

Reducing Regulatory Burden

1. Introduction

It is widely recognised that the tourism industry is highly regulated and that this reduces the international competitiveness of the sector through increased costs and lower productivity. The impact of the regulatory burden on the sector is exacerbated due to some 80% of businesses being SMEs, which have neither the resources nor the skills to constantly monitor their compliance with ever changing regulatory requirements.

This paper, therefore, aims to identify those regulations that impose a significant burden on the tourism industry and make suggestions as to where regulations can be repealed or amended to reduce unnecessary burden without significantly affecting the intent of the legislation.

Before listing regulation that needs to be repealed or amended, it worth noting that in addition to legislation that has specific tourism-related impacts, much of the legislation that impacts on the tourism industry is not specific to the sector - e.g. health and safety, employment, equality and taxation. As such, the Tourism Alliance is extremely supportive of national reviews of major cross-sectoral legislation such as the one recently commissioned by the Government into Health and Safety legislation. This review highlighted how an over-cautious or erroneous approach to implementing and administering Health and Safety legislation, combined with a growing “no win, no fee” litigation culture, has substantially increased costs imposed upon UK businesses through spiralling insurance costs and the employment of unregulated Health and Safety consultants through fear of legal action.

While this is a national issue, it is particularly relevant to the attractions sector and tourism businesses that provide services to school groups. As such, the Alliance therefore fully supports the recommendations of the Commission’s Report, especially;

- The HSE producing clear separate guidance under the Code of Practice focused on small and medium businesses engaged in lower risk activities.
- Requiring officials who ban events on health and safety grounds to put their reasons in writing, allowing businesses a route for redress where they want to challenge local officials’ decisions.
- HSE to simplify the risk assessment procedure for low hazard workplaces to create simpler interactive risk assessments and creating periodic checklists that enable businesses operating in low hazard environments to check and record their compliance with regulations as well as online video demonstrations of best practice in form completion.

On this latter point, we would suggest that as well as generic assistance to ‘low hazard workplaces’, the risks involved in say a typical B&B, or a typical campsite or pub would naturally lend themselves to a similar, sector-specific approach. Such support would

avoid the costs of each B&B, campsite or pub ‘reinventing the same wheel’ to assess and manage similar hazards which would be common to all businesses within the sector.

2. Generic Issues associated with Reducing Regulatory Burden

Before discussing specific legislation that could be amended or repealed, it is worth noting that there are a number of generic issues relating to the promulgation, implementation and administration of legislation that need to be addressed if significant progress is to be made in reducing regulatory burden on the sector.

2.1 Impact Assessments

One issue associated with the disproportionate impact of regulation on the tourism sector stems from the sources of that regulation. Much of the legislation that impacts on the sector originates outside DCMS and is promulgated with little consideration or understanding of the impacts on tourism businesses. By way of example, the Impact Assessment associated with the recent changes to Air Passenger Duty contained no assessment of the impact on inbound tourism of increasing charges or introducing a banding system, even though inbound tourism is the UK’s third largest source of export earnings.

It is imperative that the quality of the Impact Assessments that accompany all new legislative proposals is considerably improved. It is our experience that these assessments have become “back of an envelope” calculations undertaken to justify the new legislation, rather than the full, independent assessments of the costs and benefits that they were intended to be.

Therefore, all new legislation needs to be accompanied by a thorough regulatory impact assessment that recognises impacts on all sectors (especially “down-stream” sectors) and on both small business and large businesses in these sectors. Government Departments need to look outside their “Departmental Silo” and properly identify, and consult with, all relevant stakeholder industries to achieve this and perhaps there is merit in ensuring independent oversight of such work as it is against human nature for civil servants (whose role is to develop regulation) to focus on the negative impacts of their work.

2.2 Sectoral Considerations

Tourism is a huge and diverse sector. Regulation that treats tourism businesses as a single homogenous entity will create a significant regulatory burden. ‘One size does not fit all’ and, in preparation, regulation should be closely scrutinised to assess impacts across all industry sectors. A good example of this problem is the Licensing Act, whereby small businesses such as self-catering properties or hire boats which provide complimentary baskets with a bottle of wine for guests are subject to the same legislation as large inner city nightclubs. As a mechanism to achieve the policy objectives of reducing anti-social behaviour, improving public health or reducing impact on neighbouring properties, this is clearly unjustified.

Therefore, new legislation needs to be more sophisticated in targeting its objectives rather than being a blunt instrument that causes significant unintended costs. A current example of legislation requiring a more flexible implementation is the Digital Economy Act. While fighting copywriting theft is to be supported, to do so in a way that threatens the ability of cafes, pubs, hotels and holiday parks to provide wi-fi services to customers is counterproductive to the Government's desire to enhance the UK's performance as a high-tech society in which to live and undertake business.

2.3 Rationalisation of Procedures

As highlighted in the Government's review of H&S rules Report, more needs to be done to make it easier for businesses (especially small ones) understand and meet regulatory requirements. It is often the case that the way that administrative/regulatory bodies reduce risk to themselves is to pass on the risk to the businesses that they regulate.

This is done through enshrining objectives in statute - e.g. 'to take all reasonable steps to achieve ...' and then failing to provide examples for businesses to follow. This was the case with the Fire Safety Reform Order 2005 which removed government's cost and risk of fire safety inspections and led to businesses over-complying in order to ensure that they are not prosecuted.

Another route is through applying excessively arduous compliance requirements (e.g. the current licensing proposals to require all businesses that sell alcohol to assess the impact of doing so on the neighbourhood and on public health).

Various regulations also contain individual record keeping and risk assessment requirements, which create a significant bureaucratic burden on businesses, especially the SMEs and micro-businesses that make up the overwhelming majority of those working in tourism, leisure and hospitality.

While these requirements are valid in principle, we would suggest that consideration could be given to a general duty for records and risk assessments which could have the effect of reducing paperwork and bureaucracy, so long as small businesses were provided meaningful examples of the sort of records that regulation (and the Courts) would expect to be kept. We would be pleased to contribute to discussions on this with both Government and enforcers to explore how this might be achieved.

To reduce the burden associated with these procedural approaches, compliance must be made simpler and more achievable for the businesses. In many of the following suggestions for rationalisation or repeal, overly bureaucratic paperwork is a central objection.

2.4 Consistent, Proportionate Administration and Enforcement

One of the key themes of the new Government is Big Society, with greater powers being devolved to the local and neighbourhood level. While this may have significant benefits in terms of the growth and development of communities, the devolution of powers needs to be undertaken in a way that does not create a "nimby's charter" or create widespread discrepancies between areas that causes confusion for businesses and prevents national organisations providing meaningful guidance as to what businesses need to do to comply with legislation.

There will be a real need for enforcement agencies, including trading standards, environmental health, health and safety to communicate and co-ordinate among themselves to ensure fairness and consistency for small business in particular. At present, several bodies become involved in enforcement in different ways including the LBRO¹, the Local Government Association and LACORS^{2*} but there is overlap and most businesses have not seen tangible benefits. We would urge much more clarity and, if at all possible, a single body identified to coordinate enforcement activity.

Government's business support services should embrace sector-specific guidance, which would be much more meaningful for business, especially small businesses. Such guidance should be developed in collaboration with, for example, sector trade bodies.

Government agencies, such as the Health and Safety Executive, are urged to offer such practical guidance. The present approach seems to be: *'The law says XYZ, we'll let you know when we come to enforce whether we think you have interpreted it correctly and you can only be certain if something goes wrong and a Court makes a ruling (either way)'*. This is not a helpful tack and sector-specific guidance would assist in addressing this problem.

2.5 Complexity of Taxation

A business is responsible for its tax returns and faces increasingly stringent penalties for error. While this is clearly appropriate where it is a deliberate attempt to evade tax, it is less appropriate when a small business fails to understand the intricacies of an ever more complex taxation system. Just as there is a need for sector-specific guidance in terms of regulation, so too should there be a requirement on HMRC to ensure that their guidance is unambiguous and specifically communicates the requirements of the tax system, sector-by-sector, for tourism business.

Such clarity would also avoid misunderstanding by HMRC's enforcement officers and the fortunes paid by small businesses in accountancy fees to respond to inappropriate challenge where such confusions arise.

3. Regulations for Repeal

The following Sections set out where specific legislation could be either repealed, amended, or not implemented in order to reduce regulatory burden without significantly compromising the purpose for which the legislation was originally developed.

The legislation is listed in alphabetical order rather than in terms of priority or greatest benefit to the tourism industry.

- **Immigration (Hotel Records) Order 1972**

The Immigration (Hotel Records) Order 1972 requires that the operators of all lodgings - from camping sites through to hotels record the following data from all guests over 16 years old:

- Date of arrival/date of departure

¹ Local Better Regulation Office

² Local Authorities Coordinators of Regulatory Services

- Full name
- Nationality

If the guest is from outside the UK, Ireland or the Commonwealth, the operator is also required to record:

- The guest's passport number and the place the passport was issued
- The next destination that the guest will be visiting

This information must be securely stored for a year and be made available for police inspection on demand.

This legislation, which was allegedly borne out of cold war concerns, is now universally recognised as being outdated and provides no real benefit to the police, accommodation providers or the government. The Order was listed in the Home Office Simplification Plan (Dec 2009) as needing to be repealed to reduce regulatory burden.

- **The Smoke-free (Signs) Regulations 2007**

These Regulations require “no smoking” signs to be placed at each entrance to a smoke-free premises. When the smoking ban was brought into force, the need for transitional arrangements was recognised. However, the ban on smoking in enclosed public places was well publicised and, three years on, is very much embedded in our national psyche. We therefore see little need for businesses and attractions to continually replace signage outside every premise, from a cathedral to a pub, a stately home to a restaurant.

If the streetscape and attractiveness of the public realm dotted with ‘no smoking’ signs at every entrance is taken into consideration, there is surely a case for the Smoke-Free (Signs) Regulations 2007 to be reviewed/repealed.

4. Regulations to be Amended

- **Copyright Licensing (various)**

Accommodation businesses are finding it increasingly difficult to comply with copyright legislation in the provision of entertainment/communication facilities for customers. Customers now expect that, no matter what their size, almost all accommodation businesses will provide satellite TV, movies on demand (or a DVD player) and internet access. However, the licensing/copyright requirements on businesses to provide these services are onerous.

For example, if operator of a self-catering property wants to provide customers with a TV and DVD player with a selection of movies requires at least 4 different copyright licences.

- A TV Licence
- A Performing Rights Society Licence
- A Phonographic Performance Licence
- A Filmbank Licence

Each of these licenses has a different fee structure based on the usage of the copyright material and the number of rooms/units on the property. This confusing situation is exacerbated by copyright holders contracting different firms to locate and bill businesses that require copyright licences. These firms have been found to employ intimidating tactics and there are scant controls on increases in fees which have led to test cases in some cases.

A simple way to resolve this issue would be to form a centralised collection service for copyright billing. This would charge businesses a single fee based on their circumstances and then split the payment to the copyright holders, whilst there should be independent oversight on the fees charged.

- **Licensing Act 2003**

The introduction of the Licensing Act saw the licensing fees for small businesses with very low alcohol sales rise from £30 for 3 years to over £250 per year in many cases. This cost, and the associated complexity of the new application forms, caused hundreds of small businesses such as B&Bs and self-catering properties to give up their licences. Alcohol was usually supplied as a service at a loss, but the increased fees meant that customers were effectively deprived of that service.

The adverse impact that the new licensing regime had on businesses with very low alcohol sales was recognised by the Independent Fees Review Panel (the Elton Report) in 2006, which recommended *“that the future fees regime should be de minimis for certain premises types where alcohol activity is peripheral to overall activity ... We do not believe that these fee payers should be captured by the new licensing regime until their alcohol trade/activity reaches a certain level”*

To reduce the regulatory burden another category of licence is required for businesses with very low alcohol sales that are peripheral to their overall activity. Such a licence would simply require the business to register with the local licensing authority and exempt the requirement for staff servicing alcohol to be licensed.

To ensure this category of license was not abused, businesses would be required to gain a full licence if a complaint against the establishment was lodged and upheld.

A list for further regulations to be amended under the Licensing Act are attached as **Annex A**.

- **Regulatory Reform (Fire Safety) Order 2005**

Fire safety law changed in October 2006 with the introduction of the Regulatory Reform (Fire Safety) Order 2005. Prior to this reform, many small accommodation businesses were exempt from the Fire Regulations under the “six bed-space rule”. This rule stated that the operator did not have to comply with the fire regulations provided that no more than 6 people could be accommodated on the premises (usually by having 3 bedrooms) and that none of the bedrooms were located above the first floor. This allowed people to operate a small B&B business in their residential property without needing to modify the building, though of course there were safeguards through the Health & Safety at Work Act 1974.

The 2005 Order removed this exemption even though there was only one recorded fatalities occurring in any property that operated under the 6 bed-space rule in the preceding five years and this occurred as a result of a cigarette before the Smoke-Free Regulations were introduced.

For caravan parks the 2005 Order removed fire safety from the issues addressed through the site licensing system and instead each business was required to assess and manage fire risk (and argue with enforcement officers where they disagreed their assessment).

The new Fire Safety Order has caused considerable regulatory burden due to a lack of training for fire officers and lack of co-ordination or appropriate guidance on how the order should be applied to small accommodation businesses.

The situation has improved since new November 2008 when better Government guidance was issued ("Do You Take Paying Guests?"). However, considerable unnecessary costs are still being imposed upon businesses due to the inconsistent interpretation and application of the order by fire safety offices in different regions.

This can be resolved by reintroducing the six-bedspace rule or, if this is not possible, developing and issuing guidance to Fire Safety Officers to ensure a consistent, light-handed approach to the application of the Fire Safety Order.

- **The Water Supply Regulations 2010**

The new Regulations apply to all who own or use a private water supply and were introduced to ensure that people who drink water or consume food or drinks made from private supplies may do so without risk to their health. The regulations apply to all commercial premises including Bed and Breakfast and holiday rentals properties and greatly increasing the regularity of water testing and the cost to the owner of the property. As many B&Bs and self catering properties are located in remote areas and are unable to connect with water main supplies these regulations disproportionately impact upon the tourism sector without there being significant evidence that tourism properties were causing a health problem under the old Private Water Supplies Regulations 1991.

Prices for independent testing of water quality are set locally and there need to be controls on these charges which should be linked to a business's ability to meet them.

5. **Regulations That Should Not Be Implemented**

- **Digital Economy Act 2010**

Our central concern is about clauses 4 - 17 of the Act which threaten tourism businesses. According to a Code of Practice being developed under the DEA, Copyright Infringement Reports, issued following illegal actions by customers, could lead to internet access being restricted or suspended. There is extensive provision of Wi-Fi in accommodation and public areas in hotels, holiday parks restaurants and pubs; the DEA fails to recognise that it will be virtually impossible to identify which customers may have breached copyright laws on tourism premises, yet the business will be required to assume responsibility and any sanction.

- **The Health Act 2009 - Ban on Cigarette Vending Machines**

Due to procedural difficulties with the Division on 12th October 2009, an amendment to the Health Bill to ban cigarette vending machines was passed by the House of Commons. The legislation was then passed by the House of Lords. This has resulted in an outright ban on cigarette vending machines in pubs.

The industry had already invested heavily to provide smoking facilities and shelters in an attempt to maintain trade, but it is a sad reality that the smoking ban has played a significant part in the number of recent pub closures (currently 52 each week). The prohibition on the use of vending machines, on top of the smoking ban, is a disproportionate response to the problem of under-age sales and has added to the already considerable burden of regulation on the pub industry.

Sales from vending machines do not provide a major income stream for the pub but they do provide a service to customers who may leave the premises if they cannot buy cigarettes. The ban on the use of cigarette vending machines penalises adults, who comprise the vast majority of customers and who are perfectly entitled to this facility.

- **Equality Act 2010 (Age Discrimination Provisions)**

The Government is still to determine whether to implement the age discrimination provisions of the Equality Act. These provisions would ban discrimination in the provision of goods and services to any person over the age of 18 unless there was objective justification for doing so. An exemption has been provided for the provision of package holidays such as Saga holidays and Club 18-30 holidays on the basis that the tourism market is so large that companies providing niche products such as these do not reduce access to package holidays for people in other age groups.

This partial exemption recognises that there is a very large and wide-ranging supply of tourism products and services and that, to compete, businesses often target their products and service toward specific groups. This process benefits the customer in that they know that they will meet people who will share their interests and lifestyle and benefits the operator in knowing that customers will not unduly impact upon each-other's enjoyment of the product or service provided.

However, government is considering banning all other forms of age discrimination in the provision of tourism services. This would outlaw tourism businesses refusing to accommodate say, 'Stag' and 'Hen' parties or groups of young people seeking to holiday together without parental supervision.

There are health & safety considerations, as well as the potential disruption to other customers and the costs of any damage that may arise from youthful exuberance which businesses need to take into account and many are concerned that a requirement to accept all customers, however unsuitable, would work directly against a tourism business.

In addition, it makes little sense to provide an exemption to a package trip that include a coach trip to a hotel with an overnight stay and not allow either the coach trip or the hotel the same exemption.

6. Upcoming Regulations Where Intervention is Necessary

- **Package Travel Regulations 1992**

The Package Travel, Package Holidays and Package Tours Regulations 1992 implement the 1990 European Package Travel Directive. This directive aims to “protect consumers who contract package travel in the EU”. The regulations require, among other things, that businesses that provide two of either transport, accommodation or other significant tourism service have a payment protection scheme in place in case of bankruptcy and that the business sell the package is legally responsible for all components of the package.

The EU is reviewing the Directive in order to update it to cover dynamic packaging - the process by which customers construct their own package through websites such as Expedia. A close watch on the development of the new Directive needs to be maintained to ensure that while customer rights are protected, there are no unintended impacts on businesses that provide links to other local tourism operators as a matter of customer service or indeed, that costly requirements are not imposed on say a micro tourism businesses.

- **Tour Operators Margin Scheme**

The Tour Operators Margin Scheme (TOMS) is currently under review at ECOFIN in Brussels. When tour operators in the EU sell EU based packages (hotel accommodation and other services), they are taxed under the Tour Operators' Margin Scheme (TOMS). Under TOMS, tour operators pay VAT-inclusive prices on the 'tour components' that they buy from suppliers. They do not reclaim any VAT on these services. The operators' taxable amount is the margin between the tax inclusive cost of the components and the price charged to the consumer.

This margin is not profit. It contains everything not directly supplied by another company, meaning that all in-house supplies and all staffing are taxed under TOMS, as are agents' commissions, marketing and sales costs. These charges are the process of adding value. TOMS is, effectively, a levy on the practice of being a tour operator as it taxes the investment operators need to make in order to assemble, sell and deliver their product. Moreover, as this is a tax on “adding value”, the more a tour operator works, the more they are taxed. So TOMS falls most heavily on those companies that incur large costs selling in long-haul markets.

As VAT is a European sales tax, TOMS is collected in the country where operators are based. If the tour operator is based in the UK, then TOMS is collected on all services supplied in the EU.

For UK operators trying to sell Britain abroad, every cost is critical. Incoming visitors are extraordinarily price sensitive. Products do not sell if there is a 1% price differential with a competitor's product and agents switch sell for a 0.25% premium in commission. Against this, TOMS typically adds around 8% to the cost of a package resulting in UK businesses that sell EU holidays relocating outside the UK taking jobs and revenue with them.

The UK should ask the Council of Ministers to;

- a) create a level playing field between EU and non-EU operators by making sales to customers abroad exempt from VAT (already recommended by the European Parliament - see Appendix).
- b) retain the ability of businesses to “opt out” of paying VAT on their margin when selling to other businesses.

7. Further Measures for Repeal

- **The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 - Energy Performance Certificates (EPCs)**

Energy Performance Certificates were introduced as government sought to implement the EU’s Energy Performance of Buildings Directive.

The Regulatory Impact Assessment which accompanied the 2007 Regulations, made it clear that Government chose to implement the Directive in a wider context than was absolutely necessary. Article 7(1) of the Directive requires an EPC to be made available whenever a building is constructed, sold or rented out, with EPCs having to be renewed every ten years. Implementation could have followed this strict interpretation of the Directive, but Government chose to require a new EPC to be produced whenever a building is marketed for sale. The RIA identified higher costs as a result of the latter approach, but also suggested greater benefits, which was the rationale for choosing this form of implementation.

In a Communities and Local Government consultation, ‘Making better use of Energy Performance Certificates and Data’ (May 2010), it was acknowledged that there was no evidence that EPCs were delivering improved energy performance. Nonetheless they sought to broaden the scope of EPCs by introducing them for buildings used for short-term holiday lets; there were also proposals for the inclusion of EPC information in advertisements for holiday accommodation.

The DCLG proposal to extend EPCs to properties used as Short-Term Holiday Lets is not based on any evidence that holiday makers use the energy efficiency of properties to base their decision on where to stay. It is also notable that the Impact Assessment acknowledges that, even if the users and owners of properties acted in a way that discriminated between properties on this basis, the benefit to the operator would only be £2 per annum.

8. Conclusion

There is significant scope to considerably reduce the regulatory burden on the tourism sector through a combination of measures that ensure the more considered development, implementation and administration of legislation and measures to repeal or amend existing legislation. The Tourism Alliance view is that, through the forthcoming National Tourism Strategy, a working group of Government officials and industry figures is established that uses this paper as a starting point for undertaking a report on what changes can be made to best reduce regulatory burden within the sector.

ANNEX A - Further Amendments to the Licensing Act 2003

- Alcohol Disorder Zones

ADZs were introduced in the Violent Crime Reduction Act 2006, and implemented by the Local Authorities (Alcohol Disorder Zones) Regulations 2008. Serious questions were raised by the House of Lords Regulatory Scrutiny Committee during the passage of the Regulations, but they were still passed. The aim of ADZs was to provide an opportunity for local authorities and the police to work together to tackle problem premises in town centres. However, to date, no ADZs have been introduced, primarily, in our view, because the actual level of the problem in town centres has not warranted their introduction, and local areas do not want to be labelled “Alcohol Disorder Zones”.

- Requirement for triennial reviews of local licensing policies

This is an unnecessary and costly exercise and could be put aside, given that local authorities have the power to review at any time if circumstances permit. The BBPA and the LGA have recently written jointly to the Licensing Minister to request the deregulation of this particular aspect of the Licensing Act 2003.

- Statutory Forms

We would welcome the simplification of the statutory application forms laid down by the Licensing Act 2003. The current forms are too long and repetitive, and could easily be trimmed down and made more user friendly for applicants.

- Requirement to Advertise in Newspapers

The requirement to advertise applications and variations in local newspapers in addition to on-site notices is a bureaucratic obligation that is unnecessary and ineffective in eliciting responses from residents. Placing such advertisements incurs unnecessary cost for businesses, and we therefore propose that the requirement should be reviewed and repealed.

- Distribution of Applications to Responsible Authorities

The Licensing Act 2003 requires that all responsible authorities as defined by the Act (ie. Police, Fire Authority, Planning, Environmental Health, Health & Safety, Children’s Services, Trading Standards) receive a copy of all licence applications, in addition to the Licensing Authority. This includes copies of any plans etc. accompanying the application. Where an applicant makes their application electronically, the Licensing Authority is responsible for the distribution of the application to each of the responsible authorities. However, where an applicant makes a paper based application in the traditional way, they are responsible for sending eight copies of their application to the various responsible authorities and the Licensing Authority, which incurs an average cost of £70 to £80. It would be helpful if this process could be streamlined, with the Licensing Authority taking overall responsibility for the distribution of all applications to responsible authorities, the vast majority of which are within the local authority itself.

- Live Music Exemption

The Tourism Alliance supports the proposals contained in Lord Clement-Jones' Live Music Bill with regard to an exemption for small businesses from licensing requirements for live entertainment for all events attracting an audience of fewer than 200. We would not, however, necessarily wish to see the "two in a bar" rule reinstated, as we believe that this is an arbitrary measure in itself, and one that creates a further barrier in terms of staging multiple performances or groups of musicians.