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THE TIDAL WAVE OF REGULATION – AND HOW TO DO BETTER THAN CANUTE

- Cost of UK regulation has fallen by £1.19 billion since 2011.
- Deregulation lost momentum in 2013.
- Overall cost of regulation is much higher because of European Union.
- More progress on planning deregulation is needed.
- EU regulation must be tackled through stronger One-In-Two-Out rule.

1. INTRODUCTION

In this week's Prime Minister's Questions, Mark Pawsey MP asked the Prime Minister what the Government is doing to reduce the burden of legislation. In his answer, the Prime Minister highlighted the benefits to growth and employment from deregulation and stated that "this will be the first Government since the war to leave office at the end of their term with fewer regulations in place than were there at the beginning." As far as the regulation over which this Government has control is concerned, the Prime Minister is absolutely correct. Unfortunately, unless tougher action is taken to combat excessive EU regulation, the overall cost of regulation to British businesses at the end of this Parliament will be higher than at the beginning.

2. GOOD PROGRESS...

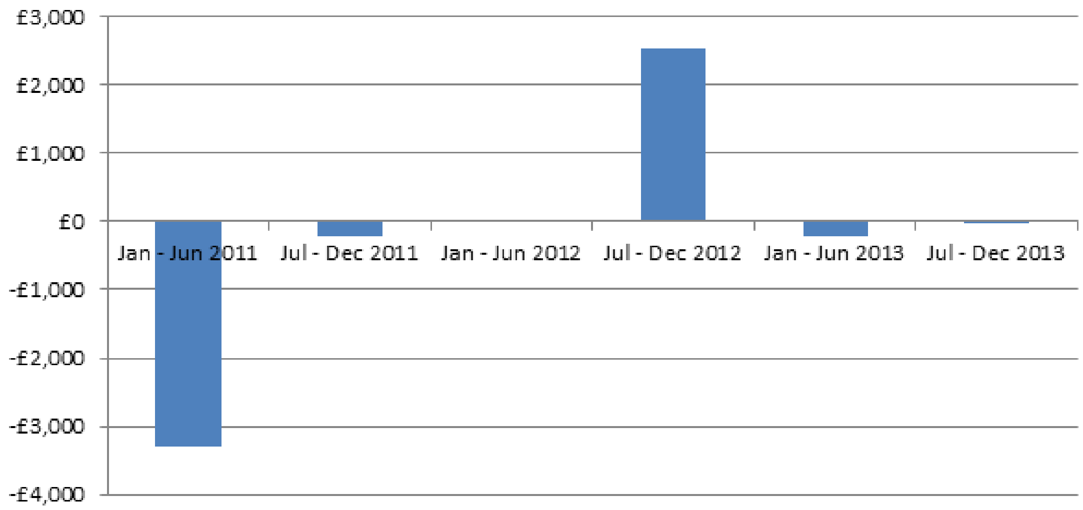
Excessive regulation can exert damaging costs on businesses. Regulatory compliance takes time and money away from more productive activities and may also act to reduce competition and the contestability of markets. This may be the case if regulation is framed in a way which acts as a barrier to entry to new firms as well as if regulation is too orientated around current market participants which could inhibit a dynamic new entrant. Under the previous Government, the burden of regulation rose significantly. The British Chambers of Commerce estimates that in 2010 the cost of regulation to British businesses was £90 billion.

The current Government has made progress in stemming the tide of regulation and has taken steps to reduce the cost of regulation since it came to power. The Red Tape Challenge and the introduction of the One-In-One-Out rule (which has become the One-In-Two-Out rule) are the key tools through which the Government has taken a deregulatory approach. According to the Government's Impact Assessments, under the One-In-One-Out rule in 2011 and 2012, the total cost of regulations within scope of the rule fell £963 million. The introduction of the One-In-Two-Out rule in 2013 saw the overall cost of regulation in the three years fall by £1.19 billion. This reduced cost burden on business will have helped to free capital for investment.

3. ...BUT LOSING STEAM

However, the Government's early momentum on deregulation appears to be losing steam. In 2013 the cost of regulations within scope of the One-In-Two-Out rule fell by just £237 million compared to the deregulatory boost of £3.5 billion in 2011.

Chart 1: Net Regulatory Cost to Business (£m)



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To some extent this must reflect diminishing returns from deregulation because many of the more absurd regulations will have been scrapped earlier on. However, to surrender ourselves to the victory of bureaucracy over business is unacceptable. In this regard, conservative free-marketeers should adopt the Trotskyist concept of permanent revolution; Government should always and everywhere look to deregulate because it is also always and everywhere increasing regulation.

4. HOW TO REGAIN THE DEREGULATORY MOMENTUM

The known total cost of regulations including out of scope EU regulations has only fallen by £29 million. For example, the Government estimates that the Alternative Investment Fund Managers Directive alone would cost British businesses £1.24 billion a year. Moreover, the costs of 67.5% of the regulations imposed from Brussels have not yet been validated. Once these have been included, it seems likely that the overall regulatory cost to British businesses will have increased. The Government could therefore take an even greater step to increase capital investment and reduce business costs by expanding the scope of the rule to include regulations imposed at the EU level.

It is widely accepted that the restricted supply of new houses is a key factor distorting the housing market and keeping costs at a higher than necessary level. As Keith Boyfield and Inna Ali point out in their CPS publication, excessively complex and bureaucratic rules have held back construction and the proper functioning of the market for little discernible benefit. Regulations controlling the planning system have grown consistently since the effective nationalisation of development under the Town and Country Planning Act 1947. 118 Acts have governed the system including the Artisans and Labourers Dwelling Act 1868 and the Sunday Entertainments Act 1932.

The result of this is more confusion and uncertainty which leads to more expensive construction and less productivity-enhancing development. Annual house building startsreached 122,590 throughout 2013 which is an increase of 23% compared to 2012. However, the number of completions fell 5% in 2013 to 109,370. Given that the number of house building starts remains 34% below the 2007 peak, it is clear that there is considerable scope for growth. The impact of regulation on house building has been emphasised through the comparison between England which has embarked on a programme of relative planning liberalisation and Wales which has not carried out equivalent reforms under the Labour controlled administration. The number of new houses registered in the UK as a whole rose 28% but in Wales the number fell 12%. Persimmon Homes estimates that extra regulation in Labour controlled Wales adds £3000 to the cost of building a house compared to many parts of England. The Government should therefore continue to reduce and simplify house building regulations. For example, as Keith Boyfield and Inna Ali suggest, a New Consolidated Act could be enacted which rationalised all the existing statues currently affecting planning and development.

The British Chambers of Commerce estimates that in 2011, 42% of regulations were out of scope of the One-In-One-Out rule. The Government should therefore look for additional ways to cut the cost of regulation. One such way would be to introduce sunset clauses for all regulations. This would mean a requirement after a period of time to review regulations to check if the benefits derived from maintaining them still outweigh the costs. The Government has already introduced this for new regulations and domestic legislation introduced through secondary legislation specifically. By extending sunset clauses to as many existing regulations as possible, the Government could give itself a new and powerful tool to promote deregulation. This could mean for example a statutory review a maximum of five years after the adoption of the new sunset clauses regulation and an automatic expiration date after seven years.

In order to reduce the burden of regulation, transparency and consistency should be a priority. Small businesses especially would benefit from clear and easy access to information on the compliance issues which are important to them. Every Government department should therefore ensure that all the Impact Assessments for regulations are readily available online alongside any commentary from the Regulatory Policy Committee. Businesses will often have to deal with regulations emanating from different departments so the Government should also ensure that there is a common way of dealing with requests for information as well as clearer inter-departmental communication on efforts to cut the cost of regulation.

Even with more powerful deregulatory measures and despite success in cutting the overall cost of regulation, the Government should set a commitment to reducing the total cost of regulations to businesses each year. This may mean simply promising to have a net reduction in the cost of regulation each year or it may even involve setting a more specific annual target for business costs saved. In doing so, businesses will have greater certainty that the future regulatory environment will be less burdensome which should encourage more investment and innovation.

5. EUROPEAN UNION REGULATORY REFORM

The European Union's Working Time Regulations enacted in 1998 mean that most workers cannot work more than 48 hours in the week unless they specifically opt-out. It is clear that these regulations make our labour market less flexibility and cause higher business costs. Open Europe estimates that it costs the UK economy £4.1 billion per year. In their report, Andrea Leadsom MP, Charlotte Leslie MP and Chris Howarth highlight the "serious and negative effect" that the Working Time Regulations have had on hospitals. This has been exacerbated by the subsequent SiMAP and Jaeger European Court of Justice Rulings which have led to significant reductions in surgical hours. Quite simply, the EU should have no business regulating the British labour market in such a way. The Government should look to secure a total opt-out from these rules. Given that the SiMAP/Jaeger rulings have had a significant impact on rest periods and on-call time in public services throughout the EU, there is continent-wide support for rolling back the most pernicious impact of these regulations.

Aside from the Working Time Directive, the Government should continue to look to carry out deregulation on the EU level. Open Europe estimates that the top 100 costliest regulations imposed on the EU level cost the British economy £27.4 billion a year. They also estimatethat EU social law alone costs British businesses and the public sector £8.6 billion a year. In looking to cut back on excessive EU regulation, the Government should first look to prevent the introduction of new costs and then use that momentum to strive for abolition of other costs. For example, the Government should push the Commission to completely withdrawthe proposed Soil Framework Directive which could cost £3.5 billion a year. Beyond that, the Government should look to cut back in areas such as the Energy Performance of Buildings Directive which is estimated to cost £1.5 billion a year. By fighting back against costly and often unnecessary EU regulations, the Government will free up funds available for capital investment which should increase underlying growth over time.

6. MUST BE READ

- **Jeremy Warner**: Our economy's getting bigger, but not better
- **Michael Fallon MP**: Deregulating for Growth
- **OECD**: Ambitious structural reforms can pave the return to strong and sustainable growth

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