. Purely in the interests of the public, of course!

Licenses and permission to engage in certain activities are also given out by central government.

Licenses are supposed to be for the protection of the public. But the licensing system has huge disadvantages as a means of pursuing this goal.

First, local authority licensing systems too often exclude newcomers from competing with those who are established in some trade or practice. There may well be a case for disqualifying *some* people from the pursuit of *some* occupations. For example, those who have been convicted of cruelty against animals may understandably be barred from running pet shops. But are not such matters better handled through the law? Withholding and granting of licenses is open to all manner of influences, some less proper than others.

The second disadvantage is that licenses by no means guarantee a good standard of service to the customer. The fact that someone has a license or a professional diploma does not mean that he will give a good service. And it is cumbersome, and only a remedy against flagrant misconduct, for the dissatisfied consumer to take an objection to a local authority or to a professional body. In our view, the customer is better protected if there is effective competition in the provision of services. *That* really keeps the supplier on his toes.

It is, of course, possible for suppliers to form associations dedicated to the maintenance of certain standards, and to offer redress to customers let down by any of their members. But ultimately, decent service must depend on the customers themselves. Those businessmen, with credentials or without, who are not providing a

satisfactory service will soon learn the hard way, as they lose their customers to those who do – provided, that is, that their trade is open to competition. For restrictive licensing may blunt the weapon of consumer choice.

Licensing may also limit the opportunities for people to better themselves. For it will exclude those who, while they may be perfectly competent at the task in question, have not received much formal education, or had the opportunity, time or financial resources to gain formal qualifications. It thus especially hits those from disadvantaged social groups.

Let us consider an example of the kind of problems that may occur.

Wayne Milner was nineteen years of age in 1983 when he was banned from running his own farrier's business near Doncaster. He had learned to shoe horses in the traditional way from his father, and was praised for his technique by veterinary surgeons. But this did not prevent his being prosecuted by the Farriers Registration Council for working without a license. Milner was told by the Council that he could continue to shoe horses only after he had served a four-year apprenticeship with an already approved farrier, and had passed an examination.

In such a case, the opinion of local veterinary surgeons, – and possibly some practical test of his skill and knowledge – would surely have sufficed to make sure that he would not be harming the horses. And when tradesmen are dealing with human beings, things can be simpler still. So long as there is a statutory obligation that firms be insured against injury to their clients and their employees, so long as the Trades Description, Theft and Fraud Acts remain on the statute book; so long as the civil courts can adjudge cases of unfulfilled contracts; and so long – in certain occupations – that a man can obtain a declaration that he does not possess a criminal record, then occupational licensing is surely an unnecessary and costly obstacle to enterprise.

Other licensing may have similar consequences. Consider the Inland Revenue's Tax Exemption Certificate 714. This gives workers in the building and construction industry the right to be classified as self-employed and so to be paid gross, without deductions. However, to get the certificate a man must show accounts, proving that he has worked in the industry for three years. But often a building worker cannot find employment unless he already holds such a certificate! For

otherwise, his employer will have to deduct tax and national insurance at source, and undertake laborious paperwork.

One recent excursion into licensing, by the Department of Transport, deserves special mention.

In May 1985 the Department announced new regulations controlling the dimensions of garages, designed to improve the MOT test. David Marrable, the owner of Orchard Service Station, found that under the new regulations he had to raise the roof of his premises, extend the work bays by fifteen feet, and install new ramps to lift the cars to a full five feet above the ground (instead of 4' 6", as his present ramps do). The costs of such changes would run into some thousands of pounds, without improving the test by one iota.

David Marrable must count himself fortunate compared with Leonard Price, who found his operations threatened by three separate official bodies.

Mr Price is the Managing Director of the Sandhurst Garage in Camberley, Surrey. In 1983 he opened his garage on land which was agreed locally to be an eyesore. An MOT testing station, with all the most up-to-date equipment, was added. Mr Price then applied to the Department of Transport for a licence to conduct MOT tests. He was asked to re-apply after an interim of six months during which no new licenses would be granted, since the specifications to which testing bays should be built were being reviewed. When the embargo was finally lifted in May 1985 (over a year and a half after his initial application), Mr Price was told that the processing of his submission would take some time; the backlog of applications was large.

In July, the local Council's inspector visited the premises and declared the site to be too small by 16 ft; under the new regulations the bays must be able to accommodate a car at least 22ft long (longer than a Rolls Royce or a Cadillac!). So Mr Price applied for permission to extend the size of the test area. Although the residents nearest to the garage had lodged no complaints – had indeed written to praise Mr Price for the improved appearance of the area – the local Council's planning authority refused permission.

Meanwhile, the Motor Trades Association threatened to organize a national boycott of MOT tests, because the new specification would put over half their members out of business (cf. the case of Mr Marrable, above). The Minister of Transport then withdrew the new specifications for garages already holding permits (which did not of course include Mr Price's).

Mr Price estimates that his failure to get permission to give MOT tests will lose his garage up to £200,000 a year. Nor will he now be able to employ five additional people, as he had hoped.

Mr Price's problems, however, did not end there. He had also applied for permission to install a car wash. The Council referred the application to the Water Authority, who said that this could be granted only if a roof was fitted over the car wash in order to protect the cars from rain!

In its White Paper the Government committed itself to review the long list of establishments which need local authority licenses and 'permissions' to operate. We have already argued the case on local licenses. But we would recommend that licensing by central government also be reviewed. Regulations such as those to do with the MOT tests, just adduced, cry out for impact analysis before they are implemented.

Unless proposed legislation is monitored for likely consequences, and unless the units to whom this work is entrusted are made reasonably effective, small businessmen may well suspect – however unfairly – that the Government's concern for them is limited to rhetoric.

Postscript

Under Mrs Thatcher's leadership, the Government has controlled inflation, removed currency controls, rearranged direct taxation to reduce the burden both on low incomes (where it discouraged the desire to work) and on high incomes (where it reduced incentives and confiscated the profits needed to finance business activities). Its industrial legislation has reduced strikes. It has begun to tackle loss-making industries like steel and mining, which were a massive drain upon the profitable sectors of British industry. And it is proposing to free other parts of the economy, by the removal of restrictions on shopping hours, and the opening-up to competition of the monopoly practices of solicitors and opticians.

Mrs Thatcher has brought into her Cabinet Lord Young, with a brief to remove regulations which make life unnecessarily difficult for small firms. No-one should question the sincerity of her desire to lift the burdens from small businesses and the self-employed, nor should they underestimate the work which has already gone into this task.

But running counter to these initiatives, Whitehall continues to place new burdens on the business community. Under pressure to

shed its own expenditure, the Civil Service is passing the load to the businessman.

Here are two or three examples. When redundancy payments first became a statutory requirement, the employer was able to claim half of them back from the government. In 1977, the Labour Government reduced the rebate from 50% to 40% – to a chorus of complaint from the Conservative opposition. Early in 1985, the Conservative Secretary for State for Employment announced that the rebate would be reduced to 35%, and phased out altogether by the end of the year, except for firms employing 10 people or less. How long will it be before this last sliver of a concession disappears?

In 1983, responsibility for paying Statutory Sick Pay began to be transferred to employers. At first, they had to pay it for the first eight weeks of an employee's illness. This has now been extended to 28 weeks. Since the introduction of Statutory Sick Pay, there have been over fifty alterations and amendments to the rules. New regulations to be introduced in 1986 have necessitated a new employers' guide. This has 200 paragraphs, as compared with the 158 paragraphs in the original guide. A heavy read.

The Department of Health and Social Security's latest proposals for reform, as set out in the recent White Paper will, if implemented, lay great additional burdens on small firms. Employers will be expected to administer and pay Maternity Benefits and Family Credit. Theirs will become the work presently done by the DHSS in calculating the benefits and by the Post Office in paying them out. As with SSP, the employer can make compensatory deductions from payments on National Insurance Contributions and PAYE. But what if the benefit exceeds the sum available from such sources? As with sickness payments, the money will have to come, temporarily, out of cash flow, or be borrowed from the bank. Worst of all, this 'reform' will give birth to yet another monstrous pile of regulations to be mastered, yet another laborious chore of unproductive administration to be done. Its most devastating effects will be shown at the margin: on those firms who survive on a tight budget and a low profit and who employ the less skilled and more vulnerable labour.

For example, a maternity allowance of £30 a week is proposed, to be paid for up to 18 weeks. A scheme for family credit is to take the place of Family Income Supplement. This will mean that an employer may be required to add up to £30 a week to the pay packet of an adult worker (plus up to £25 a week if the worker has a child under the age of eleven, with £2.00 to £3.50 a week for additional children). These

sums will be paid to the breadwinner of a family at or below £48.00 a week. The benefit will taper off at 70p for each pound of net income over the threshold. It is not hard to imagine the feelings of an employer in a small firm – and over a million firms employ six people or less – who must read, understand and administer these regulations; and face a penalty of a heavy fine or even imprisonment if he makes a mistake.

One last example of a new burden. The Data Protection Act, devised and passed by the present Government, will, it is calculated, require over 300,000 firms to register with a government agency by May 1986. Again, penalties for non-compliance are heavy. At the time of writing, the business community are slow in registering. Perhaps they are just punch drunk. The Data Protection Act poses terrifying problems for small firms, and introduces a powerful disincentive to the keeping of records on computers. All this while other organs of government have been spending considerable sums of money in order to persuade small firms to use information technology for just such purposes.

But the Government, it may be argued, is not altogether free to control the volume of legislation. On January 14th, 1986, Teddy Taylor M.P. asked the Prime Minister what had been the response of other EC members to the reservation which she placed at the Luxembourg summit in December on the proposal to extend majority voting to directives dealing with terms and conditions of employment. She replied that the Secretary of State for Foreign and Commonwealth Affairs had maintained our reserve on the working environment text dealing with the health and safety of workers, as this might be used to impose an unfair burdens on small and medium businesses. However, it was also stated that: 'it has already been agreed to maintain unanimity for directives concerned with harmonization of laws relating to other rights and interests of employed persons'[26].

What does this mean? Amongst the measures at present mooted in the European Parliament are some which limit the right of employers to use part-time labour, and which restrict to two consecutive periods of three months the length of time during which an employer may use the services of a temporary worker. The EC has declared that they wish to move toward the provision of permanent full-time jobs for everyone. And it has successfully forced our Government to cancel the exemption for firms employing under five people from the provisions of sex discrimination legislation. Nor will we be able to ignore regulations which will grant the right to *paternity* leave.

No Government since the war has shown a greater understanding of the extent to which burdens have been placed on the business community, or done more to lessen those burdens. But if its concern for small businesses – and for the wealth they can create and the jobs they can bring – is to be taken seriously, more action is needed. All proposed legislation *must* be monitored for its effects on small business, and action taken to prevent one arm of government adding burdens which are at least as onerous as the other arm is trying to remove: action taken not just in Britain, but in the EC, too – where the influence of socialist and corporatist traditions makes the task as urgent as can be.

References

(1) See *Politics Today*, Conservative Research Department, 23 September, 1985, quoting figures from the report of the Bolton Committee; figures on self-employed are a provisional estimate for June 1982, quoted in *Politics Today*, 13 May 1985.

(2) Op. cit., 23 September, 1985. On comparative employment figures, see *Eurostat: Employment and Unemployment*, 1984, Table II/6.

(3) See *Burdens on Business*, p. 57.

(4) Cp. the brief discussion in *Worried to Death*, Centre for Policy Studies, October 1983, section IV.

(5) *The Economist*, 19 October 1985; p. 40.

(6) 72nd Report of the Commission of Customs and Excise, year ending 31 March, 1981.

(7) See Bernard Juby, 'More Part-Time Employees?', *Small Business Bureau*, January 1986, p. 3.

(8) *Labour Market Changes and Opportunities: New Patterns of Work*, Institute of Director's Policy Unit, December 1985.

(9) Parliamentary written answer, 13 July 1983, Hansard Col. 385.

(10) See *Worried to Death*, section III, and our references there to *Accountancy Age*, 2 June, 1983.

(11) *ASP Report: Timebomb Ticks under Unemployment*, Alliance of Small Firms and Self-Employed People, 1983.

(12) See *Reply to the Government Paper: Burdens on Business*, National Federation of the Self-Employed, July 1985.

(13) See ACAS *Annual Report*, 1981 and *Employment Gazette*, December 1982. Our figure for cases won by employees does not, of course, take into account cases settled in arbitration.

(14) See *Lifting the Burden*, Annex 1, p. 37.

(15) From 1971 to 1984, female part-time employment increased from 2.8 to 4.2 million, while full-time employment declined from 5.5 to 4.9 million. See Equal Opportunities Commission, 9th *Annual Report*, 1984, p. 69. See also Peter Elias, 'The Changing Pattern of Employment and Earnings amongst Married Couples', *EOC Research Bulletin*, No. 8, Winter 1983-4, p. 4, where he documents an increase of 9% in part-time employment by married women over the period 1968-1980 in the sample covered by the Family Expenditure Survey.

(16) See Jean Martin and Cerdwen Roberts, *Women and Employment*, Department of the Environment Office of Population Census and Surveys, HMSO, 1984. There, comparing the results of a survey taken in 1980 with one taken in 1965, they comment that 'it is striking how little has changed' (p. 13), and record the same percentage of working women as 'employers and managers' - 5%. Cp. also *EOC Research Bulletin*, No. 5, Spring 1981, 'Women and Under-achievement at Work', reporting on the results of a large survey.

(17) See *New Earnings Survey* 1970-1984, Part A, Tables 10 and 11.

(18) I.e. the regulations effective from 1 January 1984 to amend the Equal Pay Act to bring it into line with Article 119 of the EC Treaty and the Equal Pay Directive. Cp. EOC 8th *Annual Report*, 1983, p. 4; 9th *Annual Report*, 1984, p. 4 and EOC's leaflet, *Equal Pay for Work of Equal Value*, 1984.

(19) See Equal Opportunities Commission, 9th *Annual Report*, 1984, p. 4.

(20) Compare F.A. Hayek's discussion of this issue; for example in his *Individualism and Economic Order*, Routledge & Kegan Paul, London, 1948.

(21) See *The Omega Report: Local Government Policy*, Adam Smith Institute, 1983.

(22) Press Release, Royal Town Planning Institute, PR85/41, 6 December, 1985.

(23) The exception concerns the generation of vehicular traffic. And here, indeed, some more specific conditions are probably needed.

(24) See *1972, No 1385, Town and Country Planning [Use Classes] Order 1972*, p. 2, and the conditions there relating to buildings in which the 'processes carried on or the machinery installed are such as could be carried on or installed in any residential area'.

(25) Compare Jane Jacobs' *The Death and Life of Great American Cities*, and, for argument relating to Britain, Alice Coleman's *Utopia on Trial*.

(26) See *Hansard*, 89, No. 36, Wednesday 15 January 1986 (written answers, 14 January 1986, Col. 552).

VAT – Appendix A

VAT should be eased. Simplification is the key. The principal areas of difficulty are three:–

(1) Output VAT to Customs and Excise is required in advance – frequently months before it is received. Where debts are bad, VAT is paid in relation to money never received at all. Reclamation is unreliable and uncertain.

Those worst affected are traders dealing almost exclusively with other traders. Their cash flow problems are often serious. Their grievance is understandable at the requirement to pay VAT to Customs and Excise sometimes three months or more before they receive it (many customers pay bills three to six months in arrears). This is less of a problem for retailers who supply goods and services direct to the public.

(2) Quarterly figures of sales and purchases are required. This is, in effect, an interim profit and loss account requiring precedence of unpaid paperwork over the generation of profits. Does this requirement achieve any purpose? Or is it simply a 'frightener' leading the trader to believe that in some mysterious way the information will be used to check his return of output and input taxes?

(3) VAT returns are required within one month of the end of each period, with stringent financial penalties for not doing so. This period is far too short for the proper assembly of the figures.

Our Proposals

(1) The point at which payment of VAT is due to Customs and Excise should be shifted. In reclaiming input tax (claimed back from Customs and Excise before it is paid out) the trader sometimes receives an interest-free loan from the Government. But in paying output tax he makes an interest-free loan *to* Government. The Government acknowledges that this system is unfair to barristers, who enjoy a special concession to pay VAT on the basis of payments received. The same concession should be extended to all VAT registered traders.

(Note: In order to avoid manipulation of Input Tax the existing Tax Point may need to be retained for *partly exempt* traders.)

(2) The VAT return should be simplified as follows:

(a) Boxes 1 and 4 should show Output tax received and Input tax paid during the period. The balance, in Box 7, would be the amount payable or repayable.

(b) Boxes 2, 3, 5 and 6 should be eliminated, together with boxes 8 and 9 (Value of Outputs and Inputs). Thus three boxes only would be completed instead of nine. (Some adjustment would be necessary to the boxes used by traders for the purpose of the Retail Schemes.)

(c) A single page Annual Return should be introduced, showing:

(i) Amounts of Output and Input Tax received and paid for each tax period, and for the year as a whole.

(ii) The total of all Sales and Purchases made during the year.

From these figures, Customs and Excise can check whether the correct amount of VAT has been paid during the year.

EC law allows for these changes.

Article 10 of the Sixth EC Council Directive provides that the tax may become chargeable no later than receipt of the price. Article 17 provides that the right to deduct shall arise when the deductible tax becomes chargeable. Article 22 (Para. 4) provides that a return must be submitted at an interval not exceeding two months following the end of the tax period which, itself, must not exceed one year. The Return is to include 'where appropriate and in as far as seems necessary for the establishment of the tax basis' the total amount of the transactions relative to Output and Input Tax. Article 22 (Para. 6) requires a taxable person to submit a statement concerning all transactions carried out in the preceding year and containing all the information necessary for any adjustment.

Under our proposals there would be no loss to the Revenue.

Transactions between registered traders would continue to cancel out. The bulk of VAT, paid by the general public, would still be payable in respect of the period during which the goods or services were supplied. The time saved would speed up VAT Returns, and the financial penalties contained in the recent Finance Bill would not be needed.

That is:

(a) A simplified VAT Return would enable many more traders to make the Return by the due date.

(b) Cash flow and general financial health would improve as normal trading terms of 30 days became better observed.

(c) Relations between government and the business community would not be damaged by the imposition of the new penalties for late returns and late payments.

(d) Customs and Excise staff would be freed for other duties.

VAT – Appendix B

During the Report stage of the 1985 Finance Bill, Dale Campbell Savours MP attempted to introduce a new clause, to the effect that:

(1) All traders be allowed to account for VAT on the basis of payments actually received; a concession already enjoyed by barristers.

The clause was rejected by the Minister of State, Barny Hayhoe MP, on the grounds that if Output tax were levied on payments actually received, the relief for Input tax would logically have to be based on payments actually made. But why not? Why should the Minister prefer to retain a system whereby traders are benefited who take advantage of the Tax Point to claim Input tax on accounts they have not paid – and who have no intention of paying until it suits them to do so?

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