Written submission from the Federation of Small Businesses (FSB)

Introduction

The FSB is Scotland’s largest direct-member business organisation, representing 19,000 members. The FSB campaigns for an economic and social environment which allows small businesses to grow and prosper.

We welcome the opportunity to submit comments on the Regulatory Reform Bill to the committee.

Comments

General principles

While few businesses would claim to enjoy the process of complying with regulations, most appreciate the need for legislation to protect people and the environment from harm and to prevent irresponsible and unscrupulous trading. But, when it begins to look as though business owners’ time and money is being spent on box ticking with no clear benefit, they become frustrated.

In a recent survey asking about the impact of regulation on their business just under half (45%) of Scottish members indicated that the cost of complying with regulation had increased over the previous year, while just under a third (29%) felt the time taken to comply had increased. 51% indicated that the most challenging aspect of regulation was interpreting which regulations applied to their business, closely followed by 50% who felt the sheer time dealing with it was most demanding. Lastly, 17% of respondents indicated that environmental regulation was the most time consuming and difficult to deal with, though this rose to 44% for agricultural businesses.¹

As a result, we believe that more could be done to reduce the cost and time difficulties experienced by small businesses, as well ensuring regulators behave in a way consistent with the principles of better regulation. Ultimately, this makes it easier for businesses to comply with regulation and allows them to spend more time focusing on growing their businesses.

Last year, we published a report setting out how some aspects of Scottish regulation could be improved.² We also responded to the Scottish Government’s consultation on better regulation setting out our thoughts on general principles of reform.³ Unsurprisingly then, we welcome the acknowledgment that regulators have a role to play in economic growth and that they should, as far as possible, carry out their regulatory activities with this principle in mind.

¹ FSB member survey, December 2011
² FSB Scotland, Local regulation – the case for change, 2012
Part 2: Environmental Regulation

In our response to the 2012 consultation on an integrated framework for environmental regulation, the FSB indicated its broad support for SEPA’s approach and the organisation’s commitment to the principles of better regulation.  

In general terms, the measures in Part 2 of the Bill build on this, and previous, consultations by enabling a simplification of the current environmental regulatory regime and providing a wider, more flexible range of sanctions to achieve compliance. In principle, the FSB agrees with this approach, recognising as it does that achieving compliance is assisted when a range of sanctions is available to the regulator.

While relatively few FSB members are likely to be subject to multiple licensing schemes, the move to streamline the system by creating a single permissioning framework is nevertheless a sensible step. It should reduce confusion and contradiction making it easier for businesses to understand what they are required to do.

However, most of the proposals outlined in Part 2 of the Bill are enabling clauses. The actual impact of proposals on small businesses is difficult to determine until we see regulations, guidance or procedures which will accompany the regulations and the new charging regime. As a result, most of our concerns relate to how proposals would work in practice, especially those which might, unintentionally, disadvantage small businesses. We have raised the following concerns with SEPA:

- More detail on the application of fixed penalties. The earlier consultation suggested penalties of £500 (for individuals) and £1000 (for companies) with a cap of £2500. This seems high for “relatively minor offences”. While a fixed penalty notice would often be preferable to (and less expensive than) court proceedings, these are still significant sums for small businesses. (section 12)

- The application of variable penalties of up to £40,000 also provides huge discretion to SEPA. (section 15)

- The appeals process for penalties, in particular, to whom would appeals be made? (sections 13 and 16)

- Introducing enforcement undertakings, where restoration and preventative action is taken as an alternative to prosecution, is a positive measure. But we want to ensure that it does not work against small businesses. Firstly, small firms need to be made aware that this is an option and advised of action they could take. Secondly, we want to avoid routine use of undertakings such that ‘regulatory creep’, or expecting businesses to go beyond what is required to comply, becomes the norm. More generally, SEPA should introduce monitoring processes which record which types of enforcement are used against different types and sizes of business. A move towards a more flexible regime, where actions are focused on a positive outcome, is welcome.

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However, this kind of approach could put small businesses, without specialist environmental or legal advice, at a disadvantage compared to large businesses. (section 19)

- Ensuring that investigation costs remain cost-effective and proportionate in the event that such costs are to be recovered from the individual being investigated. (section 22)

- More detail on how vicarious liability will be determined. The rationale behind it is understandable but responsible, well run small businesses may not have the range of written policies and procedures that a large company could use to shield itself from blame. (section 29)

- The offence of ‘significant environmental harm’ is based on a definition of ‘serious adverse effect’ which seems open to interpretation. (section 31)

- It is difficult to gauge how many small businesses will benefit from a streamlined regime. Benefits could be offset by increased charges for some small businesses, under the proposed new charging regime for SEPA. More generally, models about how many businesses in different sectors will be affected by the proposed new regime, would be helpful.