

***Finally cracking the nut: regulatory reform and the British Columbia 'model'***

## Regulation policy reform: a proposal for UK Policy Committee

- A poor regulatory environment is one of the biggest barriers to business success. Almost all smaller firms find at least one aspect of the current regulatory environment to be a barrier to the success of their business. Further, by a ratio of 4:1 FSB members find the current regulatory environment more of a burden than a benefit to their business.
- The aspect of the regulatory environment that most frequently acts as a barrier to business success is the overall quantity ('cumulative burden'), followed by a range of other factors, which include: poor design of regulation, complexity in the rules/ inconsistency between regulations and the burden of the monitoring, recording and reporting requirements associated with regulation.
- Most of the UK Government's efforts – since the emergence of the 'better regulation' agenda in the mid-2000s – to improve the regulatory environment for smaller firms have failed. There has been additional failure by the EU to improve its regulatory policy-making framework and the regulatory environment for smaller businesses. This is a pattern repeated across many OECD countries. However, there is one outlier defying the trend of failure. British Columbia (BC) in Canada has managed this feat.
- In 2001, the then newly elected BC (Liberal) Government – after years of economic underperformance – instigated an extensive programme of regulatory reform that has resulted in a sustained long-term improvement in the regulatory environment for business as a result of a forty-nine per cent reduction in 'regulatory requirements' over the period 2001 to 2018. Notably, the momentum of the reforms has become self-sustaining. At the same time BC has not seen a decline in health, social and environmental outcomes.
- The BC 'model' has a number of key characteristics, which have been central to its success. These include: strong political leadership, simple, clear yet robust metrics on which to base the implementation of the policy, transparency about and rigorous accountability for performance. See Table Three in this paper for more details.
- The BC 'model' is, by-far, the most successful attempt in an OECD country at dealing with the 'cumulative burden' of regulation. The latter is the dimension of the regulatory environment that FSB members (and smaller businesses more generally in the UK) most frequently report as a barrier to business success. In addition, the BC 'model', has forced improvements along other salient dimensions of the regulatory environment that are barriers to success.
- The BC 'model' complements FSB's existing 'regulatory policy' reform proposals set out in our 2017 report *Regulation Returned: what small firms want from Brexit*.
- The BC 'model' has important lessons for the UK and should be learnt from. The key elements should be adopted by the UK Government so that a similar improvement in the regulatory environment can be brought about here. FSB should advocate for this.

## 1. Introduction

This short position paper outlines the details of what has become known as the British Columbia (BC) 'model', which was (indeed, remains) an innovative approach to improving the regulatory environment for businesses in BC. It is the only successful attempt in any OECD country to significantly and consistently improve the regulatory environment for business.<sup>1</sup> As a result, it has contributed to a significant improvement in the economic performance of BC since being instigated.

This paper outlines the BC 'model' with the aim of proposing that FSB (through UKPC) add the BC 'model' (appropriately modified for the UK) to FSB's stock of existing regulatory reform policy asks, as set-out in *Regulation Returned: what small firms want from Brexit* (see Annex Two for the full set of existing FSB policy recommendations). Importantly, not only has the BC 'model' proven itself but it is consistent with FSB's existing policy recommendations about how to improve the regulatory environment for smaller firms, post-Brexit. Therefore, adopting the BC 'model' as an additional policy ask would strengthen FSB's existing corpus of policy in this area. The specific proposition is:

***FSB acknowledges the considerable success that the Government of British Columbia has had since 2001 in reducing the regulatory burden on business. It agrees that there are lessons for the UK to learn from them and supports the addition of the key measures that constitute the BC 'model' i.e. its aims and methods (with suitable adaptations to the UK environment) to FSB's existing corpus of policy recommendations on how the regulatory environment in the UK can most effectively be reformed to help smaller businesses start-up and thrive.***

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<sup>1</sup> There have been limited successes in other countries. Most notably Australia. Various Australian Governments have instigated a range of measures focussed upon de-regulating the Australian economy. These included the establishment in the mid-2000's of a special Taskforce on Reducing the Regulatory Burden on Business to review the regulatory landscape and identify regulatory reform opportunities. In addition, the Australian Productivity Commission regularly reviews different aspects of the regulatory environment in Australia e.g. the regulation of manufacturing and trade sectors in 2008, business and consumer services in 2010 and evaluating the success of regulatory reforms to-date, in 2011. In 2013 the Government committed to reducing the cost burden of regulation by AUS\$1 billion every year. To help hit the annual 'reduction target' departments in the Federal Government are set objectives, overseen by a De-regulation Unit within each department and publicly reporting on performance. Finally, Regulators are subject to a 'performance code' to incentivise them to be more 'business friendly'.

## 2. The significance of regulation as a barrier to small business success

### BEIS research

Regulation is consistently a top-5 'barrier to business success' for smaller firms in the UK, as illustrated in Table One. Notably it has risen-up the rankings in BEIS's Small Business Survey in recent years to become the second most often cited challenge to smaller business success. Further, it is the highest ranked barrier caused by deliberate 'public policy' choices. The 'barrier' that is ranked highest in the BEIS survey is 'competition' – a market issue.

**Table one:** ranking of regulation as a barrier to business by respondents to BEIS's regular small business survey  
**Source:** BEIS Small Business Survey

	2010		2012		2014		2015		2016		2017		2018	
	All	SL <sup>2</sup>	Emp <sup>3</sup>	SL	Emp	SL	Emp	SL	Emp	SL	Emp	SL	Emp	
<b>Ranking</b>	5 <sup>th</sup>	3 <sup>rd</sup> 4	4 <sup>th</sup>	4 <sup>th</sup> 5	5 <sup>th</sup> 6	2 <sup>nd</sup>	2 <sup>nd</sup>	2 <sup>nd</sup>	2 <sup>nd</sup>	2 <sup>nd</sup>	2 <sup>nd</sup>	2 <sup>nd</sup>	2 <sup>nd</sup>	

### FSB research

A survey of member 'policy priorities' in 2015 found that 'reducing red tape' was the issue cited most frequently by members as the problem they wanted the Government to prioritise tackling.<sup>7</sup> Further, the success of around nine-in-ten smaller businesses in the UK is hampered by at least one aspect of the current regulatory environment.<sup>8</sup> Further:

- By a very significant 4:1 margin, FSB members find the burden (i.e. the cost and distortions) created by the current regulatory environment outweigh any benefits that may accrue from it.
- By a margin of 2:1 FSB members find the burdens created by the current regulatory environment to be greater than the combined proportions who find the benefits and barriers of the current regulatory environment to be equally balanced or that the benefits are greater than the burden.

<sup>2</sup> Sole Trader.

<sup>3</sup> Employer.

<sup>4</sup> Joint third with cash flow.

<sup>5</sup> The 2014 survey, respondents were asked separately about 'red tape' and 'regulation'. Despite these being considered by most people as the same thing. Forty-five per cent of respondents cited 'red tape' was a barrier, while forty per cent cited 'regulation'.

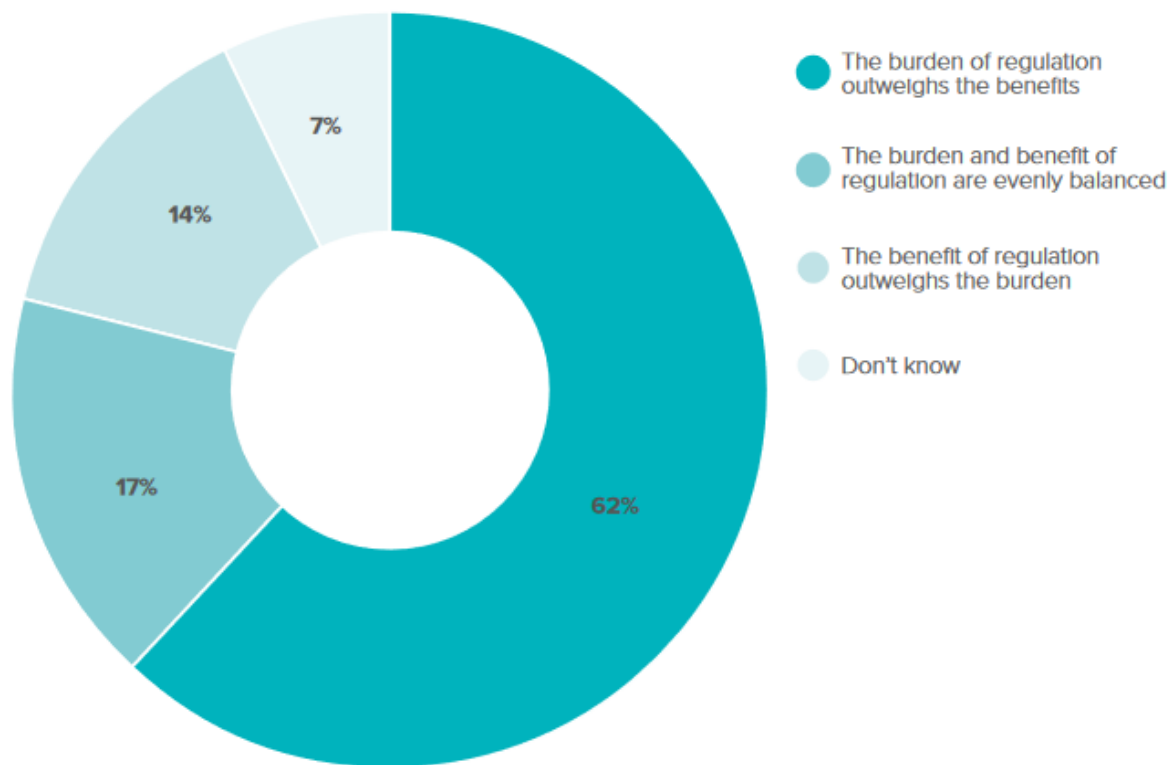
<sup>6</sup> Fifty-four per cent of small business respondents cited 'red tape', while forty-nine per cent cited 'regulation'.

<sup>7</sup> FSB. Regulation Returned: what small firms want from Brexit. 2017.

<sup>8</sup> FSB. Regulation Returned: what small firms want from Brexit. 2017.

**Chart one:** balance of the burden and benefits of the current regulatory environment for small business<sup>9</sup>

**Source:** FSB regulation survey 2017



The overwhelming negative experience of smaller businesses of the regulatory environment is unsurprising because:

- The aggregate **direct cost to smaller businesses of regulation**, in 2015, was around **£183 billion**.<sup>10</sup> This equated to an average cost of £33,000 per smaller business in the UK.
- The 'proportionate' impact of regulation is equally important for smaller firms. The **per-employee cost of regulation for a smaller business is estimated to be between seventeen and forty per cent greater than in a larger business**.<sup>11 12 13</sup> This is a very significant difference in the distribution of the detrimental impact (of any single or body of) regulations across different sizes of business. Evidence suggests that the additional indirect costs to the economy of regulation, in 2015, was a further £92 billion a year.<sup>14</sup>

<sup>9</sup> FSB. Regulation Returned: what small firms want from Brexit. 2017.

<sup>10</sup> £183 billion is more than was raised in revenues by income tax for the Exchequer in the tax-year 2016-17. Income tax raised £182.1 billion. Source: Pope, T and Waters, T. A Survey of the UK Tax System. 2016. Accessible at: <https://www.ifs.org.uk/bns/bn09.pdf>

<sup>11</sup> Baldwin, R. Better Regulation: is it better for business?. 2004.

<sup>12</sup> Chittenden, F., Kauser, S., Poutziouris, P and Sloan, B. Regulations and Small Business in the EU, USA and UK: a review. 2005.

<sup>13</sup> Crain, N V and Crain, W M. The Impact of Regulatory Costs on Small Firms. 2010.

<sup>14</sup> Crain, W. M., and Crain, N V. The Cost of Federal Regulation to the US Economy, Manufacturing and Small Business: A Report for the National Association of Manufacturers. 2010.

In sum, the **total cost of regulation to small businesses and the UK economy in 2015 was in the region of £275 billion.**<sup>15</sup>

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<sup>15</sup> In reality, this figure is an underestimate because the calculations are done excluding the direct cost impacts of regulation on bigger businesses in the UK. Consequently, the calculation based-upon the US research of Crain and Cain about the wider distortionary costs of regulation to the economy are not made on-the-basis of a complete picture about the full 'direct costs' of regulation to the whole of the UK's business population.

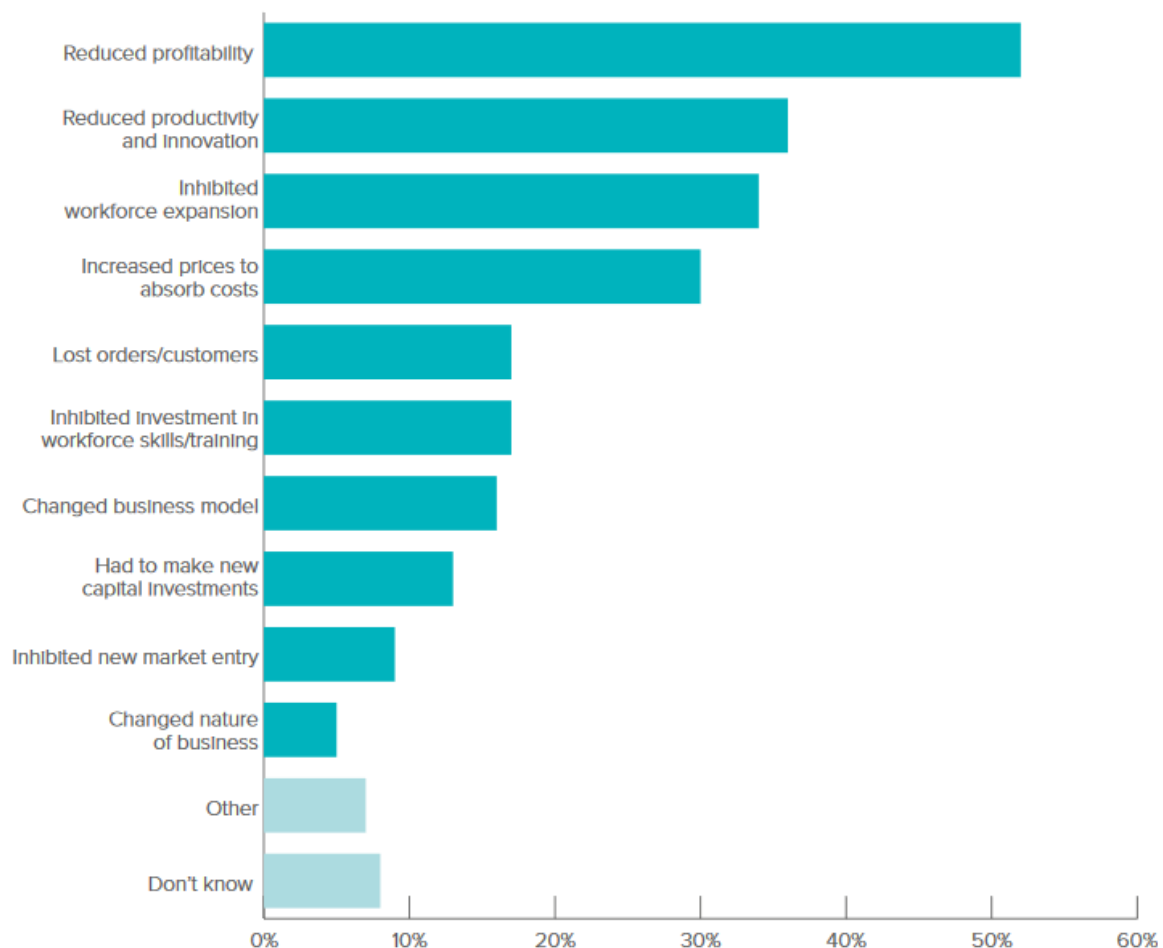
### 3. How the regulatory environment acts as a barrier to success

#### *The impact of regulation*

The kinds of specific negative impacts regulation have on smaller enterprises is illustrated in Chart two below.

**Chart two:** impacts of the regulatory environment on smaller firms<sup>16</sup>

**Source:** FSB regulation survey 2017



- The most important impact - of the regulatory environment - is on profitability. More than half of FSB members who find at least one aspect of the regulatory environment a barrier to business success suffer from lower profits as a result of regulation.
- For over a third of smaller firms that find at least one aspect of the regulatory environment a barrier to business success, regulation reduces innovation and the scope for improving business productivity.
- A third have not employed someone because of the regulatory burden.
- One-in-seven respondents that find at least one aspect of the regulatory environment a barrier to business success, changed their business model due to regulatory requirements. One-in-ten did not enter a new market because of regulation.

<sup>16</sup> FSB. Regulation Returned: what small firms want from Brexit. 2017

## The academic evidence

The BEIS surveys and FSB research are consistent with the-bulk-of-the academic literature which has examined the impact of regulation on business, industries and the economy. A basic framework of 'economic' and 'social' regulation is needed for a functioning market economy.<sup>17 18</sup> Further, there are gains to be obtained from ensuring the basic framework is high quality.<sup>19 20</sup> To be of 'high quality' regulation should be: well-designed, simple, small business-sensitive, risk-based and effectively enforced.<sup>21</sup> Nevertheless, the preponderance of research about the link between regulation and business and wider economic performance is clear: too much regulation and poor-quality regulation are actively detrimental to individual enterprises (as highlighted in Chart two) which in-turn has negative consequences for industries and the economy in a range of ways.<sup>22</sup> Some of the most salient consequences are set-out in Table two below.

**Table two:** the consequences of a poor regulatory environment on key business and economic indicators

**Sources:** various, see footnotes 23 to 39

Start-up/ entry and business growth	<ul style="list-style-type: none"> <li>Reduces business start-up/ entry into markets, 'chills' competition and reinforces market incumbency and blunts the incentives to invest and grow, resulting in less competitive industries.<sup>23 24 25</sup></li> <li>Dis-incentivises the employment of labour.<sup>26</sup></li> </ul>
Efficiency and productivity	<ul style="list-style-type: none"> <li>Inhibits the re-allocation of resources within and between firms and sectors to more productive activities.<sup>27 28 29 30</sup></li> </ul> <p>Hinders the spread and take-up of new technologies by businesses and progress towards the 'technological</p>

<sup>17</sup> Indispensable elements in the basic regulatory framework for a market economy, include: private property rights and their enforcement, protection against and punishment for theft, expropriation, dishonesty and negligence and to safeguard human life.

<sup>18</sup> Nyström, K. The institutions of economic freedom and entrepreneurship: evidence from panel data. *Public Choice*. Volume 136, No 3-4. 2008.

<sup>19</sup> Djankov, S., McLiesh, C and Ramalho, R. *Regulation and Growth*. 2006.

<sup>20</sup> Bowen, H P., and De Clercq, D. Institutional context and the allocation of entrepreneurial effort. *Journal of International Business Studies*. Vol 39. No 4. 2008.

<sup>21</sup> Effectively enforced encompasses principles such as: independence and consistency in enforcement and clarity and (a reasonable degree of) certainty in the approach a business can expect from surveillance and enforcement activity by a regulator or relevant agency, competency by the regulator and sensitivity towards the constraints which smaller businesses operate under,

<sup>22</sup> FSB. *Regulation Returned: what small firms want from Brexit*. 2017.

<sup>23</sup> Giri, S. Business regulation and red tape in the entrepreneurial economy. *Journal of Exclusive Management Science*. Vol 1. No 10. 2012.

<sup>24</sup> Klapper, L., Laeven, L and Rajan, R. Entry regulation as a barrier to entrepreneurship. *Journal of Financial Economics*. Vol 82. 2006.

<sup>25</sup> Nyström, K. The institutions of economic freedom and entrepreneurship: evidence from panel data. *Public Choice*. Vol 136. No 3-4. 2008.

<sup>26</sup> Bailey, J and Thomas, D. *Regulating Away Competition: The Effect of Regulation on Entrepreneurship and Employment*. 2015.

<sup>27</sup> Between 1997 and 2010 research by George Mason University found that the least regulated sectors experienced output-per-hour growth of sixty-four per cent and output-per-person growth of sixty-three per cent along with a four per cent fall in unit labour costs. In contrast, the most regulated sectors grew output-per-hour by 34 per cent and output-per-person by 33 per cent. While unit labour costs increased by 20 per cent. Source: Davies, A. *Regulation and Productivity*. 2014.

<sup>28</sup> Crafts, N. *Regulation and Productivity Performance*. *Oxford Review of Economic Policy*. Vol 22. No 2. 2002.

<sup>29</sup> Schianterelli, F. *Product market regulation and macroeconomic performance: a review of cross-country evidence*. 2008.

<sup>30</sup> Nicoletti G and Scarpetta, S. *Regulation, productivity and growth: OECD evidence*. *Economic Policy*. Vol 18. No 36. 2003.



	frontier'. <sup>31 32 33</sup> With concomitant impacts on productivity in businesses and sectors.
Innovation	• Stifles market-focussed innovation by businesses. <sup>34</sup>
Macro-economy	• Slower rates of long-run economic growth. <sup>35 36 37 38 39</sup>

### *The circumstances for maximising gains from regulatory reform*

Regulatory reform in-combination e.g. product and factor input market (such as labour) de-regulation, has the most powerful impacts.<sup>40</sup> Improvement of the regulatory environment should not be carried-out as a series of isolated changes narrowly focussed on delivering marginal improvement for a particular group of businesses or an individual sector. Rather, the optimal strategy is reform on multiple fronts, with changes that are complimentary and mutually reinforcing. For example, the combination of product and labour market regulatory reform can generate substantial increases in competitiveness and, in-turn, prosperity.

Finally, it is notable that the inverse relationship between regulation and business and economic success highlighted in Table two, holds true in economies that are already relatively 'liberal'.<sup>41</sup> In other words, there are still business and economy-wide gains from tackling the regulatory burden despite the relevant business environment and economy being a comparatively (to other countries) liberal-ised one.

<sup>31</sup> OECD. The Economic Impact of ICT. 2004.

<sup>32</sup> OECD. Innovation and Growth: Rationale for an Innovation Strategy. 2007.

<sup>33</sup> Djankov S., McLiesh, C and Ramalho. R M. Regulation and growth. *Economic Letters*. Vol 92. 2006. *Economic Letters*, Vol. 92,

<sup>34</sup> Stewart, L. The Impact of Regulation on Innovation in the United States: A Cross-industry Literature Review. 2010.

<sup>35</sup> Coffey, B., McLaughlin, P. and Peretto, P. The Cumulative Cost of Regulations. 2016.

<sup>36</sup> Dawson, J W and Seater, J J. Federal regulation and aggregate economic growth. *Journal of Economic Growth*. Vol 18. Issue 2. 2013.

<sup>37</sup> Gorgens, T., Paldam, M and Wuertz, A. How Does Public Regulation Affect Growth? 2008.

<sup>38</sup> Loayza, N V., Oviedo, A M and Servén, L. Regulation and Macroeconomic Performance. 2004.

<sup>39</sup> Gorgens, T., Paldam, M. and Wuertz, A. How Does Public Regulation Affect Growth?. 2003.

<sup>40</sup> Kent, C and Simon, J. Productivity Growth: The Effect of Market Regulation. 2007.

<sup>41</sup> Schianterelli, F. Product market regulation and macroeconomic performance: a review of cross-country evidence. 2008.

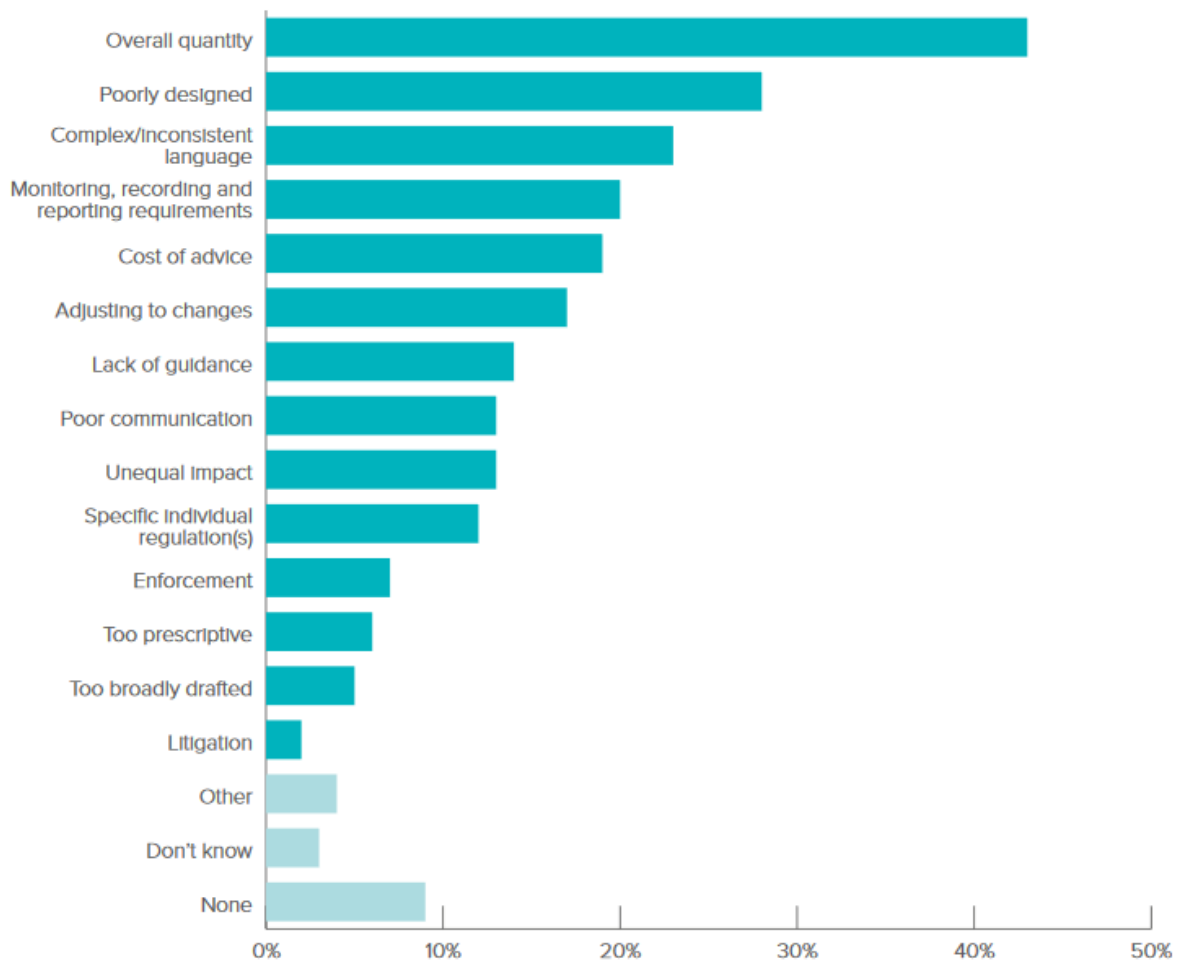
## 4. Aspects of the regulatory environment create barriers to business success

### *Barriers to business success*

FSB data illustrates what aspects of the regulatory environment are the biggest barriers to business success for smaller businesses. As shown in Chart Three, the aspect of the current regulatory landscape that inhibits business success most frequently, is the overall quantity of regulation.

**Chart three:** aspects of the small business regulatory environment that are barriers to business success<sup>42</sup>

**Source:** FSB regulation survey 2017



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*'...build-up of regulations over time leads to duplicative, obsolete, conflicting, and even contradictory rules, and the multiplicity of regulatory constraints complicates and distorts the...[actions]...of firms operating in the economy'.*

<sup>42</sup> FSB. Regulation Returned: what small firms want from Brexit. 2017

<sup>43</sup> Coffey, B., McLaughlin, P A. and Peretto, P. The Cumulative Cost of Regulations. 2016.

As Chart Three further highlights it is not just the quantity of regulation that is problematic for smaller firms, there are a range of other detrimental aspects of the regulatory environment too. These include:

- Poorly designed regulations. This aspect of the regulatory environment is a barrier to business success for around a third of smaller firms (who found at least one element of the regulatory framework is a barrier to success) as inhibiting their business.
- For a quarter the 'complexity' of regulation and 'inconsistency' between regulations is a constraint on smaller enterprise success.
- Around a fifth of smaller enterprises who suffered as a result of at least one aspect of the regulatory environment to be a barrier to success, highlighted that the monitoring, recording and reporting requirements associated with complying with regulations are an impediment to commercial operations.

#### *Deficiencies in specific types of regulation*

Table three below, using FSB data, illustrates the key problems with some of the most important (for smaller businesses) categories of regulation, that make up the current regulatory environment, in which smaller firms operate.

**Table three:** categories of regulation and the three most frequently reported factors which act as barriers to business success<sup>44</sup>

**Source:** FSB regulation survey 2017

Category of regulation	Problems
Consumer	<ul style="list-style-type: none"> <li>• Poor design.</li> <li>• Complexity and inconsistency.</li> <li>• Cost of advice.</li> </ul>
Data	<ul style="list-style-type: none"> <li>• Too broadly drafted.</li> <li>• Monitoring, recording and reporting.</li> <li>• Complexity and inconsistency.</li> </ul>
Employment	<ul style="list-style-type: none"> <li>• Cost of advice.</li> <li>• Monitoring, recording and reporting.</li> <li>• Poor design.</li> </ul>
Environment	<ul style="list-style-type: none"> <li>• Poor design.</li> <li>• Monitoring, recording and reporting.</li> <li>• Cost of advice.</li> </ul>
Food and hygiene	<ul style="list-style-type: none"> <li>• Monitoring, recording and reporting.</li> <li>• Poor design.</li> <li>• Challenging inspection/ enforcement</li> </ul>
Health and Safety	<ul style="list-style-type: none"> <li>• Monitoring, recording and reporting.</li> <li>• Cost of advice.</li> <li>• Poor design.</li> </ul>
Product liability and product standards	<ul style="list-style-type: none"> <li>• Poor design.</li> <li>• Complexity and inconsistency.</li> <li>• Cost of advice.</li> </ul>

<sup>44</sup> FSB. Regulation Returned: what small firms want from Brexit. 2017.

## 5. Failure of the UK Government's approach

### *A brief history of domestic regulation policy*

Successive UK Governments since the 1980s have attempted to improve the regulatory environment for smaller businesses. However, the trend in the scale and scope of regulation has on-the-whole defied attempts to restrain and reverse its growth. Further, there is scant evidence of much improvement in the quality of regulation, outside a handful of isolated examples. Policy towards regulatory reform has gone through a-number-of phases under successive Prime Ministers since the Thatcher Governments. Under the latter and the subsequent Major Governments there were de-regulatory initiatives. Under the Blair and Brown Premierships the 'buzz-phrase' became 'better regulation' and bodies like the Better Regulation Taskforce (BRTF) were established and which produced a number of useful outputs about regulatory issues.<sup>45</sup> The 'better regulation' label remained through the Cameron and May years. Cumulatively, these efforts drove a number of incremental improvements in domestic regulatory policy-making in the UK:

- The greater use of the routine use of Regulatory Impact Assessments (RIA) to estimate the costs and benefits of proposals (see the qualifications below about the accuracy and effectiveness of RIAs).<sup>46</sup>
- The establishment of the Regulatory Policy Committee (RPC) to independently verify the robustness of RIAs (albeit there are considerable limits to what it's achieved).
- The acceptance of the principle of a 'regulatory reduction target' and other regulation-focussed 'caps' as legitimate policy tools.
- The (slow) growth in the use of Post-implementation Reviews (PIR).
- A greater-level of general awareness among policy-makers of the need to think about the impacts of regulation by Governments, on business.

### *On-going failure to improve the regulatory environment for small business*

Nevertheless, despite the small number of positive developments described above, here has been little genuine improvement in the regulatory environment faced by smaller businesses, as the evidence in Sections Three and Four highlights.<sup>47</sup>

Initial hopes that some of the measures introduced during the Cameron years such as the Business Impact Target (BIT) and 'one-in, one-out' (and subsequently 'one-in, two-out') might result in noticeable reductions in the stock and flow of regulation impacting smaller enterprises, have been severely disappointed by the reality. The BIT and associated policies have a-number-of failings, which make the UK framework largely ineffective:

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<sup>45</sup> Its most important output was a report called: Regulation – Less is More: Reducing Burdens, Improving Outcomes in 2005.

<sup>46</sup> Cost to business is calculated in RIAs on the basis of: Equivalent Annual Net Direct Cost to Business (EANDCB). Source: BEIS. Better Regulation Framework: Guidance. 2018.

<sup>47</sup> The EU is a source of large swathes of business regulation - around fifty per cent of the 'stock' of business regulation in the UK and up to seventy per cent of the 'flow' over particular time-periods (e.g. 2000 to 2010). The failures of the domestic 'better regulation' framework have-to be seen in the light of UK membership of the EU and the limitations on the autonomy of the UK Government.

- It contains significant loopholes e.g. the 'one-in, one-out', then 'one-in, two-out' and finally 'one-in, three-out' policy put in place to help ensure the BIT was achieved, EU laws are excluded which accounts for half the stock of business regulation and tax administration, which is often cited by smaller businesses as burdensome.
- It relies upon on targeting estimates of the cost of regulation to business, which are frequently inaccurate, often by large amounts.
- The Government 'games' the targets<sup>48</sup> e.g. by making small changes to financial services regulation, nominally reducing regulatory costs but not for smaller firms or using a different measure on inflation to reduce the headline estimates of the burden of pension proposals.

Other aspects of the 'better regulation' framework in the UK are similarly deficient:

- Current policy takes no account of the quantity and thus cumulative burden on smaller firms and the effect of new regulations in the context of the substantial burden of existing requirements.
- The cost and benefit estimates in RIA's are often poorly evidenced and inaccurate, for example, often failing to provide a credible quantum for the cost impact of regulatory proposals.<sup>49</sup>
- Small and Micro-business Assessments (SaMBA) are frequently only nominally observed - at best - or absent entirely from RIAs. As a result, RIA's often fail to make any serious attempts to identify the greater 'proportionate' cost suffered by smaller enterprises as a result of regulation(s).
- Departments regularly fail to undertake PIRs on measures that have been implemented.

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<sup>48</sup> Harries, R and Sawyer, K. How to run a country: the burden of regulation. 2014.

<sup>49</sup> Estimates of the cost of the General Data Protection Regulation (GDPR) on business are a good example of the poor quality of cost estimates in RIAs. FSB data revealed that the official Ministry of Justice (MoJ) estimate in the RIA accompanying the domestic consultation on the then proposed measure underestimated the cost to small business alone by a factor of thirteen.

## 6. The solution to a detrimental regulatory environment for smaller businesses

### *The success of the BC 'model'*

In 2001 the Canadian province of British Columbia<sup>50</sup> (BC) implemented a radical and successful new approach to regulatory reform, in order to improve the regulatory environment for business (and citizens) in the Province. It stands in stark contrast to the UK's experience, which has failed to make any significant in-roads into improving the regulatory environment for smaller businesses.

As illustrated in Chart three, the aspect of the regulatory environment that most-often acts as a barrier to business success for UK smaller businesses is the quantity (cumulative burden) of regulation. With poor design and 'complexity and inconsistency' the second and third most frequently reported elements that are barriers. The regularity and the extent of monitoring, reporting and recording requirements is the fourth most often reported element of regulation creating barriers to success. Self-evidently, these four dimensions of the regulatory environment are inter-connected. A large quantity of regulation leads inevitably to greater complexity and a much greater likelihood of duplication, conflict, obsolescence (of rules) and inconsistency across the corpus of laws that business is subject to.<sup>51</sup>

BC identified and implemented a reform policy that has significantly reduced the quantity of regulation on business. As part of reducing the cumulative burden, it has led to an improvement in the design of and reduced the complexity and inconsistency in, the remaining body of regulation as repealing 'regulatory requirements'<sup>52</sup> and re-designing many of remaining rules has resulted in simplification.

The specific regulatory reduction achievements of the BC 'model' have been:<sup>53</sup>

- Between 2001 and 2004, the number of 'regulatory requirements' were reduced by **thirty-seven per cent** i.e. from 382,139 to 268,699.
- By 2018 the burden had fallen further and was **forty-nine per cent** below 2001 levels.

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<sup>50</sup> British Columbia is Canada's western most province with a population of 4.5 million people. In the 1990s it lagged most of the rest of Canada in growth (1.9 per cent below the average of the other parts of Canada), business start-up and employment rates. According to BC's business community the poor economic performance was a result of BC's high tax and excessive regulations. Source: Jones, L. Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?. 2015.

<sup>51</sup> Coffey, B., McLaughlin, P A. and Peretto, P. The Cumulative Cost of Regulations. 2016.

<sup>52</sup> The technical definition of 'regulatory requirement' used by the BC Government as and remains: '*...any action citizens, businesses, or government must take to access government services, conduct business, or meet their legal responsibilities*'. Source: British Columbia. Achieving a Modern Regulatory Environment: B.C.'s Regulatory Reform Initiative – 5<sup>th</sup> Annual Report 2015/2016. 2016.

<sup>53</sup> BC achieved these improvements without a worsening of health, safety or environmental outcomes. Source: Jones, L. Lessons from the British Columbia Model of Regulatory Reform, Testimony to the House Committee on Oversight and Government Reform. 2018

- Around **sixty per cent** of the 'regulatory requirements' eliminated **were 'administrative rules'**.<sup>54 55</sup> The remaining **forty per cent**, were 'requirements' found in 'black letter' law i.e. **legislation** (primary and secondary).<sup>56</sup>

The BC 'model' has a notable record of longevity. Its success has been sustained over 18 years. Not only has the reduction in 'regulatory requirements' been maintained but the total number of 'regulatory requirements' has continued to fall, because of the design of the 'model' and the culture change that it inculcated in Government Departments, agencies and regulators. As Laura Jones Executive Vice-President of the Canadian Federation of Independent Business (CFIB) has noted about the BC 'model':<sup>57</sup>

*'...[it has been]...so effective that...[that it]...promoted a cultural change within government. Civil servants close to the reforms in government speak of how the new approach led staff to think differently about their jobs, exercising caution in proposing new rules and taking stewardship of old rules as they located redundant, overly costly, or unnecessary ones'.*

In summary, through one package of policy reforms **BC substantially improved the position for business across four dimensions of the regulatory environment, which FSB members have identified as the most important barriers to business success.**

*Reasons behind the success of the BC 'model'*

The BC 'model' has succeeded in reducing substantially the quantity of 'regulatory requirements' on business (and citizens), reducing the negative commercial impacts of regulation and boosting the long-run growth performance of BC (see evidence of the wider positive effects on the economic prosperity of BC in Annex I). Naturally, the positive outcomes that have emerged over 18 years raises two questions:

- How did BC achieve this impressive outcome?
- Is the BC 'model' repeatable in the UK?

The positive outcomes achieved by the BC 'model' are a result of the nature of the approach taken:<sup>58</sup>

*'BC's target of reducing regulation requirements by one third in three years and then maintaining the reduction...set a hard cap on the total*

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<sup>54</sup> 'Administrative rules' is a term that captures official 'codes' and other 'standards' of practice (guidance), compliance procedures and policy approaches created by regulators and other relevant agencies, which are put-in place as part of implementing the legal rules regulators/ agencies are tasked with enforcing. Where such 'administrative rules' go-beyond the strict legal requirements these create additional 'regulatory requirements' on those subject to the jurisdiction of the relevant regulator or agency, such as small businesses.

<sup>55</sup> Telephone interview with Laura Jones of CFIB (Canadian Federation of Independent Businesses) conducted in June 2019 by Richard Hyde, Charlotte Taylor-Philip and Oliver Hateley.

<sup>56</sup> Telephone interview with Laura Jones of CFIB (Canadian Federation of Independent Businesses) conducted in June 2019 by Richard Hyde, Charlotte Taylor-Philip and Oliver Hateley.

<sup>57</sup> Jones, L cited in James Broughel, J and Jones, L. Effective Regulatory Reform: What the United States Can Learn from British Columbia. 2018.

<sup>58</sup> Jones, L cited in James Broughel, J and Jones, L. Effective Regulatory Reform: What the United States Can Learn from British Columbia. 2018.

*amount of regulatory requirements. This has forced a discipline that did not previously exist, a discipline that has helped change the culture within government to one where regulators see their job as focusing on the most important rules’.*

While the ‘hard cap’ on ‘regulatory requirements’ is central, Table four highlights in more detail the full-set of elements that make-up the BC ‘model’ and thus the factors that have enabled it to succeed.

**Table four:** lessons from BC – the key to successfully reducing the regulatory burden

**Source:** Jones, L. 2015,<sup>59</sup> 2018<sup>60</sup> and 2019<sup>61</sup>

Principle	Application in the BC ‘model’
Leadership	<ul style="list-style-type: none"> <li>• A Premier which has reform as a priority and a dedicated Minister (supported by a small but similarly dedicated team) solely focussed on reducing regulation with oversight of the implementation of the policy and its operation in departments and across Government.</li> </ul>
Simplicity	<ul style="list-style-type: none"> <li>• Clear and simple metrics to aim at and measure progress by. Efforts by others at regulatory reform have failed because of the complexity and inaccuracy of the metrics and the scope for ‘gaming’. Consequently, the BC Government decided upon the number of ‘regulatory requirements’ as the key metric.<sup>62</sup> The simplest and most easily countable metric of the burden of regulation.<sup>63</sup></li> <li>• A clear goal of a one third reduction over three years.<sup>64</sup> Every department and relevant authority (e.g. regulators and agencies) has the same objective, with minimal exceptions, minimising scope for ‘gaming’ such as horse-trading between departments.</li> </ul>
Accountability	<ul style="list-style-type: none"> <li>• Progress regularly discussed at Cabinet level, with formal quarterly progress reports required of all departments.</li> <li>• The dedicated Minister (and their team) oversaw the policy, monitored activity and published updated data on progress.</li> <li>• Key stakeholders such as business groups were involved through a formal consultative committee, which acted as a forum for additional pressure on the Government to continue the programme and ensure it was meeting its goals.</li> </ul>

<sup>59</sup> Jones, L. Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?. 2015.

<sup>60</sup> Jones, L. Lessons from the British Columbia Model of Regulatory Reform, Testimony to the House Committee on Oversight and Government Reform. 2018

<sup>61</sup> Telephone interview with Laura Jones of CFIB (Canadian Federation of Independent Businesses) conducted in June 2019 by Richard Hyde, Charlotte Taylor-Philip and Oliver Hateley.

<sup>62</sup> The technical definition of ‘regulatory requirement’ used by the BC Government as and remains: ‘...any action citizens, businesses, or government must take to access government services, conduct business, or meet their legal responsibilities’. Source: British Columbia. Achieving a Modern Regulatory Environment: B.C.’s Regulatory Reform Initiative – 5<sup>th</sup> Annual Report 2015/2016. 2016.

<sup>63</sup> As Laura Jones of CFIB has noted: ‘The regulatory requirement measure has several advantages, including its simplicity and granularity relative to the much cruder regulation measure’. Source: Jones, L. Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?. 2015.

<sup>64</sup> ‘The choice seems to have been reasonable, as there is little evidence that the regulatory reduction in the province compromised health, safety, or environmental outcomes’. Source: Jones, L. Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?. 2015.



Autonomy	<ul style="list-style-type: none"> <li>• Departments and their agencies compile an inventory of the 'regulatory requirements' that fall within their jurisdiction. In BC - across all departments and agencies - more than 380,000 'regulatory requirements' were identified.<sup>65</sup></li> <li>• The manual act of compiling the inventory is important and instructive for departments. It ensures that civil servants and regulators develop a comprehensive picture of the range of measures they are responsible for and how they can impact business and civil society.</li> <li>• Departmental autonomy over what regulatory requirements are identified and repealed and reformed.</li> </ul>
Incentives	<ul style="list-style-type: none"> <li>• Departments given the opportunity to bring forward proposals for other reforms that they have in preparation as-long-as they meet their 'regulatory requirements' reduction targets first.</li> <li>• New proposals limited by new 'checks and balances' – see below.</li> </ul>
Checks and balances	<ul style="list-style-type: none"> <li>• Place departments under a strict one-in, two-out rule for new regulations, while the 'reduction' phase is underway. The rule should be applied to 'regulatory requirements' not estimates of the monetary burden of regulation.</li> <li>• After the one third target had been hit, a 'cap' is needed to prevent the number of 'regulatory requirements' creeping back-up as a result of the future flow of new regulation. A one-in, one-out policy is required and applied across the board.</li> <li>• Additional changes to the regulatory policy making process for new regulations, such as: <ul style="list-style-type: none"> <li>◦ The development and use of a check-list for all new regulations, which helps ensure new proposals are justified, the objectives to be achieved are clear and the design of the new rule(s) are minimally burdensome (costly and distortive).</li> <li>◦ An obligation to consider alternatives to regulation by policy makers or the use of exemptions.</li> <li>◦ An explanation of the proposed 'regulation' of less than one page, published alongside the proposals.</li> <li>◦ Setting-out the 'other' 'regulatory requirements' that are going to be repealed or simplified if the new regulation is implemented.</li> <li>◦ Continuous updating of the central inventory of 'regulatory requirements'.</li> </ul> </li> <li>• In BC, none of the process rules listed above are statutory.</li> </ul>
Breadth	<ul style="list-style-type: none"> <li>• The widest possible coverage is needed, therefore the definition of 'regulatory requirements' is broad and be applied to a wide range of governing institutions i.e. not just 'requirements' in primary and secondary legislation included but equally important are those in administrative</li> </ul>

<sup>65</sup> Jones, L. Lessons from the British Columbia Model of Regulatory Reform, Testimony to the House Committee on Oversight and Government Reform. 2018.

	<p>rules produced by regulators and agencies, especially where they go beyond the legal minimum.<sup>66</sup></p> <ul style="list-style-type: none"> <li>• Businesses and citizens should be brought into the process through open public calls (i.e. crowdsourcing) for ideas about which 'regulatory requirements' to repeal or reform.</li> </ul>
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### Adapting the BC 'model' to the UK

Table four below makes specific recommendations about how to successfully adapt the BC 'model' to the UK so that it can deliver similar benefits to UK smaller enterprises.

There is no difficulty in adopting the BC 'model' as FSB policy from the standpoint of existing policy because the main elements of the BC 'model' are consistent with and indeed compliments to the wide range of institutional and process reforms to the regulatory policy landscape, that FSB proposed in its 2017 report *Regulation Returned: what small firms want from Brexit* (see Annex II for the full set of current recommendations).

Only a handful of small adjustments are required to FSB's existing regulatory reform 'asks' to accommodate all the key parts of the successful BC 'model' (as described in Tables three and four). The most significant change is the addition of a target for reducing the quantum of 'regulatory requirements' in legislation, administrative rules, guidance, policies and regulatory practices. This is an essential aspect of 'model' and cannot be dispensed with.

Consequently, this paper proposes that: **FSB adopts the specific recommendations highlighted in Table five as important elements that need to be put-in-place in order to successfully apply the BC 'model' to UK circumstances.**

**Table five:** application of the BC 'model' to the UK – proposed policy recommendations for the UK Government

Principle	Policy recommendation
Leadership	<ul style="list-style-type: none"> <li>• In <i>Regulation Returned</i> FSB called for the Government to make regulatory reform a strategic priority and for the <b>Deputy Prime Minister (DPM) – working out of the Cabinet Office</b> - to be tasked with improving the regulatory environment for smaller businesses. It is logical that the same office would <b>take-on the role of being responsible for overseeing and ensuring the implementation of the UK version of the BC 'model'</b>, including holding and ensuring the updating the central database of 'regulatory requirements' as well monitoring compliance by departments.</li> </ul>
Simplicity	<ul style="list-style-type: none"> <li>• FSB has previously supported the Government's approach of targeting regulatory cost metric based on monetary</li> </ul>

<sup>66</sup> 'Administrative rules' is a term that captures official 'codes' and other 'standards' of practice (e.g. guidance), compliance procedures and policy approaches required by regulators and other relevant agencies, which are put-in place as part of implementing the legal rules regulators/ agencies are tasked with enforcing. Where such 'administrative rules' go-beyond the legal requirements these create additional 'regulatory requirements' on those subject to the jurisdiction of the relevant regulator or agency, such as small businesses.

	<p>estimates of the burden of regulation as the best estimate of the detriment imposed on business by a regulatory proposal. This approach has failed. The BIT for example has too many loopholes, the Government 'games' the target and RIAs (supposedly estimating the cost and benefits of proposals) are consistently poor with significant underestimates of the cost to business of proposed measures. RIAs and thus policy makers take little to no account of the particularly severe impacts on smaller firms. Nor is any attempt made to estimate the cumulative cost of regulation to business and the impact of additional regulations in that context. <b>A count of the number of 'regulatory requirements' placed upon business by the law and regulators</b> is a much simpler, transparent and granular metric that a Government can more easily be held account for. Crucially, its granularity ensures the repeal or improvement of actual obligations on businesses, rather than relying on amorphous (and thus frequently inaccurate) cost estimates or other metric like the number of words or pages of rules. Consequently, it is a more effective metric to use in order to achieve the goal of a better regulatory environment. <b>The UK Government should adopt this metric as the basis for reducing the quantity of 'regulatory requirements' smaller businesses have to comply with.</b></p> <ul style="list-style-type: none"> <li>• BC hit their original one third target figure in three years and exceeded it within five. Over seventeen years they have reduced the number of 'regulatory requirements' by nearly half. A one third reduction in the 'regulatory requirements' on UK businesses therefore seems reasonable. <b>A reduction of a third of the 'regulatory requirements' placed upon small business over a five-year Parliament should be the target for Government.</b></li> </ul>
Accountability	<ul style="list-style-type: none"> <li>• If regulatory reform is made a strategic priority (as FSB already calls for) then regular discussions at the highest levels of Government will inevitably take-place. However, formal quarterly progress reporting by departments to the Prime Minister, DPM and full Cabinet are essential to make sure the policy is fully implemented, and targets hit. Progress should be reported publicly by the DPM on a regular basis.</li> <li>• <b>A formal business stakeholder group should be formed – Chaired by the Deputy Prime Minister.</b> The group would be an external 'check' on adherence to the policy, on ensuring progress was sustained and objectives met. FSB, in <i>Regulation Returned</i>, called for more extensive integration of business insights into the regulatory policy making process including a more formal involvement in the oversight of the stock and flow of regulation. The mechanism for 'feeding-in' business insights proposed in <i>Regulation Returned</i> should fulfil the important function of the external business stakeholder group (in the BC 'model')</li> </ul>

	<p>monitoring the progress in the reduction of 'regulatory requirements'.</p>
Autonomy	<ul style="list-style-type: none"> <li>In <i>Regulation Returned</i>, FSB proposed that an inventory of the stock of regulation is undertaken by an arms-length independent statutory Commission (akin to a hybrid between the Law Commission and the Australian Productivity Commission).<sup>67</sup> The Commission would then make recommendations to the Government and Parliament on how to improve the regulatory environment for smaller enterprises. However, the lesson from BC is that departments need to be 'invested-in' and 'own' the process. The BC 'model' shows that with the right leadership and incentives Departments are capable of conducting 'zero-based' reviews of the stock of regulations they are responsible for and of proposing reforms, which improve the regulatory environment for smaller enterprises.  <b>Departments should have autonomy over the process of compiling the inventory of 'regulatory requirements' and identifying which 'requirements' should be repealed, re-designed/ or simplified and how.</b> As with the BC 'model', the compiling of the inventory is important in enabling officials to build familiarity with and ownership over the legislation and policies they (or regulators under their Department's oversight) implement.</li> </ul>
Incentives	<p><b>Incentives for departments, to encourage the meeting of the one-third target, are essential.</b> As well as legislative incentives - utilised in the BC 'model') financial incentives could be used, as should transparency about departmental performance in-order to utilise public and media attention to encourage departments to meet their goals.</p>
Checks and balances	<ul style="list-style-type: none"> <li>FSB has previously supported the 'one-in, one-out' and 'one-in, two-out' and ultimately the 'one-in, three-out' approach utilised by the UK Government. However, it has been hampered by its focus on using a monetary cost metric of regulatory burden, the large number of exemptions to the rule and the inaccurate estimates of the cost of regulation that frequently evident in RIAs. While the one-third reduction plan is being implemented in the UK the flow of new 'regulatory requirements' needs to be controlled. <b>The one-in, three-out policy should be reduced to one-in, two-out to closely follow the BC 'model' and the focus of the policy should be 'regulatory requirements' not estimates of monetary cost i.e. 'one-regulatory requirement in, two-regulatory requirements out'.</b></li> <li>Discipline needs to be applied after the one-third target has been reached. Therefore, following the BC 'model' example, <b>a one-in, one-out rule will need to be put in place for the future.</b></li> </ul>

<sup>67</sup> See Annex II for the full set of current FSB recommendations.

	<ul style="list-style-type: none"> <li>• FSB has called – in <i>Regulation Returned</i> - for a more transparent pipeline for new regulatory proposals and much greater ‘challenge’ towards future regulatory measures.<sup>68</sup> For example, in <i>Regulation Returned</i>, FSB has proposed the establishment of new institutions such as the Office for Regulatory Reform (OfRR) to act as ‘built-in’ checks on regulatory proposals and to challenge the rationale for them, also for an independent body to conduct Post-Implementation Reviews (PIRs) and more resources for the RPC to more effectively carry out their role of verifying RIAs.</li> <li>• An important current FSB ask is for the reformed ‘better regulation’ framework in the UK to be put on a much stronger statutory footing.<sup>69</sup> Much of the BC ‘model’ dealing with the flow of new regulation is not statutory. This is a weakness and is one area where FSB should continue to argue for the UK to go further. However, <b>the UK should build-into a statutory framework a number of the ‘process/ regulatory policy-making improvements’ that the BC ‘model’ has put in place in BC.</b> These include: <ul style="list-style-type: none"> <li>◦ <b>The implementation of a check-list for all new regulations, which ensures there is a robust rationale with clear (and evidenced) objectives for the proposed measure(s) and that the specific rules are of quality design i.e. minimally burdensome (costly and distorting) for smaller businesses.</b></li> <li>◦ <b>An obligation to consider alternatives to regulation, with a more detailed explanation that currently, as to why alternatives would be less successful and a clear and strong rationale as-to-why smaller firms cannot be (wholly or at least partially) exempted.</b></li> <li>◦ <b>A requirement to explain the proposed ‘regulation’ to a small business in less than one page, alongside the proposed new regulation.</b></li> <li>◦ <b>The ‘other’ ‘regulatory requirements’ that are going to be repealed or simplified if the new regulation is implemented.</b></li> <li>◦ <b>Updating of the central inventory of ‘regulatory requirements’.</b></li> </ul> </li> </ul>
Breadth	<ul style="list-style-type: none"> <li>• In the BC ‘model’, the reduction in ‘regulatory requirements’ target applied to each individual department’s (and their agencies and regulators) with very little scope for exemptions. <b>All Government departments and regulatory bodies should be subject to individual targets to reduce those ‘requirements’ under their jurisdiction by one third</b> over the timescale and <b>subject</b></li> </ul>

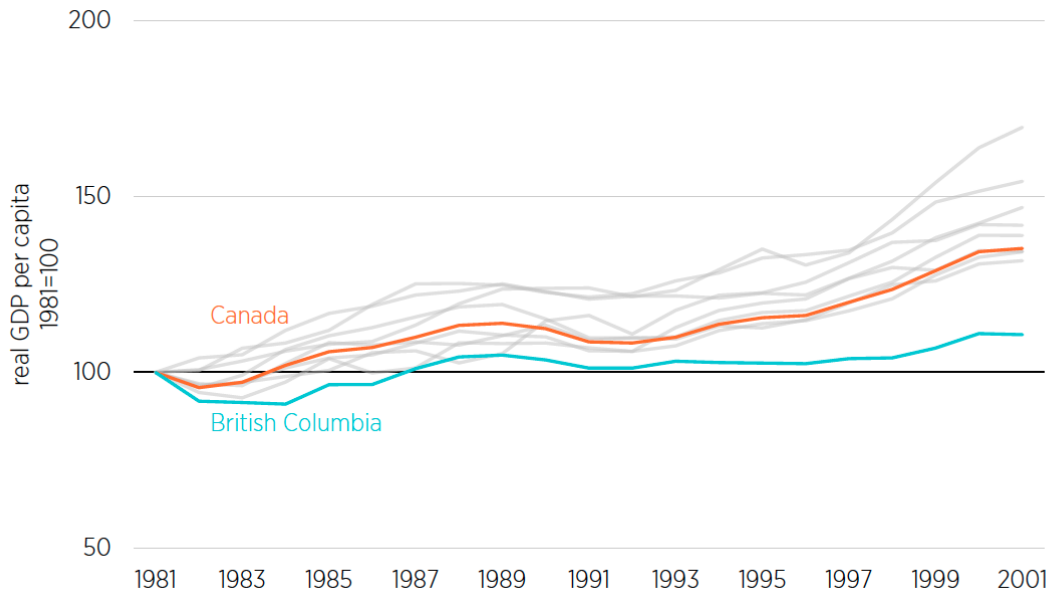
<sup>68</sup> See Annex II for the full set of current FSB recommendations.

<sup>69</sup> See Annex II for full details of FSB’s current regulatory reform recommendations, including

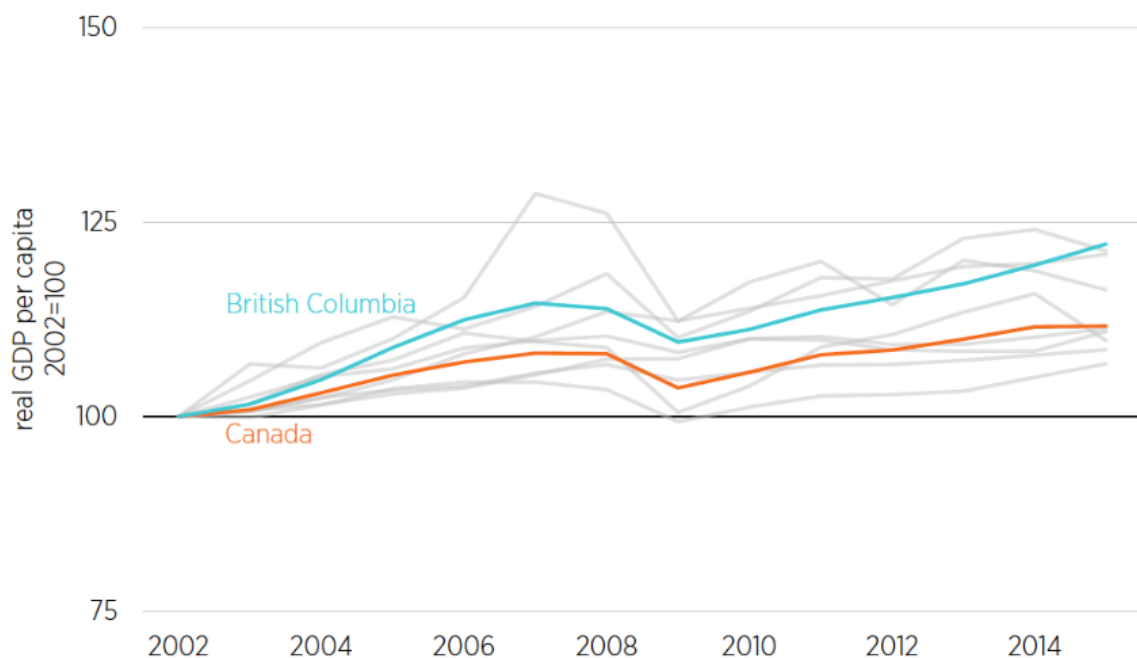
	<p><b>to the 'one-in, two' out rule while the reduction policy is underway and the 'one-in, one-out' rule after the initial target has been met.</b></p> <ul style="list-style-type: none"> <li>• In <i>Regulation Returned</i>, FSB was clear that all regulation (including tax administration, fees and charges, etc.) needed to be brought within the 'better regulation' framework. The definition of 'regulatory requirements' in the BC 'model' was very broad. Not only are 'commands' in primary and secondary legislation included but the policies and administrative rules of regulators where they add further obligations on-top of those in the relevant laws. <b>FSB should propose a similarly broad approach for the UK i.e. not only focus on primary and secondary legislation but the 'administrative rules' of regulators and agencies, too.</b></li> <li>• The UK Government has made previous attempts at 'crowd-sourcing' ideas for regulatory reform e.g. through measures such as The Red Tape Challenge. Such initiatives were only partially successful. Not least because the scheme inevitably excluded EU rules (which account for at least half of business regulation) and 'calls' for ideas from the public were undertaken sectorally, which limited both who could respond at any one time and the amount of time in-which there was to submit ideas. The BC 'model found that 'crowd sourcing' ideas from the public and business groups worked-well in identifying 'regulatory requirements' to remove or reform. Therefore, <b>FSB should support the use of crowd sourcing. However, no limits should be placed upon it and a serious out-reach effort by departments to the business community should be a key part of the exercise.</b></li> </ul>
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## Annex I: impact of regulatory reform on BC's per-capita growth

**Chart four:** growth in real-GDP-per-Capita, Canadian Provinces 1981 – 2001  
**Source:** Broughel, L. 2017



**Chart five:** growth in real-GDP-per-Capita, Canadian Provinces 2002 – 2015  
**Source:** Broughel, L. 2017



Charts four and five show that, as the regulatory reform programme began to be implemented in 2001, within a year absolute economic performance improved and further, BC's relative performance to other parts of Canada was enhanced significantly, too. Notably, these trends have sustained for more than a decade.

While other measures no doubt contributed to the improvement in performance, there is little doubt (as a result of what the preponderance of evidence tells us about the impact of regulation on business, industries and economic performance) that the regulatory reform programme had a significant positive effect and made a substantial contribution to the improvement in economic performance in BC since 2002.



## Annex II: FSB's current corpus of regulatory reform policy 'asks'

### Short-term stability

- **Recommendation one**

**The UK Government should finalise plans to introduce an Act of Parliament which transposes the EU's acquis into domestic law. This should include measures to plug any gaps in the regulatory framework that would arise due to this transposition.**

In the short-term, it is imperative that the domestic regulatory environment maintains stability so that the UK's smaller businesses can continue to plan and operate with relative certainty over the period leading up to, and immediately after, the UK's exit from the EU. The Government should aim to make Brexit as smooth as possible, minimising regulatory disruption for smaller businesses. FSB supports proposals for a Great Repeal Bill – the details of which have been set out in a recent white paper – as a workable approach to ensuring as much stability as possible in the domestic regulatory framework.

As the UK negotiates with the EU over the terms of Brexit, the Government must also set out plans for setting in train regulatory reform. This will ensure that, as we leave the EU, the UK's smaller businesses are well positioned to grow their workforce, take advantage of emerging technology and innovation, and meet the changing demands of their customers. This will help to make the UK the most competitive regulatory environment in the world.

### Establishing the structures for long-term reform of the stock of regulation

- **Recommendation two**

**Following Brexit, the UK Government should prioritise a wide-ranging review of all regulation impacting smaller businesses. This will identify how the UK's regulatory framework can best be developed and enhanced to make it the most competitive small business regulatory environment in the world.**

After the UK leaves the EU – and the acquis has been transposed across into the domestic framework – there will no longer be a distinction between UK and EU regulation. This provides the UK Government with an opportunity to examine and, where necessary, reform large swathes of regulation to enhance UK competitiveness.

This review should be 'zero-based', i.e. it should look at the stock of statutory regulation from first principles and provide an evidence-based platform for future Governments to make ongoing reforms to the business regulatory framework. The Law Commission and Australia's Productivity Commission provide models for how the UK Government might take this forward. The

review should be put on a statutory footing to ensure accountability and consistent progress to a reasonable and pre-determined timeframe. The review must be adequately resourced, pulling in expertise from industry, policy making and academia, regulators and a range of other areas where relevant. The review should make proposals to future Governments which can then be acted upon.

FSB research has identified areas of regulation where smaller businesses believe reforms are required and the direction that reform should move in, in order to improve the regulatory environment for smaller firms. We urge the UK Government, as part of its review, to explicitly write into its remit taking-into-account the views of smaller businesses...and explore how regulatory reform can help reduce barriers to their success.

## **A regulatory policy framework for the future**

- ***Recommendation three***

**The UK Government should make regulation and its reform a central and ongoing Government priority, take steps to enhance the UK's system of regulatory governance not least by integrating business perspectives into the policy making process and extend the common law approach to regulating to more of the stock of regulation as its reviewed and reformed.**

Alongside the comprehensive review of the stock of current regulation the Government needs to put in place an architecture for governing the flow of future regulation. This needs to build on the best aspects of the current regulatory governance system but go much further.

It needs to begin by acknowledging that regulation has an impact on smaller businesses and wider economic prosperity that is as significant as taxation. Consequently, regulation policy needs to be a central policy issue for future Governments. Prioritising regulatory policy in institutional form will be challenging as currently the UK Government is not set up for this. Not least because, unlike taxation, regulation is an issue that is not confined to one department. Every department is interested and involved in regulation. The challenge is going to get more acute as technology and other developments break-down the different barriers between traditional regulatory delineations. Yet, the leadership and drive needed to make regulation a long-term cross-Government strategic priority by Governments of all colours is currently absent. To rectify this:

- The UK Government needs to **make regulation a strategic policy priority and reflect that in institutional reforms** which can drive a regulatory reform agenda across all departments and regulators to make sure future regulation is minimally burdensome and effective e,g. facilitates the development and adoption of new technologies by smaller businesses. The Government should demonstrate strategic leadership by establishing an Office for Regulatory Reform (OfRR) in the Cabinet Office, run by a senior Cabinet Minister. The aim of OfRR is to bring a more

holistic and coherent approach to business regulation in the UK. The OfRR would:

- Take the better regulation agenda from BEIS (including subsuming the Better Regulation Executive – BRE).
- Act as the cross-departmental strategic driver of the regulatory reform agenda and the regulatory environment for business.
- Produce every two years produce a 'state of regulation' report to identify the ongoing successes and failures of existing regulation and the future challenges.
- Act as a non-departmental 'red team' for all new policy proposals that involve regulation, challenging proposals for new regulation and provide an independent critique of new measures from a strategic perspective. A point of view that sometimes gets lost as departments strive to devise and implement micro-policy solutions.
- The Parliamentary Regulatory Reform Committee should have oversight of these new structures and play a central role in holding them and the relevant Ministers to account.

Structural reform needs to be accompanied by process reform i.e. an improved regulatory governance system. The former without the latter would not be able to ensure that future regulation is as effective as possible i.e. where regulation is necessary it is minimally disruptive and where possible can bring benefits. Therefore:

- The Government should **strengthen the process for assessing the need for new regulations.**

The process for scrutinising policy proposals is well regarded internationally, yet the NAO identified a-number-of deficiencies. However, there is scope to go further than just correct the deficiencies identified by the NAO in current processes. A strengthened regulatory governance system should be placed in a statutory code, rather than the hybrid of some statutory elements and some administrative rules, as it is now. Such a code would include:

- Improved, more consistent and rigorous Regulatory Impact Assessments and evaluations re the need for the proposed new regulation in the first place. CBAs need to have adequate regard to the cumulative – as well as policy-specific – regulatory burden on small businesses and the in-direct or 'economic' costs of regulation e.g. to market competition. These should become part of the criteria for deciding on the desirability of new regulations. Further, each government department should have an internal independent 'challenge panel' that is able to scrutinise the justification and the design of the emerging policy proposals before proposals go to the OfRR for external 'challenge'.

Other improvements to the regulatory governance system should include:

- Having a larger and more formal role for businesses in the regulation making process. The UK Government should establish a

business forum, which has a recognised role in the development of business regulation policy. This forum would input directly into the work of the proposed OfRR.

- Setting-up an independent body, based upon the Office of Budget Responsibility Model, to conduct post-implementation reviews. The sponsoring Department should be the OfRR. This would remove the need for departments to carry out post-implementation reviews. Further it would remove any grounds for concern over conflicts of interest between Departments and rigorous analysis of the successes and failures of the regulations they have designed and implemented. This body would need access to all the information used by departments to develop the original policy proposal. All departments should be required to respond to post-implementation reviews by the new body publicly.
  - Continuing with the Regulatory Policy Committee (RPC) as independent reviewer and validator of RIAs. However, adherence to the requirements to provide RIAs early in the policy development process should be strengthened and Departments should be required to publish a formal response as to why they fail to make the improvements in the RIAs that the RPC identifies in their evaluations. The RPC also needs more resources to help it do its job as effectively as possible.
  - Consideration should be given to creating more incentives for departments to think more innovatively about regulation and regulatory solutions to identified issues that require a regulatory response that is likely to impact smaller businesses and future issues that may require regulatory responses. This should include incentives to increase cross-departmental collaboration to devise regulatory solutions to problem caused by new technology.
- Where possible, the other existing domestic advantages that will play a more important role in setting and maintaining the small business regulatory environment after the UK leaves the EU need to be supported and enhanced. Ways of improving the Regulatory Governance System have been set out above. Domestic control over the making and un-making of regulation will come when the UK leaves. However, there is scope for protecting the commercial advantages of the common law. The current and all future Governments should commit to:
    - **Protect the commercial 'friendliness' of the common law** by avoiding measures that could compromise its commercial strengths, including its robust protection of property rights and wide degree of latitude it provides for economic activity. A test should be established which, as part of the policy development process, would identify the potential of new economic regulation proposals related to contract law, investor protections and other commercially enabling regulation to undermine the benefits of the common law rules already operating.

## Supporting smaller businesses

- **Recommendation four**

**Implement measures which improve the 'regulatory experience' of smaller businesses, including:**

- **A comprehensive performance framework for non-economic regulators.**
- **The creation of a culture of transparency and learning including more use of tools such as 'safe harbour' to encourage it.**
- **More compliance support for smaller businesses from Government and regulators.**

Along with measures to improve and reduce the stock of ex ante statutory regulation and ensure that future regulation is needed and of good quality, the missing piece is the 'front line' experience of smaller businesses beyond the obligations and subsequent impacts created by the drafting of particular regulations. Since the Hampton Report, regulators and sponsoring departments have attempted to improve the experience for smaller businesses. There are a number of initiatives aimed at facilitating this. Measures such as Earned Recognition, Primary Authority and Better Business for All (among other initiatives) have helped regulators to better understand the position of smaller businesses. There are now various business forums, through which regulators can engage with smaller firms and their representatives. Measures which would improve the experience of smaller businesses and consequently reduce the costs they incur trying to understand regulations, the associated reporting and monitoring requirements and interactions with the regulators such as through inspection processes, should include:

- Building upon the current reporting requirements placed on regulators by the Enterprise Act 2016 e.g. reporting their performance against the Regulators Code, by developing a comprehensive performance framework for all non-economic regulators. This should bring more transparency to the activities of regulators and to incentivise them to improve their interaction with and accountability to smaller businesses. The framework, if calibrated effectively, should also help build a culture of openness between smaller businesses and regulators, which focussed on enabling compliance through the provision of extensive support services, which smaller businesses can take advantage of and provide 'safe harbour' for those smaller businesses that follow such advice and guidance. An emphasis should be placed on reporting of non-compliance and learning rather than punishment.
- More data sharing between Government departments and regulators. The use of big data will enable regulators to better target the provision of support or awareness raising activity as well as enforcement measures. Most importantly, it could help identify systemic problems with regulation in relevant sectors and help design ameliorative measures, for example, re-design of certain regulations. In addition, use of the data by OfRR will, for example, enable it to identify cross-cutting problems with individual as well as types of regulations. Where

necessary, carve-outs from data protection laws should be created to facilitate relevant data sharing across departments and regulators. The data would feed into the OfRR's two-yearly report into the 'state of regulation'. The overview of the 'state of regulation' should utilise the available 'big data' in conjunction with surveys and other evidence gathering methods.

- The creation of a central hub perhaps run by the Small Business Commissioner, but operated in conjunction with the OfRR, which provides smaller businesses and start-ups in particular, with access to guides and explanations of the regulations they have to, or will have to, comply with in order to conduct business.