The 'Problem' with Regulation: Systemic Constraints to Effective Implementation of New Legislation

Andrew Atherton
Enterprise Research and Development Unit (ERDU)
Lincoln Business School, University of Lincoln, Brayford Pool, Lincoln LN6 7TS
www.lincoln.ac.uk

Kirk Frith
Research Associate, ERDU, University of Lincoln

Liz Price
Research Fellow, ERDU, University of Lincoln

Manny Gatt
Managing Director, Faster Futures Limited

David Rae
Director, ERDU, University of Lincoln

Objective: To examine the dynamics of legislative compliance from SME 'demand-side' and regulator 'supply-side' perspectives, in order to generate insight into current constraints on compliance.
Prior Work: There is an ongoing debate about the impact of regulation on SMEs. Typically, regulation is seen as a burden or cost that adversely affects firms and, in particular, the operating efficiencies of SMEs. A smaller number of studies have either found no cost to compliance, or have identified benefits - both to complying businesses and to economy and society more broadly. However, such considerations of regulation as neutral or beneficial are essentially a 'minority' perspective compared with the normal consideration of 'red tape' as a burden on SMEs and a constraint on competitiveness. Either way, policy and analytical considerations of SME regulation adopt a normative view, seeing it as either burden and cost (a negative perspective) or as a positive catalyst for change in corporate behaviours and practices (the positive view).
Approach: Consideration is given to the challenges and constraints faced by regulators - in sub-regional government - and by entrepreneurs seeking to comply. The proposal explored in this paper is that the introduction of new legislation is inherently constrained by levels of local knowledge and capacity within implementing agencies.
Face-to-face interviews with regulators and entrepreneurs, and an intensive 'world cafe' brainstorming workshop generated data capturing the experiences and views of both parties. Via direct engagement with both groups, in the same forum, and through analysis of responses to parallel questions, demand- and supply-side perspectives were contrasted and compared.
Findings: The findings are: (1) regulators share similar problems in the implementation of regulation, albeit from a monitoring and control perspective, as entrepreneurs seeking to comply - there is convergence in recognition of the challenges in compliance; (2) agencies responsible for implementing legislation are insufficiently supported and advised when new regulations are introduced, so increasing the likelihood of a lack of local guidance and understanding of how to implement such legislation; (3) there are well-documented and substantive concerns and reactions against new legislation that are held and articulated by entrepreneurs.
Implications: As a result of implementation constraints relating to central government clarity and local government capacity, new legislation will not be introduced effectively and implemented without significant additional supply-side capacity-building as well as demand-side education.
Value: The problematic nature of SME compliance with regulation is a function of the dysfunctionalities inherent in the current system of implementation of new regulation.
Key Words: Small firms, SME, entrepreneurship, regulation, legislation, compliance.

Introduction

Compliance with legislation is seen as a cost, and constraint, for many smaller enterprises (Kitching, 2007; Chittenden et al., 2001). Because smaller enterprises are often under-resourced, or make do with limited resources, their capacity to respond to non-transactional requirements is constrained by their resource endowment (White, 1981). Resource-based constraints to searches for compliance requirements create the conditions for information asymmetries, where smaller enterprises are ignorant of changes to existing legislation or the introduction of new regulations because they do not have the capacity or expertise to monitor and respond to such requirements. Although no defence to non-compliance from a legal standpoint, such asymmetries create conditions where the small firms sector is likely to find compliance more challenging than larger companies, which tend to have greater resources and higher levels of functional specialisation that enable compliance; for example, company secretaries and legal departments.

Over the last two decades, there has been an ongoing policy concern with regulation in response to the identified challenges that small businesses face as well as a broader concern with market reform in the UK (De, 2000). Since the 1980s, de-regulation and the creation of efficient market conditions have been a consistent focus and trajectory of government intervention in what have been termed the 'Anglo-Saxon' economies (Parker, 2000). In recent years, there has been a growing emphasis on 'better' as well as 'less' regulation, and on the actual impacts of legislation on businesses. Emerging from these developments has been recognition that procedures and processes related to legislative compliance have not been developed from a small business perspective, and in certain cases have been overly bureaucratic and time-consuming when implemented. In the UK, principles such as 'think small first', established in the early years of the Small Business Service, and assessment mechanisms such as the 'Small Firms Impact Test' have sought to inform legislation development, and as importantly implementation, in ways that account for and respond to small business concerns around the costs of compliance (Kitching, 2006). In Europe, DG Enterprise in particular has focused on initiatives designed to reduce the administrative costs and burdens associated with compliance; for example, related to business registration as a key dimension of start-up (CSES, 2002).

Over time, these policy developments have reduced excess regulation, making the UK one of the 'easiest' countries in the world in which to do business (World Economic Forum, 2007; World Bank, 2007), with low levels of legislation in comparison with most other countries (Kitching, 2007). From this perspective, a view could be formed that policy intervention has created the enabling conditions for efficient competition through successive rounds of market liberalisation. Such external benchmarks indeed suggest that the 'job has been done' in terms of de-regulating markets and creating the conditions for open competition. However, in spite of these verifiable improvements in the business environment in the UK, de-regulation continues to inform policy discussion and approaches; in part because of concerns raised publicly, through political dialogue, about the impact of regulation on businesses, and in particular small firms.

And yet, better – and less regulation – continues to be a policy concern and at the heart of the government small business strategy (BERR, 2008). There appear to be several reasons for this. Firstly, regulation is at the heart of the political economy of competitiveness through market liberalisation, a policy theme that has informed the thinking and proposals of successive administrations of both political parties since the 1980s. Addressing small firm regulation therefore underpins a fundamental logic of government decision-making; namely, the pursuit of liberal markets and open competition. Secondly, effective advocacy by representative organisations has continued to highlight concerns about regulation and compliance, in response to concerns raised by business members of these organisations. This raises a key question as to the extent to which compliance concerns as articulated by these associations represent the whole small business population, or a proportion thereof. Thirdly, and building on the previous point, experiences of and views on compliance embrace the full range, from resistance or concern to support and promotion, within the small firms sector; so pointing to the possibility that certain groups within this heterogeneous population continue to face challenges related to compliance with legislation. Although work by Corneliussen (2005) and Vickers et al. (2005) identified 'pro-regulation owner- and key managers running smaller businesses, there is a need to test whether these individuals are in a majority or minority across the small business population. Fourthly, the likelihood of continued information asymmetries arising through constraints to search suggests a 'structural' problem in regulatory compliance that is likely to hold for SMEs regardless of overall efficiency of regulation within the UK economy.

Such considerations of regulation conceive of a relationship between government and enterprise where government constrains firm behaviour and scope in order to minimise or remove negative externalities, such as pollution, or to prevent specific practices that have adverse outcomes and results even if consistent with competition, e.g. minimum wage levels and working time directives. As has been noted by several commentators, this conception of regulation places the smaller firm in an essentially reactive role where emphasis is placed on how an SME will respond to and comply with legislation imposed by government (Vickers et al., 2005). It is perhaps inevitable, as a result, that regulation has been seen in policy debate as a constraint on business performance (Kitching, 2006).

However, recent re-assessments of the dynamics of small firm compliance have challenged conceptions that posit reactive, cost- and constraint-focused reactions and responses by SMEs to legislation. Two particular themes in this literature are worth noting with reference to this paper. The first concerns itself with the positive changes that legislation can effect on firm behaviour and performance. Kitching (2006), for example, proposes a shift from 'business-burden' and compliance-costs considerations of SME responses to legislation to a greater focus on the effects on 'business decision-making and competitiveness', and in particular how responses to regulation stimulate and create the conditions for performance and productivity improvement in firms. From this perspective, compliance with, and reactions to, regulation produce changes in behaviours and decisions within firms that stimulate innovation and encourage performance improvement.

A second key theme highlights the variety in approaches to and perceptions of regulation in the highly heterogeneous small business sector. Rather than posit that all, or most, small firms see regulation as a cost or 'burden', this literature identifies significant variation between smaller firms; from hostility or scepticism towards legislation through to positive acceptance and advocacy (e.g. Vickers et al., 2005). The emergence of ventures that advocate socially responsible agendas, such as environmental sustainability and social cohesion, is an increasingly noteworthy aspect of the small business population in post-industrial economies such as the UK. Businesses such as this – Innocent Drinks and howies come to mind – do not have an explicit 'CSR' agenda, and in some cases reject CSR approaches as overly formalistic. However, they espouse values – around wellbeing and transparency in procurement in the former case, and in investment of turnover into charities in the latter – that ensure that these businesses not only comply with minimum regulatory requirement, but in some aspects at least transcend these *de minimus* requirements. Similar dynamics can be seen in sectors such as biotechnology, which is a highly regulated, higher value and globally competitive market, suggesting that the market context of firms as well as the values and concerns of key decision makers affect, if not determine, views on regulation (Corneliussen, 2005).

This paper presents a possible explanation for the continued profile of compliance amongst enterprises and business membership organisations, who continue to raise this as a fundamental concern. Consultation with a mixed group of owner-managers, regional policymakers, local authorities and other agencies responsible for advising on and monitoring compliance highlighted systematic challenges to the implementation of new legislation that are currently intrinsic. These focused on constraints in the capacity of advisory agencies and statutory bodies to effectively support the introduction of legislation. Such constraints tended to arise due to a lack of guidance on implementation of new legislation, and on variations in local investment in and capacity to provide compliance advice to enterprises when legislation is newly introduced. Deficits in the planning of, and support, for introduction of new legislation were experienced equally by implementing agencies 'on the ground' and by smaller enterprises seeking to comply with such legislation. Indeed, the experiences were remarkably consistent, albeit from different perspectives – of adviser/implementer and complier – suggesting that there is a 'structural' weakness in supporting the introduction of new legislation, or changes to existing legislation. The remainder of this paper explores these issues and findings in more depth; starting with an overview of the research methodology, followed by presentation and discussion of findings. In conclusion, recommendation is made to focus on supporting the introduction of new legislation from an adviser and implementing perspective ('supply-side'), via capacity-building, as well as from a small business ('demand-side') perspective, where awareness-raising is of paramount importance.

Methodology

The data examined in this paper were collected as part of a regional review of the effects of regulation on small and medium enterprises in the East Midlands region of the UK. This paper focuses on the results from a consultation event held in March 2008, involving twenty-two participants (of which four were facilitators and rapporteurs). Participants represented: regulatory agencies, such as the Health and Safety Executive and local authorities; intermediary organisations, such as Business Link/East Midlands Business and enterprise agencies; and owner-managers and entrepreneurs. Business representatives were both providers of advice and guidance on compliance, so offering a private sector perspective, and businesses complying with regulations. Involvement of multiple types of organisation generated four different perspectives on regulation in smaller firms, namely; businesses complying with legislation; businesses helping other businesses to deal with legislation; intermediary organisations that refer to statutory bodies; and the statutory bodies and agencies themselves. The decision to bring together these different constituencies was deliberate, in that initial consultation in advance of the workshop suggested that challenges related to compliance with and enforcement of legislation tended to be most acute, and visible, in the interfaces between regulator, intermediary and business.

A 'world café' format was adopted in order to stimulate high levels of participant input and to ensure that the consultation event followed themes and points of interest and concern to those participants. The 'world café' methodology has become increasingly commonly used by facilitators seeking to capture and make sense of multiple perspectives on a single issue and to explore such issues in more detail via collaborative discussion, critique and enquiry (Brown, 2001; see also the World Café website at www.theworldcafe.com). This approach is designed to encourage interaction and discussion in a less formal and hence more conducive environment for experience exchange and group discussion. The 'world café' methodology consists of the following seven components:

1. Setting the context, via preparation for the event and in particular specifying the question or issue to address and who should be involved. Context-setting provides the basis for planning the event and a means of anticipating possible outcomes.
2. Creating 'hospitable space'. The world café methodology emphasises a shift from formal, 'sterile' meeting spaces to more hospitable environments; typically, taking a café format in décor and refreshments. The objective is to create a more informal and friendlier environment in order to encourage discussion and expression. For our workshop, we produced a café-style environment, following the guidance of the world café methodology in the following ways: tables were arranged in random fashion, and of different sizes; red check tablecloths and café-like settings were used; each table had flipchart paper, puzzles and objects not directly linked with the discussion, sweets and water, as well as flowers. At the back of the room, which was a dining area in a hotel rather than a standard meeting room, ample food and refreshments were available throughout the event.
3. Exploring relevant questions. The issue of regulation proved to be an attractive focus for the event, with almost all invitees attending (two businesses cancelled at the last minute). In order to ensure a clear issue lay at the heart of the event, two questions were posed to participants, initially before the event and then as the focus for discussion, namely: (i) is there is a need to improve advice on business regulation? (ii) how can this be achieved?
4. Encouraging contributions from all participants is a key aspect of the world café approach. This approach suggests the use of a 'talking object' in order to enable participants to discuss emotive issues, and to ensure an order to who is speaking (by passing round the object). Although we provided talking objects on each table, there was no need to use this aspect of the approach as participants engaged freely in conversation from early in the event.
5. Articulating and sharing individual experiences and perspectives is encouraged. As organisers, we ensured that participants were not all known to each other, and asked for movement between tables during the workshop (this was only partially successful). As facilitators, we acted as rapporteurs rather than as table 'hosts' so ensuring the conversation was driven by the participants. Our brief was to observe and note, rather than to engage in and shape the discussion. At each stage through the consultation, different participants were asked to feed back, as and how they wished. We did not, for example, formally ask each table to summarise their discussion during each feedback session.
6. Listening and pattern identification. The approach emphasises the importance of exchanging experiences, and where relevant noting differences in these experiences. Although the world café approach stresses the importance of listening to others, we re-framed this by asking participants to develop and respond to each other rather than closing down discussions or particular perspectives. As discussions developed, some key patterns –

which are reported on and discussed later in this paper – emerged across all tables, so indicating a convergence of conclusion and thinking through the event.

7. Sharing 'collective discoveries'. The world café approach stresses the importance of conversations between tables, rather than between a table and the facilitator, in order to capture wider themes and shared conclusions across the whole group. To achieve this, we asked each table to comment on other tables' observations and assertions. This led to discussions between participants, who shared their views and found areas of commonality and similar themes emerging across the group as a whole. Flip charts were used to draw patterns or images, as well as to summarise the three key highlights from each discussion, but were not used as a formal part of feedback; instead, sheets were stuck up on walls for viewing and comment. We asked each table to reflect on key conclusions and themes, and to discuss amongst themselves what the significant findings and outcomes were from the café event. It was during this phase of collective reflection and conclusion that the individual discussions around constraints to effective implementation of new legislation emerged and coalesced as consensus across the group.

The use of a world café approach to data collection and preliminary analysis through peer discussion and reflection is not a standard methodology in small firms research. Although consultation using focus group methodologies have emerged – both as a means of brainstorming issues initially, typically in order to frame an issue and identify key questions to ask, and as a way of validating findings, often derived from survey responses or quantitative analysis of secondary data – such approaches tend to be seen as supplementary to more established forms of qualitative and quantitative data collection and analysis (Curran and Blackburn, 2001). The novelty of the approach that we adopted was the use of such a methodology as the core means of collecting and making sense of personal and organisational experiences related to legislation and compliance.

The rationale for doing so was two-fold. Firstly, there was an identified need within the study to explore in detail the actual experiences of regulators, intermediaries and businesses, in order to understand the holistic and complex nature of compliance. This initial conclusion came from a formal telephone survey of over one hundred businesses in the region, and via preliminary consultation with selected stakeholders in order to frame the research question. Secondly, these discussions suggested that a key issue in terms of compliance was the interactions between businesses, intermediaries and regulators, and in particular the extent to which these interactions addressed possible information asymmetries and either enabled or enforced compliance. For this reason, a world café format where these different agents in the compliance dynamic came together to share views and experiences and to explore how regulation could be improved was selected as an appropriate methodology.

It is perhaps instructive to consider the total amount of contact time with individuals that such a format allowed. Starting at 10 am and concluding at 2 pm, the world café amounted to seventy-two hours of contact time, which represents considerable input from participants and hence sufficient data for analysis. In order to ensure that as much data as possible were collected within a finite period, rapporteurs made notes through the world café event and collected flipcharts. These different data sources – output from participants plus observational notes – provided two complementary sources of data for analysis. Following on from the world café event, the two rapporteurs produced an outline summary of the event and then reviewed this with the facilitators for accuracy and coverage of the discussions. This was then sent to participants for confirmation and, where needed, amendment.

Data collected were therefore qualitative and based on direct quotations from participants. Explicit focus was placed on 'making sense' of the data during the world café event and then testing emerging propositions with participants (Weick, 1995). Interactive methods of data collection allow for this type of initial analysis via feedback to and consultation with individuals involved in the analysis; so creating the prospect for validating, in part or superficially, emerging themes with these individuals (Atherton and Price, 2008). Such approaches therefore fit well with exploratory studies seeking to understand particular phenomena, rather than for testing specific hypotheses and propositions (Eisenhardt, 1989). As has been recognised in the research methods literature (e.g. Curran and Blackburn, 2001), data derived from the experiences of practitioners provides insight into phenomena that can complement large-scale quantitative data analysis, by offering insight into the particular contexts and dynamics within which specific responses are made. Feedback and inputs from experienced practitioners therefore provide 'thicker' representations of socioeconomic phenomena that offer the possibility of insight into the reasons why specific actions and decisions are made, and the outcomes – both anticipated and actual – that arise (Geertz, 1973). However, such data cannot be considered representative of the wider population and so should be considered within its own context of data collection, consideration and analysis.

Findings

As was noted in the introduction to this paper, the small business population in any country is highly diverse in nature, activities and performance, so indicating that responses to legislation and views on compliance will vary considerably. Participants indicated a wide range of predispositions towards and views on regulation across the small businesses they managed and knew, with many not conceiving of compliance as a major burden or constraint:

> "Businesses see regulation in very different ways from each other – some really do see it as a serious burden, whilst others seem to not be that bothered by it" [regulator].

Participants also indicated that stage of business development will also affect business compliance needs and levels of engagement. This suggests that perceptions of regulation may vary not only by owner- or key manager perspective, but also by the overall level of compliance requirement at certain points in a firm's development such as during start-up:

> "There are definitely life-cycle stages that businesses pass through where the burden of regulation gets far greater and the level of help that they then require is far more substantial" [regulator].

Business burden responses.

In this section of the paper, we adopt Kitching's (2006) typology of the regulation literature, in which studies were grouped into one of the following three categories: (i) considerations of the 'business-burden' of compliance; (ii) attempts to quantify the costs of compliance; and (iii) studies that analyse the dynamics of small business compliance, including motivations ('why') and the nature of these responses ('how).

For those businesses who "really do see it as a serious burden" [*quotation above*], compliance is challenging because of a lack of resources within the firm to respond to regulation. These businesses, which were characterised as a sub-section of the small business population, are likely to need, or benefit from, assistance and indeed may not be compliant without such support:

> "Many businesses are just too slow to respond – they don't have the resources to respond efficiently and effectively. These businesses need to be identified and they need to be given or provided with more assistance" [regulator].

Compliance costs responses.

Both the businesses and regulators participating in the world café event demonstrated a high level of awareness of legislation, and indicated that many businesses recognise the importance of compliance, not only in terms of avoiding legal sanctions but also in terms of minimising the costs of compliance as much as possible.

Indeed, awareness of regulation and rapid compliance were seen as a means of minimising costs, whereas avoidance or delay were seen as likely to lead to increased costs of compliance:

> "There is a cost benefit aspect to compliance that many businesses are aware of – the greater the potential costs the greater the incentive to comply – especially given the need to prioritise as a result of time pressures, and so on" [regulator].

There was also some indication that owner- and key managers seek to minimise the costs associated with compliance via informal consultation and guidance from other business people and other contacts:

> "Personal networks are an important source of guidance when it comes to compliance issues" [business].

Business decision-making and competitiveness responses.
Whether regulation is seen as burden or cost, or as a stimulus to new business activity depended upon the attitudes and views of key managers within the business. Where owner- and key managers adopt a view that regulation can drive industry change, and potentially innovation, responses were positive and rapid:

> "It's a mindset issue – changes in regulation can also be seen as an opportunity and can be used to your advantage if you are able to respond quickly" [business].

Indeed, the ability to respond efficiently and promptly to regulation was seen as a measure, or determinant, of the overall competitiveness of the business. Smaller firms that operate with an ethos of adaptation and flexibility perceived the changes generated by compliance as a key determinant of success (by being 'adaptive') and a threat to survival (by being 'static') where responses are not rapid:

> "It is important to be able to change behaviours and routines quickly – to be adaptive rather than static. Some businesses seem to be more flexible than others" [business].

For some of the participants, the ability and readiness to comply with legislation was an indicator of the overall nature of the business. From this perspective, businesses that do not, or are reluctant to, comply rapidly and willingly are likely to adopt practices within their businesses that should not be encouraged or recognised:

> "Good businesses will always seek to be compliant, whilst rogue businesses will always seek ways to avoid or evade compliance – especially if there is a perceived benefit from doing so" [business].

Business and regulator concerns – changing the culture of compliance and enforcement.
Participants identified a need for both regulators and businesses to approach compliance, and enforcement, though greater engagement with each other. The stereotypical view of regulators as strict enforcers held by many businesses was seen as as inappropriate as views by regulators that most smaller businesses seek not to comply with legislation:

> "The biggest issue is in building up trust between businesses and the regulators – there is a feeling of antagonism between both parties that makes cooperation difficult and often results in mutual dislike" [intermediary].

Perceptions that reinforced an adversarial interaction between businesses and regulators were still apparent in the discussions. As one regulator noted, the typical view articulated by businesses is that regulators problematise small business compliance, assuming that enterprises will avoid or ignore regulatory requirements:

> "There is a blame and claim culture that makes compliance difficult and regulation even more so – regulators aren't interested in catching businesses out, they want to help them, but many businesses don't see that and see the relationship as one in which there is a 'them and us' mentality" [regulator].

There was also indication that the internal cultures within regulating agencies varied; from those inclined towards more cooperative interactions with smaller businesses to those that were less willing to work with these enterprises:

> "There are clear differences in terms of levels of helpfulness from regulators, some regulators appear very helpful whereas others seem to be particularly unhelpful – consistency of service is vital so that businesses feel comfortable with approaching the regulators" [business].

Preconceptions held by smaller businesses that saw compliance as costly or burdensome, combined with regulators that problematised the relationship with businesses, indicates a continuing 'cultural' problem in engagement between the two parties.

Information asymmetries through search constraints – or a need for clearer guidance?
Resource-scarcity in smaller enterprises can contribute to information asymmetries where individuals within the firm do not have the time or resource to scan for and comply with legislation. As a characteristic of many smaller enterprises, this seems to be borne out by participants:

> "Finding relevant information can be very difficult" [business].

As well as search constraints within small firms, there also appears to be an under-developed infrastructure for communicating and disseminating information to businesses:

> "Signposting is critical – businesses need to know where to go to get full and up to date information regarding the regulations that impact on their businesses" [business].

This view is shared by regulators, who indicated a lack of structured collation and distribution of information about regulation to businesses as a primary reason why levels of compliance are low or unsatisfactory:

> "The means by which information is currently stored and disseminated is quite disappointing and is probably a cause for much the problems of compliance that we see occurring around us" [regulator].

In a context where there is a relative lack of information about regulations, there is over-supply of information in other areas, including the provision of advice and other services to SMEs by public and quasi-public agencies. This creates 'noise' that detracts from, and makes more difficult to filter out, information about guidance:

> "Information needs to be provided where and when it is needed – currently, businesses are saturated by information volume and also by the many different outlets for this information. It can feel like a minefield at times" [business].

There is also some indication that the content of communication and dissemination does not provide sufficient guidance to business on how to comply with regulation, but tends to focus on what the regulations say and what they require:

> "There really does need to be more information about compliance out there- the regulation is not so important to the business as is the ability to comply" [business].

The preference from participating businesses was for explicit guidance on 'how-to' comply with regulation, rather than descriptions of the regulations themselves. This points to a need to consider not only the infrastructure for information dissemination and communication, but also what is communicated and, in particular, how it can actually ensure that businesses know how, as well as with what, to comply:

> "Do's and don'ts need to be replaced by messages of how – more constructive advice is needed" [business].

Fundamental to this approach is language that is for business use, rather than produced by regulators in a language that aligns with the practices and syntax of legislation:

> "There needs to be more effort in simplifying the language of regulation – it's hard for us as small businesses to understand and it seems to be as difficult for the regulators to understand as no-one ever seems to be able to explain things to me in a clear and concise fashion" [business].

Business concerns – removing risks of ambiguity and interpretation.
Emerging from examination of information asymmetries and dis-continuities is a concern around the clarity and certainty of advice and guidance on compliance. For business participants in the world café event, a key source of concern and frustration was the nature of advice provided. In

many cases, guidance did not help the business on deciding how and on what basis to comply, but created ambiguity and uncertainty:

> "Interpretation is a huge issue. It's so difficult to know whether your business is compliant: no-one seems to be able to help with this concern" [business].

For businesses, the primary risk around regulation was a lack of clarity on what constituted sufficient compliance. In these cases, the advice provided did not enable the owner- or key manager to comply with legislation:

> "There is an awful lot of uncertainty with regards to levels of compliance – businesses are not confident that they are compliant and the regulators appear unable to offer them that security. It's muddy waters for everyone concerned and it makes compliance and regulation a very difficult area for small businesses" [regulator].

This, in turn, generates uncertainty, and hence risk, within a smaller business, and so can have a negative effect on performance, of individuals engaged in corporate decision-making in particular, and by extension the business itself:

> "Interpretation definitely hinders efficiency – as a business owner, you're always second-guessing yourself and worrying about what you're doing" [business].

However, all businesses indicated that a significant proportion of legislation was sufficiently clear, and the guidance associated with it comprehensive enough to make compliance straightforward. In these instances, there was no need for advice and guidance:

> "A lot of regulation simply requires common sense to understand or interpret" [business].

Regulator concerns – briefing and preparation for new legislation.
A primary reason why the advice and guidance provided to businesses is ambiguous, and so creates uncertainty, can be attributed to the ways in which new legislation is promulgated and implemented. Regulators operating locally, that is sub-regionally, reported that there was little guidance and briefing on new laws and regulatory requirements either in advance of its introduction or in the early period of its ratification:

> "Regulation and guidance never arrive on time – the regulator tends to get the guidance advice only when or even after the regulation comes into effect – this is a real problem for everyone concerned, including the businesses themselves" [regulator].

This places regulators in a position where they lack the information and knowledge to effectively and suitably advise smaller firms. Indeed, in some cases implementing agencies were asked to introduce new legislation without any guidance:

> "Guidance tends to follow the change in regulation so that there is a gap in regulation and regulation advice" [regulator].

This is particularly challenging when there has been no prior communication of, or awareness-raising about, the new legislation across implementing agencies:

> "Regulators are in something of a 'rock and a hard place' situation – we are often as surprised by changes in regulations as the businesses themselves" [regulator].

Moreover, the quality and in particular clarity of guidance provided to implementing agencies is often lacking, explaining in turn why these agencies offer ambiguous and uncertain advice to smaller businesses [*see above*]. For many participants, an additional challenge when implementing new regulations was the complexity and ambiguity of the guidelines on how to implement such legislation:

"The guidance advice that regulators are given tends to be as ambiguous or as complex as the regulation itself and so we, as regulators, are left with a difficult job of assessing and interpreting guidance advice guidelines" [regulator].

A prerequisite for effective implementation of new legislation and regulations therefore is clear and comprehensive guidance for implementing agencies on how to ensure that small firms know how to comply:

"It is essential that black and white advice be given [*to implementing* agencies] so that businesses, and regulators, know where they stand" [regulator].

Regulator concerns – variations in capacity and resources within authorities and agencies.
To compound the challenges surrounding the introduction of new legislation without sufficient briefing of local regulators, spatial variations in the nature and extent of provision of advisory and guidance services, and expertise, were identified. Indeed, there was indication that businesses in different levels are likely to experience different levels of support on compliance based on the local authority area or region in which they are located:

"There are definitely variations in terms of compliance across regions – as regulators we see that other areas perform better in certain aspects and worse in others. This is a problem with one-size fits all regulation and guidance – specific and context-dependent issues and responses are obscured" [regulator].

One reason for these variations was the different levels of expenditure and resource committed by organisations to supporting business compliance. This was particularly evident across local authorities; with some committing substantial resources to support this local government function, but others providing minimal or insufficient resources:

"There are real resource issues for regulators, including: small teams to provide advice and guidance to all businesses; and low levels of funding available for regulators to provide these services" [regulator].

The provision of advisory and guidance services to enable small firms to comply was seen as particularly costly, and so most likely to vary locally:

"The cost of advice is an issue – regulators are not adequately resourced to give businesses the time and attention that they need to overcome compliance difficulties" [regulator].

Moreover, there was little evidence of professional development of regulatory agency staff, in order to enhance their client engagement and process-focused advisory, counselling and guidance skills, as well as to update their knowledge of legislation and related compliance requirements. As a result, implementing agencies lacked the support to offer appropriate services and inputs:

"There is no, or at least very little, provision of training and development courses which is a real problem in terms of our ability to deliver high-quality services. There is a real need to look for ways to build our capacity so that we can do more of what we do well and so that we can improve on what we don't do so well" [regulator].

Where expertise exists, the tendency was for this to be held within agencies and authorities that allocated significant resources to supporting small business compliance. Typically, this expertise was not shared beyond personal relationship forged and so was held and maintained by individuals, effectively in *ad hoc* ways:

"Regulators do collaborate on an informal basis, but there needs to be much more informal networking going on" [regulator].

Participants believed that interactive experience exchange through networking and structured peer learning could be developed and extended:

> "There needs to be a way for shared perspectives and common knowledge to be stored and easily accessible so that a critical mass of knowledge can be developed that is available to all and which might reduce the burden on the regulators for supply of advice to businesses" [regulator].

Regulator and business concerns – designing appropriate and effective legislation
Business and regulator participants in the workshops both raised concerns about how new legislation is designed, drafted and validated. Participants perceived a lack of understanding amongst individuals and groups drafting legislation of the actual context and dynamics of smaller businesses, and so the real and practical challenges of compliance. They suggested a greater level of empathy during design and drafting, through substantive inputs by business owners and managers:

> "There is a real concern with regards to the design of regulation – the designers often seem to have little conception of what it is that the businesses that they are designing the regulation for are actually doing. Businesses need to be consulted at the design stage so that they can pre-empt the regulation and so that they can look for way in which compliance will be made easier and less complex" [business].

Workshop participants from regulatory agencies and authorities also observed a need to consider implementation issues when designing legislation, and suggested that more empathetic design could improve compliance costs and reduce compliance requirements. As with businesses, regulators proposed greater involvement of practitioners, in particular businesses, in design:

> "The poor upfront design is the biggest issue for regulators – regulators, as well as businesses, need to be consulted on the design of regulation as well as on the design of regulation advice. Co-production of regulation is the only way that I can see of moving the discussion on. Businesses need to feel involved and they need to feel a sense of ownership in terms of regulation so that they are then motivated to comply" [regulator].

Supporting implementing agencies and bodies – a missing link in compliance and regulation?
A key finding from the data discussion presented in this paper is that the role and capacity of implementing agencies are key to the ongoing policy debate around compliance and regulation in the UK. Currently, resource, expertise and institutional weaknesses in the system for supporting small business compliance exist that sustain a policy concern around small business regulation. Without greater emphasis on implementation, and on building a national infrastructure of professional agencies and individuals to ensure efficient and effective implementation, the probability is that compliance constraints, costs and burdens will continue to be a theme within policy debate:

> "There needs to be more support for regulators, including the recognition of the difficult situation in which they are in" [regulator].

Conclusion and Implications
This paper suggests that the implementation of new legislation, as well as revision and updating of existing laws, is systemically constrained by several factors. Initially, insufficient engagement, and input, by businesses and regulators into the development of new legislation appears to create design flaws and inefficiencies that then make implementation challenging. Following on from this 'design' problem, which is being addressed through 'think small first' principles and impact assessments, a second systemic constraint to effective preparation appears to be insufficient briefing and preparation of implementation agencies locally. The regulators involved in the world café event unanimously identified a lack of local knowledge about new legislation as a significant constraint when new legislation is introduced. Guidance for regulators was described as 'ambiguous', insufficient or late in arriving in most cases; mirroring business views of the advice and guidance they receive from these agencies. Indeed, a lack of preparation for the introduction of new legislation is likely to compromise its effectiveness; at least in the short-term.

These constraints on effective introduction and implementation of new legislation are compounded by two additional factors that constrain local implementation. The first is a lack of

ERROR: stackunderflow
OFFENDING COMMAND: ~

STACK: