

# Reg Alert

## January 2004

### 1 Introduction

Reg Alert is a quarterly publication from the Institute of Directors. It highlights the burden of domestic and EU regulation affecting UK business.

Reg Alert is free and copies may be made without specific permission or payment. It can be downloaded from [www.iod.com](http://www.iod.com). For a printed copy, please telephone 020 7451 3278.

Comments on regulation are always welcome. Please send them to James Walsh at the Institute of Directors, 116 Pall Mall, London, SW1Y 5ED or by e-mail to [james.walsh@iod.com](mailto:james.walsh@iod.com).

## EU developments

### 2 Working time opt-out threatened

One of the most important EU policy developments over the next few months will be the European Commission's review of Britain's opt-out from the Working Time Directive.

The opt-out allows individual workers and their employers to reach a voluntary agreement to disapply one of the central provisions of the Directive - the 48-hour limit on average working time over a 17-week period (the 'reference period').

Under the original EU legislation, passed in 1993, the opt-out must be reviewed after ten years, and this moment has now arrived. It is clear that many EU policy-makers would like to see the opt-out scrapped or, at least, scaled back so that it is available to a far narrower slice of the workforce.

The European Commission published a 'Communication' - the equivalent of a Green Paper - on 5th January. IoD members will be relieved to see that Employment Commissioner Anna Diamantopoulou appears to have pulled back from proposing wholesale abolition of the opt-out. Instead, the paper invites views on matters such as the 'reference period' and the way in which the opt-out has been implemented in practice. The closing date for contributions is 31st March.<sup>1</sup>

Two key findings from a recent IoD survey of 68 Human Resources Directors from major companies show how crucial the Working Time opt-out is to Britain's labour market flexibility.

- First, the opt-out is widely used. Over 81 per cent of this group of directors reported that some or all of their employees make use of it.
- Second, loss of the opt-out would severely increase costs. Over 60 per cent of respondents predicted increased business costs if the opt-out were removed.

The IoD will argue strongly that labour market flexibility is essential if Britain is to compete successfully in global markets. Restricting the opt-out would send a signal that the EU still believes in state regulation of labour relations when the 21st Century way is to build modern partnerships between employers and employees.

### 3 Environmental Liability - the battle goes on

The proposed Environmental Liability Directive is continuing its progress through the EU's legislative machinery - with both good and bad news for business.

This proposal, which will make businesses financially responsible for putting good any damage that they do to the environment, has been reported in successive issues of Reg Alert due to the far-reaching consequences that it is expected to have for many companies.

The Directive cleared its Second Reading debate in the European Parliament on 17th December.

On the plus side, the Parliament did not change the Directive's provisions on the so-called 'permit' and 'state-of-the-art' defences. This means that member states will be able to decide not to penalise companies in cases where the company has a permit to pollute or where the state of scientific knowledge was such that they could not have been expected to know that their actions would cause damage.

On the negative side, the Parliament amended the draft that it had received from the Council of Ministers by adding a requirement for a review five years after the Directive takes effect. This would look specifically at whether the market has started to provide suitable insurance policies to cover companies against any possible liabilities under the Directive. If the review were to decide that more action were required, then the law would be toughened up to *require* companies to take out such policies. Member states could decide not to apply compulsion to 'low-risk activities'.

This approach, known as 'compulsory financial security', is strongly opposed by the IoD and by the UK Government. It is disappointing that the Parliament has opened the door to the compulsory approach - albeit five years down the line.

We now await the Commission's opinion on the Parliament's amendments. The dossier will then be passed back to the Council of Ministers. If the Council accepts the Parliament's amendments, then

the legislation will be passed or 'adopted'. If the Council rejects the amendments, then a conciliation committee will be convened to hammer out the differences between Council and Parliament.

Depending on progress over the next few weeks, it is possible that the proposal could complete its progress through the EU's legislative machine by March.

## 4 'REACH' - some concessions on chemicals policy

Previous editions of Reg Alert have raised major concerns about one of the most far-reaching items in the EU's current work programme - the proposed chemicals policy, better known as 'REACH' (Regulation, Evaluation, and Authorisation of Chemicals).

This policy would introduce a completely new system for the control of chemicals in the EU - potentially imposing massive extra costs on business. Given that almost every part of manufacturing industry uses chemicals in one way or another, the impact of this policy will be felt well beyond the chemicals industry itself.

It is encouraging to report that a concerted joint lobbying effort by the British, French and German governments has borne some fruit. The Commission's final proposal (published 29th October) represents a significant improvement, although much remains to be done. Key changes to the policy include the following.

- Several proposed tests for chemicals produced in modest quantities (1 to 10 tonnes) have been scrapped.
- Polymers have been excluded from the registration and evaluation stages.
- The data required for 'intermediate' compounds has been reduced.

The Government is still pressing (quite rightly) for much greater 'prioritisation' - directing the testing and evaluation effort towards the chemicals that pose the greatest risk.

The legislative timetable remains unclear at this stage. It is not even clear whether the European Parliament will be able to conduct a First Reading before the European Elections on 10th June.

The DTI will run a consultation process in early 2004, backed up by a Regulatory Impact Assessment. The IoD will be making a detailed response to this consultation and a number of IoD members from the chemicals and manufacturing sectors have signalled their willingness to help. Any further members who wish to provide input should contact James Walsh in the IoD Policy Unit.

## 5 Better Regulation programme

The European Commission continues to make progress - albeit not as rapidly as many business commentators would wish - on the 'Better Regulation Action Plan' first introduced in June 2002.

A key element in the Plan was a commitment to produce Extended Impact Assessments (EIAs) for 42 of the policy initiatives in the Commission's 2003 'Work Programme'. By the end of October 2003, just 10 EIAs had been produced, with the total expected to rise to around 25 by year-end. The remainder may appear in 2004 or even 2005.

Clearly, this is not an encouraging performance, although it does indicate some progress from a standing start.

The IoD is concerned that, having made a commitment to the principles of better regulation, Commission officials may feel that they have 'ticked the box' and can move on to other projects. It is essential that Commissioners maintain the momentum.

After many delays, an 'Inter-institutional agreement on better law-making' was signed by European Parliament President Pat Cox, European Commission President Romano Prodi and Silvio Berlusconi for the Italian Council Presidency on 16th December.

As part of the agreement, the Parliament and Council have for the first time made a formal commitment to consider carrying out impact assessments on major amendments that they propose during the legislative process. The agreement also contains a long-term commitment to work towards a common methodology between the three institutions for impact assessments, once each institution has gained some experience.

Meanwhile the UK's Better Regulation Task Force has launched an investigation to assess whether the Commission is doing enough to stem the flow of unnecessary or heavy-handed regulation. This should lead to the publication of a report in early 2004.

The Task Force's Chairman, David Arculus, said 'The aim of this new programme is to get Europe up the curve in the way we have moved up the curve in the last few years. We want to help make sure that the Commission keeps up the momentum on better regulation'<sup>1,2</sup>

## UK developments

### 6 Commons Committee slams slow progress on regulatory reform

A report by the House of Commons Regulatory Reform Committee has taken the Government to task over slow progress on tackling red tape.

The Committee provides parliamentary scrutiny for Regulatory Reform Orders (RROs) - proposals to abolish or reform outdated items of red tape.<sup>3</sup>

In a report on the second year's operation of the Regulatory Reform Act 2001, the Committee found that only 14 RROs had been made to date.

The Cabinet Office has a Public Service Agreement (PSA) target of completing 60 RROs by the end of 2005. In order to stay on track for this objective the Government had hoped to have made at least 40 orders by March 2004. This has now been downgraded to an interim objective of 26 RROs by March 2004.

The Minister for Regulatory Reform, Douglas Alexander MP, remains committed to the PSA target of 60 orders by December 2005, describing it as 'stretching but achievable'.<sup>4</sup> The Government is due to carry out a limited review of the Act in April 2004.

Meanwhile, the Government has published the latest edition of its Regulatory Reform Action Plan. The Plan details more than 650 deregulatory and simplification measures, over 240 of which are said to have already been delivered.

Although the Plan contains many measures useful to business, it should be noted that it also covers measures directed towards reducing red tape burdens for the public sector.

The latest announcements, which formed part of the Pre-Budget Report package, added 147 items to the Plan, but only around one quarter of these are business-related items. Other measures include, for example, a review of the burial laws from the 1850s and the merger of the Apple and Pear Research Council with the Horticultural Development Council.

The Government has also launched plans to streamline access to the public procurement process, especially for SMEs. A joint report<sup>5</sup> by the Cabinet Office's Regulatory Impact Unit and the Office of Government Commerce outlines a number of steps to be taken, including:

- speeding up the procurement process and reducing costs;
- improving leadership and client capability;
- improving communication with the market and in government;
- focusing on successful project outcomes; and
- achieving more consistent use of best practice.

## 7 World Bank highlights value of deregulation

A World Bank survey of regulatory burdens in over 130 countries has placed the UK in the top ten least regulated economies.

The survey, *Doing Business in 2004: Understanding Regulation*, analysed each country's laws and regulations, looking specifically at the burdens encountered in: starting a business; hiring and firing; enforcing a contract; obtaining credit; and closing a business.<sup>6</sup>

The report found a clear link between light regulation and greater prosperity, with the poorest countries imposing the heaviest regulatory burdens. The World Bank places the UK in a group of nations, including Australia, Canada, the Netherlands and Singapore, that impose the lightest regulatory burdens.

Although the survey gives Britain a positive report, it demonstrates that we still lag behind competitor nations when it comes to deregulation. For example, the study found that it takes 18 days to start a business in the UK, compared with 4 days in Denmark, 11 in the Netherlands and just 2 in Australia. It takes 45 days in Germany and 53 in France.

The study found that light-touch approaches work equally well in developed and developing nations. For example, countries as diverse as Canada and Vietnam have found that offering simple procedures for business start-ups (reducing the process to what is strictly necessary - statistical, tax and social security registration, all done by electronic means) pays dividends in terms of fostering greater entrepreneurial activity.

The World Bank's Michael Klein said 'The report provides policy-makers and the public with quantitative measures on business regulations - data that will facilitate the reform effort of governments'.

## 8 Audit threshold up for SMEs

Around 69,000 small and medium sized enterprises (SMEs) will no longer be required to have their accounts audited, according to an announcement by Trade and Industry Secretary Patricia Hewitt.<sup>7</sup>

From January 2004, the threshold for compulsory auditing will be raised from £1m to £5.6m turnover per annum. The Government estimates that the move will save companies at least £94m a year.

## 9 'End of life vehicles' rules take effect in UK

New EU rules on dealing with old vehicles have now taken effect in the UK. The End of Life Vehicles Regulations 2003 came into force on 3rd November, implementing the End of Life Vehicles Directive agreed by the EU in 2000.

The new rules show how authorised handlers should dismantle, recycle and dispose of vehicles. As part of the drive towards making manufacturers take greater responsibility for the full life of the vehicle, the regulations also include provisions on design issues.

Looking towards the medium term, the Government plans to consult on how manufacturers and importers can provide free 'take-back' for all 'end of life vehicles' from 2007.

The full text of the regulations is available at [www.dti.gov.uk/sustainability](http://www.dti.gov.uk/sustainability)

## 10 Crackdown on phoning and driving

IoD members should be aware that the new penalties for using a mobile telephone while driving have major implications for employers.

Media coverage of the new rules has concentrated on the penalties now available for anyone caught using a handheld mobile while driving. However, rather less attention has been given to the new provisions in respect of anyone who 'causes or permits' a driver to take a call while on the road.

### *Penalties for drivers*

The new regulations, which took effect on 1st December, make it an offence for a driver to hold a phone for the purposes of:

- speaking or listening to a call;
- using the device interactively for the purpose of accessing data, including the internet; and
- sending or receiving text messages or other images.

Offences are punishable by a £30 fixed penalty, or by a fine of up to £1,000 if the matter goes to court. In due course, the Government plans to increase the £30 fine to a three-point penalty and £60 fine, but this will require primary legislation.

It will not be an offence to have a phone switched on while driving or to push the buttons on a phone which is mounted in a cradle.

The Department of Transport's advice is that no flexibility applies. Making a call while in a traffic jam or telling a caller 'I'm just pulling over' will not be acceptable.

### *Penalties for employers*

Employers will need to be aware that the legislation also makes it an offence to 'cause or permit' employees to lose proper control of a vehicle. The Department for Transport's guidance states:

'The Department considers that employers would not be liable just because they supplied a telephone or because they phoned an employee who was driving. However, employers would probably be liable if they required their employees to use a hand-held phone while driving and might also be liable if they failed to forbid employees to use such phones on company business.'

Although this does not outlaw making calls to an employee who is out of the office 'on the road', it does mean that they cannot be expected to answer. Instead, employers may have to be prepared for staff to catch up on messages when they take a break from their journey.

Full details of the legislation are available at:

[www.dft.gov.uk/stellent/groups/dft\\_rdsafety/documents/page/dft\\_rdsafety\\_025216.hcsp](http://www.dft.gov.uk/stellent/groups/dft_rdsafety/documents/page/dft_rdsafety_025216.hcsp)

## 11 Check your gas - and your insurance

Many companies risk invalidating their insurance through failure to service their gas boilers, according to a new survey.

The Gas Safety (Installation and Use) Regulations 1998 stipulate that, in leased premises, landlords must ensure that gas appliances and fittings are serviced at least once a year. Compliance is a prerequisite of most insurance policies.

All employers and self-employed workers are under a general duty 'to ensure that any gas appliance, installation, pipework or flue installed at any place of work under his control is maintained in a safe condition so as to prevent risk of injury to any person.'

However, a survey by GasForce, part of the Connaught facilities management group, has found that only 35 per cent of companies are aware of these requirements.<sup>8</sup>

IoD members should check their insurance policies and ensure that their management plans for gas equipment measure up.

## 12 Audit Commission shows the way

The Audit Commission has set an example to the rest of the public sector by cutting back on both staffing and the extent of its inspection work.

The Commission is to shed 250 jobs following a decision to adopt a more risk-based and proportionate approach to audit and inspection of local government. The move is expected to save councils £24 million in fees every year.

The Commission's surprise move follows a report by the Government's Better Regulation Task Force, which found that even Ministers have little idea of the true extent to which independent bodies regulate large parts of the public and private sectors.

The Chairman of the Task Force, David Arculus, said, 'If independent regulators followed its [the Audit Commission's] lead, then there is the potential that they can make large savings'.<sup>9</sup>

## 13 Public sector over-regulated, says Government study

While the Audit Commission has been cutting back the bureaucracy, a study by a senior Government official has declared that the rest of the official machine suffers from an excess of regulation, audit and inspection.

The finding comes from a study conducted by Sir Peter Gershon, Head of the Office of Government Commerce. His outline findings are revealed in the December 2003 Pre-Budget Report.

Sir Peter finds that around £12 billion is spent every year on policy-making, regulation and inspection - £9 billion on the public sector and £3 billion on the private sector.

Sir Peter singles out the example of a typical NHS trust, which is subject to checks by more than 30 separate bodies. 'That does seem rather a lot', he admitted.<sup>10</sup>

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January 2004*

### References

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1. The text of the consultation document is available at:  
[http://europa.eu.int/comm/employment\\_social/labour\\_law/docs/workingtime\\_communication\\_en.pdf](http://europa.eu.int/comm/employment_social/labour_law/docs/workingtime_communication_en.pdf)
2. Financial Times, 2nd October 2003
3. <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmdereg/908/90802.htm>
4. The operation of the Regulatory Reform Act 2001: a progress report, House of Commons Regulatory Reform Committee, 5th November 2003,
5. Making a difference: reducing bureaucracy in central civil government procurement, December 2003
6. see <http://rru.worldbank.org/doingbusiness>
7. DTI press release, 19th November 2003
8. Survey commissioned by GasForce from Mercator Research Group. Survey conducted by telephone, November 2003. Further details available from: Paul Hurrell, Sales & Marketing Director, Connaught Plc, 14 Orchard Street, Bristol, BS1 5EH. Email: [paul.hurrell@connaught.plc.uk](mailto:paul.hurrell@connaught.plc.uk)
9. Financial Times, 5th November 2003
10. Financial Times, 11h December 2003