Regulatory Impact Assessment

This section regularly examines Regulatory Impact Assessment (IA) at three levels: the EU, the Member States and internationally. Contributions aim to cover aspects such as the interface between IA and risk analysis, looking at methodologies as well as legal and political science-related issues. Contributions are meant to report and critically assess recent developments in the field, develop strategic thinking, and make constructive recommendations for improving performance in IA processes.

"Better Regulation Yes – De-regulation No.": A Trade Union's Perspective on the Regulatory Reform Agenda in the UK

*Sarah Veale**

Good regulation is essential, to protect employees, consumers and the public, as well as the environment. To argue that the market should be allowed to be the determinant of working conditions, together with a bit of exhortation to employers to behave decently, is to accept the Victorian approach that allowed children to work in coal mines.

The massive problems in the finance sector recently also show only too well the impact of weak regulation and de-regulation.

That said, Governments do not always get it right when they do regulate and there is undoubtedly some regulation that is no longer necessary, or is out of date, or is over-complicated or hard to enforce. Neither have Governments showed themselves to be very good at assessing public risk or balancing public health and environment protection with innovation and growth. As the former Risk and Regulation Advisory Council suggested, risk is often assessed through the prism of media sensationalism, political point scoring, civil service attachment to legislation and "risk mongers" such as insurance companies that have a vested interest in talking up risk.

For those reasons organisations like the Trades Union Congress (TUC) generally supported the better regulation programme of the previous UK Government and was actively involved in bodies such as the former Better Regulation Commission. The TUC has been critical of regulatory proposals that do not properly address issues of public risk or have not been properly assessed in terms of the benefits and costs. From the experience of the excessive regulation of trade unions it can be learned how expensive, unnecessary and time consuming bad regulation can be. Workers in some areas of public service provision, for example education, dislike the amount of form filling that they are expected to do.

The Better Regulation Executive produced a report on the benefits of regulation (Better Regulation, Better Benefits: Getting the Balance Right, October 2009) which showed, for example, how the National Minimum Wage had benefitted the economy.

The work of the current Regulatory Policy Committee sets out to improve the processes of regulating and ensure that Impact Assessments are thorough and robust. Non-regulatory alternatives should be explored and external advice should be sought when considering regulation. However, the bottom line is that when it comes to public safety, employees' rights and consumer protection, good regulation is an essential underpinning and must be properly enforced.

The TUC also thinks there are important areas where we need to re-regulate the labour market. Government could incentivise employers to support collective bargaining, rewarding employers that develop fairer pay systems, and to further support and extend collective agreements in the public sector. Such measures produce benefits in terms of productivity. Perhaps in return for some modest statutory de-regulation the Government could consider co-regulation between unions and employers.

The proponents of deregulation have insisted that the economic crisis means we need to deregulate still further, particularly in the labour market. The message is that red tape and regulation are strangling business and that we need to restrict workers' statutory rights, pare back the minimum wage and reduce jobs security for workers.

It is easy to see why this view is attractive to the free market economists. It delivers straightforward policy prescriptions which fit with neo-liberals' instinctive dislike of regulations and limits on employer discretion. But the fundamental problem for proponents of this view is almost none of its assumptions are borne out by the evidence.

There is no evidence that average levels of labour market regulation impede economic performance

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(and the UK is far below average), and a good deal of evidence that some types of regulation can improve aspects of economic performance.

The UK is one of the most lightly regulated countries in the OECD, ranking below only the USA and Canada on the OECD's index of employment protection. Many other successful economies – including Germany, which has performed well during the recession – have far more regulated labour markets (Germany ranks 19 in the index).

The modest re-regulation of the British labour market in the last decade was achieved without detriment to employment creation. Indeed, the impact of the 2008-09 recession on UK unemployment – which rose by much less than in the early 1980s and 1990s recessions – suggests that the slightly more regulated labour market of the last decade was working well. The new economics under the Coalition Government have had the reverse impact with unemployment soaring.

Given that the UK is already a very lightly regulated economy, there is nothing to be gained in terms of improved economic performance from deregulating further. On the contrary, it is quite possible that reducing or scrapping regulations could actually make the UK labour market perform worse for example reducing the rate of productivity growth.

The TUC welcomes and supports the work done by the HSE to simplify regulations and administrative requirements as these make for better, more effective, regulation, where the level of protection is not reduced. This has meant that we now have 46 % less health and safety regulation than 35 years ago and 37 % less than just 15 years ago.

It is not just the number of regulations that has declined. Over the last three years the HSE has reduced the number of forms used for collecting information from business from 127 to 54, a 57.5 % reduction. This has been done with the support of employers, unions and safety professionals, but the driving force has been a belief that we want regulation to be simple and effective.

Pressure from some parts of government might lead to a move away from the regulatory framework towards a "voluntary" approach. In some areas this may work well. However, the experience in some areas, including seat belts, smoking restrictions and crash helmets, is that the voluntary approach does not work and that only a statutory duty, backed up by enforcement where necessary, will ensure compliance. Where voluntarism has been attempted in the health and safety field, such as Ireland and the USA, the experience has not been positive.

Much of our regulation has been introduced to comply with European Directives. There is a misconception that the UK has traditionally "gold-plated" health and safety regulation from Europe. That is not the case, as demonstrated by the infraction proceedings that the UK faces in a number of areas because it has failed to implement European legislation adequately. What the UK has done is to ensure that, when implementing European Directives, they are placed in the context of existing UK regulation. This has meant that the UK regulations are, generally, more consistent and easy to understand than had the regulation simply been adopted out of context, as is the case in some other EU Member States. In some cases it has also meant that the UK has managed to reduce and simplify previously existing legislation, such as with the recent construction regulations. This approach has been broadly welcomed by both business and workers groups.

Much of the debate on employment rights has focused on the supposed administrative burdens which regulation places on employers, rather than on the benefits which employment law brings to working people and to building successful organisations. Providing individuals with fair treatment at work is a central feature of any civilised society, preventing discrimination and protecting vulnerable workers from mistreatment. Employment law also ensures that clear and transparent procedures are followed at work, which build trust and prevent the escalation of disputes. Compliance with employment standards also plays a key role in enabling businesses to recruit and retain staff and in promoting team-working and productive, high trust workplaces.

The regulatory agenda should not be driven by a belief that there should be either more or less regulation. Instead, we should have the level of regulation that is proportionate and effective.

Too often the administrative costs of a regulation are conflated with the policy objective; whereas keeping records of employees' hours does require some administrative effort, the overall policy objective may be laudable; the better regulation solution is to look at providing better guidance and assistance to SMEs in record keeping and reduce it as far as is possible without weakening the protection.

Reversal of many of the regulations would clearly have significant business costs – for example if we did not have clean water or asbestos free buildings,

employers who did not voluntarily keep their workplaces safe would find they incurred significantly more costs in terms of employee and public sickness, and, no doubt, litigation against them.

The current Coalition Government is struggling with the issue of regulation. Despite their desire to reduce regulation there has been an increase since the General Election. It may be that the solution does not lie in processes (for example the new One In One Out rule) but rather in a new approach in terms of policy making with non-regulatory alternatives given serious consideration. Allowing the Regulatory Policy Committee to challenge the premise for regulating when the Government comes up with policy proposals could begin to achieve better outcomes with less process.

For the TUC it is "Better Regulation Yes, Deregulation No".

Risk Communication

This section discusses issues related to risk communication across a range of publicly perceived high-risk industries (such as pharmaceuticals, nuclear, oil, etc.). It reports critically and provides analysis on risk communication as an outcome of risk research within these industries. Contributions are intended to include methods working towards the advancement of risk perception research and describe any lessons learned for successfully communicating to the public about risk.

Initial Phase Crisis Communications Following High Perceived Risk Events: The Volcanic Ash Crisis and the Japanese Tsunami as Examples

*Sweta Chakraborty and Naomi Creutzfeldt-Banda**

On 14 April 2010 the Icelandic volcano, Eyjafjallajökull, erupted resulting in a volcanic ash cloud across European airspace. The ash cloud caused a moratorium on flying and concerns over health effects to vulnerable populations. Not even a year since the volcanic ash cloud; on 11 March 2011 a massive 9.0-magnitude earthquake occurred near the northeastern coast of Japan, creating extremely destructive tsunami waves which hit Japan just minutes after the earthquake, triggering evacuations and warnings across the Pacific Ocean. The disaster also led to concerns over nuclear power plant meltdowns in the affected areas and risk of radiation. High perceived risks associated with the Japanese tsunami and volcanic ash crisis are examples of scenarios where accurate and timely health and safety communications are vital for effective emergency response. However, communications immediately following such events face unique challenges. This report describes the challenges faced in terms of crisis communication immediately following high perceived risk events and positions the example case studies in the context of an existing crisis communication paradigm.

Communicating health and safety information immediately following a high perceived risk event faces specific time-sensitive challenges: logistics being disrupted, victims in need of care, relatives in need of support, emergency responders falling victim and/or torn between professional and personal obligations, increased media attention, and political and interest group obstacles. On the positive side, the communicator has the public's attention,[1] and it is during this period of time immediately following an emergency situation that clear, accurate, and timely information must be dispensed. The importance of these communications cannot be overstated. Effective risk communication can be vital in preventing or reducing illness and injury, reducing anxiety levels, and facilitating relief efforts.[2]

Effective risk communication following a high perceived risk event requires the dissemination of facts to affected publics. However, simply telling the public the accurate levels of health and safety risks associated with events like the volcanic eruption or tsunami may not be enough to quell public panic. Communicators also need to acknowledge the needs and concerns of the public and respond accordingly. This communication approach challenges the traditional assumption that public perceptions must be brought into conformity with scientific risk assessments and describes a widespread shift in the field of risk communication towards an emphasis on understanding public perceptions of risk in order to

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1 P. Sandman and J. Lanard, "Crisis Communication: Guidelines for Action. Planning What to Say When Terrorists, Epidemics, or Other Emergencies Strike" (2004), available on the Internet at <http://www.psandman.com/handouts/AIHA-DVD.htm> (last accessed on 12 February 2011).

2 B. Fischhoff *et al.*, "Analyzing Disaster Risks and Plans: An Avian Flu Example", 33 *Journal of Risk and Uncertainty* (2006), pp. 131–149.