

IS REGULATION REALLY GOOD FOR US?

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ABOUT US

The British Chambers of Commerce is the national body for a powerful and influential Network of Accredited Chambers of Commerce across the UK; a Network that directly serves not only its member businesses, but the wider business community.

Representing 100,000 businesses who together employ more than 5 million employees, the British Chambers of Commerce is The Ultimate Business Network. Every Chamber sits at the very heart of its local community working with businesses to grow and develop by sharing opportunities, knowledge and know-how.

No other business organisation has the geographical spread across extensive multi-sectoral, multi-sized businesses achieved through local Chambers of Commerce. Lying at the heart of their local community, Chambers reach and serve all businesses, with special emphasis on providing services to their members.

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Welcome to our eighth annual Impact Assessment Report, *Is Regulation Really Good For Us?*, with thanks to the authors, Tim Ambler, Francis Chittenden and Andrea Miccini.

One year on from our last report, the UK economy has begun to grow again, but the wounds of a deep recession are still open. There are almost 2.5 million people unemployed and the scale of the budget deficit is unsustainable.

It is clear that the responsibility of generating a robust recovery and creating wealth will fall at the feet of the business community. To this end, it is vital that the regulatory burden is treated as importantly as any other aspect of the economic environment which government can influence.

Our annual Burdens Barometer, published alongside this document, shows that the cost to businesses of complying with regulation is still growing. Furthermore, this report outlines that there is still a long way to go before Whitehall and the European institutions have got to grips with the impact of their regulatory output.

Indeed, this publication looks at the government narrative related to its better regulation agenda, how the UK and EU processes are out of kilter, and Parliament's control of the regulatory process. However, if adopted, the recommendations made here, such as strong independent scrutiny of Impact Assessments and robust post-implementation review, will help to address these problems.

Despite the need for improvement, it would be churlish to suggest that over the past few years significant progress has not been made: Impact Assessments are better; there is greater transparency of the legislative process; and, administrative burdens have been reduced. There is, however, much more to do.

A handwritten signature in black ink, appearing to read 'David J. Frost'.

David Frost
Director General
British Chambers of Commerce

In the last two years, the UK government has sought to change the regulatory narrative from improving regulation to claiming that regulation is generally beneficial, i.e. it brings more benefits than costs, for everyone. This change of presentation may reflect the government's failure to staunch the flow of new regulations, which more than doubled from around 150 p.a. in the 1990s to 334 p.a. in 2005/6. The decline to 265 for the year to 30th June 2009 is due to fewer regulations from Brussels.

The Impact Assessment (IA) system was created, ostensibly, to challenge the need for each proposed new regulation and, if it is required at all, then to establish the least burdensome means of delivering the policy objective. As discussed in our previous reports, the IA system works fairly well in clerical terms (the boxes are ticked), but not substantively. Few if any regulations are stopped as a result of IA challenge, and few alternative solutions are seriously considered.

This eighth annual report examining how the UK regulatory system works in theory and practice covers:

1. The conformity of regulatory IAs with best practice as set out by government. **Summary Finding: the boxes are increasingly ticked but impact assessment has had no effect on the Whitehall culture of regulation.**
2. Formal impact assessment began later in the EU than the UK but we can now compare practice with theory here too. **Summary Finding: practice is improving in Brussels but the system is very untidy. For example, the lack of clarity about which initiatives are selected for formal impact assessment, the content of such assessment and lack of audit trail between proposal and implementation make following the process difficult.**
3. The UK enjoys, or suffers, two law-making factories: Whitehall and Brussels. Ideally they would each restrict themselves to their own areas of competence so that the combined burden would be the same as that from a single factory. In our report last year we showed this not to be the case. Each factory seems to operate as if the other did not exist. **Summary Finding: Further research this year**

confirms that the two systems do not mesh. Proposed regulations are not challenged by the body that is supposed to have charge of UK law-making, namely Parliament.

Much of the claimed overall benefit of regulation is no more than "bread and circuses": giving attractive rewards to citizens and penalising productivity in the process. Transferring wealth from business to citizens, whatever the arithmetic, can be made to seem beneficial. In reality, however, it is a form of business taxation and damaging for competitiveness and the economy, and therefore UK citizens, in the longer term.

This report notes the positive moves made by government towards restraining regulation but nevertheless we are left with two conclusions:

- The UK government case that regulation is beneficial for business, citizens and the country as a whole, is deeply flawed. Some regulation is essential but current amounts are excessive and flow mostly from Whitehall. The UK has a diminishing number of people in productive employment and an increasing number of people trying to stop them.
- Since most of the cumulative regulatory business burden (by value) arises in Brussels, government should pay more attention to aligning the UK IA system with the EU legislative timetable in order to make the UK more effective at representing business needs in Brussels, improve the productivity of the EU, and ensure that the UK does not penalise itself relative to the rest of the EU.

RECOMMENDATIONS

1. Whitehall may think that the EU has much to learn from the UK IA system and that is true, up to a point. Far more importantly, the UK should learn from the EU. For a start, UK IAs of upcoming EU legislation should be based on the EU timetable beginning with the Work Plan, and partial UK IAs should appear simultaneously with the proposed legislation. UK IAs should be aligned with EU legislation not only in timing but also in description so that the documentation is easier to match up.
2. The UK needs the equivalent of the EU Impact Assessment Board (IAB), which sets standards and robustly rejects IAs that do

not match up to them. The new Regulatory Policy Committee may well prove to fill this need as it has strongly criticised the first five draft IAs it considered.

3. IAs are still difficult to find and identify on departmental websites, although the Better Regulation Executive's new library is proving valuable. The audit trail of UK IAs should be maintained on departmental websites for later use, e.g. in post-implementation review.
4. The relevant committees of the Commons and the Lords should be promptly provided with [partial] IA templates and have the opportunity for substantive comment and, where necessary, rejection. At present they get draft EU legislation and UK sourced regulations in an avalanche of paper without the crucial impact assessment templates, and too late to make a difference. Parliament should recover its role as UK law-maker and approve or reject all significant (burdensome) regulations.
5. When a Minister signs off a new UK-only regulation, in relation to an area with EU competence, he or she should explain in the IA why the regulation is needed in the UK but not in the rest of Europe.
6. Both the Commission and Whitehall muddy the regulatory waters by having too many inappropriate IAs, i.e. for discussion papers, guidance, and legislation, or prospective legislation, that places no burden on any stakeholder and for UK transpositions of EU regulations that are automatically binding in the UK. IAs should be reserved for their original purpose, i.e. challenging burdensome EU and UK regulations as part of the consultation process. SMEs should be considered separately in all IAs.
7. EU Regulations should be separated into laws and administrative orders as envisaged by the Lisbon Treaty. The EU2020 strategy's commitment to use regulations instead of directives where possible, is to be welcomed.
8. Post implementation reviews should be conducted and published three years after a regulation's implementation. Parliament should block any new primary or secondary (Statutory Instrument) legislation from a department which is not up to date with published post-implementation reviews for significant regulations, e.g. more than £1m burden. The EU should adopt a similar policy, but EU PIRs should be based upon analysis conducted in Member States, as ex-post examination at the level of the EU is too high a level of aggregation to be meaningful.

1. SETTING THE SCENE

In the last two years, the UK government has sought to change the regulatory narrative from improving regulation to claiming that regulation is generally beneficial, i.e. it brings more benefits than costs, for everyone. Apparently we should not see it as a burden, reducing productivity, but a boost to competitiveness and the economy. This is a major change of tack. 20 years ago, the administration of the day saw regulation as a burden to be minimised. The “Less Regulation Task Force” was directed to find ways to reduce the flow of new regulation, the stock of old regulation and thereby the burden.

In 1997, the presentation was changed to “better regulation”, in other words the process and outcomes should be as positive as possible. The volume of new regulation was not to be a matter of concern; the quality was what mattered.

When “better” seemed to mean “more”, the government changed tack again and, in October 2004, stated that, in the new regulatory regime, “less is more”¹. Two initiatives were announced as part of that: learning from the Dutch, a programme to reduce the administrative, as distinct from compliance, burden of regulation and the removal of one existing regulation for every new one introduced.

The first has been implemented to some extent and we will review that. The second, like the regulatory budgets announced in March 2008 was not. But did the flow of new regulations reduce as the word “less” would imply? Unsurprisingly, the number of regulations p.a. more than doubled from around 150 in the 1990s to 334 in 2005/6 although it has since fallen back to 265 for the year to 30th June 2009, of which 54 arose from Brussels.²

Apparently needed by the continuing grumbles about the amount of regulation, the government,

in 2008/9, changed gear again, going on the attack and attempting to show that regulation, far from being a burden, provided more benefits than costs. The Better Regulation Executive (BRE) website states “Effective regulation brings benefits – like the extra trade and reduced prices that competitive markets create, cleaner air and water, reduced carbon emissions, safer and healthier workplaces and food, and the safety-net created by the minimum wage.”³ In October the BRE published “The Total Benefit/Cost Ratio of New Regulations 2008 – 2009” (BCR) which claims that the benefits of these new regulations are double the costs.

This report examines that claim in detail. The BCR results are in sharp contrast to figures in the BCC Burdens Barometer that examine the cumulative and significant net costs of regulation to business. Using the regulation of business, rather than the tax system, to provide for social welfare, such as parental leave, undermines business competitiveness and productivity. Politicians have grabbed regulation as a “free” way to increase social benefits without the transparency of taxation. Transferring money from wealth **creating** business to wealth **consuming** citizens will, sooner or later, damage competitiveness and reduce employment. Transferring wealth from rich to poor is a fundamental requirement for liberal democracies but that is the function of the tax system. Hobbiling productive business is, at the very least, an inefficient and, some would argue, covert form of taxation.

The Impact Assessment (IA) system was created, ostensibly, to challenge the need for each proposed new regulation and, if it is required at all, then to establish the least burdensome means of delivering the policy objective. As discussed in our previous reports⁴, the IA system works increasingly well in clerical terms (the

¹ *Less is More*, Better Regulation Task Force, March 2005. The idea was that fewer principles would be better than more specifics. A nice theory but the civil servants and lawyers who drive regulations demand the specifics.

² Since every business burdening regulation should have an IA, we estimate the number of regulations from the number of IAs.

³ <http://www.berr.gov.uk/whatwedo/bre/benefits/page44019.html>, accessed 29/1/10.

⁴ The previous reports were:

Tim Ambler and Francis Chittenden, **Worlds Apart: The EU and British Regulatory Systems**, British Chambers of Commerce, May 2009.

Tim Ambler, Francis Chittenden, and Stefano Iancich, **The British Regulatory System**, British Chambers of Commerce, March 2008.

Tim Ambler, Francis Chittenden, and Deming Xiao, **The Burden of Regulation: Who is watching out for us?** British Chambers of Commerce, April 2007.

Tim Ambler, Francis Chittenden and Kapil Ahuja, **Regulators: Box Tickers or Burdens Busters?** British Chambers of Commerce, April 2006

Tim Ambler, Francis Chittenden, and Chanyeon Hwang, **Regulation: another form of taxation**, British Chambers of Commerce, March 2005.

Tim Ambler, Francis Chittenden and Mikhail Obodovski, **Are regulators raising their game? UK regulatory impact assessments in 2002/3**, British Chambers of Commerce, March 2004.

Tim Ambler, Francis Chittenden and Monika Shamutkova, **Do the regulators play by the rules? An audit of UK regulatory impact assessments**, British Chambers of Commerce, January 2003.

boxes are ticked), but not substantively. Few if any regulations have been stopped as a result of IA challenge and few alternative solutions are seriously considered. The usual list of options consist of (a) Do nothing or (b) A precise specification of some predetermined course of action. The “Do nothing” option clearly will not bring the required change and therefore option b is the only sensible course of action. And, many pages later, a Minister signs to say so. If it were not so serious, it would be farcical.

This report examines the extent to which the new claim that regulation is good for all parties is substantive, and the extent to which it is purely presentational. In other words, does reality match the rhetoric? Do these new claims represent a genuine change in regulatory activity or are they merely seeking to justify the unrelenting flow of new regulation and failure to remove redundant regulation?

This is the eighth annual report examining how the UK regulatory system works in theory and practice. It is also the sixth to review the comparable EU system.⁵ Some administrative improvements have been made but the more substantive recommendations have neither been refuted nor implemented. We now discuss:

1. The conformity of regulatory IAs with best practice as set out by government.

2. Formal impact assessment began later in the EU than the UK but we can now compare practice with EU theory here too.
3. The UK is regulated mainly by two law-making bodies: Whitehall and Brussels. Ideally, each would restrict itself to its own area of competence so that the combined burden would be the same as that from a single administration. In our report last year we showed this not to be the case. Both seem to operate as if the other did not exist: the impact assessment systems are not coordinated and few if any regulations are effectively challenged by the body that is supposed to have charge of UK law-making, namely Parliament. Perhaps things have improved in the last 12 months. We explore this question further in this paper.
4. Whether the “good for all” claims by government withstand inspection. We take note of the improvements which have been made and are proposed, e.g. in the March 2010 Budget statement.⁶
5. What realistic and practical improvements should now be made? We face an election in a few weeks and perhaps the incoming government, of whatever colour, will recognise the importance of Parliament’s role in new UK and EU law-making. We make recommendations with that in mind.

⁵ Our reports from 2006-2009 included EU IAs after the separate report: Tim Ambler, Francis Chittenden and Chanyeon Hwang, **Is EU Regulation good for us? A study of EU Regulations in 2003/4**, British Chambers of Commerce, May 2005.

⁶ Chapter 4: Supporting Business and Growth, pp. 55-56.

2. DOES THE GOVERNMENT FOLLOW ITS OWN GUIDELINES FOR UK IMPACT ASSESSMENT?

All business-burdening regulations, whether sourced from the EU or UK, should be tested by Impact Assessments to establish if they are necessary and, if so, whether the least burdensome means of achieving the policy objective is being adopted. In considering regulation from a business perspective, we use the number of IAs to indicate the number, costs

and benefits of regulations. The year to June 2009 saw 265 new regulations, an increase of 7% over the previous year.⁷ Since, according to UK Guidelines, Impact Assessment is required for any proposal that imposes or decreases costs on businesses or third sector, this increase could indicate that legislative activity affecting business is increasing, although these numbers are smaller than in 2005 to 2007.

Table 2.1 shows the annual progression.

Table 2.1: Number of IAs p.a.

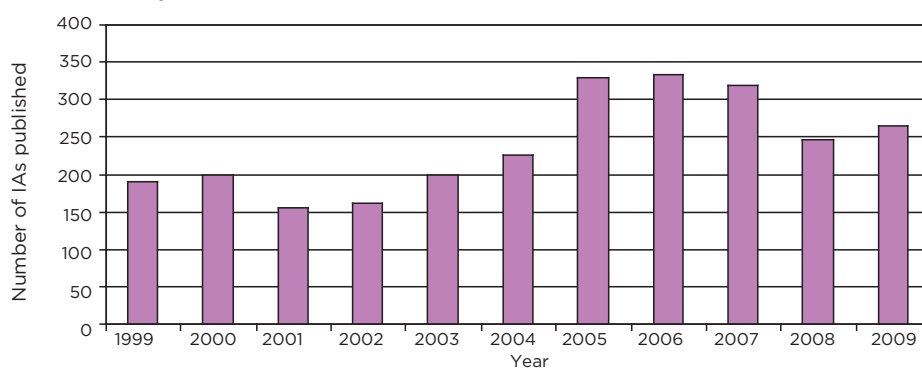


Table 2.2: Number of regulations per department p.a.

Department	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
BIS (BERR & DIUS)	42	50	29	31	31	43	42	49	66	32	32	447
DEFRA	63	42	30	20	24	33	59	46	57	34	36	444
DT	25	12	15	34	29	32	45	48	32	25	39	336
HMRC	5	14	10	19	11	29	19	37	23	34	20	221
DH	14	16	10	13	18	27	29	20	23	15	35	220
ODPM/DCLG	6	9	3	3	15	13	21	30	24	30	37	191
HO	7	15	17	9	9	10	40	6	15	9	27	164
FSA	6	11	12	7	17	14	21	18	15	22	5	148
HMT	9	10	4	5	12	4	8	4	18	22	11	107
DWP	9	6	12	5	2	3	5	10	19	5	4	80
DFES	4	5	4	2	3	6	17	33	3			77
HSE	1	8	5	10	13	2	7	5			4	55
DCMS			2	1	9	1	8	15	8	3	2	49
DCA		1	3	2	5	6	6	9	2			34
MoJ									8	3	9	20
DCSF									2	1	4	7
FCO					1	1	1	2		2		7
CO						2	1	1		2		6
FC					1				3	1		5
Innov_Unis_Schools										5		5
MOD							1	1	1	1		4
Govt Equality Unit										1		1
Total	191	199	156	161	200	226	330	334	319	247	265	2628

⁷ Impact Assessment Library (<http://www.ialibrary.berr.gov.uk/>), maintained by the Better Regulation Executive (BRE), 2nd August 2009.

CHAPTER TWO: DOES THE GOVERNMENT FOLLOW ITS OWN GUIDELINES FOR UK IMPACT ASSESSMENT?

Over 20 UK government departments were responsible for regulations in the period 1998 - 2009 but most arose from six departments: Business, Innovation and Skills (BIS - created in June 2009 from the merger of Business, Enterprise and Regulatory Reform - BERR - and Innovation, Universities and Skills - DIUS), Environment, Food and Rural Affairs (DEFRA), Transport (DT), HM Revenue & Customs (HMRC), Health (DH) and Deputy Prime Minister/Local Government (ODPM/DCLG). This was also true for 2008/9.

Table 2.3 shows that about 30% of policy proposals originated in the EU, although in the last two years this proportion has fallen to 20%. The reduction in the proportion of EU legislation coincides with and is mainly responsible for the decline in the total number of IAs produced. This information will be of interest later when comparing the economic impact of these proposals.

Table 2.3: % of EU and UK policy proposals

Year	EU	UK
2004	28.90%	71.10%
2005	33.23%	66.77%
2006	32.33%	67.67%
2007	32.34%	67.66%
2008	20.99%	79.01%
2009	20.00%	80.00%
Total	28.39%	71.61%

Appendix A contains the analysis of IAs in terms of the costs and benefits for the three "stakeholder" groups, namely business, government and citizens, both for 2008/9 and the trends up to that year. The main points that can be drawn are:

- 2008/9 was broadly comparable with previous years in terms of numbers of IAs produced and Government Departments involved.
- The number of IAs extending the qualitative analysis to each stakeholder has increased, but the number of IAs with quantitative estimates is considerably lower. In particular the measurements for SMEs are unsatisfactory given the departments' knowledge that SMEs are disproportionately burdened and government affirmation that SMEs would be considered first⁸.
- Although EU-originated initiatives were only 20% in 2008/9, they generated 43-54% of the gross regulatory burden on business.
- Most of the cost and benefits measured arise from a small minority of initiatives. The activity of post implementation review should therefore be targeted most efficiently to these key regulations.
- Overall in 2008/9, the initiatives generated a net cost and benefit of £1,357m and £9,501m respectively, but citizens enjoy the benefits whereas businesses incur the costs. We return to this topic in the penultimate section of this report.
- Although we have remarked on it before, it is worth again commending the BRE on two very helpful developments which are working well in practice: the virtual library of all UK IAs and the IA "template", i.e. the fixed format executive summary of the IA. These three pages or so provide, in many cases, all one needs to know about a regulation. It is a pity, as noted last year, that Parliament ignores IAs and templates and, as a result, fails to give proposed new legislation the attention it merits.

⁸ E.g. "we put small businesses at the heart of Government's thinking about regulation", Index of 2008 BRE Annual Report.

3. EU REGULATORY IMPACT ASSESSMENT⁹

The EU's Impact Assessment Board (IAB) was established in 2006 and "examines and issues opinions on the quality of Impact Assessment before the proposal reaches the Inter-Service Consultation". While the opinions of the Board are not binding, they accompany the proposal and the Impact Assessment throughout all the political decision-making process in the legislative branches. At the beginning of 2009, after its second year of activity, the IAB released a report outlining the main results of its operations in 2008. Emphasis was on the increased level of their activity: they considered 135 impact assessments compared to 102 in 2007 and for 32% it requested one or two revisions, up from 10% in the previous year.

These latter figures however should not be interpreted as a sign of degradation in the quality of the IAs submitted. In 2008, the IAB was more stringent in its evaluations. In 2007, "the Board took into account the fact that this centralised quality control was a new element for Commission services, and that a certain time

was necessary to allow them to get used to its procedures and requirements."

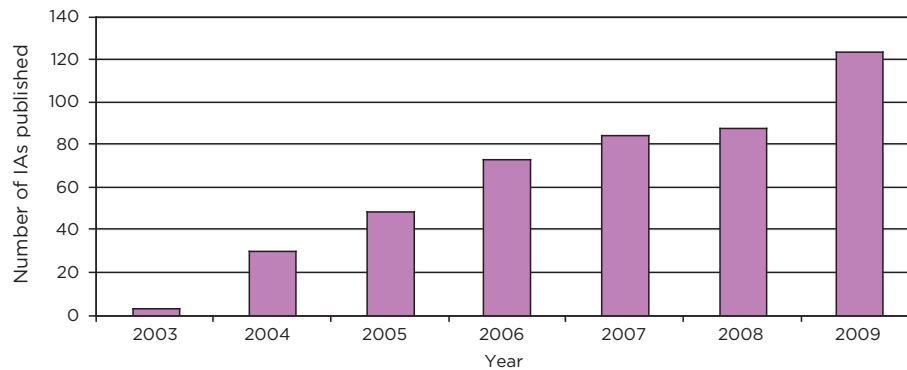
In 2008, for over 70% of opinions, the main IA weaknesses were 1) Problem definition and baseline objectives, 2) Analysis of impacts, 3) Options and their comparison. Under "Analysis of Impacts", 30%+ needed to improve quantification of impacts, and the quantification of Administrative Costs.

Finally, the IA Board complained about the quality of the IAs received, claiming that "on several occasions [they] were clearly sub-standard" and about the time they were given: "Sufficient time should be allowed not only for the Board to examine impact assessments, but in particular for services to follow-up on its recommendations".

122 EU IAs were published in 2008/9: 56 to December and then 66 to June.¹⁰ Table 3.1 shows a steady increase but not related, unlike the UK, to the number of Regulations or Directives.

Table 3.2 shows that, in 2008/9, 66% of IAs were

Table 3.1: Number of EU IAs published per year (July to June)



⁹ This section compares practice with the EU Impact Assessment guidelines introduced in January 2009. Since this is halfway through 2008/9 and some IAs will be work in progress in January, this is not strictly fair. On the other hand, these guidelines must have been in consultation for some time before they were final.

¹⁰ http://ec.europa.eu/governance/impact/ia_carried_out/cia_2009_en.htm, accessed 19th November 2009.

Table 3.2: Proportion of binding initiatives

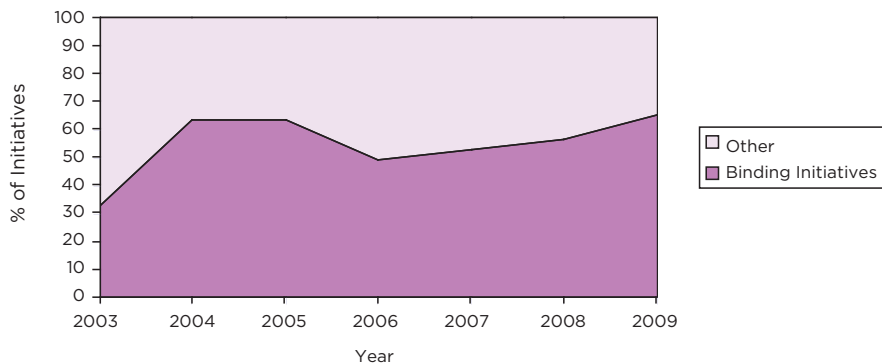


Table 3.3: EU instruments subject to IAs

Legal Instrument (% of Total IAs per year)	2004	2005	2006	2007	2008	2009
Regulation	16.7	28.6	11.0	23.5	25.0	28.7
Directive	33.3	16.3	26.0	24.7	23.9	30.3
Decision	13.3	18.4	12.3	4.7	8.0	7.4
<i>Subtotal - Binding</i>	<i>63.3</i>	<i>63.3</i>	<i>49.3</i>	<i>52.9</i>	<i>56.8</i>	<i>66.4</i>
Communication	30.0	32.7	49.3	45.9	27.3	26.2
Recommendation	0.0	0.0	1.4	0.0	4.5	6.6
White Paper	0.0	0.0	0.0	1.2	5.7	0.8
Other	6.7	4.1	0.0	0.0	5.7	0.0
Total	100.0	100.0	100.0	100.0	100.0	100.0
Total number of IAs	30	49	73	85	88	122

linked to binding initiatives (legislation) and the current trend is upwards. As noted in previous reports, we are baffled by the use of the cumbersome IA system for non-legislative matters, e.g. communications, especially as only a proportion of legislative proposals have them, even though all should. Table 3.3 provides an analysis of IAs by associated instrument.

The 81 IAs (66.4% of the total) should be compared with the total 2,314 (1,285 Regulations, 97 Directives and 932 Decisions) for EU binding instruments in the same period. Quite a few of the 2,314 are probably not legislative in nature. The Lisbon Treaty has suggested distinguishing legislative instruments from administrative orders. No action has yet been taken on that although we understand it is planned for 2020, nor is there any audit trail which would permit direct comparison.¹²

Examples of administrative orders are:

- Commission Regulation (EC) No 1050/2008 of 24 October 2008 amending Regulation (EC) No 1580/2007 as regards the trigger levels for additional duties on cucumbers, artichokes, clementines, mandarins and oranges
- Commission Decision of 11 June 2009 terminating the anti-dumping proceeding concerning imports of sodium metal originating in the United States of America.

Identification of the most relevant pieces of legislation, that require economic, social and environmental assessment, in other words, IAs, is conducted during preparation of the Commission Annual Legislative and Work Programme (CLWP)¹³, at the beginning of each calendar year. The CLWP lists the instruments that are considered “Strategic” or “Priorities” by the Commission, in agreement with the Council and the Parliament.

During the calendar year, the Commission updates the list of proposals that have been adopted since January with reference to IAs. The final document for 2008 provides the data we summarise in Table 3.4:¹⁴

The table covers calendar 2008, while the period analysed in table 3.3 is July 2008/June 2009. However the pattern is similar to the statistics considered so far. Out of 308 legislative (binding) initiatives, 64 Strategic, Priority and Simplification initiatives are assessed along with a limited number of “Other Initiatives” bringing the total relatively close to the 81 IAs for binding initiatives in the period 2008/9.

Thus, while the IA process covers only a minority of the EU’s legislation, it is supposedly concentrated on initiatives that are deemed important, giving slightly more attention to binding instruments. But these categories are

¹² European Commission. *Register of Commission documents*. Available at: <http://ec.europa.eu/transparency/regdoc/recherche.cfm?CL=en> (linked to the PreLex database: <http://ec.europa.eu/prelex/apcnet.cfm?CL=en>) (accessed November 22, 2009).

¹³ European Commission. *Planning of impact assessments - “Roadmaps”*. Available at: http://ec.europa.eu/governance/impact/planned_ia/planned_ia_en.htm (accessed November 22, 2009).

¹⁴ European Commission, 2008. *Execution report*. Available at: http://ec.europa.eu/atwork/programmes/docs/execution_report_2008.pdf (accessed November 22, 2009).

Table 3.4: Summary of 2008 Commission Activity

Comparison Proposals	Legislative		Non-Legislative	
	No. of initiatives (approx)	Impact assessment available?	No. of Initiatives (approx)	Impact assessment available?
Strategic	8	Always	16	Almost Always
Priority	27	Always	29	Frequently
Simplification	29	Always	14	Never
Other Initiatives	132	Seldom	433	never
Codification Initiatives	112	never	42	Never
Total	308		534	

neither defined nor reconciled. At best it is fuzzy. The 132 “unimportant” legislative initiatives in Table 3.4 should have been challenged by the IA system. Perhaps they were too unimportant to inflict on member states.

These categories for deciding when EU IAs are needed are, frankly, a mess:

- 1) The distinction between non-legislative and legislative initiatives can be blurred since for the majority of non-legislative initiatives, regulatory options are at least considered, even if not chosen.
- 2) Some non-legislative initiatives introduce broader regulatory and non-regulatory programmes, for example:
 - a. “Regulatory / non-regulatory initiatives to be proposed over the next 10 years” (2006/ENTR+/003)
 - b. “A communication reviewing the domains for which Community instruments (legislative or not) could contribute” (2006/ENTR+/008),
 - c. “Enlargement of the euro area” (2006/ECFIN/019)
- 3) Some non-legislative initiatives are introduced in the Work Programme without a clear list of options and explore in the Impact Assessment the appropriate next steps to establish future policies, for example:
 - a. “a more progressive, proactive, gradual approach, where the Commission prepares an interpretive communication to solve imminent problems, and at the same time launch a detailed IA to analyze the problem” (2006/MARKT+/012),
 - b. “What are the policy options? To be

identified in cooperation with stakeholders,” “What are the impacts likely to result from each policy option? To be decided when the Commission considers concrete actions (in the light of the outcome of the consultation process).” (2006/SG+/008),

- c. “An analysis of the regulatory and non-regulatory instruments is the object of this initiative” (2006/TREN/010)

The last case deserves further comment: an IA is used not only to evaluate the economic, social and environmental impact of a set of options but also, before that, to establish what the options should be. The difficulty here is genuine. A formal IA may be premature for speculative papers opening up a subject albeit with, potentially, a legislative outcome. At that stage, the ideas may be too vague. On the other hand, producing an IA once one option has been selected would be too late. That is why preliminary or partial IAs were suggested in the UK such that the IA developed definition alongside and as part of identifying and then evaluating options. Such preliminary IAs should be part of an audit trail but such a process does not seem yet to have been thought through.

Our detailed analysis of EU IAs can be found in Appendix B.

SMALL AND MEDIUM ENTERPRISES (SMES)

Very few EU IAs in 2008/9 or previously quantified regulatory effects on SMEs. In 2008/9, the *Proposal for a Directive amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities* quantifies the benefit on

SMEs in terms of reduced administration costs in the value of €6,700 million for the best case scenario, although ECOFIN considered this IA to be over optimistic.¹⁵

The Commission, on the 25/06/2008 adopted the Communication “Think Small First”, A “Small Business Act” for Europe, which explains that the Commission “will ... rigorously assess the impact of forthcoming legislative and administrative initiatives on SMEs (“SME test”) and take relevant results into account when designing proposals”. The Commission has subsequently claimed significant progress in making life easier for EU businesses, but closer examination reveals a less encouraging picture with some key initiatives either being “in progress” or claiming unrealisable benefits^{16, 17}

Similarly, special attention for SMEs within the Impact Assessment activity is, so far, inadequate. The evidence that SMEs are disproportionately damaged by regulation is overwhelming¹⁸. The lip service routinely given to lightening the regulatory burden for SMEs needs to be converted to action by policy makers and the Impact Assessment Board.

CONCLUSIONS ON THE IA PROCESS IN THE EU

The number of IAs increased markedly in 2008/9. Confusion remains over which instruments should and should not have EU IAs. Legislative proposals that affect business costs? All legislative proposals? All instruments deemed “important” whether legislative or not? Who should decide their importance? Early strategic documents (green papers) paving the way for important legislation but not themselves legislative? The application of IAs needs to be clarified.

Linking IAs to their related instruments is not straightforward. The audit trail for IAs from inception of the related instrument to the final IA and regulatory instrument should be strengthened, not least because it is a multi-year process.

2008/9 saw a useful increase in the proportion of IAs quantifying the economic impact on stakeholders but:

- Progress is real but also slow. The improvements in 2008/9 require consolidation in the next period.

- The level of quality is not yet satisfactory for EU Businesses and especially SMEs who are the primary reasons for an objective IA process. For others (Non-EU Business and Consumers) it is also poor.
- Overall, levels of quantification remain very low compared with the number of EU IAs that consider impacts qualitatively. As a result, the Commission, Parliament and Council are making decisions on many occasions with only a partial appraisal of the consequences.

The high proportion of IAs that lack approximate and/or credible quantification of benefits and costs reduces the effectiveness of the Impact Assessment function in controlling unnecessary legislation. The flow of EU regulation does seem to have reduced relative to the UK but we cannot judge the extent to which that is due to the IA system.

EU Impact Assessment operates in an environment where timescales are lengthy: from the 2006 data we can see that some proposals are withdrawn¹⁹. Others may take two or three years to work through the system to national implementation. Whether withdrawal is due to the IA system, member state or parliamentary debates or some combination of those it is refreshing to see the transparency. In contrast, the Whitehall system does its best to cover up the withdrawal of proposed regulations, if indeed that ever happens.

The EU IA process is still evolving, in terms of the number of IAs generated per year; the documentation produced (e.g. a mid-term review was produced only for 2006); from 2007 onwards the Commission has published the list of proposals adopted with or without IA; and the IAB, created at the end of 2006, is still making its presence felt. The fact that the IAB does refer IAs back for further work, unlike Whitehall, is encouraging.

From 2006 to 2009 increased efforts have sought to make the EU IA process more transparent and easier to track. Yet there is considerable scope for additional improvements and the EU can learn from the UK, notably by using a template linked to the EU’s virtual library of IAs, along the lines operated of that by the BRE.

¹⁵ Minutes of ECOFIN meeting, 28/29th September 2009

¹⁶ For example, with respect to micro-entities accounts, where the derogation is enacted in member states, accounts will normally still need to be prepared and filed with tax authorities. The result is a shift in the cause of the administrative burden from the EU to national governments. The size of any savings for small business is unclear.

¹⁷ http://ec.europa.eu/enterprise/policies/sme/sma-ii-business-act/implementation/files/sba_imp_en.pdf last accessed 18th March 2010.

¹⁸ E.g. “we put small businesses at the heart of Government’s thinking about regulation”, Index of 2008 BRE Annual Report

¹⁹ Due to impact assessment perhaps but more likely to President Barroso’s leadership in the reduction of regulation.

4. HOW WELL DO THE EU AND UK IA SYSTEMS MESH?

In theory and after 35 years of EU membership, we should expect the EU and UK regulatory systems, including impact assessment, to be well integrated. Our previous reports did not confirm that: indeed, they found quite the opposite. Each of the two administrations acts independently. They improve their own systems without apparent regard for the other. Both the chambers of the UK Parliament have separate committees considering, insofar as they consider them at all, new UK and EU regulations.

Our previous research found that, although the UK IA process worked well enough for UK sourced legislation, in procedure if not in substance, it did not work at all for EU sourced regulation, where UK IAs typically appeared after the event. IAs are there to inform the debates about new regulation, whether it is necessary and, if so, the least burdensome means of achieving the policy goal. Writing up an IA after the regulation has passed into law is just an attempt to paper over maladministration.

An example of this seems to be the “The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009” with an IA published 25 January 2010. It purports to implement EU Council Regulation 1005/2008, i.e. a Regulation of a year earlier which would therefore already be in force. No UK IA can be found addressing the issue before the EU Regulation was finalised. Since EU Regulations, unlike Directives, are automatically UK law, no further UK regulations are required unless gold plating is proposed. In this case the IA solemnly proclaims that the policy options are to do nothing (pretend the Regulation does not exist) or minimally to implement it. After due consideration, pointing out that the former option is illegal, the IA proposes the latter option. This is farcical. DEFRA, it would appear, failed to provide an IA when it was needed and subsequently tried to cover its tracks.

This disconnectedness deserves more attention. Specifically this section covers:

- For all of the 25 Regulation and Directive proposals (14 Directives and 11 Regulations) adopted in 2006 with EU IAs, the timelines through the EU and UK processes.

- Analysis of the timelines of a 2008 sample of 20 UK IAs for EU sourced regulation.

In other words, we are working from both ends: EU going forward and UK going back. We needed to start in 2006 because of the extended time taken for EU legislation to be considered and ultimately transposed into member state law.

EU forward – analysis of the 25 proposals adopted by the Commission in 2006

Table 4.1 shows the years in which the Work Programmes anticipated the items assessed. Five of the IAs related to initiatives that did not seem to appear in any Work Programme.

Table 4.1: Origin of the Directives or Regulations for which EU IAs exist²⁰

CLWP Year	No. of IAs	% of Total IAs
2003	2	8
2005	3	12
2006	15	60
Not identified	5	20
Total	25	100

Of the 14 Directives proposed, 11 came into force. Accordingly 25 UK IAs should have been produced: 14 for the original proposed Directives to provide data for determining their necessity and content and 11 for transposing the final Directives into UK law. There should also have been 11 for the Regulations and a large number for proposed EU laws without EU IAs.

We know there are a large number of UK IAs for EU legislation (see section 2 of this paper) but we were not able to find the UK IAs for all of the 25 EU Work Programme items identified here. This may be partly because those UK IAs that were completed are hard to trace for various reasons including:

- We could not identify the UK department which is responsible for each EU proposal.
- The UK IAs may no longer be available on the Internet (Departments change names, are split or merge, and so their Internet archives are subject to modification with information loss).

²⁰ None of the 2006 IAs related to the 2004 CLWP.

- Whitehall often uses different names for the UK legislation and does not necessarily use the (rather helpful) EU identifying numbers.

An example is the Commission's proposal for a Directive "Environmental quality standards in the field of water policy" which was called in the UK consultations "Priority Directive", without any link to the Commission's identifying numbers. The BRE IA library should reduce these problems in future, or at least ensure that the EU reference numbers were included.

Details of the timelines appear as Appendix C. Of the 25 Directives and Regulations, eight began the UK IA process within a few months of EU publication, perhaps not soon enough but before the legislation was final. Four of the proposals were dropped. In 13 out of the 25 cases (i.e. 52%) we could find no timely UK IA process.

UK back – the sample of 20 UK IAs published in 2008 for EU sourced regulation

This section tracks UK Final IAs back to EU legislative instruments (Directives or Regulations) in order to track the history of the UK IA activity in the EU legislative context.

The 20 UK Final Impact Assessments have been selected from those published in the UK in 2007/8 and refer to a range of EU legislative initiatives approved in the years 2005/7. On average, these initiatives were originated by Commission proposals more than two years earlier, i.e. they were adopted in the years 2001/7. There is one exception. EU Regulation 41/2007, effectively an administrative order about Sea Fishing, required only 16 days for EU approval.

Five of the 20 UK Final IAs (see Appendix C) indicate UK consultations or partial IAs before the Directive or Regulation was approved, that is, when the UK government may still have been able to influence the EU legislative process. For the other 15 either the records have gone astray or the IAs were simply issued after the event to cover the oversights. There is also continuing confusion where Whitehall seems to think that UK regulations are required to implement EU ones. They are, occasionally where interpretation is required, but in principle an EU Regulation is UK law and does not require further justification, or regulation, after enactment in Brussels.

In some cases the existence of past consultations and IAs can be inferred from later documents, but it was not possible to retrieve them on the internet for verification. There seems to be a problem with the storage of these past documents on the UK departments' internet websites that renders audit trails incomplete.

Commission Proposals were found for 11 of the 20 initiatives. Of these only three had EU IAs, due to the slow build up of the EU IA system at that time.

Beyond our samples, a typical case is given by Impact Assessment of Directive 2007/58/EC on rail passenger liberalisation. There should have been a UK IA reviewing this Directive back in 2006 or 2007. If there was one, we could not find it. Unfortunately the BRE IA Library did not exist at the time.

What is needed once a Directive becomes final is one or more UK regulations which transpose the Directive and a UK IA that considers how this should best be done. Instead we have one UK IA, after the event, considering the Directive itself and asking whether it should be ignored or minimally implemented. Of course the UK does not have a choice. The dates give the game away: the Commission said it would review the implementation of the Directive two or three years after it was finalised, i.e. 1st January 2009. The date of the UK IA considering the whole matter is 23rd April 2009: too little, too late.

Conclusions

Whatever may go on behind the scenes, the paper trail indicates only moderate involvement by the UK Government in EU lawmaking (52% of Commission proposals are not subject to UK IAs), and the sufficiency and effectiveness of this work in influencing EU decisions remains to be established.

Whitehall needs a more systematic and transparent approach to ensure that, where proposed EU legislation and decisions merit UK IAs:

- The partial UK IA should be prepared as soon as the EU proposal is made and circulated to relevant British interests for consultation, including the House of Commons. The EU IA should be attached to that as soon as possible.
- UK IAs and legislation should use the same,

CHAPTER FOUR: HOW WELL DO THE EU AND UK IA SYSTEMS MESH?

or identifiably similar, names as the EU proposals and the same identifying numbers.

- Partial UK IAs should be archived so that the paper trail can be followed and used in post implementation reviews.
- Further UK IAs are confusingly not used for EU Regulations and Directives after they have been finalised. Of course, IAs should be

produced for the UK transposition of Directives, but not Regulations, once the UK legislation is in draft.

- The House of Commons should be asked to signify approval or disapproval of proposed EU legislation in sufficient time for such views to carry weight – hence their need for Partial IAs at the earliest time.

CHAPTER FIVE: IS REGULATION REALLY BENEFICIAL FOR UK BUSINESS OR THE UK AS A WHOLE?

5. IS REGULATION REALLY BENEFICIAL FOR UK BUSINESS OR THE UK AS A WHOLE?

As noted at the beginning of this paper, the government is anxious to convert the negative perceptions of regulation, or over-regulation, into positives, namely that regulation is essentially good for business, good for citizens and good for UK plc. No one doubts that markets need some degree of regulation but this campaign goes much further than that.

In the BRE's October 2009 Report²¹ the Minister (Ian Lucas) introduced the topic by writing "Our better regulation agenda aims to ensure that regulation is only introduced when it is really necessary. And when it is necessary, our agenda aims to ensure that the way regulations are implemented delivers real benefits for society." Prima facie that is fine, but who judges what is "necessary" and over what time scale do we judge benefits for society? And does "society" include business?

Regulation can penalise business by transferring resources needed away from business investment to employees or citizens in general. In the short term, society can be represented as better off but when business loses competitiveness and employment shrinks as a result of these burdens, the pendulum swings the other way. This is the central issue in the discussion of "benefits" or the extent to which regulation is good for the UK as a whole, both business and society. Yet it is an issue that government, in its anxiety to portray regulation as good for us, avoids, although it does acknowledge "is vital to get regulation right: the consequences of failures can be heavy and the substantial hassle and cost falls first on business but then across the economy." (p.6) Needless to say, the case studies are all about net benefits and there is no mention of any such failures.

The report goes on to suggest that negative views of regulation are false perceptions.

All this is a bit rich from Whitehall departments who have almost all failed to publish Post Implementation Reviews (PIRs).²² In theory, each new regulation is reviewed three years after enactment to establish whether it succeeded or failed. In practice this has yet to happen²³, which leaves the Report's Panglossian claims unsubstantiated.

The government's response²⁴ to the House of

Lords report on the lack of PIRs meekly accepted almost all the criticisms and recommendations and re-stated the theory of what should happen. It agreed that failures should be published so that Departments can learn from them. Although this exchange will have impacted regulation for the better, we can expect that improvement will be slow, with greater attention being given to presentation than reporting plain facts from which we can all learn. Let us hope this expectation will be proved wrong.

One of the bolder claims in the BIS October report was that regulation should be credited with setting/maintaining measurement standards which were giving a benefit of £5bn p.a. (p.28, 1.11). This is sourced²⁵ to a 1999 consultancy study which had nothing to do with regulation. It was finding justification for four rather expensive government laboratories and certain outsourcing (p 0.3 of the PA Report). No doubt the error was accidental.

On the one hand, this document makes a powerful case for the benefits of regulation and for the burdens being more perception than reality. On the other hand, it is somewhat one-sided. The authors included a TUC representative but no one with business interests or representing the business perspective (p.88):

Steve Brooker, Consumer Focus
Rebekah Eden, Local Better Regulation Office (LBRO)
Marie-Elaine Frith, Department of Health (DH)
Victoria Hawker and Dominic Hutchings, Environment Agency
David Plant, Communities and Local Government (CLG)
Alison Spalding, Food Standards Agency
Kevin Walkin, Health and Safety Executive
Trevor Whelan, Department for Transport (DfT)
Sarah Veale, Trade Union Congress
Local Authorities Coordinators of Regulatory Services (LACORS)

Impact assessment means, according to the report, that only those regulations where the benefits exceed the costs are enacted but, as shown by the seven years of our audits, this is not the case. Another deficiency is that the report makes no substantive reference to the EU which contributes 68% and 30% (20% in the last two years) of UK regulations by value of the burden and number of regulations respectively.

²¹ "Better regulation, better benefits: getting the balance right," Department for Business, Innovation and Skills available at <http://www.berr.gov.uk/files/file53251.pdf>, last accessed 18th March 2010.

²² House of Lords Merits of Statutory Instruments Committee "What happened next? A study of Post-Implementation Reviews of secondary legislation," Report with evidence, 12 November 2009, HL Paper 180.

²³ In a 2009 meeting the BRE explained that this was because of the three year gestation period before PIRs should be conducted and that the programme of PIR preparation was about to commence. Since PIRs are not a new idea, this explanation is not wholly convincing - see House of Lords comments.

²⁴ Published by the House of Lords Merits of Statutory Instruments Committee, 28 January 2010.

²⁵ PA consulting group for DTI National Measurement System Policy Unit (1999) "Review of the Rationale for and Economic Benefit of UK National Measurement System" at <http://www.berr.gov.uk/files/file32855.pdf>

CHAPTER FIVE: IS REGULATION REALLY BENEFICIAL FOR UK BUSINESS OR THE UK AS A WHOLE?

Are all EU sourced regulations net beneficial? We know (see above) that the EU does not conduct cost benefit analysis on most of the Directives and Regulations, so how would anyone know?

BRE published another report about the same time²⁶: “The Total Benefit/Cost Ratio of New Regulations 2008 - 2009” (BCR Report). Figure 1 (p.4) shows that for secondary legislation (regulations) the benefits outweighed the costs by more than five times. The cost or burden in the year was £2bn. whereas the benefits were over £11bn. As this was in striking contrast to the IA figures we have been tracking and publishing in the British Chambers of Commerce annual Burdens Barometer, the two sets of figures need to be reconciled, not least because the BCR Report claims it was compiled from the same IAs used in this report, omitting, as we do, costs and benefits that may exist but were not quantified in the IAs.

The year taken for the BCR Report was to March 2009 whereas the years for analysis in this report are to June. The BCR Report is based on the dates regulations come into effect whereas this report is based on the dates of final IAs. As the flow of regulation is fairly steady, that is not a major problem but the difference of dates affects the reconciliation below. All the BCR

Report data should be included in this report and its predecessor.

Importantly both this and the BCR use the costs and benefits taken from the same final IAs and should therefore closely match.

By far the biggest difference is due to the BCR Report confusing costs and benefits for different stakeholders. As discussed above, a cost to business, such as maternity leave, with the benefit going to citizens is effectively a tax, making business less productive and less competitive. Governments should not outsource taxation to business but handle it directly. Furthermore if the benefit to business outweighs the cost to business, no regulation should be required at all, except perhaps some self regulation, since it would be in the interests of business to put that innovation in hand.

The fact that regulation has been running at record levels suggests that business is funding private benefits with the government seeking to portray itself in these two reports as creating value for all. The reality is somewhat different. Business creates virtually all of the value added in the economy and, where business costs are increased by regulation, i.e. just like taxation, some activities become unprofitable and so the economy shrinks in size. In a boom this goes largely unnoticed, but when the economy is

Table 5.1 Reconciliation of BCR annual cost / benefit numbers with BCC IA database

	Once-off Benefits £M	Once-off costs £M	Recurrent benefits £M	Recurrent Costs £M	Net once-off benefits	Net recurrent benefits
BCR	1,560	935	26,760	15,693	£m	£m
minus effect of missing IAs from IA database	5	43	360	346	625	11,067
minus effect of the Payment Services Directive (difference between BCR and IA library summary)	785	-276	8,000	-131	-38	13
minus effect of other minor differences (interpretation)	-33	-18	4,443	4,957	1,061	8,131
IA Database	803	1,186	13,958	10,521	-15	-514

²⁶ 21 October 2009

under pressure, as at present, the chickens come home to roost.

According to our database the total net benefits and costs, consolidated in a similar fashion to the methodology in the BCR Report and the reconciliation with the BCR numbers are set out in Table 5.1 on the previous page:

The main conclusions are:

- The BCR figures combine costs and benefits for all stakeholders whereas the BCC Barometer purely looks at net costs for business. We return to that later.
- The biggest difference is the £1bn (once-off) and £8bn (recurrent) net benefits for the Payment Services Directive. The Barometer and our database use the quantification from the IA as recorded on the BRE IA Library. Why the BCR takes figures that are £9bn different is not explained. This is such a large sum that we return to it later.
- The BCC IA database nets off the benefits and costs to consumers and this explains most of the £4bn, sums for recurrent benefits and costs in the BCR but not in the IA Library. These off-set each other, except for some minor differences of interpretation.²⁷
- The technical treatment of cost and benefit projections are open to question, as noted in the BCR report.
- Little if any attention is given to the EU and its regulatory responsibilities.
- In summary the BCR figures lack credibility for a number of reasons, but primarily, because they hide the use of regulation as a form of taxation; they raise business costs and so drive out economic activity.

Isolating the impact on business

As discussed previously, the BCR Report, far from showing the overall benefits of regulation, conceal the transfer of money from the wealth producing sector, business, to the wealth consuming sector, citizens. What is not apparent from the BCR Report or Table 5.1 above is that the net once-off costs to business during this period where £286m and recurrent costs were £5,953m according to the figures on the IAs.

Of course some regulation can enhance GDP but the vast majority of the hundreds of business

burdening regulations that we witness each year, of which many are additional to those required by the EU, can only hobble the UK's ability to earn a living. Any new business regulation that, net, benefits business should be unnecessary since business would need little encouragement to do it for themselves. It might need self-regulation, but that is far cheaper and less cumbersome than statutory legislation.

As the companion "Better regulation, better benefits: getting the balance right" report correctly points out, businesses find the hassle of having to change systems to meet regulatory changes even more debilitating than the cost burden. Many regulations are merely revisions to earlier regulations. The conclusion must be that they were poorly drafted in the first place – despite all the challenges the Impact Assessment system is supposed to contribute.

Payment Services Directive

The Payment Services Directive (PSD) did have a UK IA while the Directive was still under discussion. The 24 page document managed, however, to review the costs and benefits of the three options, as HM Treasury saw them, without any numbers at all.²⁸ For better or worse the Directive was agreed **before** the period covered by the BCR Report which can only be covering the transposition. No transposition regulation can have major benefits since, by definition, it can only interpret the final Directive – it may impose extra costs (gold plating) but not benefits.

According to the IA Summary in the BRE Library, "By applying the derogations as suggested the estimated cost to business should fall to £28.3m one-off & £4.8m p.a.". The overall costs and benefits, according to the IA, balance out at around £475M (PV) but the cost per firm was not calculated. Apparently the Directive will have a significant effect on competition, but that is not explained in the template.

The huge benefit claimed, £1bn (one-off) and £8bn (recurrent), in the BCR Report is stated in the departmental IA, but not in the IA in the BRE Library. The IA cites the Commission's estimate of £6.6bn but that is for the whole EU and for the original Directive, not this transposition. The £8bn of recurring benefit is also based upon the EU Impact Assessment published in 2005, but this figure relates to the benefits that could arise

²⁷ For example in estimating of the net present value of costs and benefits. The BCC database records annual costs and benefits, as opposed to the BRE / departments' estimates over the life of new regulations.

²⁸ The Payment Services Directive, A Revised Regulatory Impact Assessment, December 2006.

“If banks would offer EU-wide, standardised, faster and more economic end-to end automatable payments, conservative estimates project savings of €50-100bn per year for businesses.”²⁹ The €50-100bn is translated in the UK Impact Assessment as £66-99bn per annum. This is averaged at £49.5bn $(66+33 / 2)$ and then multiplied by the proportion of UK to EU GDP (16.5%) even though UK payment costs are acknowledged by the EU IA (page 22) to be the third lowest in Europe (behind Belgium and the Netherlands) and 40% lower than the EU average. The EU IA also states that the benefits will be shared between business and consumers, but the UK IA attributes all of the benefits to business, which seems most unlikely in a competitive market. It appears that this UK Impact Assessment is, at best, a prime example of box ticking and at worst thoroughly misleading.

As the biggest single number and one that tilts the whole report, one might have expected the BRE to give this a little more attention.

Financial projections

The BCR is generally based on accumulating costs and benefits over a ten year period, which is a long time in a dynamic world. Business tends to make investment decisions on the basis of a one to five year payback and seek to retain flexibility over their decisions because of the high levels of risk and uncertainty about outcomes.³⁰

Governments should be able to adopt a longer time horizon, but only when there is a very high level of certainty about outcomes. In the

absence of such certainty the use of the Treasury's 3.5% discount rate over a 10 year period, based on the Treasury Green Book and widely used in the BCR, is wholly unrealistic.

This marked difference in perceptions of risk and uncertainty and the time horizons over which outcomes can be predicted goes some way to explain why many business people believe that politicians make changes for the sake of them (causing short-term costs of upheaval with little prospect of realising the desired medium or long term outcomes) and why politicians (most of whom have no experience of trying to deliver outcomes) cannot understand why businesses do not resolve topical issues without government intervention.

Conclusion

In short, the claimed Panglossian role of regulation, as evidenced by these two reports, does not withstand examination. The impact of regulation on competitiveness and productivity is not addressed. Although some regulations undoubtedly are beneficial for the country as a whole, and they should be held up as shining examples, the sheer number, and rate of change of UK-only regulations damages UK business by distracting management from their customers and their trade. The cost burdens in IAs, which we use here, are likely to understate reality since departments are interested in having their new rules accepted.

Our conclusion is that the flow of new regulations, in aggregate, is not good for the UK even where individual citizens may gain some short term benefit.

²⁹ EU Impact Assessment, page 10, available at http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2005/sec_2005_1535_en.pdf

³⁰ Chittenden, F. with Derregia M, Capital Investment Decision Making: Some Results from Studying Entrepreneurial Businesses, Institute of Chartered Accountants in England and Wales, Briefing, 2004, London.

6. RECOMMENDATIONS

The Regulatory Policy Committee (RPC) announced by government in April 2009 delivered its first five opinions on draft IAs on 5th March 2010.³¹ The RPC's role is twofold: firstly to review IAs for new regulation and report on the quality of the costs and benefits evidence and secondly to monitor whether regulators are following Hampton principles.³² These first opinions, and others more recently, are critical of the IAs and their quantitative justification (or lack of it) in particular. For example, on reservoir flood plans they say "...the benefits are based on numbers of lives saved in the event of reservoir failure, despite the fact that there have been no such fatalities since reservoir safety legislation was introduced in the 1930s".

These albeit early indicators encourage us to believe that the RPC will prove as robust as the EU IAB. One small quibble is that they appear to confuse the needs for an IA on the transposition of a Directive with the IA for the original Directive itself.

We also welcome the new government proposals for restraining regulation set out in the Budget statement of March 2010.³³ The intent is to be helpful to industry and the principle of improving the regulatory regime is sound. Firms will wait to see how that works out before rushing to judgement, but we have two concerns:

- The main mechanism is greatly increased consultation which is itself a burden on people struggling with their businesses and does not seem to have deterred Departments from their intentions thus far.
- This is particularly true for SMEs who should be largely taken out of the regulatory system. The government has not delivered on its promises for special attention for SMEs, which are disproportionately burdened, and no mention is made of SMEs in this section of the Budget Red Book.

No government will limit itself only to regulate where the quantifiable benefits to business outweigh the quantifiable costs and, as noted above, such regulations should not be necessary anyway. And if it costs business £X and benefits citizens £Y, we are not comparing like with like. If the citizens deserve £Y then the government

should provide them with those benefits out of general taxation.

Our specific recommendations are:

1. Whitehall may think that the EU has much to learn from the UK IA system and that is true, up to a point. Far more importantly, the UK should learn from the EU. For a start, UK IAs of upcoming EU legislation should be based on the EU timetable beginning with the Work Plan. Partial UK IAs should appear simultaneously with the proposed legislation. UK IAs should be aligned with EU legislation not only in timing but also in description so that the documentation is easier to match up.
2. The UK needs the equivalent of the EU Impact Assessment Board (IAB) which sets standards and robustly rejects IAs that do not match up to them. The new Regulatory Policy Committee may well prove to fill this need as it has strongly criticised the first five draft IAs it considered.
3. IAs are still difficult to find and identify on departmental websites, although the Better Regulation Executive's new library is proving valuable. The audit trail of UK IAs should be maintained on departmental websites for later use, e.g. in post-implementation review.
4. The relevant committees of the Commons and the Lords should be promptly provided with [partial] IA templates and have the opportunity for substantive comment and, where necessary, rejection. At present they get draft EU legislation and UK sourced regulations in an avalanche of paper without the crucial impact assessment templates, and too late to make a difference. Parliament should recover its role as UK law-maker and approve or reject all significant (burdensome) regulations.
5. When a Minister signs off a new UK-only regulation, in relation to an area with EU competence, he or she should explain in the IA why the regulation is needed in the UK but not in the rest of Europe.
6. Both the Commission and Whitehall muddy the IA water by having too many inappropriate IAs, i.e. for discussion papers, guidance, and legislation, or prospective legislation, that places no burden on any

³¹ DCSF: Offsite-provision, BIS: Street Trading Pedlars, DH: Protection Tobacco Regulations (Vending Machines), DWP: Housing Benefit, Top-up-training-door-supervisors

³² <http://regulatorypolicycommittee.independent.gov.uk/rpc/terms-of-reference>, accessed 25 February 2010.

³³ Chapter 4: Supporting Business and Growth, pp. 55-56.

- stakeholder and for UK transpositions of EU regulations that are automatically binding in the UK. IAs should be reserved for their original purpose, i.e. challenging burdensome EU and UK regulations as part of the consultation process. SMEs should be considered separately.
7. EU Regulations should be separated into laws and administrative orders as envisaged by the Lisbon Treaty. The EU2020 strategy's commitment to use regulations instead of directives where possible, is to be welcomed.
 8. Post implementation reviews should be conducted and published three years after their implementation. Parliament should block any new primary or secondary (Statutory Instrument) legislation from a department which is not up to date with published post-implementation reviews for significant regulations, e.g. more than £1M burden. The EU should adopt a similar policy, but EU PIRs should be based upon analysis conducted in Member States as ex-post examination at the level of the EU is too high a level of aggregation to be meaningful.

7. CONCLUSIONS

The formalities of the UK IA system, especially with improving quantification, the new template and the IA Library are surely the best in Europe, perhaps the world. Unfortunately, none of that means anything if the system does not do its basic job of challenging new regulations, blocking those that fail to show themselves being worthwhile and improving the others. After eight years of these audits, we have seen little if any sign of this substance.

The EU IAB, still relatively new, is a great deal more robust: its rejection of inadequate proposed legislation is there for all to see. In the UK the Regulatory Policy Committee has made a good start with robust comments on draft IAs. Nevertheless regulatory decisions should ultimately be undertaken by Parliament which has largely abdicated its function as UK lawmaker leaving secondary legislation (regulations via statutory instruments) to Whitehall and Europe-wide legislation to Brussels. UK parliamentary involvement can be categorised as too little, too late.

This report has covered many issues that some readers will consider too detailed for them to worry about. The central question is prompted by the government's recent attempts to persuade us that all-well conceived regulation, i.e. all their regulation, is good for us. Is this true or is it merely propaganda?

Transferring wealth from business to citizens, whatever the arithmetic, can be made to seem beneficial, but is a form of taxation and damaging for the economy, and therefore UK jobs and citizens, in the longer term. We have little choice but to move on these matters roughly in line with the EU as a whole. Furthermore, the majority of business burdens arise on EU legislation. Yet the government directs most attention to its own legislation and very little to using the IA process in time to affect EU legislation. The two October 2009 reports proclaiming the benefits of regulation make very little reference to the EU.

So we are left with two conclusions:

- Government's case that regulation is generally beneficial appears to be unfounded, or at least overstated. Some regulations are good for some people some of the time. Very few regulations create wealth. Most act like taxation and redistribute wealth, usually away from business.
- Government should pay more attention to aligning the UK IA system with the EU legislative timetable in order to make the UK more effective in Brussels.

UK IMPACT ASSESSMENT ANALYSIS

One measure of the quality of IAs is expressed in table A.1 as the percentage per year providing at least a qualitative, if not quantitative, indication of the policy impact to main stakeholders.

Analysis of impacts on Business, Government and SMEs are present in a large majority of Impact Assessments, thus meeting one of the objectives defined by the UK IA guidelines, “to help the policy-maker fully think through and understand the consequences of possible and actual Government interventions in the public, private and third sectors.”

Another measure of quality is the percentage of reports that present quantitative indications of benefits and costs for businesses, government, consumers-citizens and SMEs.

Table A.2 shows a positive trend for IAs’ measures of the economic impacts. IAs are more likely to provide quantitative evaluation for costs than for benefits. This indicates that benefits are more difficult to quantify than costs, maybe because of the uncertainty and the longer time horizons normally associated with benefits. Despite the fact benefits represent a key driver for the policy introduction; incomplete

Table A.1: % of IAs providing some sort of impact evaluation per stakeholder

	Costs (% of all IAs)			Benefits (% of all IAs)		
	Business	Government	SME	Business	Government	Consumer
1999	15	10	0	12	4	16
2000	17	15	0	15	6	19
2001	44	34	1	39	24	55
2002	74	60	0	66	41	83
2003	83	80	0	73	60	46
2004	96	62	69	73	60	46
2005	96	94	87	96	94	93
2006	76	66	79	78	71	50
2007	76	62	71	68	65	55
2008	81	81	39	74	74	59
2009	71	78	64	76	80	72

Table A.2: % of IAs providing quantitative measures of benefits and costs per stakeholder

	Costs (% of all IAs)			Benefits (% of all IAs)		
	Business	Government	SME	Business	Government	Consumer
1999	11	6	0	2	0	9
2000	15	8	0	4	2	11
2001	36	16	1	13	3	27
2002	58	31	0	16	5	35
2003	64	33	0	24	12	35
2004	77	43	35	19	15	14
2005	67	80	62	47	60	29
2006	58	54	57	28	24	15
2007	47	36	30	19	18	7
2008	64	63	31	49	45	31
2009	59	64	38	39	31	22

Table A.3: Reported Costs and Benefits for Businesses in 2008/2009

Status	Costs			Benefits		
	Cases	One-off (£m)	Recurring (£m)	Cases	One-off (£m)	Recurring (£m)
Quantified	130 (49%)	1,015	3,359	89 (34%)	549	2,180
Not Significant	27 (10%)	0	0	15 (6%)	0	0
Not Quantified	31 (12%)	0	0	98 (37%)	0	0
Not Discussed	63 (24%)	0	0	55 (21%)	0	0
Not available	14 (5%)	0	0	8 (3%)	0	0
Total	265 (100%)	1,015	3,359	265 (100%)	549	2,180

economic analysis is bound to be inconclusive because of this apparent evaluation difficulty. This is an important drawback of the current system, since a rigorous evaluation of potential benefits is necessary to ensure a well designed policy is likely to be realised (the Economist³⁴ recently presented a good example of the difficulty to design a tax on junk food).

Business

Table A.3 presents a summary of the costs and benefits for businesses. These have been quantified (and greater than zero), in 49% of IAs for the costs and 34% of IAs for the benefits, an improvement on the previous years' statistics (table A.4).

The value of one-off costs for 2008/2009 is mainly due to three proposals which together represent more than 70% of the total: *Impact Assessment of the Implementation of the Payment Services Directive on business*³⁵ and *Impact Assessment of changes to the standard rate of VAT*³⁶, published by the HM Treasury, and *Impact Assessment of the Fluorinated Greenhouse Gases Regulations 2009*³⁷ by the Department for Environment, Food and Rural Affairs. The first and third of these are of EU origin.

In relation to recurring costs, two of the biggest contributors, representing more than half of the total amount come from the *Impact Assessment of Euro 5 and 6 Light Duty Vehicle Emission Standards*³⁸ and the *Impact Assessment of Community Infrastructure Levy*³⁹, released respectively by the Department of Transport and Department for Communities and Local Government. The former originates from the EU.

Looking at the benefits generated, the main one-off amount is due the *Impact Assessment of the Implementation of the Payment Services Directive on business*, from HM Treasury which strongly contributes also to the recurring benefits and is also an EU measure.

The quantified costs are not compensated by the benefits, on either a one-off or recurring basis. The general mismatch between the proposals generating the highest costs and those producing the highest benefits implies that the most expensive legislative initiatives have a substantial net negative effect on business competitiveness.

The historical analysis confirms the difficulty in defending the case for regulation activity to improve business competitiveness but we need to take into account the reluctance of Departments to quantify benefits relative to costs.

Government

Table A.5 reports the total costs and benefits quantified by the IAs in respect of Government.

The majority of one-off costs (80%) relate to *Impact Assessment of the Postal Services Bill*⁴⁰, promoted by the Department of Business, Enterprise and Regulatory Reform (now Business, Innovation and Skills - BIS), which represents in reality a transfer of a pension liability from Royal Mail (public entity) to the Government and it is offset by the equivalent benefit from Government to RM. This change removes any uncertainty about whether government has final responsibility for making up the RM pension deficit. Important recurrent costs to government result from the *Impact*

³⁴ The Economist, 2009. Waist banned. Available at: http://www.economist.com/businessfinance/displaystory.cfm?story_id=14120903 (accessed November 22, 2009).

³⁵ Better Regulation Executive, Impact Assessment Library: <http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=4ad1bd04514a4080b89c452cad0a28fa>

³⁶ <http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=a8039b2bab5b450f9eac200fdb82449e>

³⁷ <http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=bad087e599844f60bd1b9430c28590eb>

³⁸ <http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=6218a47c60264f9690e4a619fca70b5f>

³⁹ <http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=4c9cd20c866c4dd4abf4af46db4aa714>

⁴⁰ <http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=2a883931b73f4fa5a42a03481b49c368>

⁴¹ <http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=902ba2a93b6c47b4b1353ec8899305f5>

Table A.4: Costs and Benefits for Businesses from 2004 to 2009

Year	Costs			Benefits			net benefit (Cost)	
	Cases	One-off (£m)	Recurring (£m)	Cases	One-off (£m)	Recurring (£m)	One-off	Recurring
2004	145 (64%)	1,507	3,029	37 (16%)	1,057	1,257	(450)	(1,772)
2005	108 (33%)	1,153	4,247	26 (8%)	1	2,177	(1,152)	(2,070)
2006	94 (28%)	2,092	2,965	44 (13%)	223	3,507	(1,869)	542
2007	94 (29%)	1,329	703	39 (12%)	31	1,890	(1,298)	1,188
2008	97 (39%)	1,437	1,926	79 (32%)	165	1,145	(1,273)	(781)
2009	130 (49%)	1,015	3,359	89 (34%)	549	2,180	(466)	(1,179)
Total	668	8,534	16,229	314	2,026	12,156	(6,508)	(4,072)

*Assessment of the Education and Skills Act*⁴¹ (Department for Child, Schools and Families), which accounts for 27% of the total. It should be remembered that regulations that raise government costs also increase taxes as public expenditure has to be paid for. However, these costs are more equitable than in the case of business regulation, since the electorate will be paying higher taxes in return for the greater benefits that voters who access the educational system will receive.

One-off benefits are generated mainly by the already mentioned *Impact Assessment of the Postal Services Bill*⁴² and *Homeowners Support Package*⁴³ (DCLG) which includes *Impact Assessment of Mortgage Rescue* and *Impact Assessment of HomeBuy Direct*.

Yearly benefits to government are £2,718 million and almost compensate for the recurring cost of the initiatives. The benefits are produced largely

by the *Impact Assessment of Community Infrastructure Levy*⁴⁴ (DCLG) and by the *Impact Assessment for Implementing Personalised Care Planning for People with Long Term Conditions*⁴⁵ (including guidance to NHS and Social Care) (DH).

64% of IAs quantify costs (Quantified or Not Significant) compared with 30% that quantified benefits. Yet it can be observed that roughly the same number of IAs analyse, at least on a qualitative level (including the status Not Quantified), the negative and positive impact on government.

The historical analysis, in table A.6, provides a mixed picture where the value of Net Benefits for the Government are variable but generally strongly positive (i.e. providing significant net benefits) except for the last two years. Once more the figures are only partial due to the high number of IAs which do not quantify economic

Table A.5: Reported Costs and Benefits for Government in 2008/2009

Status	Costs			Benefits		
	Cases	One-off (£m)	Recurring (£m)	Cases	One-off (£m)	Recurring (£m)
Quantified	149 (56%)	7,499	2,821	72 (27%)	6,601	2,718
Not Significant	20 (8%)	0	0	9 (3%)	0	0
Not Quantified	38 (14%)	0	0	132 (50%)	0	0
Not Discussed	55 (21%)	0	0	49 (18%)	0	0
Not available	3 (1%)	0	0	3 (1%)	0	0
Total	265 (100%)	7,499	2,821	265 (100%)	6,601	2,718

⁴² <http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=2a883931b73f4fa5a42a03481b49c368>

⁴³ <http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=3a4260e152534905bcd1ce64c4e71d>

⁴⁴ <http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=4c9cd20c866c4dd4abf4af46db4aa714>

⁴⁵ <http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=716e32b3370e41b39dfb42cd00fcc0ec>

Table A.6: Historical series of Costs and Benefits for Government from 2004 to 2009

Year	Costs			Benefits			Net benefit (Cost)	
	Cases	One-off (£m)	Recurring (£m)	Cases	One-off (£m)	Recurring (£m)	One-off	Recurring
2004	90 (40%)	1,957	514	33 (15%)	1,760	1,110	(197)	597
2005	65 (20%)	637	1,839	33 (10%)	50	22,070	(587)	20,230
2006	77 (23%)	2,066	5,820	34 (10%)	130	17,147	(1,937)	11,327
2007	72 (23%)	1,183	2,335	46 (14%)	1,345	27,157	162	24,822
2008	84 (34%)	437	2,495	41 (17%)	0	625	(437)	(1,871)
2009	149 (56%)	7,499	2,821	72 (27%)	6,601	2,718	(898)	(103)
Total	537	13,779	15,824	259	9,886	70,826	(3,894)	55,002

benefits.

Consumers/Citizens

Table A.7 summarises the Net Benefits to Consumers which amount yearly to £10,738m and are due mainly to *Impact Assessment of Vascular Checks Programme*⁴⁶ (£3,678m) by the Department of Health and the Impact Assessment of the Education and Skills Act (£2,400m), responsibility of the Department for Child, Schools and Families. The proportion of IAs that contain no information on the impacts on consumers or citizens is significant (28%) and this aspect might deserve an additional study to clarify the reasons, since IAs should include

Table A.7: Reported Net Benefits for Consumers in 2008/2009

Status	Net Benefits		
	Cases (£m)	One-off (£m)	Recurring
Quantified	56 (21%)	7	10,783
Not Significant	3 (1%)	0	0
Not Quantified	132 (50%)	0	0
Not Discussed	51 (19%)	0	0
Not Available	23 (9%)	0	0
Total	265 (100%)	7	10,783

Table A.7 shows that half of all IAs claim benefits for consumers / citizens but do not quantify them. The IA Assessment Toolkit in general puts emphasis on first-round effects; “In some cases it might be appropriate to note any macroeconomic or second-round effects but it will not normally be necessary to try to quantify or forecast them.” For this reason the benefits to

Table A.8: Net Benefits for Consumers from 2004 to 2009

Year	Net Benefits		
	Cases (£m)	One-off (£m)	Recurring
2004	27 (12%)	8	2,602
2005	18 (5%)	0	19,192
2006	12 (4%)	0	1,384
2007	13 (4%)	31	338
2008	33 (13%)	-1,031	4,687
2009	56 (21%)	7	10,783
Total	159	-986	38,986

consumers could be overstated if they do not take into account the consequences of reduced competitiveness of the national economic system, such as loss of jobs and reduced purchasing power (e.g. when regulatory costs for the businesses are passed on to customers in order to enable the business to survive).

Small and Medium Enterprises (SMEs)

Table A.9 summarises the costs identified for Small and Medium Enterprises, reported by 38% of IAs. Main recurring costs for 2009 relate to the *Industrial Training Levy (Construction Board) Order 2009*⁴⁸, issued by the Department for Innovation, Universities and Skills (DIUS).

While policy-makers are aware of the risks of disproportionate legislative burden for SMEs and encourage mitigating measures (“Think Small First” principle), according to the statistical press release issued by The Department for Business, Enterprise and Regulatory Reform in 2008. Small

⁴⁶ <http://www.ialibrary.berr.gov.uk/ImpactAssessment/detail.cfm?IAID=d2f9537ec2734bb9b8a6e950d4776426>

⁴⁷ UK IA Guidelines and IA Toolkit (<http://www.berr.gov.uk/whatwedo/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/toolkit/page44199.html>)

⁴⁸ <http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=5d585d87205f49f6a5645236b42a6634>

Table A.9: Reported Costs for SMEs in 2008/2009

Status	Net Benefits		
	Cases	One-off (£m)	Recurring (£m)
Quantified	37 (14%)	8	66
Not Significant	63 (24%)	0	0
Not Quantified	69 (26%)	0	0
Not Discussed	62 (23%)	0	0
Not Available	34 (13%)	0	0
Total	265 (100%)	8	66

firms only (up to 49 employees) accounted for 37% of the UK private business turnover. If we include also medium sized company (from 50 to 249 employees), the figure rises to 51%.

The Small Firm Impact Test is mandatory when the proposal has an economic impact on businesses. In fact, this test in 2009 generally is not available for Impact Assessments where the costs and benefits to businesses are not significant or not applicable and in cases where the impact on business is not even discussed. Yet around 10% of IAs present costs to business but not on SMEs. The use of this test therefore is not always compliant with the guidelines.

Comparing tables A.10 and A.4 shows that only about a quarter of the IAs that analyse cost for business go on to quantify costs specifically for SMEs.

Clearly the government's guidelines are not being followed in this respect.

Table A.10: Costs for SMEs from 2004 to 2009

Year	SME Costs			SME/Business costs ratio (%)	
	Cases	One-off (£m)	Recurring (£m)	One-off (£m)	Recurring (£m)
2004	41 (18%)	92	22	6%	0.7%
2005	5 (2%)	0	1	0%	0.0%
2006	19 (6%)	111	99	5%	3.3%
2007	4 (1%)		0	0%	0.0%
2008	14 (6%)	0	-36	0%	-1.9%
2009	37 (14%)	8	66	1%	2%
Total	1,481 (100%)	205	96		

EU IMPACT ASSESSMENT ANALYSIS

Table B.1 presents the percentage of each year's IAs that provide an evaluation or description of the impacts for each stakeholder (European and Non-European Businesses⁵⁰, EU institutions – including Member State governments, SMEs and Consumers/Citizens).

The figures show, for example, that in 2008/9 90% of IAs discussed, if not quantified, the costs and benefits to EU Institutions and Governments. Historically (2004-2009) the impacts on EU Institutions are scrutinised most in the policy appraisal, normally more than 50%. EU officials are quite aware of the impact of proposed regulations on the EU and Member State Governments. It is a pity, but perhaps unsurprising, that they consider the costs on business rather less frequently. Consumers are at the centre of the impact assessment activity in 2008/9 but this has not been the case in previous years.

Costs to SMEs are considered in 52% of IAs in 2008/9. This percentage represents important progress compared with figures in previous years

that peaked at 40% in 2006/7, as shown above. The impact on SMEs is considered in almost 80% of the IAs that attempt to estimate the costs for all EU business (i.e. in 66% of IAs in 2008/9).

Table B.2 indicates the percentage of IAs that provides quantitative measures (including zero) of the impact for each stakeholder. These IAs are, of course, a subgroup of those counted before. Therefore all the figures are lower.

Quantification for almost all the categories has improved, no doubt due to the IAB's progress and to the more stringent criteria used. There is a risk of year to year researcher bias: data in EU Impact Assessments are more difficult to find than in the UK equivalent, due mainly to the lack of a template that summarises the main findings.

For example, some summaries of the EU IAs do not provide the quantitative information that is present in the full document (for ex. *Proposal for a Directive on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products*⁵¹; *Proposal for a*

Table B.1: % of IAs providing impact evaluation per stakeholder.

Year	Total No. of IAs	Costs				Benefits			
		EU Business	Non-EU Business	EU Institutions	SME	EU Business	Non-EU Business	EU Institutions	Consumer
2004	30	57	27	43	10	53	27	47	7
2005	49	29	12	61	20	49	29	67	0
2006	73	41	16	60	18	53	30	71	10
2007	85	66	35	62	40	67	38	67	62
2008	86	38	3	57	8	37	3	58	37
2009	122	66	28	90	52	80	33	90	87

Table B.2: % of IAs providing quantitative measure of benefit and cost per stakeholder

Year	Total No. of IAs	Costs				Benefits			
		EU Business	Non-EU Business	EU Institutions	SME	EU Business	Non-EU Business	EU Institutions	Consumer
2004	30	23	13	17	0	13	0	7	0
2005	49	8	0	29	2	8	0	4	0
2006	73	11	4	27	3	5	3	4	0
2007	85	16	0	22	4	13	2	7	4
2008	86	13	1	24	0	8	0	12	3
2009	122	36	11	52	11	30	8	15	21

⁵⁰ The EU IA Guidelines recognise that some Binding Initiatives (such as those which introduce trade standards) can have important two-way effects on trade relations ("How does [the option] affect EU trade policy and its international obligations, including in the WTO?") and subsequently on EU business dealing with import and export. Accordingly they should be formally considered.

Directive on labelling of tyres with respect to fuel efficiency and other essential parameters), in others the costs of certain initiatives are not attributed to a specific stakeholder (for ex. *Proposal for a Directive amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding* doesn't clarify if the cost of these measures should be met by the Member States or borne by business).

These difficulties could be largely obviated by the adoption of a template as the UK has successfully done.

Binding Initiatives

Following EU IA guidelines prescribe a more thorough analysis of economic, social and environmental impacts for Binding Initiatives (Directives, Regulations and Decisions only), and Table B.3 reports the extent of their quantitative evaluation.

The level of quantification of benefits and costs in the EU IA process is, so far, inferior to that of the UK.

During the period analysed, the IAs report total one-off costs for the whole of society equal to €8.229 million and recurring net benefits of €306.829 million. These figures are, in principle, laudable and potentially demonstrate the intention of the EU to increase wealth within and beyond EU borders. However, this aggregated picture doesn't show how this wealth is created and distributed. It is interesting to observe, for example, that a large chunk of the claimed one-

off costs (€3.540 million) come from the *Proposal for a Regulation concerning a European rail network for competitive freight*. The same applies to the total recurring net benefits where the *Proposal for a Directive on combating late payment in commercial transactions (recast) - Implementing the Small Business Act* which contributes €171.860 million, more than half of the estimated net benefits. These figures do not seem credible.

EU Business

Table B.4 presents the aggregated costs and benefits which are greater than zero in 25%-33% of IAs, in an increasing proportion compared to previous years. A significant percentage of IAs (30%) do not discuss any negative economic impacts on business but it is perhaps reassuring to see that apparently quantified costs are more than balanced by quantified benefits for EU business. In reality a very large proportion of recurring benefit (€179.110 million figure differs from the page above) are generated by only one proposal - *Proposal for a Directive on combating late payment in commercial transactions (recast) - Implementing the Small Business Act*. As observed in the UK, a small number of IAs is responsible for large proportions of costs and (especially) benefits claimed. A majority of IAs either claim modest costs or benefits, or do not quantify the impacts.

As noted above, the costs are mainly generated by *Proposal for a Regulation concerning a European rail network for competitive freight*.

Table B.5 compares the findings of this year's analysis with the previous years. Two aspects stand out:

Table B.3: % of IAs for Binding Initiatives providing quantitative measures of benefits and costs

Year	Costs				Benefits			
	EU Business	Non-EU Business	EU Institutions	SME	EU Business	Non-EU Business	EU Institutions	Consumer
2004	32	11	26	0	21	0	11	0
2005	10	0	42	3	10	0	3	0
2006	9	9	26	0	6	3	3	0
2007	27	0	31	4	22	4	13	7
2008	21	2	29	0	13	0	15	6
2009	50	14	69	17	47	8	22	31

Table B.4: Reported Costs and Benefits for EU Business in 2008/2009

Status	Costs			Benefits		
	No. of IAs	One-off (£m)	Recurring (£m)	No. of IAs	One-off (£m)	Recurring (£m)
Quantified	33 (27%)	7,733	13,298	25 (207%)	0	189,783
Not Significant	12 (10%)			4 (3%)		0
Not Quantified	40 (33%)			76 (62%)		0
Not Discussed	28 (23%)			12 (10%)		0
Not available	9 (7%)			5 (4%)		0
Total	122 (100%)	7,733	13,298	122 (100%)	0	189,783

- The high variability of the net benefits generated: in 2007 IAs presented total one-off net costs of €8.676 million and recurring benefits of €25,056 million, while 2008 recorded one-off and recurring net costs respectively of €3,043 million and €1,197 million. As noted above this is probably because a small number of IAs account for large proportions of the estimated net benefits. The presence or absence of one or two such proposals in a year can account for the irregular patterns observed.
- Overall, since the calculation of costs and benefits started in 2004, one-off costs of €48,600 million have produced claimed annual benefits of €308,500 million.

Nevertheless as in previous years, most EU IAs affecting business, raise business costs. The claimed benefits accrue from a small number of

proposals. Commentators also observe that IAs claiming benefits for business fail to address the point that a proposal that generates large net benefits for business should not require regulation. If the benefits are so large, surely business would adopt the proposed practices in their own interest and without the need for EU intervention? However, it can be argued that regulation can play a co-ordinating role and that without this a fragmented market would not adjust in an optimal way, i.e. there would be a market failure (Kapstein⁵² presented the case of the banking sector in 1987 and the concept of “competitive deregulation” which undermines collaborative efforts).

Sometimes inter-industry agreement to achieve the government’s policy objective is not legally permissible, e.g. agreement between supermarkets on minimum prices for alcohol. It is one thing for government to chair (and thus

Table B.5: Historical series of Costs and Benefits for EU Business from 2004 to 2009

Year	Costs			Benefits			Net benefit (Cost)	
	No. of IAs	One-off (£m)	Recurring (£m)	No. of IAs	One-off (£m)	Recurring (£m)	One-off (£m)	Recurring (£m)
2004	3 (12%)	6,000	1,371	4 (15%)	0	20,760	(6,000)	19,389
2005	3 (7%)	560	1,574	4 (9%)	0	12,408	(560)	10,834
2006	2 (3%)	0	3,390	3 (4%)	0	78,278	0	74,888
2007	13 (17%)	9,041	10,561	11 (14%)	365	35,617	(8,676)	25,056
2008	11 (14%)	3,043	3,043	6 (8%)	0	1,845	(3,043)	(1,197)
2009	33 (27%)	7,733	13,298	28 (23%)	0	192,836	(7,733)	179,538
Total	65	26,377	33,236	56	365	341,745	(26,012)	308,508

⁵¹ This and the following European IAs can be found at European Commission Final Impact Assessment website at: http://ec.europa.eu/governance/impact/ia_carried_out/cia_2009_en.htm#markt

⁵² Kapstein Ethan B., 1989. Resolving the Regulator’s Dilemma: International Coordination of Banking Regulations. International Organization, 43 (2), 323-347.

Table B.6: Reported Costs and Benefits for the EU in 2008/2009

Status	Costs			Benefits		
	No. of IAs	One-off (£m)	Recurring (£m)	No. of IAs	One-off (£m)	Recurring (£m)
Quantified	45 (37%)	498	11,169	20 (16%)	0	88,559
Not Significant	15 (12%)	0	0	2 (2%)	0	0
Not Quantified	52 (43%)	0	0	84 (69%)	0	0
Not Discussed	10 (8%)	0	0	13 (11%)	0	0
Not available	0 (%)			3 (2%)	0	0
Total	122 (100%)	498	11,169	122 (100%)	0	88,559

legitimise) an industry meeting to achieve the objective on a voluntary basis and quite another to try to enforce new regulations which industry will likely circumvent.

Non-EU Business

The general lack of quantitative data in relation to the impact on Non-EU business doesn't allow any meaningful analysis. Only nine reports present some quantification of economic effects and among those there is the Proposal for a Directive amending Directive 2001/83/EC as regards the prevention of the entry into the legal supply chain of medicinal products which are falsified in relation to their identity, history or source with a one-off cost to non EU businesses of €32 million.

We question whether this "stakeholder" should receive even this level of attention. Clearly special cases can be considered in a special way in any case.

European Union

Table B.6 summarises the findings of the economic impact on the European Union and Member States which are net recipients of the major portion of the benefits generated for the society as a whole. The aggregated figure for recurring benefits is €88,559 million, while for the same period one-off and annual costs of € 448 million and €11 million are generated.

The IAs that claims the majority of the benefits are the *Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation* (€40,300 million) and *Proposal for a Directive on*

standards of quality and safety of human organs intended for transplantation (€3,800 million).

The *Proposal for a Regulation amending Regulation (EC) No 1934/2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories* generates the majority of one-off costs (€ 176 million) while the *Proposal for a Directive on combating late payment in commercial transactions (recast) - Implementing the Small Business Act* is the main IA responsible for the recurring costs in the form of increased costs for public sector late payments (€ 7,250 million).

Since 2004, the data has been highly variable but overall effect of regulation appears to have cost the EU institutions €232,600 million annually. This is largely due to a proposal adopted in 2004: the Decision replacing Decision 1692/96/EC on the Community guidelines for the development of the transeuropean network in the field of transport (TEN guidelines) (recurring costs €196 billion).⁵³

Consumers

The large estimated recurring benefits of €88,559 million is mainly due to two proposals: the Proposal for a Regulation concerning a European rail network for competitive freight and Proposal for a Directive on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products, which provide benefits whose annual value are respectively €27,400 million and €26,000 million. None of these numbers are realistic.

⁵³ Although these TEN figures are very high, they are credible. Some countries will be receiving very large grants:

"In view of the growth in traffic between Member States, expected to double by 2020, the investment required to complete and modernise a true trans-European network in the enlarged EU amounts to some € 500 billion from 2007 to 2020, out of which € 270 billion for the priority axis and projects. Given the scale of the investment required, it is necessary to prioritise projects, in close collaboration with national governments, and to ensure effective European coordination.

Table B.7: Historical series of Costs and Benefits for the EU from 2004 to 2009⁵⁴

Year	Costs			Benefits			Net benefit (Cost)	
	No. of IAs	One-off (£m)	Recurring (£m)	No. of IAs	One-off (£m)	Recurring (£m)	One-off (£m)	Recurring (£m)
2004	3 (10%)	5	196,016	2 (7%)	0	706	(5)	(195,310)
2005	13 (27%)	1,679	6,816	2 (4%)	0	19,760	(1,679)	12,944
2006	15 (21%)	140,311	16,492	3 (4%)	0	42,700	(46,311)	26,208
2007	17 (17%)	3,003	1,853	6 (4%)	94,000	333	(1,250)	(1,520)
2008	14 (14%)	767	283	5 (8%)	1,754	4,852	(767)	4,570
2009	45 (27%)	498	11,169	20 (23%)	0	88,559	(498)	77,389
Total	107	146,263	232,629	38	0	156,910	(50,510)	(75,719)

Table B.8: Reported Net Benefits for Consumers in 2008/2009

Status	Net Benefits (Cost)		
	No. of IAs	One-off (£m)	Recurring (£m)
Quantified	20 (16%)	0	88,559
Not Significant	2 (2%)	0	0
Not Quantified	84 (69%)	0	0
Not Discussed	13 (11%)	0	0
Not Available	3 (2%)	0	0
Total	122 (100%)	0	88,559

Table B.9: Historical series of Net Benefits for consumers from 2004 to 2009⁵⁵

Status	Net Benefits (Cost)		
	No. of IAs	One-off (£m)	Recurring (£m)
2004	0 (0%)	0	0
2005	0 (0%)	0	0
2006	0 (0%)	0	0
2007	3 (4%)	0	25,633
2008	3 (3%)	0	9,842
2009	20 (16%)	0	88,559
Total	26	0	124,034

By comparing the findings with previous years, Table B.9 appears to show an encouraging increase in the proportion of IAs that quantify the economic impact on Citizens but, as noted above, some of these estimates are, prima facie, dubious.

⁵⁴ % in bracket indicates IAs per year providing quantification of impact

⁵⁵ % in bracket indicates IAs per year providing quantification of impact

EU AND UK IA INTERACTION

I. UK IAs for the 25 EU Legislative proposals from 2006

EU Commission Proposal				UK Partial IA		UK Partial IA for Transposition		Final IA
Date	Title	Final Legal Instrument	Final Approval	Dept.	Date	Dept.	Date	Date
05/01/2006	Shareholder's Rights	Directive	-	BERR/BIS	Oct 06			
21/02/2006	Restrictions on the marketing of certain measuring devices containing mercury	Directive	25/09/2007	DEFRA	Apr 06			
						Office of Government Commerce (OGC)	Apr 08	
14/06/2006	Review procedures Concerning the award of public contracts	Directive	11/12/2007			Office of Government Commerce (OGC)	Feb 09	
12/07/2006	Pesticides Thematic Strategy	Directive	-	HSE HSE	Apr 08 Dec 08			
12/07/2006	Regulation on 'roaming'	Regulation	27/06/2007	DTI	Oct 06			
17/07/2006	Environmental quality standards in the field of water policy	Directive	16/12/2008	Defra	Dec 06			Jun 09
12/09/2006	Supervisory approval for major shareholdings in banking, insurance, securities	Directive	05/09/2007	HM Treasury	Mar 07	HM Treasury and FSA	Sep 08	
05/10/2006	Retrofitting of mirrors to heavy goods vehicles banking insurance, Community	Directive	11/07/2007	DFT	Mar 07	DFT	Jul 08	Feb 09
12/07/2006	Directive on plant protection products	Regulation	-	HSE HSE	May 08 Dec 08			
18/07/2006	Common rules for the operation of air transport in the Community (recast)	Regulation	24/09/2008	DFT	Oct 06			
20/12/2006	Including aviation activities in the scheme for greenhouse gas emission allowance trading within the Community	Directive	19/11/2008	DFT	Mar 07	DFT	Feb 09	
18/01/2006	Flood Management	Directive	23/10/2007			DEFRA	Mar 09	Apr 09
07/03/2006	European grouping of territorial co-operation (EGTC)	Regulation	05/07/2006			DTI	(1)	

(1): "minimal impact on the private sector and on business costs. This is why a regulatory impact assessment was not undertaken for the Regulation itself."

I. UK IAs for the 25 EU Legislative proposals from 2006 (continued)

EU Commission Proposal				UK Partial IA		UK Partial IA for Transposition		Final IA
Date	Title	Final Legal Instrument	Final Approval	Dept.	Date	Dept.	Date	Date
04/04/2006	Use of alien and locally absent species in aquaculture	Regulation	11/06/2007	Defra	Required but not found			
28/07/2006	Package on Food improvement agents	Directive	16/12/2008		(2)			
26/10/2006	Banning of exports and the safe storage of metallic mercury	Regulation	22/1/2008		(3)			
17/07/2006	Regulation on the applicable law and jurisdiction in divorce matters	Regulation	-					
19/07/2006	Regulation on setting up teams of international experts to assist re external borders	Regulation	11/07/2007					
28/07/2006	Community Code on Visas	Regulation	13/07/2009					
20/09/2006	Banana internal support scheme	Regulation	19/12/2006					
12/10/2006	Community financial contributions to the International Fund for Ireland (2007-2010)	Regulation	21/12/2006					
18/10/2006	Full accomplishment of the internal market of Community postal services	Directive	20/02/2008			BERR	Feb 09	
12/12/2006	European elections 2004	Communication, Directive	-					
13/12/2006	Certification and security in railway transport	Directive	17/06/2008			DFT	Mar 09	
22/12/2006	Inland transport of dangerous goods	Directive	24/09/2008			DFT	Nov 08	

(2): "No RIA has been produced in respect of the proposed Regulation on common procedures since this is considered to be cost-neutral"

(3): "Only one UK Company will be affected by the Regulation"; "The proposal is not therefore expected to have any additional impact in the UK, and consequently a Regulatory Impact Assessment has not been prepared."

II. Timeline of EU-UK legislative process for 20 UK IAs in 2007/8

UK Final IA		UK Partial IAs	EU Instrument		Commission proposal		
Title	Issued	Date	EU Ref	Date	EU Ref	Date	EUIA available?
Implementation of the EU Directive on the statutory audit of annual and consolidated accounts	Dec 07		2006/43/EC	Sep 05	COM/2002/119/FINAL	Mar 02	No
IA of the Companies Act 1985 (Reduction of Capital) (Creditor Protection)	Mar 08	Mar 05 Feb 07	2006/68/EC	Sep 06	COM/2004/730/FINAL	Oct 04	No
European Qualification (Health and Social Care Professions) Regulations 2007	Nov 07		2005/36/EC	Sep 05	COM/2004/317/FINAL	Mar 02	No
Impact Assessment of Implementation of Internal Market Provisions of Batteries and Accumulators Directive (2006/66/EC)	Jul 08	Dec 07 May 07	2006/66/EC	Sep 06	COM/2003/723/FINAL	Nov 03	Yes
IA of the Companies (Mergers and Divisions of Public Companies) (Amendment) Regulations 2008	Mar 08	Jan 07 Dec 07	2007/63/EC	Nov 07	COM 2007/91 /FINAL	Mar 07	Yes
The Merchant Shipping (Liner Conferences) Act 1982 (Repeal) Regulations 2008	Jan 08	Jan 06 Apr 07	1419/2006	Sep 06	COM 2005/651/FINAL	Dec 05	Yes
Impact Assessment of The Specified Products from China (restriction on First Placing on the Market) (England) Regulations 2008	Apr 08		Decision 2008/289/EC	Apr 08	Not found		
The Cosmetic Products (Safety) Regulations 2008	May 08	Aug 08	Directive 2007/22/EC; Directive 2007/53/EC; Directive 2007/54/EC	Aug 07	Not found		
The Condensed Milk and Dired Milk (England) (Amendment) Regulations 2008	Jan 08	Apr 07 Jan 08	2007/61	Sep 07	COM/2007/58 /FINAL	Feb 07	No
The Plastic Materials and Articles in Contact with Food (Ltd Gaskets) (England) Regulations 2007	Sep 07	Jul 07	372/2007	Apr 07	Not found		
Food (Suspension of the Use of E128 Red 2Gas Food Colour) (England) Regulations 2007	Jul 07		884/2007	Jul 07	Not found		
The Sea Fishing (Restriction on Days at Sea) Order 2007	Mar 07		EU Regulation 41/2007	Dec 06	COM/2006/774/FINAL	Dec 06	No
Provision of historic consumption on Energy Bills	Apr 08	Nov 06 Aug 07	2006/32/EC	Apr 06	COM/2003/739/FINAL	Dec 03	No
The rice Products from the United States of America (Restriction on First Placing on the Market) (England) Regulation 2008	Mar 08		2006/601	Nov 06	Not found		
The Food for Particular Nutritional Uses (Miscellaneous Amendments) (England) Regulations 2007	Sep 07	Jul 07	1609/2006	Oct 06	Not found		

II. Timeline of EU-UK legislative process for 20 UK IAs in 2007/8 (continued)

UK Final IA		UK Partial IAs	EU Instrument		Commission proposal		
Title	Issued	Date	EU Ref	Date	EU Ref	Date	EUIA available?
The Materials and Articles in Contact with Food (England) Regulations 2007	Mar 06 Sep 07	Aug 06	2023/2006	Dec 06	Not found		
The Small Companies and groups (Accounts + Directors Report) Regulations 2008	Dec 07	Mar 07	2006/46/EC	Jun 06	COM/ 2004/72 5/FINAL	Oct 04	No
The Passenger and Goods Vehicles (recording Equipment) (Downloading and Retention of Data) Regulations 2008	Jan 08	Jan 07	561/2006	Mar 06	COM/ 2001/57 3/FINAL	Oct 01	No
The Motor Vehicles (EC Type Approval) (Amendment No 2) Regulations 2007	Nov 07		2006/40 2007/15 2006/81 2006/96	May 06	2/FINAL	Aug 03	No



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