

## The 2011 Red Tape Challenge - outcomes and effectiveness

### The Red Tape Challenge 2011: how it worked

In April 2011, the Coalition government launched a crowdsourcing initiative, the 'Red Tape Challenge', which invited the public to identify regulations to be improved or removed. The initiative was the brainchild of No. 10 Advisor Steve Hilton and was driven by Cabinet Officer minister Oliver Letwin MP. Other policies were already in place to stem the flow of regulation, this initiative aimed to reduce the UK's regulatory stock (over 21,000 statutory regulations were in force at the time). It attracted considerable support from within the Conservative party and the highest levels of the Civil Service, as a practical means of tackling 'excessive' regulations which were seen as an impediment to economic activity (in particular health & safety and employment legislation).

An extensive list of existing regulations was assembled by the National Archives, and a [website](#) was established to enable the public to submit their views (a private channel was also provided). Regulation was organised into six cross-cutting themes - equalities, health & safety, environment, employment law, company and commercial law, pensions - which were open for comment throughout the process. Every few weeks, specific regulation affecting one sector or industry was given a 'spotlight' period on the website for five weeks each (full list [here](#)).

For each theme, all relevant regulations were listed, and respondents asked to comment on whether these should be scrapped, reformed, simplified, or left in their current form. Views were also invited on regulatory implementation and enforcement ('regulatory enforcement' was later added to the website as a standalone theme). Business sector 'champions' were invited to actively review the comment pages and help facilitate debate.

Based on the comments received, departments were required to select regulations for repeal or simplification, and to provide justification for any they wished to keep. The resulting proposals were submitted to various internal 'challenges', culminating in the ministerial 'star chamber', where proposals were scrutinised by Oliver Letwin and Mark Prisk. The modified list of proposals (see, for example, the [environment](#) and [agriculture](#) proposals) was then submitted to the cabinet sub-committee on 'Reducing Regulation' for final approval.

By May 2012, the website had been visited by over 227,000 people, with over 28,000 comments submitted. The Red Tape Challenge process ran until April 2013. Cameron stated that the exercise had led to the repeal or simplification of over 3,000 pieces of regulation, with 800 scrapped/amended by January 2014. Around 5,500 regulations were reviewed in total.

### The Red Tape Challenge 2011: outcomes and effectiveness

The Red Tape Challenge was conceived of to give voice to the perceived high levels of popular frustration with 'red tape'. However, after the process concluded, various analyses found that most of the comments submitted were in favour of protecting or enhancing regulation, rather than calls for eliminating red tape. Comments which argued for a weakening of regulation were often found to be put forward by organisational interests. In 2012 Vince Cable (then Secretary of State for Business Innovation & Skills) himself [stated](#): *"we are being bombarded by messages from the public saying please increase regulation."*

What, then, was the justification for the subsequent repeal of 3,000 or so regulations? Insiders report that online comments were generally not seen as critical in decisions around whether to scrap, weaken or keep regulations. Indeed, most of the decisions leading to the resulting repeals were brought about as a result of the internal challenge process. The star chamber's emphasis on cutting regulatory 'burdens' unless presented with plausible arguments to the contrary suggests that this was a project propelled primarily by the political agenda of deregulation.

Did the Red Tape Challenge achieve its twin aims of reducing the overall regulatory stock and reducing regulatory costs to business? There is some scepticism about the Red Tape Challenge's cost-effectiveness as a policy. Many commentators have noted the huge amount of Ministerial and Civil Service time consumed by the process, as well as the significant technical challenges in creating a workable website. Significant internal costs were likely to have been incurred; from managing the website, analysing comments, and the creation of departmental proposals. The coalition government did not publish any estimations of the associated internal costs, neither did it clarify this after the event.

While much was made of the 3,095 provisions which were scrapped as a result of the Red Tape Challenge, official reports state that just 1,376 changes were of material benefit, where "the reform has an impact for business/civil society, individuals or the taxpayer, over and above tidying the statute book".<sup>1</sup> However, there were some notable losses, including protective provisions in the Equality Act, leading the House of Lords Select Committee on the Equality Act 2010 and Disability to refer to "changes made under the Red Tape Challenge which increase the problems of disabled people."<sup>2</sup>

The government's calculations on the cost-savings achieved for businesses are hard to unpick, not least because a proportion of regulations destined for the scrapheap consisted of 'zombie' regulations, therefore delivering no cost-savings. A cursory look at the government's figures indicates that the initiative saved each UK business just £230 annually on average.<sup>3</sup>

Some have questioned the fundamental concept of listing thousands of regulations online and expecting a reasonable debate to follow. This bears out in the responses to the Red Tape Challenge, which lacked any kind of standardisation, were highly subjective, and often emotive. (One particularly creative respondent shared his self-authored poetry in one of the themes). Presumably, the varied nature of the comments made it difficult to synthesise responses, or to code them as supportive or otherwise.

It was also difficult to identify who was commenting on the various regulations. Many participants provided only first-names, many gave aliases. It is hard to ascertain how many businesses or trade groups took part in the process. Very few business comments are located on the public feed, suggesting that most submitted comments via the private email channel.

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<sup>1</sup> <http://www.oecd.org/gov/regulatory-policy/GBR-Red-Tape-Challenge.pdf>

<sup>2</sup> <https://publications.parliament.uk/pa/ld201516/ldselect/ldseqact/117/117.pdf>

<sup>3</sup> Unchecked UK analysis

## Conclusions

We suggest that the 2011 Red Tape Challenge was flawed, on a number of counts:

### 1. The Red Tape Challenge revealed the lack of public appetite for deregulation

The main studies which have analysed public responses to the 2011 Red Tape Challenge are consistent in their findings: that the majority of participants (75-80% in some analyses) wanted to maintain or strengthen existing regulations, and that the majority of the remaining participants were unclear in their view. In reality, the public (insofar as participants can be taken to be representative) did not support policy efforts to reduce the UK's regulatory stock – meaning the core assumption of the Red Tape Challenge project was manifestly undermined.<sup>4</sup>

### 2. Little weight was given to the views of the public anyway

The premise of the Red Tape Challenge was to give voice to popular dissatisfaction with over-regulation. This consultation process would help to shape the specific deregulatory measures that followed. However, there is no clear link between the comments on the website and departmental proposals to scrap regulation, nor the subsequent repeal of the 3,095 regulations. There was little published by way of methodology during the Red Tape Challenge process, in terms of how the comments were synthesised and quantified. By many accounts, the internal challenge processes and the ministerial star chamber were far more instrumental in deciding the size of the subsequent regulatory 'scrapheap' than the online comments.

### 3. A flawed process

This kind of 'open source' policymaking can, at its best, open up decision-making and policymaking processes to a wide range of views. But its manifestation through the Red Tape Challenge was chaotic. The process created a huge number of non-standardised points-of-view from often unidentifiable sources, some referring to whole swathes of regulation, some referring to specific policies, and some referring to personal grievances which lay outside of the scope of the project. This, presumably, obstructed attempts to code responses or to gather any empirical or meaningful insights. Government estimates stated that just 12% of comment submitted via the online channels were considered useful.<sup>5</sup>

### 4. The Red Tape Challenge failed to deliver on bureaucracy- and cost-reduction

The Red Tape Challenge, established to reduce regulatory 'burdens', in fact created additional bureaucracy within government, and consumed huge amounts of civil service time. Paradoxically, the Challenge became something of a tick-box exercise itself. Former civil servants report on departments' tendency to pick zombie provisions to throw onto the scrapheap. The reported annual cost-savings for businesses achieved by the Red Tape Challenge (GBP 1.2 billion) is difficult to unpick, as no methodology for this calculation has been published.

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<sup>4</sup> See, for example:

[https://www.regulation.org.uk/library/2012\\_carr\\_crowdsourcing\\_and\\_the%20red\\_tape\\_challenge.pdf](https://www.regulation.org.uk/library/2012_carr_crowdsourcing_and_the%20red_tape_challenge.pdf)

<sup>5</sup> [https://www.instituteforgovernment.org.uk/sites/default/files/120123%20Crowdsourcing%20Presentation%20-%20IfG%20\(2\).pdf](https://www.instituteforgovernment.org.uk/sites/default/files/120123%20Crowdsourcing%20Presentation%20-%20IfG%20(2).pdf)

## Annex: the Red Tape Challenge 2011, what was lost?

### **The Equalities Red Tape Challenge scrutinised equalities legislation in May 2011. The subsequent scrapping of a number 'unnecessary burdens' in the [Equality Act](#) included:**

- **The repeal**, in October 2013, of the provision which made employers liable for the harassment of staff by a third party. Previously, employers were required to take reasonable steps to prevent harassment of their employees by third parties, such as customers or suppliers.
- **Curbs** to powers allowing employment tribunals to make wider recommendations for improvement to a defendant found to be in breach of the Act. The repeal, effective from October 2015, meant that tribunals could no longer make recommendations beyond a specific case; preventing them from rectifying persistent patterns of misbehaviour or systemic problems within a company. In justification, former Education Secretary and Minister for Women and Equalities Nicky Morgan MP stated: *"employers who had received a wider recommendation from tribunals...indicated an average compliance cost of about £2,000."* The move was heavily opposed.<sup>6</sup>
- **The removal**, in 2013, of a provision which allowed claimants to serve a list of questions to alleged perpetrators where they were believed to have breached the Act. This provision meant that defendants were obliged to hand over information, documents and data relating to the case, with sanctions for a failure to respond. In justification, SoS Nicky Morgan MP said: *"the process had become legally burdensome. By 2009, it was estimated that nearly 10,000 businesses a year were having to respond to these questions at a cost of about £1.4 million per annum."*<sup>7</sup>
- **Abolition** of the Equality and Human Rights Commission's (EHRC) powers to arrange independent mediation (conciliation) in non-employment cases, the majority of which are disability cases. Conciliation can provide indispensable expert advice to both parties in complex areas of equality law, greatly assisting individuals facing discrimination. Bodies such as the Discrimination Law Association strongly opposed this move, citing the particular impact on disabled people.<sup>8</sup> These powers were nonetheless repealed in June 2013, via the Enterprise and Regulatory Reform Act.
- **The prevention** of the initiation of provisions, included in the Equality Act 2010, which imposed a duty on landlords to make disability-related reasonable adjustments of common parts of buildings (such as doorways and stairs), if asked by a disabled tenant. The delay in implementation was heavily opposed.<sup>9</sup>

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<sup>6</sup> Written evidence to the Lords Select Committee on the Equality Act 2010 and Disability, 2015, from Action on Hearing Loss ([EQD0128](#)), the Association of Colleges ([EQD0073](#)), the Disability Law Service ([EQD0051](#)), the Equality and Human Rights Commission ([EQD0083](#)), Law Centres Network ([EQD0135](#)), the Law Society ([EQD0163](#)), National AIDS Trust ([EQD0136](#)), Sense ([EQD0122](#)) and the TUC ([EQD0055](#))

<sup>7</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/oral/26351.html>

<sup>8</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/equality-act-2010-and-disability-committee/equality-act-2010-and-disability/written/20875.html>

<sup>9</sup> Written evidence to the Lords Select Committee on the Equality Act 2010 and Disability, 2015, from the Equality and Human Rights Commission ([EQD0083](#)), the Discrimination Law Association ([EQD0129](#)), the Disability Law Service ([EQD0051](#)), University of Leeds ([EQD0125](#)), Disability Rights UK ([EQD0105](#)) and the Law Centres Network ([EQD0135](#))

- **The prevention** of the commencement of provisions on dual discrimination; where an individual can bring a combined claim on the basis of discrimination due to a combination of two protected characteristics. The provision was prevented from being brought forward on the basis that it *“represented an unnecessary burden to business.”* This was opposed by many.<sup>10</sup>
- **The prevention** of the commencement of the Socio-Economic Duty, which requires public bodies to take into account the effects of their policies on socio-economically disadvantaged people. The Scottish Government is now introducing the Duty for Scottish public bodies.

**The Red Tape Challenge delivered a radical package of employment-related law reforms. These measures led to the scrapping of a number of important employee protections:**

- **The extension**, in April 2012, of the qualifying period for unfair dismissal from 1 to 2 years. The consultation for this change elicited positive response from the business community, with the BCC *“welcom[ing] the proposal as a strong signal from Government that it is committed to reducing the burden of employment regulation.”* However, the vast majority of respondents disagreed with the proposal, pointing to the ‘disparate impact on particular groups.’ Nevertheless, the government proceeded, stating: *“we consider that business stakeholders are best placed to evaluate the likely impact on business confidence.”*<sup>11</sup>
- **The introduction**, in 2013, of a £1,200 tribunal fee for employees bringing an unfair dismissal, equal pay, or discrimination claim. In 2017 the Supreme Court ruled Employment Tribunal fees as unlawful, and a full refund programme is now underway.
- **Change** in the law to increase the absence threshold for accident or injury reporting from seven to three days, removing an estimated 30,000 injuries off official figures for annual workplace injuries. HSE Northern Ireland decided not to proceed with the changes due to concern around the impact on employee protection.
- **Weakening** of the Gangmasters Licensing Authority’s (GLA) remit and enforcement powers, under the Employment Theme of the Red Tape Challenge. In 2013 Defra announced proposals to strip the GLA of powers to regulate a number of sectors including forestry, land agents, cleaning contractors in the food processing industry and volunteers working for charities, as well as plans to scrap automatic physical inspections by the GLA. 13 representatives from major UK retail chains opposed the proposals, stating that they would: *“hamper the GLA’s ability to meet [its] objectives”* and *“make it easier for rogue gangmasters to operate in the sector which would generate unfair competition for law-abiding companies and increase the risk of vulnerable workers being mistreated at work.”*<sup>12</sup>

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<sup>10</sup> Written evidence to the Lords Select Committee on the Equality Act 2010 and Disability, 2015, from the Law Society ([EQD0162](#)) and supplementary written evidence from the Equality and Human Rights Commission ([EQD0145](#))

<sup>11</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/32181/11-1365-resolving-workplace-disputes-government-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32181/11-1365-resolving-workplace-disputes-government-response.pdf)

<sup>12</sup> <http://labourproviders.org.uk/wp-content/uploads/2012/11/Joint-Statement-on-the-GLA-Outcome-of-the-Red-Tape-Challenge.pdf>

**The Red Tape Challenge led to the scrapping of a number of other measures put in place to protect citizens, and the environment, including:**

- **An increase** to the speed limit for 7.5 tonne HGVs travelling on single carriageways from 40mph to 50mph and on dual carriageways from 50 mph to 60 mph. Nearly 3/4 (73%) of respondents to the single carriageway consultation opposed the proposals, citing road safety concerns. The government's response stated that it would nevertheless proceed with the changes, on the grounds that two of the respondents in favour were logistics associations representing large memberships.<sup>13</sup>
- **The abolition** of the Code for Sustainable Homes (a method of assessing the environmental performance of new homes), effective from 26 March 2015, in order to reduce the cost and complexity of building homes in England. Many, including the Environmental Audit Committee, = opposed this move.<sup>14</sup>
- **Weakening** of regulation of acid sales, a move anticipated to save businesses £20,000 a year. This removed the requirement for registration or a licence to sell a number of toxic and corrosive chemicals. With the exception of sales of extremely potent substances used to make explosives, for which a licence is required for home owners, sellers are now merely obligated to report 'suspicious' transactions to authorities. Assuming a buyer passes this ambiguous scrutiny test, chemicals such as sulphuric acid and hydrochloric acid are now handed over without any questions being asked.
- **Reducing** regulatory oversight of general aviation (covering all civilian aviation except commercial passenger airlines), as well as a shift to self-regulation for the sector, so that it *"enjoy[s] a safety regulation system that imposes the minimum necessary burden and empowers individuals to make responsible decisions to secure acceptable safety outcomes."* The proposals were contained in the [General Aviation Strategy](#), published the day of the GermanWings crash.
- **Abolition** of paper tax discs. Department of Transport figures show that the number of untaxed vehicles on the road has risen threefold since 2013 - to 700,000 (representing £107m lost in unpaid tax receipts). The deregulatory measure was estimated to deliver £10m in cost savings.
- **Reduction** of fire safety inspections for businesses with good records from 6 hours to 45 minutes, through the Focus on Enforcement programme, which reviewed the regulatory enforcement and inspection regimes in various sectors between 2012 and 2015.

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<sup>13</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336311/singles-consultation-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336311/singles-consultation-response.pdf)

<sup>14</sup> <https://publications.parliament.uk/pa/cm201314/cmselect/cmenvaud/192/19204.htm>