

**REGULATORY BARRIERS TO  
CROSS-BORDER TRADE AND BUSINESS**

June 2009

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# Executive Summary

## Key findings

The aim of this study is to identify where differences in regulation impose a significant cost to businesses that wish to operate on both sides of the border.

### From the scoping and mapping exercises

1. In order to select the regulations for the study, a number of criteria were established in consultation with the Steering Group. These included cross-sectoral application, likely familiarity, relevance to business, length of time in force, and potential cost to business and are detailed in Table 1 below.
2. Regulations were assessed against these criteria and other factors, such as the desire to include areas with potentially significant and widespread impact such as employment regulations.

The scoping exercise phase of this assignment was substantial, serving to underline the complexity and scale of the regulatory landscape for businesses. Once a long list of legislation was selected, a short list of regulations was created based on the above criteria and including some pieces of legislation in certain broad areas, for example, employment in order to achieve a spread of regulatory areas in the final sample. However, it was also agreed with the Steering Group that, if new or other legislation was cited by the businesses participating in this research, these regulations would also be referenced in this report. The long list of regulations is presented in Appendix 1.

3. The shortlist of regulations/areas that emerged from the scoping phase are presented in Table 2.

**Table 1:**  
Selection criteria for regulations

Cross-sectoral	The regulation should not be tied to one distinct trade or sector.
Familiarity	It should not be unreasonable to assume a general familiarity with the area of regulation.
Relevance to business	The regulation should be aimed at businesses or a function of a business and not society at large. For example, speed limits will clearly have an impact on the speed of delivery for goods but they apply to all members of the public. However, weight restrictions for heavy goods vehicles and rest times for drivers will be directly applicable to the transport industry.
Length of time in force	There should be a general working knowledge of its requirements. For example, much of our understanding of the requirements of a regulation comes from case law interpretation. With new legislation, it may well be that there is not a sufficient body of case law to properly assist an examination of its impact. However, it was recognised that businesses may well refer to such new legislation in the context of their compliance activity and it was also recognised that this lack of case law might also give rise to differences in understanding.
Potential cost to business	There should be some evidence, anecdotal and/or on the basis of a clear reading of the regulation, that it has the potential to have a cost burden on trade.

**Table 2:**  
The short listed regulations

Northern Ireland	Ireland	Aim	Enforcement
Data Protection Act 1998	Data Protection Act 1988, as amended by the European Communities (Data Protection) Regulations 2001 and the Data Protection (Amendment) Act 2003	An Act to make new provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information. The Data Protection Act doesn't guarantee personal privacy at all costs, but aims to strike a balance between the rights of individuals and the sometimes competing interests of those with legitimate reasons for using personal information. It applies to some paper records as well as computer records.	Information Commissioner's Office (NI); Data Protection Commissioner (Ireland)
Consumer Protection (Distance Selling) Regulations 2000	EC (Protection of Consumers in respect of contracts made by means of distance communication) Regulations 2001	The Regulations apply to contracts for goods or services to be supplied to a consumer where the contract is made exclusively by means of distance communication that is any means used without the simultaneous physical presence of the consumer and the supplier. Examples of distance selling include selling via: the internet, text message, phone call, fax and interactive TV or mail order.	The Department of Enterprise, Trade and Employment (Ireland) The Department of Enterprise, Trade and Investment in Northern Ireland
The Working Time Regulations (NI) 1998	The Organisation of Working Time Act 1997	The Working Time Regulations (Northern Ireland) 1998 and The Organisation of Working Time Act 1997 implement the Working Time Directive. The aim of the Directive is to ensure that workers are protected against adverse effects on their health and safety; caused by working excessively long hours or having inadequate breaks.	Employment Tribunals (NI); The Rights Commissioner in the first instance and on appeal, to the Labour Court (Ireland)
The Transfer of Undertakings (Protection of Employment) Regulations 2006	The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003	The TUPE regulations protect employees' terms and conditions when a business or undertaking, or part of one, is transferred to a new employer.	Employment Tribunals (NI); The Rights Commissioner in the first instance and on appeal, to the Employment Appeals Tribunal (Ireland)
Construction Industry Scheme	Relevant Contracts Tax	The Construction Industry Scheme and Relevant Contracts Tax sets out the rules for how payments to subcontractors for construction work must be handled by contractors in the construction industry.	Her Majesty's Revenue & Customs; The Irish Revenue Commissioners (Ireland)
Immigration Act 1971	Immigration Act 1999 as amended by the Immigration Act 2003	The Immigration Acts control immigration and those non EEA individuals who wish to enter, work or remain in the UK or Ireland.	An immigration officer of the UK Immigration Service, the distinctive operational arm of the UK Border and Immigration Agency (BIA) of the Home Office (guidance) An immigration officer of the Garda National Immigration Bureau

4. The six selected regulatory areas were then mapped to identify the key differences between the relevant pieces of legislation in the North and South. There are a number of key findings for this study which emerged from this research and which underline the view that there is “no golden key” to reducing administrative burdens.

5. The mapping exercise illustrated that there are a number of ways in which differences in legislation, North and South, can impact on business. The key findings are summarised under five headings in Table 3.

**Table 3:**  
Desk research - key findings

Finding	Example
Difficulty in sourcing equivalent regulations	The PwC corporate legal team had to use a variety of sources to identify and map the equivalent legislation North and South, including consultations with counterparts in the PwC Dublin office. This mirrors the process which businesses would have to undertake in exploring the obligations on them in the other jurisdiction. It is likely that SMEs in particular would have difficulty in distinguishing the comparable legislation.
Duplication requirements in relation to compliance matters	A business which holds or processes data in Northern Ireland and is also established in Ireland has to register with the data commissioner and maintain that registration appropriately in both jurisdictions.
Subtle but important differences in regulation essentially aimed at the same mischief	Pursuant to the distance selling regulations, in the case of telephone communication in relation to distance sales in Northern Ireland, the identity of the business and the reason for the call must be stated at the beginning of the conversation. There is no requirement to do this at the outset of the call in Ireland so long as the identity of the supplier and the purpose of the commercial call is made explicitly clear at some stage during the call.
Differences in the timing for the implementation of regulations	Although one would expect corresponding nationally derived legislation not to be implemented at the same time, there are also discrepancies between the implementation time for EU derived legislation. This is due to the fact that when adopted, an EU directive gives Member States a timetable for the implementation of the intended outcome. Therefore different Member States will implement the changes at different times with the potential to create confusion.
A failure to recognise differing yet adequate standards imposed in each jurisdiction	Where a construction related contract is performed partly in Northern Ireland and partly in Ireland (for example haulage activities) the Relevant Contracts Tax scheme needs to be applied to the part of the contract that is performed in Ireland. This is the case notwithstanding that the Construction Industry Scheme may not be applicable to the Northern Ireland element of the contract.

6. The, mostly, subtle differences in legislation which were identified during the mapping exercise are detailed in Appendix 3, which accompanies this report and on InterTradelreland’s website. Table 4 highlights just a few of these differences to provide a flavour of the potential impacts on businesses.

7. It is not just the differences or duplication in legislation that pose a problem for businesses trading on a cross-border basis but the totality of the burden in complying with the regulations in both jurisdictions. In a real sense “one plus one” can equal more than two when it comes to the totality of the burden. This scoping and mapping phase formed the basis of the research with stakeholders, businesses and the regulatory bodies.

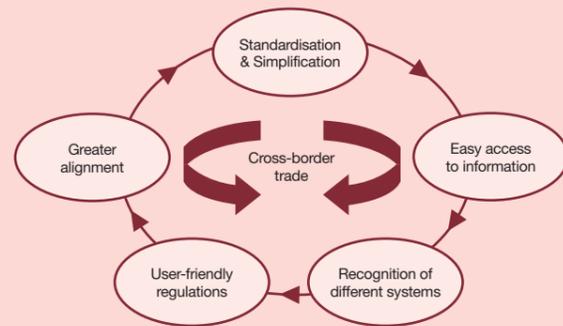
**Table 4:**  
Subtle differences in legislation emerging from the mapping exercise

Northern Ireland	Ireland	Selected differences in regulation
Data Protection Act 1998	Data Protection Act 1988, as amended by the European Communities (Data Protection) Regulations 2001 and the Data Protection (Amendment) Act 2003	In Northern Ireland, a data controller must take reasonable steps whereas in Ireland, he or she must take all reasonable steps. Further, in Ireland, data controllers must ensure that the people they employ are aware and comply with the relevant security measures.
Consumer Protection (Distance Selling) Regulations 2000	EC (Protection of Consumers in respect of contracts made by means of distance communication) Regulations 2001	In the Northern Ireland regulations, the identity of the supplier and the purpose of the commercial call must be achieved at the outset of the call. This is not the case in Ireland.
The Working Time Regulations (NI) 1998	The Organisation of Working Time Act 1997	The amount of weekly rest is broadly similar in both jurisdictions, although there is a further obligation in Ireland insofar as weekly rest, should be on a Sunday, unless otherwise agreed between employer and employee.
The Transfer of Undertakings (Protection of Employment) Regulations 2006	The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003	In Ireland there is no regulation confirming the specifics of the information to be provided regarding transferring employees.
Construction Industry Scheme	Relevant Contracts Tax	Under the CIS, monthly returns are required and there are penalties for late returns. The RCT requires an annual return.
Immigration Act 1971	Immigration Act 1999 as amended by the Immigration Act 2003	Differences arise on the mobility of non-EU citizens across the border.

## From the fieldwork exercise

8. Overall, businesses reported that they wanted: more standardisation and simplification; easy access to information; greater recognition of similar certifications and accreditations; more user-friendly regulations; and greater alignment of regulation between the two jurisdictions. Figure 1 summarises the business' perspectives which emerged from our research.

Figure 1: The business perspective



9. Several employers called for more standardisation and simplification of legislation in the future, for example, stating that simplification of legislation is required to promote cross-border mobility of workers. Some suggested that there should be greater collaboration between the legislative authorities, North and South, and that enforcement should be focused on a risk-based approach. There was a general view that greater harmonisation between the relevant Government agencies, North and South, would be beneficial, for example in the area of vehicle licensing.

10. Several respondents suggested that legislation should be simplified and the burden of paperwork should be removed as companies (particularly SMEs) do not have the capacity to deal with the intricacies surrounding compliance on many regulations, within two separate legal jurisdictions. Greater use of electronic systems and a reduction in duplication of paperwork were suggested as possible solutions. Emerging or small companies wanted a reduction in cost to enable them to "get up and running". In their view, greater leniency and flexibility in the early stages of their business would facilitate this.

11. Many respondents, when asked if they would know where to go to get regulation-based information, were unaware of one main source. Instead, they said that they would seek private consultant or solicitor input. Several participants suggested that an advisory service for employees and businesses would be beneficial. Others considered that implementation of the regulations could be improved through mutual recognition in public sector contracts of specific accreditations. Some employers suggested greater transparency in the development of regulations and wanted to understand better the rationale for some legislation. Others suggested that Codes of Practice could, in some cases, be produced in a more user-friendly fashion.

## Conclusions

12. The research shows that there are many subtle differences in the selected regulations and that mapping these differences is a complex and, at times, an onerous task.

13. However, it should be recognised that, in most instances, there is a clear rationale for a specific piece of legislation and that there is therefore an implicit cost of non-compliance, not only for an individual business that infringes a regulation and subsequently, for example, must pay a fine, but also in a wider sense for society. This includes the additional costs to other businesses that are complying (creating, perhaps, an 'unlevel playing field') and to, for example, employees and the public who are offered protection under the specific piece of legislation.

14. Because of the lack of awareness of the differences in regulations, it has not been possible to estimate the full costs of cross-border regulatory burdens for the selected regulations. The barrier to cross-border trade lies rather in the perception of the burden that the different regulations might create.

15. In light of this, and based on our analysis of the findings of this research, we have made a number of observations for further consideration. These are discussed in further detail below under six main headings.

### Easier access to information for businesses

16. As noted above, the research has found that, amongst employers, awareness of the regulatory requirements on businesses trading across the border was generally low. Many of the participants in this research suggested that the process of accessing information on compliance is time-consuming, particularly for SMEs, and that, in their view, many employers do not have the necessary knowledge to navigate the regulatory landscape.

17. Furthermore, subject to the state of the economy North and South, several of the representative bodies thought that cross-border trade is likely to continue to increase in the future from a relatively low base. If this is the case, easier access to timely, accurate and straightforward information will become even more important. Two potential options for further consideration are presented below:

- **A “first-stop shop”:** several participants requested a “first-stop shop” which would provide information and advice on compliance, in both an actual and virtual format. Examples cited included a website listing all health and safety or environmental regulatory requirements. While there are some logistical issues in co-ordinating such a service between the two jurisdictions, there is some evidence of a demand for such a service from employers. Consideration could be given, in the first instance, to developing such a service for a specific sector with significant cross-border trade, such as construction, by way of a pilot.
- **Virtual networks:** consideration could also be given to developing an interface or portal to join up existing sources of information on regulatory requirements and differences. Examples of existing databases include EURES, the European job mobility portal, Business online and SOLVIT. Such a network could also provide cross-border guidance on more operational issues such as PAYE and VAT.

SOLVIT is an on-line problem solving network in which EU Member States work together to resolve, without legal proceedings, problems caused by the misapplication of Internal Market law by public authorities. There is a SOLVIT centre in every European Union Member State (as well as in Norway, Iceland and Liechtenstein). SOLVIT Centres can help with handling complaints and issues from both citizens and businesses. They are part of the national administration and are committed to providing real solutions to problems within ten weeks, free of charge. SOLVIT has been in operation since July 2002. The European Commission co-ordinates the network, which is operated by the Member States. The European Commission provides the database facilities and, when needed, helps to speed up the resolution of problems. The Commission also passes formal complaints it receives on to SOLVIT if there is a good chance that the problem can be solved without legal action.<sup>1</sup> At present, the majority of queries that SOLVIT centres receive are from individuals and SOLVIT representatives are therefore keen to work with trade organisations and other bodies to raise awareness of the benefits of the system amongst the business community.

<sup>1</sup> More information is available at [http://ec.europa.eu/solvit/site/about/index\\_en.htm](http://ec.europa.eu/solvit/site/about/index_en.htm).

18. It should be noted, however, that there is an existing infrastructure across Ireland to provide such information and that care should be taken ‘not to reinvent the wheel’.

### Raising awareness of compliance requirements

19. Linked to easier access to information is the need to raise awareness amongst businesses about the importance of compliance. Several participants in this research were not fully aware of the regulations impacting on their sector with some stating that if they were compliant in one jurisdiction they thought that they would be compliant in the other. Some of the representative organisations also suggested that a lack of understanding of the need for a specific regulation created some level of frustration amongst their members, which may potentially hinder compliance. There are several options for raising awareness:

- **Incorporating regulatory training into business development programmes:** The existence of a number, the existence of a number of export growth and export start-up programmes, North and South, provides an opportunity to support further training on cross-border compliance to new or expanding businesses.
- **Communication of the rationale for regulations:** as noted above, there is some evidence that employers are not fully aware of the rationale for some of the regulations and that this creates a certain level of dissatisfaction and confusion amongst businesses. Clearer communication of the need for specific regulations, through for example, the Explanatory Notes accompanying legislation, relevant Government websites, the “first-stop shop” recommended above, or the various business stakeholder organisations could reassure businesses of the need for regulation and the importance of compliance.

- **Co-ordinated consultation with business:** linked to the point above, further co-ordinated consultation between legislators and the business community raises awareness amongst law-makers of the needs of businesses and the constraints which operate on them.

### Consideration of the cross-border element in the development of regulations

20. The mapping exercise demonstrates that small differences in regulations can potentially have an impact on businesses and that comparing the relevant legislation is an onerous task. Evidence from the employers that we spoke to suggests that this is a greater burden on SMEs, which are not in a position to engage legal teams to assist them. There are a number of, there are a number of ways in which compliance could be facilitated during the drafting and development stage of legislation:

- **Regulatory Impact Assessments:** given that the Regulatory Impact Assessment (RIA) processes are currently under review in both the North and the South, there is an opportunity, which is now timely, to ensure that the cross-border dimension is incorporated into the RIAs of the relevant Government Departments in both jurisdictions. An analysis of the likely or potential impact of a specific regulation on cross-border trade will help ease the burden on businesses in the future. The RIAs could, for example, explore the opportunities for a ‘de minimus’ approach in relation to, for example, the provision of short-term work permits for non-EU workers to facilitate cross-border mobility;

- **Cross-border collaboration on the presentation of common legislation:** the mapping exercise has also demonstrated that while many regulations derive from European legislation, the structure and presentation of the domestic interpretation of these regulations differs, thus making it more difficult to achieve a ready 'read across'. It is recommended that, potentially through the mechanism of existing North/South structures, consideration is given to the presentation of such regulations so that, as far as possible, common features are ordered in the same fashion in both jurisdictions whilst retaining sufficient flexibility to tailor the interpretation of the legislation to the context of each jurisdiction;
- **Relationship with Europe:** given the importance of European law in both jurisdictions noted above, and in light of the British Chambers of Commerce observation that European Impact Assessments are relatively high-level, consideration should be given to encouraging both the UK and Irish Governments to consider the potential impact of any new legislation at an early stage and to make prompt representations to the Commission as appropriate. Any such early assessment should consider the likely impact on the border; and
- **Role of the regulators:** consideration should be given in both jurisdictions to maintaining and enhancing the role of regulators as "information-providers" as well as "enforcers" and to ensuring that any new regulatory bodies have such a dual role. While there was some evidence of co-operation between the regulators, further consideration should be given to developing stronger and more formal linkages between the regulatory authorities North and South.

### Public sector procurement

21. Several of the employers that participated in this research noted their experience of additional burdens created by some public sector contractual processes in both the North and South. There are two main dimensions to this:
- **Assistance in navigating public procurement systems:** several participants in this research reported difficulties in accessing the public procurement systems in each jurisdiction, particularly in terms of providing the right information at the right time. Consideration could be given to providing further assistance and support to businesses in this regard and to streamlining the registration processes for each system; and
  - **Mutual recognition of certain industry accreditations:** other respondents noted the additional burden of training their workforce in two different systems to which they need to comply. For example, different health and safety accreditations, to similar levels of quality or compliance. In order to mitigate against this burden, consideration should be given to ensuring that, where the relevant authorities are satisfied that a common level of compliance is attained in such accreditations, both accreditations are specified or recognised in public sector contracts.

### Promoting partnership arrangements

22. While the focus of this research is on minimising the cross-border regulatory burdens on businesses and recognising that both jurisdictions should continue to strive to reduce any burden, there is evidence to suggest that other approaches also assist in minimising the burden on businesses. Several of the businesses that we interviewed, for example, reported that the border was not an issue for them as they had established partners in the other jurisdiction who were responsible for compliance in that area.
- **Assisting businesses to link together:** consideration could therefore be given to assisting businesses to source partners such as distributors, agents or businesses interested in joint ventures, in the other jurisdiction, through for example joint networking events or a dedicated website. This could also include more assistance in the development of consortia, North and South, capable of competing with larger multinational companies in procurement exercises.

### Monitoring the impact of the border on business

23. Several of the representative bodies noted that cross-border trade has started to increase in recent years from a relatively low base. While the current downturn in the economy may impact on the rate at which cross-border trade continues to grow, monitoring the impact of the border would provide not only an indication of the impact of any reforms emerging from this review and other on-going work to reduce regulatory burdens, but also important contextual information on specific issues facing businesses across both jurisdictions. Valuable quantitative information could be obtained by including relevant questions

in existing InterTradeIreland surveys or by commissioning custom-designed survey data on cross-border trading issues.

24. The research has also highlighted the high number of environmental regulations relating to business and noted some of the general concerns expressed by participants. Given the scale of legislation in this area, a stand-alone study into the impact of environmental regulations on business may be required.

# 1 Introduction

## Background to this study

- 1.1 PricewaterhouseCoopers was commissioned by InterTradeIreland in 2008 to undertake a study on the impact of differences in regulation in Northern Ireland and Ireland on cross-border trade. The study was prompted by the growing recognition across Europe that better regulation can play a key role in improving the competitive position of businesses and therefore fostering faster economic growth. A central aspect of better regulation is minimising the administrative burdens on businesses.
- 1.2 The European Council and the Organisation for Economic Co-operation and Development (OECD) are attaching considerable political importance to improving regulation. Government ministers across Europe have stressed the potential contribution that reductions in the burden of administration can make in reducing unnecessary costs facing the private sector and so driving improvements in productivity and hence, economic performance. This applies not just to businesses operating within their own jurisdiction but those operating across borders and across the European Union.
- 1.3 The European Council in March 2007 set a target to reduce the administrative burdens arising from EU legislation by 25% by 2012 and invited Member States to set their own national targets of comparable ambition by 2008. The European Commission acknowledged that having to spend time on satisfying unnecessary bureaucratic demands in particular prevents businesses from spending valuable time and resources on their core activities. The Commission recognises that this is a challenging target but considers that it is achievable by getting rid of unnecessary requirements. The UK has adopted the 25%

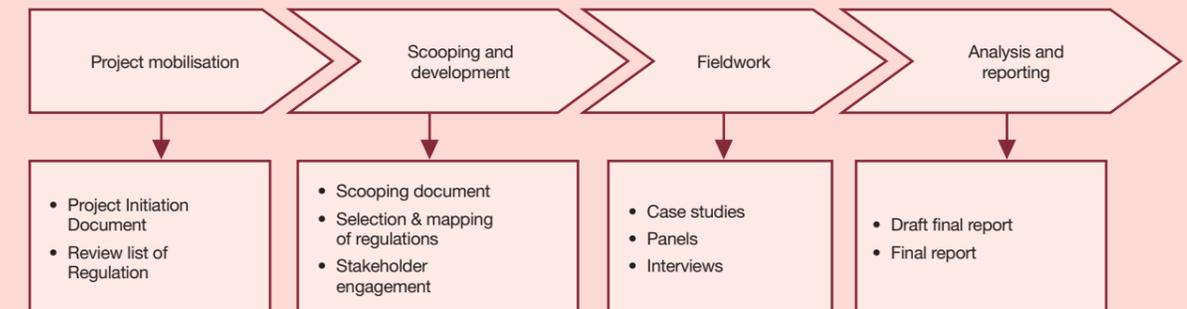
reduction target and Ireland is also actively considering ways to reduce the regulatory burden on business.

- 1.4 The Lisbon Strategy is a development plan to strengthen the economy of the EU and to push forward the creation of the single market between 2000 and 2010. It sets out a bold vision of creating 'the most competitive and dynamic knowledge-based economy' in the world. In a common contribution to their Lisbon Action Plans, the UK and Irish Governments have committed to providing a positive climate for business, including through more efficient regulation.
- 1.5 Regulatory differences were also identified as a potential barrier to business in the recent Comprehensive Study on the Island Economy prepared for and endorsed by the British Irish Inter-Governmental Conference in early 2007. The study argued that there is "a strong case for the two Governments to continue to work together to address the differences in the regulatory environment and to consider how the regulatory burdens on companies and individuals of doing business in the two jurisdictions can be reduced in order to move towards a truly all-island economy".
- 1.6 As the following section of this report outlines, there are a number of initiatives underway in the United Kingdom and Ireland aimed at reducing the administrative burden on businesses. Indeed, across the EU, there has been an increasing move towards self-regulation. However, given the deep credit crisis and the abrupt turnaround in the economic situation, new regulations to curb and curtail businesses are more likely to be the order in the future.

## Work programme

- 1.7 The work on this assignment was carried out in four stages as illustrated in Figure 1.1.

Figure 1.1: Our approach



- 1.8 The first substantial phase of the work involved scoping the research, mapping the relevant legislation and identifying a short list of regulations to be explored in greater detail. A scoping document was prepared and a short list was agreed with the Steering Group.
- 1.9 The research fieldwork consisted of three elements which were carried out in both Northern Ireland and Ireland:
- Interviews with business representative organisations to assist with identifying the key regulations and their impact;
  - Panel sessions and in depth interviews with 20 businesses that operate across the border to ascertain the impact of the regulations on their business; and
  - Interviews with regulatory bodies to understand the regulatory differences and what, if anything, could be done about them.

## Scope of this research

1.10 It is important at the outset to be clear about what a study such as this can address i.e. to say what the study 'is' and what it is 'not'. In particular, the potential number of regulations for inclusion in a study such as this is substantial. The large-scale Administrative Burden Measurement Programme which was conducted in the UK in 2005 by PwC, for example, identified approximately 2,000 regulations across all Government Departments which impacted on business and met its criteria for inclusion. Furthermore, as previous exercises and research has shown, while there is a general view that 'red tape is bad', businesses often find it difficult to identify the particular costs and benefits associated with specific examples.

1.11 From the outset of this research it was therefore clear that the parameters of the study should be clearly scoped and that a pragmatic approach was required in order to identify the impact of regulations on cross-border trade in particular. The main characteristics of this approach are as follows:

- **Cross-border:** as already indicated, this study does not attempt to map all regulatory burdens on business in the two jurisdictions. The focus of this research is on the impact of the border on the regulatory burdens on business and particularly the impact on trade. This impact may arise from differences in regulations aimed at achieving the same aim, which results in the duplication of effort to ensure compliance in each jurisdiction;
- **Exploratory:** the nature of this research is necessarily exploratory, given not only the sheer number of potentially relevant

regulations, but also the variations in business characteristics in terms of sector, size, structure, and lifecycle stage. The short list of regulations should not therefore be viewed as the definitive guide to the regulations which pose the greatest burden, but rather as a tool to gain further insights into the burden on business and to point to some possible initiatives to ease the burden for businesses trading across the border;

- **Pragmatic scoping:** while a number of criteria have been selected for selecting the regulations for study in conjunction with the Steering Group, these have not been treated as 'hard and fast' rules but rather a sensible approach to scoping and selection. The intention was to obtain a short list of regulations that covered a range of sectors and regulatory areas to inform the research with the business sector;
- **Informed by business:** the observations and recommendations presented in this report are informed by the experiences of the businesses participating in this research, and by PwC's experience of working with businesses across Ireland, North and South. Indeed, the scope of this study was widened to explore the general, and not just the regulatory, obstacles that businesses experience when trading across the border, given that issues such as the fluctuating currency rates can often cause businesses more problems than compliance;
- **Impacts of regulations:** in carrying out the research the focus has been on the impact of the selected regulations on a range of businesses that operate across the border.

- **Practical observations:** recommendations for changes in legislation in either jurisdiction are outside the scope of this study and the observations and conclusions are rooted firmly in a pragmatic approach. Instead, a number of recommendations are presented which are practical, feasible and relevant to the needs of businesses, regulators and the statutory authorities; and
- **Illustrative examples:** a number of illustrative examples and many quotes from stakeholder organisations, businesses, regulators are included in the report to provide a unique flavour of the challenges facing businesses trading across the border.

1.12 It is also important to note by way of context the changing economic circumstances that have taken place during the course of this study. The global 'credit crunch', the general slowdown in economic growth and the particular difficulties in the construction sector, together with the weakening of sterling against the Euro have impacted on business in both Northern Ireland and Ireland. This will undoubtedly impact on levels of cross-border trade, probably to a greater degree than the regulatory burden, certainly influenced the view of businesses taken during the course of the research.

1.13 The remainder of this report is structured as follows:

- **Section 2: The regulatory landscape,** which sets out the background of how legislation is developed and implemented in both jurisdictions, existing approaches to reducing the regulatory burdens on business and the implications for this study;

- **Section 3: Scoping the research,** which describes the process by which the regulatory areas were identified and the regulations that were selected for testing with business;
- **Section 4: Business perspectives on cross-border burdens,** which reports the findings of the research with businesses on the impact of these regulations on their cross-border trading activities; and
- **Section 5: Conclusions.**

# 2 The regulatory landscape

## Introduction

- 2.1 Understanding the regulatory landscape in this study is crucial both to inform the research design, and, from a practical perspective, to frame the observations and recommendations in a pragmatic, robust and useful manner. Furthermore, one of the purposes of this section is to identify any opportunities for common action or intervention by relevant authorities, North and South, to reduce the regulatory impact of the border. This analysis is based on the knowledge, previous experience and further research by PricewaterhouseCoopers into the regulatory frameworks in Northern Ireland and Ireland, (including the role of Westminster in Northern Ireland affairs).
- 2.2 This section of the report provides the context for the overall analysis through a consideration of the main features of the regulatory landscape which characterises Northern Ireland and Ireland, describing the processes by which regulations are developed, modified and enforced, and some of the recent policy decisions and initiatives in both the North and South regarding the respective Governments' intentions to reduce the administrative burden on business. It is structured as follows:
- Developing and modifying regulations;
  - The burden of legislation on business;
  - The potential impact of regulation on trade;
  - Cross-border initiatives to reduce the regulatory burden on businesses in the UK and Ireland; and
  - Conclusions.

## Developing and modifying regulations

- 2.3 The following paragraphs outline the ways in which legislation is developed in Northern Ireland and Ireland. Firstly, however, given the major role of the European Union in the formation of legislation, we describe the key law-making processes in Europe.

### The role of the European Union

- 2.4 It is important to understand the European regulatory context as an ever-increasing number of regulations derive from initiatives at the European level.
- 2.5 The European Union formally came into being in 1993 under the Maastricht Treaty. The EC Treaty in 1957 was signed by six founding members and since then, the European Union has expanded significantly. By signing the Treaty, the United Kingdom, Ireland, and the Member States in general, have given power to the three European institutions (the European Parliament, the European Council and European Commission) to adopt secondary legislation that is directly applicable in those Member States, taking precedence over national law. It is these three institutions, therefore, that have the extensive powers as opposed to the Member States. Table 2.1 describes the role of each of these institutions in turn.

**Table 2.1**  
**The legislative role of the European Institutions<sup>2</sup>**

The European Parliament	The European Parliament is elected every five years by the people of Europe to represent their interests. Members sit in political groups, rather than in accordance with their nationality. The main task of Parliament is to pass European laws. It shares this responsibility with the Council and the proposals for new laws come from the European Commission. Parliament is supported by a number of standing committees which draw up reports on proposed legislation. Parliament and Council also share joint responsibility for approving the EU's €100 billion annual budget. Parliament has the power to dismiss the Commission.
The European Council	The Council shares with Parliament the responsibility for passing laws and taking policy decisions. It also bears the main responsibility for EU actions in the field of the common foreign and security policy and of some justice and freedom issues. The Council consists of ministers from the national governments of all the EU countries. Meetings are attended by whichever ministers are responsible for the items to be discussed: foreign ministers, ministers of the economy and finance, ministers for agriculture and so on, as appropriate. Each country has a number of votes in the Council broadly reflecting the size of their population, but weighted in favour of smaller countries. Most decisions are taken by majority vote. The work of the Council is prepared and co-ordinated by the Permanent Representatives Committee (COREPER) and the work of COREPER is in turn prepared by other Council committees and working parties.
The European Commission	The Commission is independent of national governments. It has a monopoly on drafting proposals for new European laws, which it presents to the Parliament and the Council. It manages the day-to-day business of implementing EU policies and spending EU funds. The Commission also monitors compliance with the European treaties and laws. It can act against rule-breakers, taking them to the Court of Justice if necessary. The Commission consists of representatives from each EU country divided into a number of Directorate Generals (DGs) headed by individual commissioners. They are assisted by about 24,000 civil servants, most of whom work in Brussels. The President and members of the Commission are appointed for a period of five years, coinciding with the period for which the Parliament is elected.

<sup>2</sup> For further information please refer to [www.practicalcallaw.com](http://www.practicalcallaw.com)

2.6 Two other institutions also have a very important role. The European Court of Justice upholds the rule of European Law, and the Court of Auditors checks the financing of the EU's activities.

2.7 There are a number of legislative instruments available to the three institutions in which to enact legislation in Member States, which have different legal effects. These instruments are described in more detail below In Table 2.2

**Table 2.2:**  
**European legislative instruments<sup>3</sup>**

Regulations	Regulations are usually employed to create new law which is directly applicable across the EU. The Commission may adopt regulations, or alternatively the Council and Parliament acting together may do so. Regulations have direct and immediate effect in Member States without the need for any further action from national authorities.
Directives	Directives are usually used for the purposes of harmonising national laws. Directives are binding on Member States in respect of the result to be achieved and the date by which implementation is to occur, however Member States will have flexibility to choose the means by which the stated aims of the Directive are to be achieved. This allows Member States to implement the Directive in a way commensurate with their existing laws, however this flexibility can also lead to incomplete or delayed transposition into Member States' national laws. Most of the measures adopted or to be adopted as part of the Financial Services Action Plan are Directives.
Decisions	Decisions are used to give a ruling on a specific matter. They can be adopted by the Council alone, by the Council and Parliament together, or by the Commission. A decision is binding only on the persons to whom it is addressed.
Opinions	An opinion is a non-binding statement made by one of the institutions, setting out that institution's views on a particular matter.
Recommendations	A recommendation incorporates both a non-binding opinion and additionally non-binding suggestions in relation to a particular matter.
Other instruments	Other mechanisms used, which are not provided for in the EC Treaty, include the institutions' internal regulations and Community action programmes.

2.8 In summary, it is necessary that, when the UK Parliament, the Northern Ireland Assembly or the Dáil pass legislation, this legislation must not contradict, intentionally or unintentionally, European law. Further, when questions arise on the compatibility of British, Northern Irish or Irish law with Community law, it is ultimately for the European Court of Justice of the Community to adjudicate.

2.9 Member States, through joining the European Community (Union), have committed themselves to do everything in their power to comply with the objectives laid down in the treaties and to refrain from any action which might impede Community objectives. If the Member State fail to comply with the Union's objectives, this places the Member State in breach of its Community obligations, liable to penalties, and obliged to take action to eliminate any incompatibility.

2.10 If domestic policy conflicts with Community requirements, the Government must bring the domestic law into line with Community law and if they do not, the Member State may, and will, be held liable in damages for any loss directly sustained as a result of the offending policy.

2.11 In relation to regulation and cross-border trade, the European dimension is clearly important and provides a framework in which commonly agreed principles can be applied uniformly across Great Britain, Northern Ireland and Ireland. However, there still remains the potential for divergence amongst Member States, thereby creating the potential for differences in regulation affecting cross-border trade. Differences may emerge, for example, from:

- EU Directives set minimum requirements to which Member States must comply. As such, a Member State can go further than this

minimum and implement a higher standard. This leaves open the possibility, that in relation to certain EU Directives, only the minimum standard will be the same in Northern Ireland and Ireland, and the practical requirements on businesses will differ cross-border;

- Generally there are timeframes in which Member States can implement enacting legislation. It is therefore possible that one Member State may enact legislation some time ahead of another State;
- As with any legislation, legislation derived from Europe may require a case to be referred to the European Court of Justice before there is certainty as to its scope and/or its meaning; and
- Depending on the circumstances, Member States may have rights to 'opt out' of certain provisions or may take advantage of certain exemptions with the effect that there will be clear differences between Member States. For example, in 1991, the United Kingdom government 'opted out' of the Social Chapter and did not incorporate it until 1999. This chapter, which had been adopted by Ireland, covered areas such as the rights of part-time workers.

### Passing legislation in Northern Ireland

2.12 With the partitioning of Ireland in 1921, separate legal systems were established for North and South. Each part of the island was given its own parliament as well as a system of courts. In Northern Ireland, some scope for legal development distinct from that occurring in England was created by a transfer to a new local parliament of the right to enact legislation "for the peace, order and good government" of the

<sup>3</sup>For further information please refer to [www.practicallaw.com](http://www.practicallaw.com)

province<sup>4</sup>. From 1932, the new matters which were “transferred” to the Stormont Parliament included law and order, local government, health and social services, internal trade, education, industrial development, agricultural and planning.

2.13 Certain “excepted” and “reserved” matters, however, could only be dealt with by the Parliament at Westminster. Excepted matters were those which were of imperial or national concern, for which it was felt to be undesirable to enact local variations.

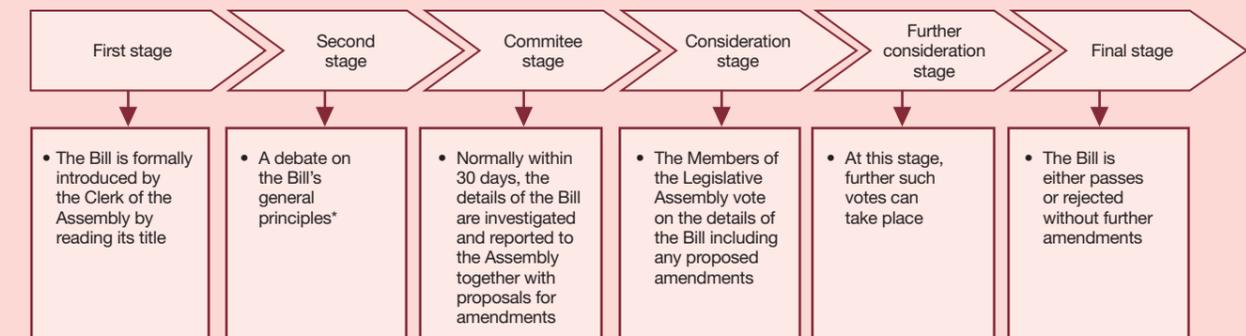
2.14 Devolution of powers in the North continued until March 1972 when the Stormont Parliament was suspended and substituted for direct rule from Westminster. Subsequently, there were three devolved Assemblies in Northern Ireland in 1974, from 1982 to 1986, and the current Assembly. The Assembly in 1974 had legislative powers but the Assembly in 1982-86 had no legislative responsibilities. During periods of direct rule, the majority of Northern Ireland’s primary legislation was brought into effect by means of Orders in Council. On 10 April 1998, the signing of the Good Friday/Belfast Agreement led to the creation of the Northern Ireland Assembly. The powers of this Assembly and other aspects of this Agreement were then enshrined in law by the Northern Ireland Act 1998. The new Northern Ireland Assembly had no legislative power prior to devolution on 2 December 1999. Following devolution, legislative power in most areas was transferred from Westminster to the Assembly (these areas are listed further below) and executive power to its power-sharing Executive. The Assembly was subsequently suspended in 2002.

2.15 With the restoration of the Assembly on 8 May 2007, the majority of legislation is expected to be made in the form of Bills passed by the

Assembly as it resumes its legislative role once more. However the Northern Ireland Assembly is still not permitted to pass laws on “excepted” or “reserved” matters.<sup>5</sup> These categories are now defined differently from the way in which they were defined in previous legislation: all other matters are deemed to be “transferred” and are therefore within what is called “the legislative competence” of the Assembly.<sup>6</sup> The matters reserved to the Secretary of State of Northern Ireland include policing, criminal law, crime, courts, public order, firearms and explosives, civil defence, emergency powers, law commission, social security and child support commissioners, and telecommunications and broadcasting. Excepted matters include defence, taxation and foreign policy.

2.16 Legislation introduced in the Northern Ireland Assembly can go through the stages presented in Figure 2.1.

**Figure 2.1: The passage of legislation in the Northern Ireland Assembly**



\*This can be referred to the Northern Ireland Grand Committee at Westminster and considered for up to 2½ hours over a day or more. If approved, the House of Commons gives the Bill its Second Reading. This procedure is rare and unlikely to be used while devolution is in place.

2.17 Before the Final Stage, the Bill can be referred to the Northern Ireland Human Rights Commission for advice on whether the Bill is compatible with Human Rights. Further, after the final stage, the Bill can be reconsidered by the Assembly. A Bill is then sent for Royal Assent once the Assembly stages have been completed.

### Northern Ireland matters in Westminster

2.18 Until such further transfer of powers occurs, Northern Ireland will continue to have laws passed, not just by the Northern Ireland Assembly, but also by the Privy Council and by Parliament at Westminster. In the House of Commons at Westminster, Northern Irish matters are conducted in a number of ways and the UK Parliament retains the right to debate matters in Northern Ireland and legislate on these matters. Oral questions are presented by Northern Ireland Ministers to the Secretary of State on a monthly basis. In addition, questions to the Northern Ireland Office may be asked by Members with constituencies anywhere in the United Kingdom.

2.19 Another way in which Northern Irish business is discussed in the House of Commons is through the work of the Northern Ireland Grand Committee. The Committee consists of 18 Members representing constituencies in Northern Ireland and not more than 25 other Members nominated by the Committee of Selection. The quorum of the Committee is 10. The Committee can debate specified matters, or legislative proposals, that relate exclusively to Northern Ireland. In this case, a legislative proposal means a proposal for a draft Order in Council relating exclusively to Northern Ireland.

2.20 The Northern Ireland Affairs Select Committee is also appointed by the House of Commons at Westminster and has a maximum of 13 Members. The Committee is empowered to examine the expenditure, administration and policy of the Northern Ireland Office and the administration of the Crown Solicitor’s Office. The Committee can take evidence in Northern Ireland and, in recent years, has done so in Belfast and Londonderry.

<sup>4</sup>Government of Ireland Act 1920, s 4(1)

<sup>5</sup>Schedules 2 and 3, respectively, to the Northern Ireland Act 1998. Please note that reserved matters and excepted matters that are ancillary to reserved or transferred matters may be included in an Assembly Bill only if approved by the Secretary of State.

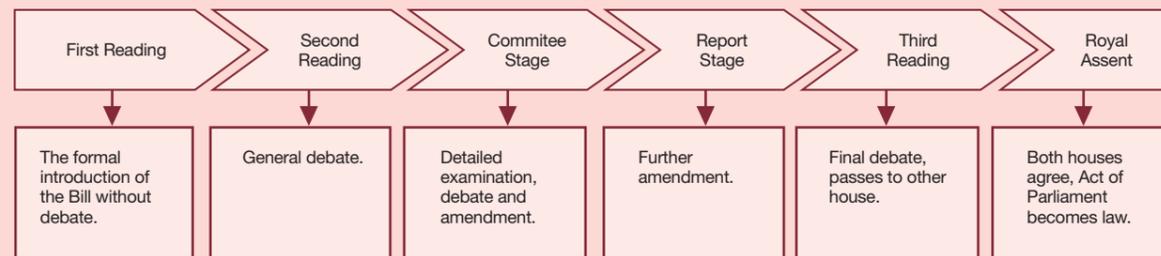
<sup>6</sup>www.niassembly.gov.uk

A sub-committee of the Northern Ireland Select Committee has also been established. Furthermore, Orders in Council can be made for certain reserved matters under Section 85 of the Northern Ireland Act 1998.

### Legislation enacted in Westminster <sup>7</sup>

2.21 Given that the Northern Ireland Assembly has only been restored since 8 May 2007, much of the legislation considered in this study will have been enacted at Westminster. It is also important to remember, as noted above, that Westminster still retains the ability to implement legislation affecting Northern Ireland in many areas which might impact on cross-border trade, or which at least have the potential to create differences in regulation between Ireland and Northern Ireland. As a consequence it is useful to consider the process whereby legislation is passed at Westminster.<sup>8</sup>

Figure 2.2: The passage of legislation in Westminster



<sup>7</sup> For further information please refer to [www.direct.gov.uk](http://www.direct.gov.uk)

<sup>8</sup> Parliament's role and the manner of its working have changed in the last fifteen years. As noted above, Parliament's role is limited by membership of the European Community which has law-making powers in relation to increasingly large areas. In order for a proposal to become law in Westminster it must follow a number of stages through the Commons before going to the House of Lords for similar scrutiny and ultimately Royal Assent. The origin of bills is predominantly from Government proposals; however, members of Parliament may introduce Private Members' Bills although they have little chance of success. The first stage of the process is the First Reading. This is essentially notice being given to the Commons that a Bill is about to come before it. A date will then be set for Second Reading. On this date, the Commons will consider the Bill in its entirety. The purpose is not to examine every detail, but to consider the principles and proposals underlying it. This is the first formal occasion where the Bill is tested for approval. Once a Bill has survived its Second Reading it stands 'committed' to a Standing Committee. This is the stage where the Bill is subjected to detailed scrutiny. It will be considered from the first clause to the last clause to ensure that the Bill is in the best form. When the Bill emerges from Committee it is reported back to the House, having been reprinted with any amendments agreed to. Generally, little or no debate takes place, although on occasion there may be a lengthy debate on a controversial Bill. As soon as the Bill is through Report, the Bill is read a third time, only minor grammatical amendments being made, and is sent to the House of Lords for consideration. The Bill is then accorded Royal Assent and immediately becomes an Act. The House of Lords can delay a Bill by a year, however, thereafter the House of Commons can enact the Bill notwithstanding the opposition by the House of Lords.

2.22 Proposals for new laws may be outlined in Government papers. A round of consultation is embarked upon by way of publishing Green and White Papers. 'Green Papers' are issued by the Government to interested parties when they are planning to introduce a new piece of legislation and require comments. Once these comments have been taken into consideration, the next stage in the process is to publish a policy document or 'White Paper'. White Papers are a firm statement of the Government's plans, although comments are still sought from stakeholders. However, there is no requirement that a White or Green Paper be introduced.

2.23 A Bill is a proposal for a new law or a change to a law presented before Parliament. When the contents of a Bill have been debated and agreed by both the House of Commons and the House of Lords it is approved by the Monarch (called Royal Assent) before becoming an Act of Parliament and therefore law.

2.24 Bills can be introduced by a variety of ways, the most common being Public Bills which change the law that applies to the general public. Government ministers propose the majority of Public Bills. Private Members' Bills are Public Bills introduced by Members of Parliament or Lords who are not ministers. Private Bills are usually promoted by organisations, such as local authorities or private companies, to give themselves powers beyond, or in conflict, with the general law. These Bills change the law as it applies to specific people or organisations rather than the general public.

### The Scottish Parliament and the Welsh Assembly

2.25 Under the Scotland Act 1998, certain powers have been devolved to the Scottish Parliament. Members of the Scottish Parliament can legislate on matters in relation to education and training, law and home affairs (including police and prisons), local government, housing and health. The Government of Wales Act 1998 established the National Assembly for Wales. The Executive Assembly is termed the Cabinet. In contrast to the Scottish Parliament, the Welsh Assembly does not have primary legislative powers. It cannot raise taxes or oversee law, home affairs or the police. However, Welsh Assembly members do have an input into European policy and the primary legislation for Wales. The Assembly has power over local government and can decide on policy in relation to economic development, education and training, housing, health and social services.

### Passing legislation in Ireland <sup>9</sup>

2.26 Ireland is a republic with a parliamentary system of government. The President stands as the Head of State (Article 12) and is elected for a seven year term. Re-election can only occur once. The President does not have executive powers but may carry out constitutional powers aided by the Council of State, an advisory body. The Taoiseach (prime minister) is appointed by the President on the nomination of parliament. Most Taoisigh have been the leader of the political party which has won the most seats in the national election.

2.27 A period of sixteen years elapsed between the partition of Ireland in 1921 and adoption of the Constitution of Ireland (Bunreacht na hÉireann) on 29 December 1937. The Constitution was borne out of a plebiscite and can only be amended by referendum.

<sup>9</sup> Source: [www.oireachtas.ie](http://www.oireachtas.ie)

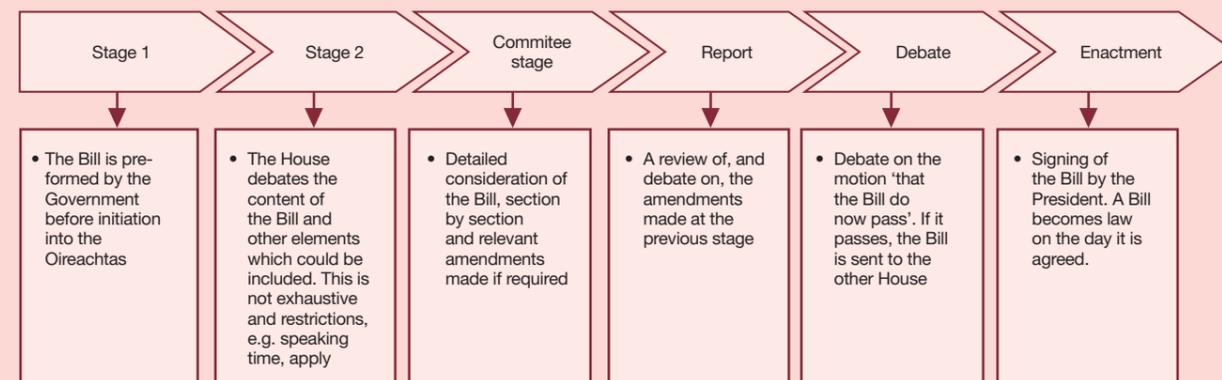
2.28 The main legislative organ of Ireland is the bicameral parliament (Oireachtas) (Article 15). Akin to the Westminster model this comprises a lower House of Representatives (Dáil Éireann) (Article 16) and an upper Senate House (Seanad Éireann) (Article 18). The Seanad is composed of 60 members (11 nominated by the Taoiseach, six elected by two universities and 43 elected by public representatives). The Dáil (currently) has 166 members (Teachta Dála) elected under proportional representation by means of a single transferable vote. Constitutionally, there must be a general election every seven years. Statute may dictate a lower limit: the current statutory maximum is five years.

2.29 The Seanad has some similarity to the House of Lords given its standing as the 'Upper House' and its role in the legislative process. However, whereas the House of Lords stands as the highest member of the national judiciary of the UK, the Seanad does not hold a judicial role. Instead, Ireland has a Supreme Court established under Article 34.

### Primary legislation

2.30 All prospective Acts of the Oireachtas start life as a Bill. Those Bills applicable to the general body of citizens are called Public Bills and those promoted by local authorities, private bodies or individuals for their own purposes are called Private Bills. Private Bills are rare and dealt with outside of the standard legislative process. Figure 2.3 illustrates the stages in passing a Bill in Ireland.

**Figure 2.3: The passage of primary legislation in the Oireachtas**



### Secondary legislation

2.31 In the South, secondary legislation can only be enacted under an existing authorising statute. The government cannot enact legislation by decree, unlike the British Government in the form of Orders in Council. Secondary legislation cannot introduce novel principles or policies but merely give effect to the existing principles and policies of the parent Act.

2.32 Since Ireland joined the European Union, the degree to which very important legal measures are adopted via Statutory Instruments rather than through Acts of the Oireachtas has increased greatly. It may be, given the sheer quantity of legislation emanating from the European Union and the need for uniformity of EU law throughout the EU, that this development is necessary.

### North/South co-operation

2.33 In the context of this study, it is also important to understand the role of the North/South bodies established under the Good Friday/Belfast Agreement and their potential role in easing the burden of regulation in relation to cross-border trade. This is for two reasons: firstly, some participants in this research suggested that these bodies may have a consultative role in this area or otherwise queried whether they should have a remit with regard to regulation making; and secondly, these bodies may afford the opportunity for greater consultation on the development of legislation.

2.34 There are six North-South Bodies, which operate on an all-island basis. All six bodies operate under the overall policy direction of the North/South Ministerial Council, with clear accountability lines back to the Council and to the Oireachtas and the Northern Ireland Assembly.

The six Bodies are:

1. Waterways Ireland;
2. Food Safety Promotion Board;
3. Foyle, Carlingford and Irish Lights Commission;
4. Special European Union Programmes Body;
5. Trade and Business Development Body- Intertradelreland
6. The Language Body/An Foras Teanga/ North-South Body o Leid.

2.35 The bodies were formed as part of the Good Friday/Belfast Agreement, by means of a supplementary International Agreement between the British and Irish Governments signed on 8 March 1999. This Agreement was given domestic effect, North and South, by means of the North-South Co-operation (Implementation Bodies) (Northern Ireland) Order, 1999, and the British-Irish Agreement Act, 1999, respectively.

### The North/South Ministerial Council

2.36 The North/South Ministerial Council (NSMC) was established on Thursday 2 December 1999 and it comprises Ministers of the Irish Government and the Northern Ireland Administration. The Council was set up as a direct result of the entry into force of the British-Irish Agreement, which was signed by the British and Irish Governments as part of the Agreement reached in the Multi-Party Negotiations on Good Friday in Belfast on 10 April 1998 ("the Agreement").

2.37 The Agreement stipulates that the North/South Ministerial Council will bring together those with executive responsibilities in Northern Ireland and the Irish Government to develop consultation, co-operation and action between both parts of the island. This will also include implementation on matters of mutual interest and within the competence of each Administration, North and South.

2.38 It is important to note that the North/South Ministerial Council and the North/South Bodies cannot develop regulations, but can instead identify areas which are of common interest and make representations to the relevant institutions. As to whether these institutions enact legislation will be a matter for them and the process to be followed will be the same as for implementing other legislation. Nevertheless, these bodies do provide an opportunity for identifying early ways in which regulations might be amended in order to assist cross-border trade due to their proximity to government.

### The British-Irish Council

2.39 The British-Irish Council (BIC), was established under the Belfast Agreement in 1998, and formally established on 2 December 1999. Its membership is made up of representatives from the Governments of Ireland; the United Kingdom; three of the constituent countries of the UK (Northern Ireland, Scotland and Wales); and three British Crown dependencies (Guernsey, the Isle of Man and Jersey). Its aim is to “promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands”. England does not have a devolved government, and as such does not have representation on the Council as a separate entity.

2.40 As with the North/South bodies, BIC does not have any law-making powers, but should be well placed to identify at a relatively early stage matters of mutual interest which then might be used to amend differences in regulation and in turn assist trade. Interestingly, this body can assist on matters which affect East-West and not just North/South interests.

### Implications for this study

2.41 The various legislative bodies and institutions discussed above have a number of implications for this study as follows:

- While Europe provides a framework for the implementation of legislation on common principles across Europe, this does not necessarily mean that the ways in which they are eventually implemented in Northern Ireland and Ireland will be the same. While differences might arise from legitimate state views on certain areas such as social rights or security, these can also arise from more subtle and less controversial aspects, for example, the timing of implementation and the order and wording of legislation which may be different but which aims at the same item;
- The Northern Ireland Assembly can legislate in the areas of education, health, social security, environment and agriculture, thus providing a basis on which legislation may be scrutinised more closely and enabling locally elected politicians to consider how legislation might need to be tailored in order to help facilitate or at least not hinder cross-border trade;
- While it is perhaps too early to judge, it might not be unreasonable to assume that where legislation has been passed at Westminster and such legislation is not controversial and the benefits can be seen, the Northern Ireland Assembly may well implement similar legislation. However, since the possibility remains for it to deviate, this does leave open the very real possibility that where efforts are made to remove differences in regulation so

as to facilitate better trading conditions North and South, differences affecting trade East and West could then result. The scope for differences throughout the United Kingdom may also increase, as devolution enables local assemblies to enact legislation or policies to suit their specific needs. With this in mind it could be argued that the role of the BIC will be all the more important going forward;

- The Westminster Parliament still retains significant powers which can result in legislation which applies to Northern Ireland but which create differences between Northern Ireland and Ireland; and
- The process by which legislation is introduced throughout the United Kingdom and Ireland is broadly similar. Consequently lobbying and drafting are two important ways of trying to minimise unnecessary or unimportant differences. For example, joint lobbying by relevant interest groups across the island and coordination in the preparation of draft bills and consultation papers.

### Implementation and enforcement of regulations

2.42 The way legislation is enforced can vary depending on the specific aims and objectives of each particular piece of legislation. Further to that, there are numerous bodies that have enforcement powers depending on each regulation, for example, as noted previously the Data Protection Commissioner enforces the Data Protection Act, the police have numerous enforcement powers in relation to the Road Traffic Acts and local councils are given powers to enforce certain types of legislation. Other than this, legislation can be enforced by citizens, regulators or through state functions such as the

relevant revenue authorities through the courts or tribunals.

2.43 With such a diverse range of processes by which regulations can be enforced there is the potential for differences to arise, for example:

- Whether any court action will be brought will be determined in many cases by the enforcement body. This makes it difficult to have any meaningful precedent by which businesses can determine what they are required to do or not to do in any particular context. There is also the possibility that regulators may take differing approaches;
- The decisions of courts in each jurisdiction, while potentially persuasive are not binding on courts in the other jurisdiction; and
- The role of the enforcement agency in question is to ensure compliance in its jurisdiction and not to take into account cross-border trading issues.

### Burden of regulation

2.44 As noted above, the European Council in March 2007 set a target to reduce the administrative burdens arising from EU legislation by 25% by 2012 and invited Member States to set their own national target of comparable ambition by 2008.<sup>10</sup>

2.45 Both the UK and Ireland have adopted the 25% target. This was preceded in 2004 by a joint statement by the Irish, Dutch, Luxembourg, United Kingdom, Austrian and Finnish presidencies of the European Union, which called for concerted action to tackle the administrative burden on businesses, simplify existing legislation and to strengthen the regulatory framework. Their recommendations regarding the regulatory framework include improvements to

<sup>10</sup> <http://www.berr.gov.uk/whatwedo/bre/policy/european-legislation/page44084.html>

pre-legislative consultation in the EU, increasing business input into regulatory development and reform and ensuring that non-legislative options get greater consideration at the EU level.

2.46 The World Bank Report 'Doing Business 2008 Report'<sup>11</sup> ranks Ireland at eight out of 178 countries in terms of ease of setting up and running a business, while the UK is ranked sixth. A high ranking (one being the best) on the ease of doing business index means the regulatory environment is conducive to the operation of business. This index averages the country's percentile rankings on ten areas, made up of a variety of indicators, one of which is trading cross-border. On this element the UK and Ireland were ranked 27th and 20th respectively. This compares with Denmark (2), Germany(10), The Netherlands (14) and France (25) who were all ranked better than Ireland and nearly all better than the UK.

2.47 This report estimates the cost to import and export a standardised cargo of goods in Ireland to be over \$1,000 for each import and export of a standardised cargo of goods. In the UK it is just under \$1,000 to export a standardised cargo and over \$1,200 to import. However, the cost is not just financial, there is also a significant time cost also involved with an average of 13 days in the UK to export and import and between seven and 12 days in Ireland. Table 2.3 details the cost of import and export in the UK and Ireland in terms of resources and financial requirements.

**Table 2.3:**  
Trading across borders (Doing Business Survey (World Bank, 2008))

Nature of export procedure	United Kingdom		Ireland	
	Duration (days)	US\$	Duration (days)	US\$
Documents preparation	7	200	5	190
Customs clearance and technical control	2	80	1	158
Ports and terminal handling	2	360	1	198
Inland transportation and handling	2	300	-	544
Total	13	940	7	1090
Nature of import procedure	Duration (days)	US\$ Cost	Duration (days)	US\$ Cost
Documents preparation	7	250	5	190
Customs clearance and technical control	2	70	2	63
Ports and terminal handling	2	360	2	253
Inland transportation and handling	2	587	3	633
Total	13	1267	12	1139

<sup>11</sup> Economies are ranked on their ease of doing business, from 1-178, with first place being the best. A high ranking on the ease of doing business index means the regulatory environment is conducive to the operation of business. This index averages the country's percentile rankings on 10 topics, made up of a variety of indicators, giving equal weight to each topic. The rankings are from the Doing Business 2008 report, covering the period April 2006 to June 2007.

2.48 This report has not assessed the cost of regulation to business in a formal manner through the Standard Cost Model, for example. However, mapping each of the complementary pieces of legislation accounted for a considerable amount of time on the part of the PricewaterhouseCoopers' legal team. The Data Protection Act mapping exercise, for example, required five days' input from a member of their corporate services legal team and the Distance Selling regulations accounted for a similar level of time. This activity mirrors that which a business would have to undertake (or commission) to become familiar with the legislation itself, and then the cross-border differences. This process would evidently be more onerous for SMEs, with, in all likelihood, less access to in-house or external legal expertise. There would also be proportionate costs for any business seeking to have this exercise undertaken by a professional company.

## Initiatives to reduce the regulatory burden on businesses in the UK and Ireland

2.49 The following sections provide an overview of some of the key actions undertaken by the Governments of the UK and Ireland to reduce the administrative burdens in business. It should be noted that these actions, in the main, relate to "internal" burdens rather than burdens created through cross-border trade. Notwithstanding this, the regulatory areas which have been identified (to varying degrees) as presenting the most onerous burdens on businesses in their home jurisdiction, are also likely, in many cases, to present a burden to the "foreign" business, subject to levels of compliance.

### Government approaches to reducing legislation in the United Kingdom

2.50 The Better Regulation Agenda was introduced by the UK Government in 1997. It encompasses not only deregulation but also the development of new regulation, which should be based on five principles of good regulation:

- Proportionality;
- Accountability;
- Consistency;
- Transparency; and
- Targeting.

2.51 In 2005, the Better Regulation Task Force published the report *Regulation - Less is More. Reducing Burdens, Improving Outcomes*. The key recommendations from this report were that the Government should:

- Adopt an approach developed by the Dutch Government to measure and reduce the administrative burdens of regulation; and
- Introduce a programme requiring Government Departments to prioritise between new regulations and to simplify and remove existing regulations.

2.52 The main aim of these recommendations was to encourage greater innovation, productivity and growth of businesses in the UK. The recommendations from this report were implemented through the ongoing Administrative Burdens Reduction Programme. The Administrative Burdens Reduction Programme was developed to reduce the cost to business of providing information to demonstrate their compliance with regulations.

2.53 Through the Programme, the Government has measured the administrative burdens on business, which were estimated to cost nearly £20 billion in May 2005. Departments will seek to reduce these burdens by at least 25 per cent by 2010 and have published plans outlining over 500 simplification measures to progress towards their targets. The Government's choice of targets followed the precedent set by Danish and Dutch Governments.

### Administrative Burdens Reduction Programme

[The Programme] focuses on reducing the costs to business of carrying out the administrative activities that they would not undertake in the absence of regulation, but that they have to undertake in order to comply with regulations. For example by allowing companies to send out information to shareholders by email rather than insisting that it must be sent in writing. The Programme only considers administrative costs - often paperwork - and does not seek to change the protections and benefits offered by regulations... The rationale was that reducing administrative burdens will allow businesses to redeploy 'saved' resources and, in doing so, help to promote innovation and improve productivity. (Source: Fifth Report of the House of Commons Select Committee on Regulatory Reform)

2.54 The Fifth Report of the House of Commons Select Committee on Regulatory Reform published in July 2008 outlines some of its key successes to date.

*"The regulations of four departments; the Department for Communities and Local Government, the Department for Business Enterprise and Regulatory Reform, the Health and Safety Executive and HM Revenue and Customs represent about three quarters of the total administrative burdens in the UK. The burden imposed by these departments is high because many of their regulations apply to all businesses in the UK. Departments have committed to reducing administrative burdens by 25 per cent by 2010. HMRC is a taxing authority and has set its own targets: to reduce the cost of complying with tax forms and return by 10 per cent, and the cost of complying with audit and inspections by 15 per cent, by 2010-11. In December 2007 the Better Regulation Executive reported that departments are on track to deliver against the 25 per cent target by the end of the Programme in 2010. Departments estimated that they had reduced the net annual cost of complying with administrative activities by approximately £800 million, equivalent of six per cent of the total baseline. In March 2008, HMRC reported reductions of almost £400 million."*

2.55 The regulatory system in the UK was also reviewed in 2005 by Sir Philip Hampton. The Hampton review, *Reducing Administrative Burdens: Effective Inspection and Enforcement*, suggested that the current regime:

*"Imposed too many forms, duplicate information requests and multiple inspections on business."*

2.56 Hampton's recommendations, which were based around the principle of risk-based assessment and regulation included:

- Comprehensive risk assessment should be the foundation of all regulators' enforcement programmes;
- There should be no inspections without a reason, and data requirements for less risky businesses should be lower than for riskier businesses;
- Resources released from unnecessary inspections should be redirected towards advice to improve compliance;
- There should be fewer, simpler forms;
- Data requirements, including the design of forms, should be coordinated across regulators;
- When new regulations are being devised, Departments should plan to ensure enforcement can be as efficient as possible, and follows the principles of this report; and
- Thirty-one national regulators should be reduced to seven more thematic bodies.

2.57 The National Audit Office (NAO) in the UK is also monitoring the success of the Programme on a yearly basis. In the NAO's most recent report (2007), it presents the results of a survey of businesses on the issue of regulations. The main administrative burdens as ranked by participating businesses were as follows:

- Having to keep up-to-date with changes in existing regulations (80%);
- The length of time taken to go through the whole process of complying (77%);
- Finding information about which regulations apply to your business (74%);
- Completing paperwork and keeping records (74%);
- Having to provide the same information more than once to Government (71%); and
- Finding guidance and advice on compliance requirements (71%).

2.58 When asked to rate the main measures which would reduce the burden on businesses, the most important were thought to be:

- Simplification of complex rules;
- Improved access to information in clear and simple language about the regulations which apply to a business;
- Provision of guidance in clear and simple language on compliance; and
- Reduction in the duplication of information.

**Selected recommendations from *Reducing the Cost of Complying with Regulations: the Delivery of the Administrative Burdens Reduction Programme, 2007 (NAO, 2007)***

- Departments should supplement their estimates of reductions in administrative burdens with a broader suite of indicators to evaluate non quantifiable improvements in the regulatory environment. Departments should develop a series of indicators to evaluate the impact of their initiatives to address non-quantified 'irritation factors' and improve the wider business environment. This might, if practical, include a mix of internal measures and external indicators that capture business perspectives and actions, including segmentation between different sizes, sectors and ages of businesses.
- Businesses need information about changes to the regulatory environment. The Better Regulation Executive (BRE) and the departments directly involved in implementing the Less is More recommendations, should, where practical, extend the use of Common Commencement Dates to include changes resulting from the Administrative Burdens Reduction Programme, as well as the introduction of new regulations.
- The BRE and departments should continue to use and improve existing arrangements for communicating with business. They should also consider forming better links with trade and sector organisations and how to use established fora to communicate directly with businesses.

2.59 The British Chambers of Commerce also publishes an annual review of the British regulatory system. In the 2008 report<sup>12</sup>, the Director General of the British Chambers of Commerce, David Frost, highlighted the large proportion of the cost of regulation which derives from EU regulation.

*"In February we released our 2008 Burdens Barometer, which shows that the cumulative cost of new regulation to business since 1998 is now £66 billion. What is striking about this figure is not just its enormity, but also that 71 per cent of it is EU sourced. EU Impact Assessments still tend to be highly conceptual and it is questionable whether they influence policy. Furthermore, few Directives or Regulations have Impact Assessments."*

2.60 Frost suggests that the Government could do more to examine and attempt to influence the likely impact of regulation at an earlier stage, stating that UK Impact Assessment focuses on the implementation of the UK legislation by which time the EC decision-making process is complete.

*"However, it would be too easy to lay the blame at the door of the European Commission for whom Impact Assessment is an important tool, but one with which they will struggle without the support of Member States who must be relied upon to conduct their own parallel Impact Assessments. Without this, the Commission has little or no data on which to base their own analysis while Member States will miss a key opportunity to influence EU policy. The Government has invested heavily in the UK Impact Assessment. However, their focus has been on the UK end of the legislation by which time it is too late to influence the Brussels stage which drives the whole process. We know from this year's research that too often officials are focused on transposition as the moment at which to conduct an Impact Assessment. To have real influence then a partial UK Impact Assessment should emerge immediately after the Commission makes a legislative proposal."*

<sup>12</sup> Ambler, T, Chittenden, F. & Iancich, S., *The British Regulatory System* (London: British Chambers of Commerce, 2008).

## Government approaches to reducing legislation in Northern Ireland

2.61 Prior to devolution, Northern Ireland followed Cabinet Office guidance on regulation. After 1999, in common with the Scottish Executive, Northern Ireland developed its own Better Regulation Strategy, which was approved by the Executive in December 2001. The main components of the 2001 Strategy were:

- Regulatory Impact Assessments (RIAs);
- A micro-business test;
- Publication of arrangements for monitoring standards;
- Consideration of business concerns;
- A twelve week notification period for new legislation and provision of guidance on implementing it; and
- An Enforcement Concordat.

2.62 In 2006, DETI carried out a review of the Northern Ireland Better Regulation Strategy. This review included a scoping exercise comparing the current Northern Ireland situation with that in the rest of the UK and Ireland. The main objective of the review was to ensure that businesses in Northern Ireland continued to benefit from UK policy on Better Regulation in light of existing and planned developments at EU, UK and the devolved administration levels. The review concentrated on the following areas:

- An examination of the better regulation situation in NI in light of existing and planned developments at EU, UK and the devolved administration levels;
- Consideration of the potential to further reduce the regulatory burden whilst continuing to meet policy objectives;
- A comparison of the regulatory regimes North and South of the border;

- Identification of areas where DETI should consider changes to the Better Regulation Strategy;
- Improved communications on better regulation initiatives to other departments and monitoring arrangements to ensure that appropriate action is taken by all departments.

2.63 The recommendations from the review were endorsed by Ministers and agreed with all Northern Ireland departments. The Review was also endorsed by the Economic Development Forum which represents the social partners in Northern Ireland. One of the outputs of the 2006 review was the production of an Implementation plan, which detailed ten initiatives and actions:

1. An annual report on better regulation;
2. Better regulation objectives in departments' corporate and operating plans;
3. Training on Regulatory Impact Assessments;
4. The use of departmental websites to promote better regulation;
5. Regular engagement with stakeholders;
6. Reviews of legislation;
7. Review of forms;
8. Review of RIA guidance;
9. Review of enforcement; and
10. Monitoring of Whitehall simplification plans.

## Government approaches to reducing legislation in Ireland

2.64 In the mid-1990s, the Irish Government began a programme of work to achieve regulatory reform, launched with the publication of *Delivering Better Government* in 1996. In July 1999, the then Taoiseach, Bertie Ahern, launched *Reducing Red Tape: An Action Programme of Regulatory Reform in Ireland*, stating:

*“Regulatory Reform - known more colloquially as “cutting red tape” - is an important part of the programme of change in which the Irish Civil Service is currently engaged. Having the right amount of regulation in an economy is an important contributor to economic growth, competitiveness and job creation. For these reasons, it is a key objective of national policy<sup>13</sup>.”*

2.65 The Taoiseach emphasised that, while regulations are evidently required to protect the public as well as businesses, globalisation and technological advances require that businesses are able to react quickly to an ever-changing environment.

*“Regulations are put in place to allow Governments to provide strong protections for citizens, on a range of issues from health to environmental protection to commercial transactions. However, with the advent of the Internet, e-Commerce, e-Government and the Information Society, the Irish business environment is now firmly a part of the global business environment and is changing at a phenomenal speed. To ensure that we keep pace with developments, it is important that we are not overly regulated and that we have the capacity to react quickly to emerging trends when required.”*

<sup>13</sup> www.betterregulation.ie

2.66 In 2004, the Irish Government published a White Paper, *Regulating Better*, which set out six principles which would underpin its approach to regulatory reform. These principles are presented in Table 2.4.

**Table 2.4:**  
**Six Principles for Better Regulation**

Necessity	Is the regulation necessary? Can we reduce red tape in this area? Are the rules and structures that govern this area still valid?
Effectiveness	Is the regulation properly targeted? Is it going to be properly complied with and enforced?
Proportionality	Are we satisfied that the advantages outweigh the disadvantages of the regulation? Is there a smarter way of achieving the same goal?
Transparency	Have we consulted with stakeholders prior to regulating? Is the regulation in this area clear and accessible to all? Is there good backup explanatory material?
Accountability	Is it clear under the regulation who is responsible to whom and for what? Is there an effective appeals process?
Consistency	Will the regulation give rise to anomalies and inconsistencies given the other regulations that are already in place in this area? Are we applying best practice developed in one area when regulating other areas?

2.67 This White Paper also establishes an action plan for regulatory reform and commits the Irish Government to:

- Introduce a new system of Regulatory Impact Analysis, with consideration of business interests, and, in particular, those of SMEs;
- Implement systematic reviews of the regulation of key areas and sectors, including the regulators;
- Monitor the cumulative burden of compliance in business;
- Publish explanatory guides alongside new primary legislation;
- Streamline Departments' service delivery; and
- Improve the coherence of regulation through revision, restatement and repeal.

2.68 Following the publication of the White Paper, the Business Regulatory Forum was established in order to advise the Minister for Enterprise, Trade and Employment on regulatory matters impacting on business. In 2007, it published the *Report of the Business Regulation Forum*<sup>14</sup>, which recommended that an administrative burden reduction programme should be carried out in Ireland during the lifetime of the next Government. During the course of 2006, the Forum received more than 40 submissions. In its report, the Forum groups the findings from this exercise under six broad areas for reform: structure and processes; tax; banking and finance; waste management; employment law and health and safety; and company law. More detailed findings from this report are presented in Appendix 2. However, there are a number of interesting themes emerging from this report, which can be summarised as follows:

- A perceived need for more joined-up Government;
- A call for more detailed Regulatory Impact Analysis;
- More consultation and communication between regulators and business;
- More, and clearer advice for businesses
- Simplification of VAT processes;
- Greater clarity and simplicity in the use of language in regulatory documents;
- Particular issues relating to waste management across Ireland;
- Risk-based assessment;
- The issue of work permits; and
- The recognition of certification and accreditation across different jurisdictions.

2.69 As part of its ongoing work to reduce the burden on businesses, the Department of the Taoiseach published a survey of Irish business views on regulation in 2007<sup>15</sup>. This research found that regulation was a relatively significant challenge to business; with 13% citing it as their most important challenge (approximately three in ten stated labour costs and a similar proportion cited increased competition). Key regulatory areas where Irish firms suggested that the Irish Government should intervene were energy (37%), taxation (24%), and finance/banking (17%). VAT (42%), income and corporation tax (37%) and health and safety regulations (32%) were found to be most likely to have a 'major impact' on businesses. This research also found that there is a relatively low level of awareness among firms of developments in the European Union regarding their sector and that:

*"Fewer than one in five firms feel that Government takes account of the requirements of their business sector in negotiating at EU level."*

<sup>14</sup> [www.forfas.ie/brf/index.html](http://www.forfas.ie/brf/index.html)

<sup>15</sup> Business Regulation Survey (Department of the Taoiseach, 2007).

## Conclusions

- 2.70 This section of the report has examined the ways in which regulations are developed and modified in the North and South, highlighting the central role of Europe as a driver for new regulation. Indeed, the British Chamber of Commerce has estimated that 70% of the regulatory burden on business derives from Europe. This section has also examined the potential impacts of devolution, following the restoration of the Northern Ireland Assembly in May 2007, and the possible role of North/South bodies in the development or review of regulation to increase levels of North/South consultation.
- 2.71 It has demonstrated that the East-West dimension is also important in relation to cross-border trade, given the balance of powers and functions between the Northern Ireland Assembly and Westminster.
- 2.72 The European Council established firm targets in 2007 to reduce the regulatory burden on businesses, adopted by both the UK and Ireland. However both the British and the Irish Governments have implemented measures to reduce the burden on businesses from the mid-1990s onwards. There is some evidence, however, to suggest that, while both jurisdictions are doing relatively well in terms of ease of doing business internally, trading cross-border is more problematic with the UK ranked sixth overall and 27th in terms of trading cross-border and Ireland eighth and 20th respectively in the World Bank Doing Business Survey 2008.
- 2.73 The Administrative Burdens Reduction Programme in the UK commenced with a measurement of the cost of burdens on business in mid-2005 (estimated at £20 billion).

Each Government Department was then tasked with reducing the burden it places on business by 25% by 2010. According to the Select Committee on Regulatory Reform, the Government, as of December 2007, was on track to achieve this target. A subsequent review of the regulatory regime has advocated a move towards more risk-based assessment.

- 2.74 Despite these efforts, research with businesses suggests that businesses still report administrative burdens, related to, in the main, keeping up-to-date with changes in existing legislation and sourcing information about regulations applicable to them. Key measures for business were greater simplification and improved access to information. These findings are consistent with the observations of our corporate legal services team on the mapping phase of this research and led the National Audit Office to recommend improvements in the existing arrangements for communicating with business on regulatory issues. Other issues raised in relation to administrative burdens in the UK include the call from the British Chambers of Commerce for the UK Government to respond to EC legislative proposals in sufficient time to influence the shape of the regulation. Prior to devolution, Northern Ireland followed Cabinet Office guidance on regulation. Following devolution, Northern Ireland developed its own Better Regulation Strategy, which was approved by the Executive in December 2001.
- 2.75 The Irish Government has been working towards reducing the level of red tape since the mid-1990s and in 2004 published an action plan for regulatory reform, based on six principles of better regulation. Recent work undertaken by the Business Regulatory Forum suggests that business stakeholder organisations and others are concerned about the following

issues: the need for greater cross-Governmental working; tax; banking and finance; waste management; employment law and health and safety; and company law. Underpinning these broad sectors are a number of themes relating to: the clarification and simplification of the regulatory landscape; improved consultation with businesses; and better advice for businesses.

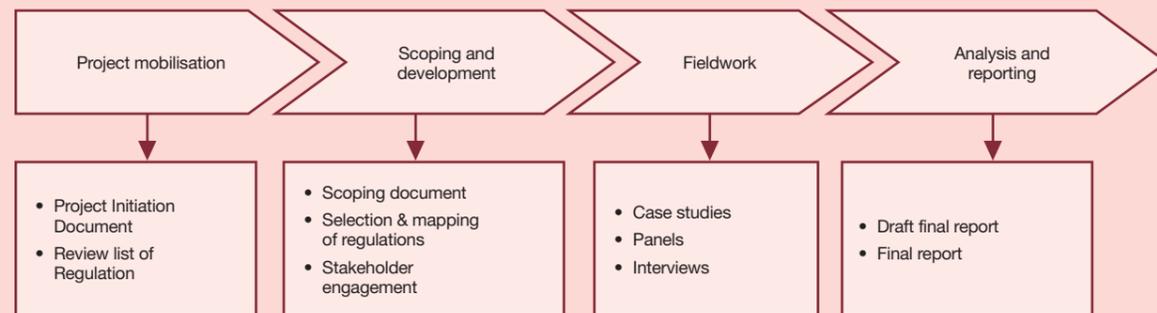
- 2.76 The following section describes the scoping of the legislation for inclusion in this study and presents key findings from the mapping of the selected legislation.

# 3 Scoping the legislation

## Introduction

3.1 This section of the report outlines the approach taken in this study. There were two main phases to this research: desk-based analysis to select and map a number of regulations undertaken by the PwC corporate legal services team; and engagement with businesses and their representative groups. Figure 3.1 presents an overview of approach.

Figure 3.1: Our approach



3.2 At the outset of this research, it became clear that the parameters of the study required to be defined in some detail, given the scale of the regulatory landscape. This section therefore explores the definition of a regulation as employed in this study and the selection criteria for the regulations to be researched with businesses. It also presents a number of key findings from the scoping and mapping exercise. This section is therefore structured as follows:

- Defining regulations;
- Regulations for study: some criteria;
- Other regulatory areas;
- Selected regulations;
- Mapping the regulations;
- Stakeholder and business engagement; and
- Conclusions.

## Defining regulations

3.3 Defining a regulation can be problematic as it has the potential to cover a wide legislative framework depending on differing perspectives. From a technical perspective, a “regulation” tends to relate to an instrument adopted by the European Community. This strict definition usually excludes national legislation particularly as it does not ordinarily require any implementing legislation. Generally, however, businesses recognise a looser definition often using it to cover that general area of ‘red tape’ or unwelcome third party intervention impacting on the costs of trade. Consequently the term in a practical sense can cover any one or more of the following:

- European Directives and regulations;
- National legislation;
- Case law at both the local and at the European level;
- Rules of regulatory bodies; and
- Rules of trade associations.

3.4 It is important, therefore, to establish what is meant by a regulation for the purposes of this report. The working definition adopted is that a regulation relates to a ‘national legislative provision having been implemented and in force’. While the legislation cited may in many cases be based upon European Directives, it is the national legislation which will be used in this report.

3.5 The rationale for this is based on our remit to, in part, consider how in implementing legislation to cover a common mischief or agreed principle, differences or duplication in the final implementation have the potential to create a cost burden upon businesses wishing to trade across the island of Ireland. However, as will be described more fully in subsequent sections, it

was interesting to note that participants often took the view that by complying with the local legislation in one EU jurisdiction, they were probably in compliance with the national legislation in another jurisdiction, since certain regulated areas derive from European requirements.

3.6 Furthermore, case law, while clearly useful as a means of informing our understanding of the interpretation and application of the legislation, has not been a major focus of this report. This is because such an approach would be too narrow, potentially specific to a particular set of circumstances and would not therefore have a general application.

3.7 Rules of regulatory bodies and trade associations are not, in our view, appropriate for examination in this context since the manner in which they can be amended or adapted is often easier than legislation, so that if there is an undue burden to cross-border trade as a result of any trade or association rule there is generally greater freedom to change that rule. While it is accepted that such rules have the potential to be protectionist thus inhibiting cross-border trade, such a review is beyond the scope of this work, particularly as there are already a number of bodies whose remit it is to investigate potentially anti-competitive activities.

## Regulatory areas for study: some criteria

3.8 Notwithstanding the interpretation set out above, the potential scope of this report was still extremely wide as it could arguably encompass a massive range of national legislative rules from both jurisdictions. Accordingly, an initial exercise was required to determine the areas of

regulation which should be used as the basis for this research. During this exercise, it became apparent that, given the number of regulations impacting on business, a pragmatic approach was required in order to short list a selection of regulations as a basis for further research.

3.9 It should be understood, therefore, that this report does not attempt to provide an exhaustive evaluation of the regulatory burden on businesses wishing to trade cross-border, rather it provides an insight into any difficulties experienced by businesses and highlights where other potential areas for a cost burden might exist. The selection process involved selecting an initial long list of regulations from the following areas: consumer protection; employment law; data protection; proceeds of crime; company legislation; and governing the contract (for example, enforcement).

3.10 Clearly there are a number of other sectoral areas that could have been included for example, agrifoods, construction and information technology. However, the above regulatory areas were chosen for the following reasons:

- Generally, they are not so specific so as to be tied to one distinct trade or business but instead refer to regulations that impact on many businesses wishing to trade regardless of their specific business area;
- Many of the specific regulations implemented in these areas are aimed at common mischief or derived from Europe, so they therefore provide a useful basis on which to examine differences which might not otherwise be available from regulations implemented to tackle a uniquely local issue; and

- These are areas with which it is assumed that the participating businesses may have a familiarity or a working understanding.

3.11 An additional criterion of whether the regulation could be amended in Northern Ireland, that is, whether the matter is reserved/accepted for the Westminster parliament or whether the Northern Ireland Assembly could alter it, was also considered. However, in using this criterion and applying it to the list of legislation, a number of difficulties arose. Firstly, a main area of legislation, data protection, is a reserved matter<sup>16</sup> and as such will not meet this criterion. Thus a significant area of regulation had the potential to be entirely excluded. Secondly, certain pieces of legislation, the main subject matter of which is not reserved, make reference to matters which are reserved. For example, while consumer protection is not a reserved matter, aspects of this legislation refer to consumer safety which is a reserved matter. This would have meant including only certain sections of a piece of legislation, rather than the legislation as a whole, thus raising the following potential difficulties:

- A piece of legislation when taken in isolation may not have represented a significant aspect either for assessing cost or in terms of finding an Irish comparator; and
- Such subtle distinctions would have been likely to lead to difficulties when conducting the research with businesses as respondents may not have been concerned as to such idiosyncratic aspects of the regulations.

3.12 In order to refine the selection process further, an additional set of criteria were developed and agreed with the Steering Group. These criteria are presented in Table 3.1.

**Table 3.1:**  
**Refined selection criteria**

Cross-sectoral	The regulation should not be tied to one distinct trade or sector.
Familiarity	It should not be unreasonable to assume a general familiarity with the area of regulation.
Relevant to business	The regulation should be aimed at businesses or a function of a business and not society at large. For example, speed limits will clearly have an impact on the speed of delivery for goods but they apply to all members of the public. However, weight restrictions for heavy goods vehicles and rest times for drivers will be directly applicable to the transport industry.
Long-standing	There should be a general working knowledge of its requirements. For example, much of our understanding of the requirements of a regulation comes from case law interpretation. With new legislation, it may well be that there is not a sufficient body of case law to properly assist an examination of its impact. However, it was recognised that businesses may well refer to such new legislation in the context of their compliance activity and it was also recognised that this lack of case law might also give rise to differences in understanding.
Potential cost	There should be some evidence, anecdotal and/or on the basis of a clear reading of the regulation, that it has the potential to have a cost burden on trade.

3.13 A long list of legislation was selected using the above criteria (see Appendix 1 for details). Then a short list of regulations was created based on the same criteria. The short list also includes some pieces of legislation in certain broad areas, for example employment, in order to achieve a spread of regulatory areas in the final sample. And it was agreed with the Steering Group that, if new or other legislation was cited by the businesses participating in this research, these regulations would also be referenced in this report.

<sup>16</sup> Following devolution, the Northern Ireland Assembly governs Northern Ireland in respect of 'transferred matters', and also 'reserved matters' with the Secretary of State's consent. Excepted matters remain the responsibility of the United Kingdom Parliament. Transferred matters include education, health and agriculture; reserved matters include policing and criminal law, which will be transferred to the Assembly at a later date; and excepted matters are matters of national importance, such as defence, taxation and foreign policy.

3.14 The Northern Ireland regulations/areas to be considered, together with the Irish counterparts and the relevant enforcement bodies, emerging from this scoping phase are presented in Table 3.2.

Table 3.2: The short listed regulations			
Northern Ireland	Ireland	Aim	Enforcement
Data Protection Act 1998	Data Protection Act 1988, as amended by the European Communities (Data Protection) Regulations 2001 and the Data Protection (Amendment) Act 2003	An Act to make new provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information. The Data Protection Act doesn't guarantee personal privacy at all costs, but aims to strike a balance between the rights of individuals and the sometimes competing interests of those with legitimate reasons for using personal information. It applies to some paper records as well as computer records.	Information Commissioner's Office (NI); Data Protection Commissioner Ireland
Consumer Protection (Distance Selling) Regulations 2000	EC (Protection of Consumers in respect of contracts made by means of distance communication) Regulations 2001	The Regulations apply to contracts for goods or services to be supplied to a consumer where the contract is made exclusively by means of distance communication (that is any means used without the simultaneous physical presence of the consumer and the supplier) Examples of distance selling include selling via: the internet, text message, phone call, fax and interactive TV or mail order.	The Department of Enterprise, Trade and Employment (Ireland) The Department of Enterprise, Trade and Investment in Northern Ireland
The Working Time Regulations (NI) 1998	The Organisation of Working Time Act 1997	The Working Time Regulations (Northern Ireland) 1998 and The Organisation of Working Time Act 1997 implement the Working Time Directive. The aim of the Directive is to ensure that workers are protected against adverse effects on their health and safety; caused by working excessively long hours or having inadequate breaks.	Employment Tribunals (NI); The Rights Commissioner in the first instance and on appeal, to the Labour Court (Ireland)
The Transfer of Undertakings (Protection of Employment) Regulations 2006	The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003	The TUPE regulations protect employees' terms and conditions when a business or undertaking, or part of one, is transferred to a new employer.	Employment Tribunals (NI); The Rights Commissioner in the first instance and on appeal, to the Employment Appeals Tribunal (Ireland)
Construction Industry Scheme	Relevant Contracts Tax	The Construction Industry Scheme and Relevant Contracts Tax sets out the rules for how payments to subcontractors for construction work must be handled by contractors in the construction industry.	Her Majesty's Revenue & Customs; The Irish Revenue Commissioners.
Immigration Act 1971	Immigration Act 1999 as amended by the Immigration Act 2003	The Immigration Acts control immigration and those non EEA individuals who wish to enter, work or remain in the UK or Ireland.	An immigration officer of the UK Immigration Service, the distinctive operational arm of the UK Border and Immigration Agency (BIA) of the Home Office (guidance); Garda National Immigration Bureau

3.15 As already indicated, in selecting these pieces of legislation, the focus was on areas where there is an agreement in the two jurisdictions about the 'mischief' to be tackled but a difference in implementation. Therefore, the aim of the regulation is to accomplish similar objectives (national or EU), but, in its design or application, it adds a substantial cost to businesses wishing to trade or do business on both sides of the border.

3.16 Much of the legislation in the two jurisdictions has been adopted from policies which are independent from the corresponding policy in the other jurisdiction. For example, the Income Tax (Relevant Contracts Tax) Regulations 2000 in Ireland and the Income Tax (Construction Industry Scheme) Regulations 2005 in Northern Ireland. This obviously leaves a great deal of scope for difference to arise as the policies from which they originate are inherently distinct therefore even where the legislation has been derived from an EU Directive there are differences in how the two jurisdictions have applied it. The EU provides a significant area of commonality, accounting for some 50% of all regulations and whilst, in theory, this should lead to standardisation across the single market, in practice, variation in implementation time periods, vetoes and enacting local legislation leads to differences.

3.17 It should be emphasised, that, these regulations have been selected on the basis of a pragmatic approach, to ensure sufficient diversity in regulatory areas and that there is likely to be sufficient familiarity with the regulations amongst business. Given the scale of the regulatory landscape both North and South, there are likely to be other pieces of legislation that impact significantly on businesses. This list is therefore not intended to be exhaustive nor as a definitive statement of the main impacts on business. Rather it forms the basis of an exploratory

analysis of the regulatory impacts of the border on trade between firms in Northern Ireland and Ireland.

## Other regulatory areas

3.18 During this exercise, a number of other key areas, in addition to those outlined in paragraph 3.9 above, were considered for inclusion. These were as follows:

- Transport;
- Taxation;
- The environment; and
- Movement of workers.

### Transport

3.19 While several respondents noted the importance of transport regulations to some businesses, transport was excluded from this study as InterTradelreland has recently published a report on the impact of these regulations<sup>17</sup>.

### Taxation

3.20 While it is accepted that, for many businesses, the differences in tax treatment between Northern Ireland and Ireland may have a cost impact on businesses who wish to trade across the island, tax was also excluded from our short list as:

- Taxation is a potentially wide area and would itself need to be narrowed down, and even then its application can be different depending upon a wide range of factors, making any general observations difficult;
- As noted above, the focus of the report was to examine where, although there was no difference in a common principle between London, Belfast and Dublin, the

<sup>17</sup> InterTradelreland, Freight Transport on the Island of Ireland (March 2008).

implementation of the legislation to deal with the common issue created a potential for unnecessary costs. In relation to taxation there is not necessarily an agreed principle in so far as tax levels are concerned so any recommendations for change would be fundamental to each jurisdiction;

- There was an underlying intention to examine areas where change, if not possible in Northern Ireland alone, in the case of legislation applying to Northern Ireland, might still be possible with perhaps limited lobbying. It was considered that this would not be the case in relation to taxation. Similarly it was considered that, in relation to taxation matters in Ireland, limited lobbying would not be sufficient for such a change;
- Taxation has been the focus of a recent review in Northern Ireland and is undergoing review in Ireland and perhaps warrants separate treatment well beyond the scope of this work<sup>18</sup>.

3.21 However, in response to early feedback from stakeholders, the Construction Industry Scheme (Northern Ireland) and the Relevant Contracts Tax (Ireland) were included on the final list even though the impact is largely in one sector, that is, construction. Initial discussions with business groups suggested that this was a significant area in terms of the impact on trade and that it was therefore worthy of inclusion, notwithstanding the criterion listed above. It was also noted that both legislative regimes in this area were generally aimed at a common mischief and, in this sense, did not necessarily represent a fundamental difference in principle which might not be the case for other taxes such as for example corporation tax. Furthermore, construction is a sector with a relatively high level of cross-border activity.

## The environment

3.22 In relation to environment regulations, there were a number of issues which made reliable feedback in terms of the effect on cross-border trade potentially difficult. Firstly, having reviewed this area of legislation, the number of environmental regulations that could apply to businesses located in Northern Ireland was vast and potentially, even greater in Ireland. These regulations are also dependent upon various factors that include the type and size of the business, the industry sector and the specific processes being undertaken. There are at least 58 pieces of primary legislation together with a further 211 items of secondary legislation in relation to environmental matters. Given the scale of this regulatory area, it was agreed that environmental regulations in general would be addressed through the interviews with businesses in order to scope those pieces of environmental law which posed the greatest impact on businesses.

## The movement of workers

The mobility of workers was also raised by stakeholders as many businesses are turning to non-EU workers to plug skills gaps in Northern Ireland and in Ireland, particularly in the IT and financial services sectors. Again it was agreed that this area would be addressed in more detail in the stakeholder and business engagement phase of this research.

## Mapping the regulations

3.23 Following the scoping exercise, the next stage in this research was to consider the ways in which the chosen regulations might create a burden on trade. Each regulation was sub-divided into a list of requirements of or obligations on businesses and the areas of difference between each set

of legislation were highlighted, alongside the potential associated business activities. The results of this mapping exercise are presented at Appendix 3, together with a note outlining the process for obtaining work permits for non-EU workers in both Northern Ireland and Ireland. This Appendix illustrates the potential additional burdens on businesses for the selected regulations.

3.24 This phase explored not just the regulations that differ substantially in how a similar issue is approached but also where similar requirements lead to a duplication of effort in both jurisdictions, for example, the similar requirements to register with the Data Commissioner in both Northern Ireland and in Ireland.

3.25 The overriding observation from the desk research was the amount of time and consequent cost required to go through each piece of legislation, draw out the relevant obligations within that legislation and then compare and contrast this against the relevant legislation in the other jurisdiction.

3.26 This task was made all the more onerous by the fact that one piece of legislation in Northern Ireland does not always correspond to just one piece of legislation in Ireland, for example, in Northern Ireland there is one piece of legislation governing data protection (Data Protection Act 1998) whilst in Ireland there are three (Data Protection Act 1988, as amended by the European Communities (Data Protection) Regulations 2001 and the Data Protection (Amendment) Act 2003). Difficulties were also encountered in ascertaining what the equivalent pieces of legislation in the two jurisdictions were and there was no obvious source of guidance, North or South, to elucidate these issues.

3.27 The equivalent legislation was much easier to discover when they derived from an EU directive but establishing corresponding nationally derived legislation proved complex. This obviously could pose a burden on SMEs as they will not necessarily have the in-house expertise or the resources to spend significant amounts of time exploring the obligations on them, or indeed to focus on compliance at the expense of managing and growing their business effectively. For example, the law surrounding recruitment of staff, their rights and employer's obligations during employment can be a minefield for the unwary. Large corporations can protect themselves by employing permanent HR or personnel departments to take responsibility for all these matters and ensure compliance with cross-border legislation. However, an SME will often lack the resources, knowledge or confidence to tackle these issues. The understandable focus of an SME will be on business performance and there is a lack of incentive for them to find out or understand the implications of legislation.

<sup>18</sup> HM Treasury, Review of Tax Policy in Northern Ireland (December 2007). The Commission on Taxation for Ireland was established in February 2008 by the then Minister of Finance and Tanáiste, Brian Cowen T.D.

3.28 Our desk research highlighted the ways in which regulations can potentially create an increased cost burden. These are presented in Table 3.3.

**Table 3.3:**  
**Desk research: key findings**

Finding	Example
Difficulty in sourcing equivalent regulations	The PwC corporate legal team had to use a variety of sources to identify and map the equivalent legislation North and South, including consultations with counterparts in the PwC Dublin office. This mirrors the potentially expensive process which businesses would have to undertake in exploring the obligations on them in the other jurisdiction. It is likely that SMEs in particular would have difficulty in distinguishing the comparable legislation.
Duplication requirements in relation to compliance matters	A business which holds or processes data in Northern Ireland and is also established in Ireland has to register with the data commissioner and maintain that registration appropriately in both jurisdictions. The Relevant Contracts Tax scheme in Ireland and the Construction industry Scheme in Northern Ireland use different forms for broadly the same procedures. The relevant contractor and subcontractor needs to be registered separately in each jurisdiction leading to a duplication of paperwork.
Subtle but important differences in regulation essentially aimed at the same mischief	Pursuant to the distance selling regulations, in the case of telephone communication in relation to distance sales in Northern Ireland, the identity of the business and the reason for the call must be stated at the beginning of the conversation. There is no requirement to do this at the outset of the call in Ireland so long as the identity of the supplier and the purpose of the commercial call is made explicitly clear at some stage during the call.
Differences in the timing for the implementation of regulations	One would expect corresponding nationally derived legislation not to be implemented at the same time but there are also discrepancies between the implementation time for EU derived legislation. This is due to the fact that when adopted, an EU directive gives Member States a timetable for the implementation of the intended outcome. Therefore different Member States will implement the changes at different times.
A failure to recognise differing yet adequate standards imposed in each jurisdiction	Where a construction-related contract is performed partly in Northern Ireland and partly in Ireland (for example haulage activities) the Relevant Contracts Tax scheme needs to be applied to the part of the contract that is performed in Ireland. This is the case notwithstanding that the Construction Industry Scheme may not be applicable to the Northern Ireland element of the contract.

3.29 It is not just the differences or duplication in legislation that pose a problem for businesses trading on a cross-border basis but the totality of the burden in complying with the regulations in both jurisdictions.

**Stakeholder and business engagement**

3.30 Following the mapping phase of the research, the potential impact of the differences in the regulations was tested firstly with business stakeholder organisations. The stakeholders that participated in this research were as follows:

- IBEC/CBI;
- Federation of Small Businesses;
- Irish Exporters Association;
- Small Firms Association; and
- Irish Small and Medium Enterprise Association.

3.31 Secondly, we consulted with a small sample of businesses themselves, through a combination of employer panel sessions and in-depth interviews. The businesses selected for interview represented a range of sectors and sizes of enterprise, in both the North and South. Most had some experience of cross-border trade, with some businesses having established offices in the other jurisdiction and others working through a partnership arrangement such as a distributorship. In all, two panel sessions and 20 in-depth interviews were held. The profile of the participating businesses is presented in Table 3.4.

**Table 3.4:**  
**Profile of businesses participating in interviews**

	Category	Number of interviews
Size (number of employees)	Less than 10	4
	10-49	4
	50-100	8
	More than 100	4
Sector	Construction	4
	Food and drink services	4
	Food and drink manufacturing	5
	Engineering	1
	Other manufacturing	3
	Other services	3
Location	Northern Ireland	10
	Ireland	10

- 3.32 The participating stakeholders and businesses were asked a number of questions relating to general barriers to trade North and South, the impact of the selected regulations, the impact of environmental and immigration-related regulations; and other regulatory areas affecting their business.
- 3.33 Four interviews were also held with the regulatory bodies for the relevant legislation in order to explore further the main regulatory burdens on business.

## Conclusions

- 3.34 This section of the report has outlined the selection and mapping of the regulations. The scoping exercise phase of this assignment was substantial, serving to underline the complexity and scale of the regulatory landscape for businesses. In order to select the regulations for further study, a number of criteria were established in consultation with the Steering Group. These included: cross-sectoral application; likely familiarity; relevance to business; length of time in force; and potential cost to business.
- 3.35 Regulations were assessed against these criteria and other factors, such as the wish to include areas with potentially significant and widespread impact such as employment regulations. The regulation selection was therefore undertaken on a common-sense basis to create a short list of five regulations for further research. This short-list should therefore not be considered as a definitive list of the five most burdensome regulations impacting on businesses North and South. Initial discussions with the Steering Group and stakeholders also revealed potential issues with environmental regulations and immigration. These areas were also included in the fieldwork

phase of the research in order to explore in more depth the specific impacts on business.

- 3.36 The five selected regulatory areas were then mapped to identify the key differences between the relevant pieces of legislation in the North and South. There are a number of key findings for this study which emerged from this research.
- 3.37 Firstly, mapping each of the complementary pieces of legislation accounted for a considerable amount of time on the part of our corporate legal services team. This activity mirrors that which a business would have to undertake (or commission) to become familiar with the legislation itself, and then the cross-border differences. This process would evidently be more onerous for SMEs, with, in all likelihood, less access to in-house or external legal expertise.
- 3.38 Secondly, the mapping illustrated that there are a number of ways in which differences in legislation, North and South, can impact on business, including:
- The lack of a single source of information on equivalent regulations;
  - Duplication of requirements in regard to compliance matters;
  - Subtle but important differences in regulation, which may be easy to overlook;
  - Differences in the timing for the implementation of the regulations; and
  - A lack of recognition of different yet adequate standards.
- 3.39 This scoping and mapping phase formed the basis of our research with stakeholders, businesses and the regulatory bodies. The main findings from the fieldwork are discussed in Section 5 of this report.

# 4 Business perspectives on cross-border burdens

## Introduction

- 4.1 An important aspect of this study was to explore the real barriers to cross-border trade experienced by businesses and to gain insight into the regulatory issues impacting on their operations.
- 4.2 We interviewed a small sample of employers, based North and South, engaged in cross-border trade, as well as some of their representative bodies and the relevant regulatory authorities for the selected regulations.
- 4.3 This section of our report explores both the general and specific regulatory barriers experienced by businesses and is structured as follows:
- Awareness of regulatory differences;
  - General barriers to cross-border trade;
  - Barriers relating to the selected regulations;
  - Barriers relating to other regulatory areas;
  - A summary of the business perspective; and
  - Conclusions.
- 4.4 In considering the findings from this phase of the research, it should be noted that the views presented below are those of the businesses which participated in this research and are based on their interpretation of the legal requirements on them. In some cases, these views reflect a misconception of the regulations which, in itself, underlines the complexity of the regulatory landscape. The issues emerging from this research are illustrated by case studies and other examples derived from the interviews and from PwC's experience of working with businesses across the island of Ireland.

## Awareness of regulatory differences

- 4.5 Overall, and not surprisingly, there was a generally very low level of awareness of regulatory differences between the North and South amongst the businesses and stakeholders that participated in this research. The level of knowledge amongst businesses did vary, however, according to the sector in which they operate, the lifecycle of the business, and their use, if any, of external sources of professional advice such as solicitors.

*"We incur significant costs but can tolerate these more as we are a large business. Regulations and costs on small businesses are more significant!" (Business respondent)*

*"Awareness ranges from a very basic knowledge to complete ignorance". (Regulator respondent)*

- 4.6 Some of the stakeholders that participated in this research reported that they had already addressed the issue of regulatory burdens with their members in general terms, finding that, while paperwork and levels of bureaucracy were a concern for businesses, and SMEs in particular, it was difficult to obtain specific instances of "burden".

*"Businesses complain about red tape but find it difficult to drill down to specific concerns." (Stakeholder organisation)*

4.7 Several participants suggested that, for SMEs in particular, regulatory burdens were viewed as a 'fact of life' though some argued that there was a need for simplification and a reduction in the level of paperwork required.

*"There is a certain amount of bureaucracy with any trade, it's a necessary evil." (Business respondent)*

*"Bigger corporations tend to have more resources available to handle the regulatory side of things and at the same time are better at focusing on getting state bodies to reduce regulations. The smaller companies tend to just accept that it has to be done and try and find ways around it... smaller companies tend to fail to identify that regulation is a problem. They either say it's not worth my while or it is worth my while." (Stakeholder organisation)*

*"Mostly, companies will inadvertently fall foul of compliance standards. Many don't have the size or the capability to worry about compliance. They're more focused on earning a living." (Business respondent)*

4.8 To some extent, this lack of knowledge, or a lack of familiarity, while not surprising, is in itself potentially a barrier to trade. Indeed, several businesses noted that, in their view, the barriers were cultural or "psychological" rather than physical. In some instances, this lack of knowledge or familiarity might suggest that many businesses do not regard the differences in legislation as relevant.

*"I don't work in the North because it is unfamiliar territory." (Business respondent)*

4.9 Stakeholder organisations in both jurisdictions reported few queries from businesses in the other authority but suggested that businesses tended to be more focused on navigating around the regulatory system in their home territory. Indeed, many queried the familiarity of businesses with their home legislation. A large proportion of the enquiries received by these organisations are after the event or reactive. There was also a perception that many businesses assume that if they are compliant with the legislation in their jurisdiction, and were not unwittingly infringing regulations in the other jurisdiction, any penalties imposed would be minimal. This could be regarded as a form of delusion on the part of these businesses.

*"Overall, the issue is that if you are not overly aware of the legislation in your own jurisdiction, you're going to have fun trying to work out someone else's." (Stakeholder organisation)*

*"We are more focused on ensuring that we comply in our own jurisdiction rather than what we have to do elsewhere." (Business respondent)*

4.10 In general, it was thought that businesses are only now becoming aware of the potential opportunities of cross-border trade and that therefore the impact of differences in legislation had been relatively muted, and there is very little in the way of hard cases of evidence. The new political climate in Northern Ireland was cited as a key driver of increasing cross-border trade. Some respondents thought that there is more North-to-South trading than South-to-North, with companies in the South more likely to export to the UK mainland given the scale of the respective markets. It was noted, however, that the current worsening economic outlook is likely to impact on future cross-border trading.

*"With an increasing level of cross-border trade, the issue of regulatory difference will become increasingly significant." (Stakeholder organisation)*

*"The number of our members trading cross-border is growing, but not rapidly." (Stakeholder organisation)*

*"I have a good market in the South and we're working at capacity so we're not actively sourcing work from other markets." (Business respondent)*

*"The political climate has settled and people are willing to move forward which has resulted in a relaxation of society as a whole... and that was one of our main reasons for coming up here." (Business respondent)*

*"Due to the economic downturn, businesses will consolidate in local markets rather than subject themselves to extra costs by expanding into new markets." (Business respondent)*

4.11 Differences in regulation were thought to form a greater perceived barrier to cross-border trade to businesses in the South as they have a larger default market. There was therefore a greater incentive for Northern companies to attempt to penetrate the Southern market. Some respondents expressed the view that the further businesses were located from the border the greater were the perceived difficulties in trading across the border. Overall, regulatory burdens were thought to be greatest on SMEs, new start-ups, and businesses that had just recently established a presence in the other jurisdiction.

## General barriers to cross-border trade

4.12 Participants in this research highlighted a number of barriers to cross-border trade which, while not perhaps strictly related to regulatory burdens, did impact, and in some cases significantly, on their operations. Indeed, several companies described the main barriers as commercial rather than bureaucratic.

4.13 Some of the businesses we interviewed had only recently begun to operate in the other jurisdiction. These organisations noted that it was difficult to raise their profile in a new market as "the new guy" and to develop partnerships with other businesses. Overall, the general barriers experienced by business included:

- Access to information and signposting;
- VAT-related issues;
- Other tax and insurance related issues;
- Exchange rates and pricing;
- Repetition and duplication of data requirements; and
- Recognition of accreditations and qualifications.

4.14 In considering these issues, it should be noted that businesses may experience one or more of these at any one time. Indeed, as one respondent to this research suggested, it is the combination of several of these factors that results in a "bureaucratic headache" for business.

## Access to information and sign-posting

4.15 Several of the stakeholder organisations which participated in this research noted that keeping up-to-date with changing and new legislation is a challenge for businesses and particularly small businesses. Indeed, the mapping exercise undertaken by our corporate legal services team as part of this study (see Appendix 3) provides an indication of the level of the endeavour required from businesses to become familiar with differences in regulation. While many larger concerns may have the necessary in-house legal expertise or the resources to commission such support, SMEs may struggle to identify the requirements on them.

*“Micro-businesses do not have time to play detective.”  
(Stakeholder organisation)*

*“There should be more clarity as to what is required in terms of compliance.” (Business respondent)*

*“The main barriers are knowledge, information and signposting about regulations. Information itself is not hard to find, but is time-consuming to work through.”  
(Business respondent)*

*“We only receive a handful of calls in relation to employment regulation, particularly in relation to the North, which we obviously cannot advise on. Companies in the South expect there to be someone in the North to provide advice on regulations but there isn’t a setup like that in the North. People have to pay solicitors which is not a regulatory burden but still a cost to business.” (Stakeholder organisation)*

4.16 The stakeholder organisations suggested that many of the enquiries that they receive from SMEs relate to signposting, that is to say, identifying the best source of advice or finding the simplest and quickest means of accessing information. It was also noted that associated documentation such as Codes of Practice can be quite complex. One stakeholder commented on the usefulness of the Health and Safety Executive (NI) website which lists on one page all relevant regulations.

4.17 Some Northern businesses commented that it was difficult to obtain relevant information in the South, mainly as this often varied from county to county. This is likely to become more of an issue in the North when responsibility for economic development is devolved to the eleven new councils following the Review of Public Administration.

*“It initially took a fair amount of time to get the correct information including the proper documentation. There was also a certain level of misinformation.”  
(Business respondent)*

*“I would like to see a greater emphasis in the South on highlighting the opportunities for the market in the North.” (Business respondent)*

4.18 It was also suggested that the rationale for certain regulations should be better communicated to businesses in order to assist them to understand the imperatives driving the regulation. Some respondents noted an understandable unwillingness amongst the businesses to spend on activities which do not have any apparent real value for them or result in increased profitability: clearer communication of the necessity of regulation may encourage greater levels of awareness and therefore compliance.

## VAT-related issues

4.19 Several participants identified differences in VAT rates in the North and South as a barrier to trade for businesses.

*“If you are selling on the Internet the EU has the VAT charge set up on the company where the product originates and not where it is consumed. As the South is a high VAT country it mitigates against companies selling through the Internet from the Republic. It’s less of an issue for Northern Ireland but it is still not positive for the South to sell to the North.”  
(Stakeholder organisation)*

4.20 One participant noted the “opportunity cost” to his business posed by differences in VAT regulations across the border, given that a member of his staff had to spend time familiarising themselves with two sets of regulations and then administering accordingly. Variations in VAT rating policy were also identified as a considerable impact by a food manufacturer that participated in this research.

*“Most bakery products in the North and the UK as a whole are zero-rated while in the South there is VAT applied to products with fruit content and/or a high sugar content. We have to charge VAT on these in the South which results in variable pricing and creates difficulties for price comparison which rebounds on us.” (Business respondent)*

4.21 Other businesses identified a lack of clarity over VAT requirements as the main issue for them. One business, manufacturing in the North and trading in the South, noted that there was no means of checking whether the VAT numbers provided by companies in the South were valid. However, it also stated that there were associated benefits in that companies in the South did not have to claim the VAT back which assists with cash flow.

*“Our main burden is being clear about the VAT and whether it is chargeable or not on the supplies that we receive or that we make. There can be grey areas and it is key that we make sure that the VAT documentation and the VAT numbers are correct, that we’re being charged or not charged appropriately, and the offset of recovery of ROI VAT.”  
(Business respondent)*

*“If there was some way of streamlining VAT that would be helpful. We’ve had problems with the issuing of ROI invoices with GB VAT numbers.”  
(Business respondent)*

## Other tax and insurance issues

4.22 Several respondents (stakeholders and businesses) noted the difficulties experienced by some businesses in the border regions which employ workers in one jurisdiction that are resident in the other with ensuing PAYE complications. Some suggested that a potential solution could be to tax employees only in the jurisdiction in which they are paid or that there should be either an advisory service or greater collaboration between tax offices in border areas in each jurisdiction. Differences in payment forms were also described as a burden.

*“Many of our employees work in Derry but live across the border. There is an issue as they are remunerated in one currency and deal with the tax authorities in that jurisdiction and then have to deal with the tax authorities in their own. It is more of a hassle to the employees than the company but it has a knock-on effect as it affects the employees’ welfare and well-being.” (Business respondent)*

*“A subcontractor from the North who is paid in sterling has to have a payment form 715 but if fitting in the South needs a C2 form. This is a real burden, particularly if the subcontractors don’t have the right forms<sup>19</sup>.” (Business respondent)*

4.23 Differences in corporation tax were also identified as an area of major concern for many businesses. There was a recognition, however, that it would probably not be feasible, within the scope of this study, to recommend amending the tax rate in Northern Ireland as decisions on taxation are primarily political rather than administrative.

*“A unified corporation tax rate... preferably the one in the South.” (Business respondent)*

*“I don’t believe that corporation tax should be so low in the South, it should be more of a pan-European rate. Rather than going to the bottom, where countries are undercutting each other.” (Business respondent)*

4.24 Overall, taxation was viewed as a complex issue and of prime importance to businesses, impacting on important decisions such as the location of business sites. Several businesses reported using both in-house advisors and external consultants to manage the tax issues in both jurisdictions, and while they were unable to quantify the exact cost of this, it was thought to be significant.

### Example 1: Difficulty in working through tax regulations within a restructuring of the company

Company A reported that it had an issue with complying with a company re-structuring across both jurisdictions. It was in the process of re-organising its group of companies and had businesses in both the North and South of Ireland.

*“The business has grown and developed in a scattered way over the years, by buying a company, buying another and so on. We ended up with a group with a diverse structure and wanted to organise the group in an administrative way that we would be able to work with easier. We envisaged that this would be through one Holding Company operating in the North with all other companies held directly by it.”*

The company advisors regarded the proposed structure as a straightforward reorganisation and within the UK no issues were encountered as it was seen as a purely structural, administrative measure. However, in regard to the two Southern operations, the company was advised that there could be a potential capital gains dimension to the transaction.

*“Even though the ownership wasn’t changing, it was literally a re-structuring of the company... We wanted the Southern companies to be owned directly by the parent in the North and that potentially could hold an issue for us... If it means that we have to pay capital gains on a company that we already own, we may have to reconsider our approach.”*

Dealing with the complexities of the issue within two different jurisdictions has been a problem for the business, in terms of understanding the different regulations pertaining to capital gains and in finding and employing outside advisers to assist them. The company described the costs in trying to resolve the issue as significant.

*“Certainly this has cost us thousands of pounds in fees in terms of advice and outside consultation thus far, and ultimately the price could be that we leave the structure as it currently exists... It is difficult to fully assess the impact of this on our business. How do you quantify the impact of not having your business structured in the way you want it ideally to be structured?”*

4.25 Several respondents also noted that insuring commercial vehicles from one jurisdiction in the other can be costly to businesses. One example given was of an employee living in the South driving a NI-registered company car and being liable for import fees.

4.26 Access to financial packages in general was considered by several respondents to be problematic with one Northern manufacturing business using a company to supply finance in the North and another to supply finance in the South.

### Example 2: Compensation arrangements

A large international construction company based in Northern Ireland had a difficulty when trying to seek compensation following the personal injury suffered by one of its employees. The employee was required to assist the company on construction projects just over the border and so spent a considerable amount of his time in Ireland. Unfortunately a site accident resulted in him suffering a personal injury, entitling the employee to a significant compensation payment. The company was subsequently unable to recover this money from its insurers and instead had to rely upon a state based compensation scheme which was designed to pay in circumstances where the insurer was unable to do so. Unfortunately this state scheme only applied where employers were required by law to have in place insurance in Northern Ireland. As this employee worked in Ireland technically under NI law the company was not required to have insurance in place for him (regardless of the Irish requirements). Consequently the compensation fund did not make any payment resulting in a significant cost to the employer. The rules for compensation in this circumstance did not take account of companies based in Northern Ireland who might have employees working a majority of their time across the border in order to meet business needs.

<sup>19</sup> Please note that the 715 payment form refers to the former Construction Industry Tax Deduction Scheme – which is now redundant.

## Exchange rates and pricing

4.27 Currency fluctuations emerged as a major issue for many participants, particularly at the current time when the Euro has strengthened against the pound, with several going so far as to suggest that Northern Ireland should join the Euro zone. Fluctuations in exchange rates were viewed as more of a problem for SMEs, particularly in the processing of payments. The strength of the Euro was also thought to deter potential job candidates to the North, particularly from the Dublin area.

*“The exchange rate issue causes more problems for the smaller companies. Smaller companies are more likely to have cheques to handle, the bigger companies are more likely to process electronically. Cheque handling between Ireland and England is appalling.” (Stakeholder organisation)*

*“If you are trading in the South, you are going to be paid in Euros and you have to have the facilities to allow you to trade in Euros. With fluctuations in the exchange rate in the last 12 months, it is a lot more tricky and you have to be careful when you are quoting prices that you make sure that you are covering your costs.” (Business respondent)*

*“If you’re a cash business, the ability to deal with the coins of another currency is a burden. Banks often only want to deal with notes and not coins.” (Business respondent)*

4.28 This respondent noted that specialist advice had proved very beneficial to the business.

*“As the company has grown, we have taken on a company accountant who put in place good accounting practices to help trade in both sterling and the euro. Assistance from InvestNI and InterTradeIreland has been a great help.” (Business respondent)*

4.29 Pricing issues were raised by a number of respondents. Several businesses in the North argued that, as prices were perceived to be lower in the South, they were at a competitive disadvantage when exporting into Irish market. Differences in the pricing policies of major retailers created difficulties for one food producing company as this impacted on their capacity to run joint promotions. Another large company also highlighted variations in energy prices across Ireland and perceived less flexible employment legislation in the North. Linked to this, several businesses noted that contractual differences between the North and the South can create difficulties for SMEs.

*“Payment in the South, for example, in construction, tends to be much slower than in the North. The regulation says payment should be within 30 days. This is a problem for small businesses if they are waiting to get paid by larger contractors... and they’re not going to bring the customer to court.” (Stakeholder organisation)*

### Example 3: Debt collection

A Northern Ireland based client expressed frustration at having to chase a debt from an Ireland registered customer. The difficulty arose because the client did not have to hand an understanding of the process of debt collection in Ireland. In Northern Ireland, where the client undertakes the majority of its business, the client has on-going relationships with advisors whom it can use in such circumstances and has an understanding of the debt collection process. However, this lack of familiarity with Ireland meant that a relatively routine debt collection exercise required more time, cost and energy than if it were based in Northern Ireland.

## Repetition and duplication of data requirements

4.30 Many respondents highlighted the duplication of data requirements as a burden on businesses both within and across the jurisdictions.

*“In terms of bureaucracy, the repetition of reporting statistics in the South, to CSO, to Revenue, to the registrations office... there is no overlap between them. A company of 10 people or less could spend half a day each month complying with regulations.” (Stakeholder organisation)*

### Example 4: Incorporation costs

A Northern Ireland based company had wanted to expand its reach into Ireland and so set up a Dublin subsidiary. While it is true that one of the main drivers for this was commercial (i.e. to have a physical presence in Dublin), the client also considered that by having a subsidiary in Dublin it would help it deal with Irish legal requirements and the Northern Ireland company could deal with Northern Ireland legal requirements. This therefore meant a duplication of incorporation costs for this company.

## Recognition of accreditations and qualifications

4.31 Several participants highlighted actual or potential problems associated with the recognition (or lack of) various accreditations and qualifications across jurisdictions, in some cases, this was thought to be a pan-European issue. One stakeholder suggested that this was a particular issue for businesses selling services - an area of exporting growth.

*“There are different operating standards between the South and the North. It is difficult for an architect or a doctor or an engineer for example as there isn’t dual recognition of operating standards. Their freedom to set up operations in other countries is limited and it gets worse the further you get into Europe, in Italy or Germany for example. Service exports were 42% of total exports last year, ten years ago it was only about 10%. This is where the main growth will come from therefore you need to look at all the relevant regulations and identify where there are any restrictions. It would be in the interests of all professional bodies to have their standards recognised in all countries.” (Stakeholder organisation)*

*“You have to be a member of a certain number of bodies before you can bid for public or private tenders. For such a small island, there should be more standardisation of qualifications.” (Business respondent)*

4.32 According to one business participant, however, the situation in the food industry has improved recently with British Retail Consortium accreditation now widely recognised across the UK and Ireland.

*“Once your factory has achieved a certain level of accreditation in the North there are no barriers preventing you from trading in the South.” (Business respondent)*

4.33 However, several respondents noted that guarantee schemes in the construction industry did not have equal recognition. One company, providing a ten year guarantee, found that its scheme was only covered in the North and had to go separately through the Homebond Scheme in the South, despite meeting all the requirements. The mandatory health and safety cards in the construction industry also caused problems for some companies.

*“The further south you go they don’t recognise the health and safety card from NI.”*  
(Business respondent)

### Example 5: Recognition of accreditations and qualifications

The Construction Skills Registration Card in Northern Ireland and the FÁS Safe Pass card in Ireland are aimed at ensuring that construction operatives in the North and South have appropriate levels of health and safety and skills training. According to the Construction Employers’ Federation, the administrators of the CSR card, these two systems of accreditation are equivalent and that the CSR card is valid in the South. However, there appears to be varying degrees of awareness of this equivalence in the sector. One company reported a significant expense in training its workforce in both systems and obtaining both cards, noting that this had to be repeated every two years. According to this respondent, this dual accreditation was required as both cards are not routinely specified in public sector contracts North and South. It should be noted, however, that the card is officially accepted outside of Northern Ireland through a mutual recognition agreement between CSR and the FAS Safe Pass Safety Awareness Training Programme in Ireland, and through an affiliation with the Construction Skills Certification Scheme (CSCS) in Britain.

## Barriers relating to the selected regulations

4.34 As part of this research, five regulations were selected for further testing with stakeholders and businesses<sup>20</sup> : Working Time Regulations, Transfer of Undertakings (Protection of Employment); Consumer Protection (Distance Selling); Data Protection; and the Construction Industry Scheme. The degree of difference in the comparable regulations North and South varied, however, as some respondents noted, small differences could potentially create as many difficulties as larger differences. Again, there was a view that businesses would only become aware of the differences after infringement.

*“Subtle differences (in regulations) are more difficult to spot.”* (Stakeholder organisation)

*“Companies blunder on without examining both sets of regulations in detail until they become a problem.”*  
(Business respondent)

*“There is no easy way of identifying the differences.”*  
(Regulator respondent)

4.35 The paragraphs below outline the business and stakeholder perspectives on each of the five pairs of regulations selected. These findings should, however, be considered in light of the general low levels of awareness of the detail of regulations (whether home regulations or not) noted in paragraph 4.2 above.

## Working Time Regulations

4.36 Most businesses were aware of the Working Time Regulations (WTR) in their jurisdiction but were unable to state whether differences in the regulations North and South had much of an impact on their organisation. One stakeholder respondent described the WTR in general as “byzantine” given the sector specific complexities of the regulation and the UK derogations. The amount of paperwork associated with the WTR was identified as a particular issue. It was also thought that the bureaucracy involved would increase as the level of enforcement increases.

*“This is a regulatory burden due to the number of forms that have to be filled in. In the South you have to fill in a form every week with hours of work and numbers of breaks for each employee and these need to be kept for three years. If you have a sizeable enterprise it is a particular burden. The reality is that 99% of firms have never heard of it... it will be a large burden when it is enforced.”* (Stakeholder organisation)

*“The main issue around Working Time Regulations is the onus on the 48 hour week. Companies have to apply it. In the South, companies can average it out over four months. In the North, an employee can opt out of it – which is a huge advantage.”*  
(Stakeholder organisation)

4.37 In relation to the latter citation, it should be noted that companies in the North can also average the time over 17 weeks, approximately four months.

4.38 One of the stakeholders noted that transport is now governed by WTR and that there are subtle differences in the lengths of rest breaks allowed in the North and the South (30 minutes in the South and 20 minutes in the North following six hours of work). The regulations in general

were thought to generate significant amounts of paperwork. Another suggested that, as many road haulage companies in the South are “owner drivers”, businesses tend to find “a way around” the WTR.

*“There is more of a worry that the Southern Government will start to implement the EU directive in full rather than differences in the regulation between North and South.”* (Stakeholder organisation)

4.39 Overall, there was some awareness of the directive, but not of the differences between jurisdictions. Businesses tended to rely on their HR managers for compliance. Some reported difficulties in monitoring hours worked and that significant manager-level input was required to ensure compliance. The WTR were thought to place a greater burden on SMEs.

4.40 In the food industry, one business reported that the WTR limited its ability to resource periods of high activity and business need, and that enforcement was perceived as stricter in the North. For this business, managing the WTR requirements across two jurisdictions was said to compound the pressure placed on its human resources department. The WTR were also said to have resulted in the greater use of sub-contractors, particularly in the construction industry, as the regulatory environment was perceived as “looser” in relation to sub-contractors compared to full-time employees.

<sup>20</sup> Please see previous chapter for selection criteria.

### Example 6: Terms and conditions

PwC were engaged to advise an all Ireland organisation on terms and conditions of employment following employee disharmony arising on what was perceived to be favouritism and unfair treatment on the Irish employees. They had considered it unfair that employees in Northern Ireland got better terms of employment even though the terms in question represented the statutory minimum in Northern Ireland. For example Statutory Sick Pay and Parental Leave provisions are more favourable in Northern Ireland than in Ireland. Although this employer was compliant the differences resulted in poor employee morale, administration costs and costs in relation to consultancy advice as to how best to deal with the issue.

- 4.41 One of the stakeholder organisations that participated in this research noted that there were a number of related regulations in the North which impacted on the WTR, much more so than in the South. While there are some key differences in terms of public holidays and Sunday premiums, these related regulations have resulted in more case law in Northern Ireland. According to this respondent, any differences are therefore much more difficult to identify and that any mapping exercise would be very resource-intensive for an employer. Furthermore, it was noted that some confusion could arise from the enforcement responsibilities of both the Health and Safety Executive and local government in Northern Ireland.

### Transfer of Undertakings (Protection of Employment)

- 4.42 There was again little awareness of the Transfer of Undertakings (Protection of Employment) (TUPE) regulations unless businesses had gone

through the process. Some of the stakeholders thought that differences in TUPE legislation were likely to emerge in the future as the size of the public sector in Northern Ireland reduces while another thought that there were more significant differences between the island of Ireland as a whole and mainland Europe.

### Example 7: Workforce issues

A cross-border organisation for whom PwC acted had wanted to harmonise working practices and policies within its workforce. In order to accommodate this it decided to harmonise key aspects in line with the highest statutory and best practice standard from whichever jurisdiction in order to remain compliant. This caused a number of difficulties first, it meant that there was an increased cost burden and secondly it meant that both employees from Northern Ireland and Ireland needed to be retrained. It also met with some implementation difficulties as those responsible for the role out of the change did not fully appreciate why they were having to comply with what they perceived to be irrelevant legislation in terms of how they ran their part of the organisation in their jurisdiction.

### Consumer Protection (Distance Selling)

- 4.43 Those manufacturing businesses participating in this research did not in the main have an issue with this regulation as much of their trade in the other jurisdiction was undertaken through a distributor or other intermediary and there was little or none of the 'distance' elements in their transactions. In general terms, such partnership arrangements were reported to be beneficial as it transferred the burden of compliance to the partner organisation.

- 4.44 From a regulatory body perspective, this regulation has not, to date, created a significant issue for businesses, however, the main focus of regulation in this regard is re-dress rather than compliance.

### Data Protection Act

- 4.45 In general, stakeholders were of the view that the level of awareness of Data Protection requirements of businesses in their own jurisdiction was low. Businesses tended to report that they were more aware of the Data Protection Act (DPA) than of the other regulations although many stated that they did not have a detailed knowledge of it. Indeed, some respondents, dealing with personal data across the border were not aware of any differences in the legislation or indeed of the need to register with the relevant commissioner.

*"Small companies may know a little about data protection. It's more or less the same legislation. There could be more time spent in investing in data protection in relation to the records that they have to hold and dealing with requests. It tends to be a bit more onerous in the South. For example, information must be presented in a "friendly manner". (Stakeholder organisation)*

- 4.46 Some participants found that, while registering in the North was relatively straight forward, the process was more time-consuming in the South.

*"It was difficult to find people to tell us what to do, though maybe we were just asking in the wrong place." (Business respondent)*

*"I would like to see a 'Data Protection for Dummies' book". (Business respondent)*

- 4.47 The regulatory body for data protection in Ireland is the Data Protection Commission. According to one of the commissioners that participated in this study, data protection issues and compliance constitute one of the main regulatory impacts on business, alongside labour law and taxation (working through two different taxation systems). The regulatory authority held the view that the level of understanding of the regulation, and compliance with it, is increasing amongst business. It noted, however, that larger organisations tended to have compliance departments to manage regulatory impacts and that the size of business often determines the extent to which the regulatory responsibilities on it are fully understood.
- 4.48 The regulators identified two main differences between the data protection in the North and the South: firstly, that the requirements to register are more extensive in the North; and secondly, that the powers of investigation are more extensive in the South. In general, the regulatory bodies thought that recent media coverage of data protection issues had raised business awareness of these regulations. The main issues that arose related in the main to the inappropriate use of mailing lists, for example lists generated for an operational purpose used for sales and marketing.

### Example 8: Enforcement of the Data Protection Act

Company B is involved in the sale of electrical goods. It had gathered the mobile numbers of customers in order to notify them of delivery dates. Company B then used these numbers to notify 180,000 customers that they were having a sale. This constituted a criminal offence in Ireland but would have represented only a breach of the Data Protection Act in the United Kingdom.

## Construction Industry Scheme

4.49 This scheme was described as causing SMEs in the construction industry “a lot of grief”. Some respondents suggested openly that they did not have the resources to address the intricacies of this regulation.

*“If you read all that you wouldn’t have any time to do any work... when there is a problem we make sure we resolve it.” (Business respondent)*

### Example 9: Daily regulatory burdens facing a construction industry in Northern Ireland

Company C, a construction company based in Northern Ireland noted a range of regulatory burdens which face them on a daily basis.

*“Tax issues, VAT and operating with two different currencies are the immediate impacts of the border on our business, but there are plenty of other regulations which make trading and working in the South very difficult.”*

The Construction Industry Scheme (CIS) was one such burden, and the complexities in subcontracting and paying subcontractors through the CIS in the North and the Relevant Contracts Tax in the South was mentioned as problematic.

*“If we just had one set of rules for both the North and South, then things would be much easier for us.”*

The company also explained how they had difficulty in guaranteeing their work in Ireland. It was noted that, whilst in the North they were guaranteed under the National House-Building Council, they had to seek membership with HomeBond in Ireland which had

cost implications in terms of staff time in researching how this was achieved and the financial fees in applying to the scheme.

Permitted developments and planning laws were also perceived by the company as difficult to understand and work with, both North and South. It was felt that it has taken time to get information on planning criteria, and it has been very difficult to learn about the different planning issues within both jurisdictions.

*“Over and above these regulations, there is a customer imperative and that’s what ultimately decides how we do what we do. We have to run our business and make money, but somewhere along the line, some government body could come to us and point out what we have been doing wrong, which we don’t necessarily know about. If that happens, we’ll just have to pay what we owe them if it turns out that we aren’t compliant somewhere.”*

## Barriers relating to other regulatory areas

4.50 A number of other regulatory areas with the potential to impact on cross-border trade emerged in the course of this research. Two areas were explored with participants explicitly, namely environmental regulations and immigration regulations, as these were identified during the scoping stage of this study as having the potential to affect cross-border trade. Other regulatory areas, such as transport and customs, became apparent during the fieldwork phase.

### Environmental regulations

4.51 Overall, the stakeholders who participated in this research thought that it was likely that differences in environmental regulations would pose a burden to businesses but were unable, in the main, to

cite specific examples. Some larger businesses reported additional costs in training staff in both systems to ensure that they were aware of their responsibilities but again were unable to provide specific examples or definite associated costs.

4.52 Other respondents did note however that the different enforcement regimes, with the existence of the Environmental Protection Agency in the South and no equivalent body in the North, were likely to create different expectations in terms of enforcement and compliance amongst businesses. Advice on recycling was thought by some respondents to be more readily accessible in the South.

*“It is stricter in the South, more relaxed in the North.” (Business respondent)*

*“Who do you go to for advice in the North? InvestNI? Your local council?” (Business respondent)*

*“Environmental regulations are not as clear in the North and are not applied as efficiently.” (Business respondent)*

4.53 Several respondents suggested that waste disposal requirements are onerous but this tended to be in relation to the actual requirements of the jurisdictions rather than due to regulatory differences between North and South. It was noted, however, that there is more competition in the UK waste disposal market while in Ireland, given the size of its market, there is a single supplier.

4.54 Some stakeholders reported growing concerns over the Waste Electrical and Electronic Equipment Directive which came into force in January 2007, which relates to the disposal of computers and other electrical equipment.

While respondents were unclear as to cross-border differences in the regulations, there was a general view that this regulation would prove to be onerous on smaller companies which may not have access to storage, transport and other resources for the safe disposal of such equipment.

4.55 Some respondents suggested that, in the South, the main concern is waste management and that recent changes to waste packaging regulations have created significant differences between the legislation in force in the South and that in force in the UK, with compliance required after producing 10 tonnes of packaging in the former compared to 50 tonnes in the latter. Waste collection permits were also described as insufficiently flexible.

*“If a company is trading up North and producing 15 tonnes of waste packaging that is okay. If they are also trading down South that will not be seen as okay – that is the issue. It is around five or six times more expensive to collect waste in the South than the North.” (Stakeholder organisation)*

*“€00,000 on administration in managing this. €50 for every load that you take from the Republic. It takes two months to get the paperwork in place and pay your costs upfront for the whole year, which can be up to €50,000 paid out. You must notify councils, North and South, three days in advance. You must then notify them by fax when the load has been delivered and also when the load is then sorted.” (Business respondent)*

4.56 There was also a concern in the South that the right balance should be found between promoting environmental concerns and business freedom.

*“Regulations seem to be increasing more quickly in the South than in the UK. There is a big concern that with the Greens in we will try and lead in Europe to the detriment of business. We don’t want to cripple ourselves trying to show how green and clean we are and lose business in the process. We all need to move together. There is a consensus that we in the South are moving up the league faster than the UK.” (Stakeholder organisation)*

### Immigration regulations

4.57 The mobility of non-European Union workers across the border was raised as an issue by some stakeholder organisations and businesses. Under the current arrangements, non-EU workers in Northern Ireland, for example, are restricted from working at a client site or another company office across the border. One of the stakeholders who participated in this research suggested that the impact of the visa issue was likely to increase, given skills shortages in areas such as IT and the growing tendency to recruit IT graduates, for example, from countries such as Brazil, China or India.

4.58 The complexities surrounding the granting of visas were perceived by several firms to constrain the flexibility of businesses in terms of responding to skills needs and to short-term changes in business circumstances. Furthermore, a lack of clear border controls or indicators was thought to make it difficult for some employees to know where they can or cannot go. Overall, there was a view that there is insufficient flexibility in the current system.

*“If you have a work permit in the North and you want to work in the South, then you have to start from the beginning. If there was some alignment or recognition then it would be a big help.” (Business respondent)*

*“Although you have a high standard, you have to be careful that you do not fall foul of the slightest nuance in either set of regulations.” (Business respondent)*

4.59 One business respondent, who commissioned a solicitor for human resources advice, estimated that there was a cost to his company of approximately £10,000 per annum in relation to vetting potential employees and applying for work permits for good candidates. The different legal requirements in each jurisdiction compounded the burden on his company.

*“Sometimes you get people who have a work permit for the South who realise they can earn more money in the North and will go up North and tell you they’re legal when they’re not... there needs to be more clarity about who is legal to work... Some solicitors aren’t aware of who is allowed to work. There are too many loopholes and red tape... the fact that there are two legal jurisdictions adds to the confusion and the difficulty.” (Business respondent)*

4.60 Another business reported that there was also an element of risk in this regard which has to be managed by his company.

*“We have staff in India who periodically come to Northern Ireland to work with colleagues for up to a month. If they work internally, it is a case of getting business visas. If it is client facing, they must get work permits. The visas and the work permits are for the UK only. If the staff are out for the weekend or need to visit a client in the South, they can’t go and the company has to manage this risk.” (Business respondent)*

### Other areas of regulation

4.61 Some respondents noted other areas of regulation that may prove difficult for businesses. One of the stakeholder organisations suggested that awareness of anti-money laundering legislation North and South was low and that there was therefore a need for an ‘educational piece’ on the subject.

*“Small companies will know little, if anything, about money laundering. The biggest issue about money laundering regulations in the South is that they haven’t a clue about them. Money laundering is perhaps tighter in the North for obvious reasons but the South is catching up rapidly in this area... there is much more scrutiny in the South than there has been in the past.” (Stakeholder organisation)*

*“There should be an opportunity to say we’ve done all the money laundering checks in the South, so this will be okay for the North if you remain with the same bank.” (Stakeholder organisation)*

4.62 One stakeholder reported a query from a member regarding gift vouchers in relation to money laundering, noting that the revenue guidelines in the South state that the tax free limit will be reduced from €250 to €100 “which kills the business straight way”. The corresponding limit in the UK is £650.

4.63 Stakeholders thought that differences in transport regulations were likely to create problems for businesses but noted the extensive research that InterTradelreland has already undertaken on this issue<sup>21</sup>. The Carriage of Dangerous Goods regulations were thought to impact on pharmaceutical companies in particular. Several respondents also noted the differing reporting requirements for wide loads North and South.

In the North, businesses have to notify the Police Service for Northern Ireland (PSNI) and the Department of the Environment. In the South, each county on the route requires notification.

4.64 Differences in customs regulations were also identified as an issue, particularly for food and drink companies trading on both sides of the border and with, perhaps, warehouses on either side. An example provided was that of a small distillery in the South that had to export to a clearinghouse in London in order to sell to the North. It was also noted that there are quite large differences in relation to licensing requirements and that, in the view of one stakeholder, “a single regional customs approach would be advantageous”.

*“The various duties and tariffs for alcohol between North and South can be difficult to work through.” (Business respondent)*

### Example 10: Maternity leave provision

An Ireland-based organisation had applied post-maternity return to work rights in relation to a Northern Ireland based employee which were not compliant with Northern Ireland parental rights. For example errors were made with regard to timelines for action, recording working hours and return to work arrangements. This resulted in them being in breach of Northern Ireland law and in causing confusion amongst their HR functions.

<sup>21</sup> InterTradelreland, Freight Transport on the Island of Ireland (2008)

## Regulatory relationships with other jurisdictions

4.65 Some stakeholder organisations also noted the importance of considering the East-West dimension to trade as well as the North/South while another argued that, in the South at least, there is a “one size fits all approach” which does not distinguish sufficiently between the requirements to be placed on SMEs in relation to larger businesses.

*“There seems to be just more regulations being added rather than getting rid of older ones.”*  
(Stakeholder organisation)

*“It is difficult for people in SMEs to understand all the regulations.”* (Business respondent)

4.66 One respondent argued strongly that differences in the implementation of EU legislation in the UK and Ireland was often to the detriment of Northern Ireland. He suggested that the UK approach could be characterised as ‘gold-plated’ where the approach in the South was usually pragmatic, and that, for reserved matters, what could be inconsequential at the UK level could sometimes be highly significant for Northern Ireland. Examples given included responses to the BSE crisis, higher energy prices in the North due to the energy infrastructure, fuel duty, and reduced availability of farm labour from Eastern Europe due to the strength of the Euro. As all these factors were thought to impact on the competitiveness of Northern Ireland businesses in a potential all-island economy, this participant advocated greater representation of Northern Ireland interests at both the UK and the EU levels.

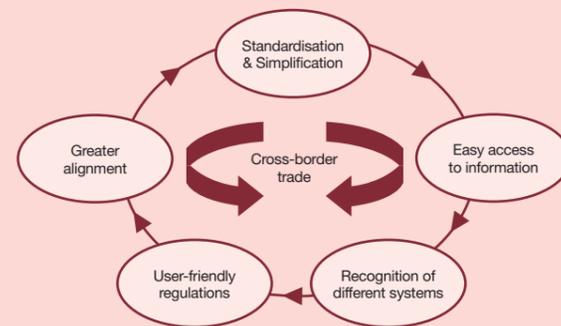
4.67 While these particular issues are to some extent beyond the scope of this report, the various North/South and East-West statutory bodies

should give due consideration to the impact of the border on the economies of both the North and the South in any deliberations, particularly in the context of informing EU decision-making.

## A summary of the business perspective

4.68 During the fieldwork, businesses were asked not only about the regulations impacting on their cross-border trade but also for their “wish list” in terms of the regulatory environment. Figure 4.1 summarises the business perspectives which emerged from our research.

Figure 4.1: The business perspective



### Standardisation and simplification

4.69 Several employers called for more standardisation and simplification of legislation in the future, for example, stating that simplification of legislation is required to promote cross-border mobility of workers. Some suggested that there should be greater collaboration between the legislative authorities North and South and that enforcement should be focused on a risk-based approach. There was a general view that greater harmonisation between the relevant Government agencies, North and South, would be beneficial, for example in the area of vehicle licensing.

4.70 Several respondents suggested that legislation should be simplified and the burden of paperwork should be removed as companies (particularly SMEs) do not have the capacity to deal with the intricacies surrounding compliance on many regulations, within two separate legal jurisdictions. More electronic systems and less duplication of paperwork were suggested as possible solutions. Some emerging or small companies wanted a reduction in cost and indeed a separate cost structure in terms of compliance obligations on SMEs, to enable them to “get up and running”. In their view, leniency and flexibility in the early stages of their business would facilitate this.

*“Emerging or small companies should have a reduction in cost or a separate cost structure in terms of compliance to enable them to get up and running. Leniency in the early stages.”* (Business respondent)

*“Also a simplification of trying to work out VAT, if it were more routinely recoverable.”* (Business respondent)

*“Personally, we should all go Euro.”*  
(Business respondent)

### Easy access to information

4.71 Many respondents, when asked if they would know where to go to get regulation based information were unaware of one main source. Instead, they said that they would seek private consultant or solicitor input. Several participants suggested that an advisory service for employees and businesses would be beneficial.

*“I would like to see a one stop shop.”*  
(Business respondent)

*“An advisory service on regulations.”*  
(Business respondent)

*“A hot line number that you could call and say “look the job isn’t finished yet, can we extend the visa by another week?”* (Business respondent)

### Recognition of different systems

4.72 Others considered that implementation of the regulations could be improved e.g. through mutual recognition in public sector contracts of construction health and safety cards, North and South.

### User-friendly regulations

4.73 Some employers suggested greater transparency in the development of regulations and wanted to understand better the rationale for some legislation. Others suggested that Codes of Practice could, in some cases, be produced in a more user-friendly fashion.

### Greater co-operation

4.74 Others reported that more collaborative working between local SMEs e.g. through consortia would be beneficial.

*“More networking of SMEs so that they could band together and give the big boys a run for their money.”*  
(Respondent)

## Conclusions

- 4.75 Overall, there was little evidence of an in-depth knowledge of the detail or difference in regulations between the North and South. The extent to which businesses experienced barriers derived in the main from a lack of information or signposting and the practical implementation or outworkings of the regulations.
- 4.76 Any knowledge of the differences in regulation that was apparent was driven by the individual circumstances and characteristics of the business, such as its sector, level of development in its lifecycle, or whether it had encountered a barrier through non-compliance in the past.
- 4.77 The stakeholder organisations which participated in this research tended to suggest that the incidence of regulatory burdens would increase as cross-border trade increases. However, future growth in this area will be subject to the health of the respective economies North and South. In general, there was a perception that businesses were not fully aware of the regulatory requirements on them in their home jurisdiction and even less so in another.
- 4.78 There was some concern that SMEs (particularly micro and emerging businesses) are not aware of the regulatory environment and that it takes time to understand it fully. There was a common view that regulatory compliance is more difficult for small businesses and start-up companies with no experience or resource for advisory expertise on these issues. Getting to grips with regulations potentially represented a significant cost for SMEs if they decide to ascertain what compliance entails. Many companies rely on either the outside services of lawyers and accountants or in-house legal and accountancy teams. It is evidently easier for larger companies to absorb the costs of these.
- 4.79 For some businesses, the potential cost of compliance in another jurisdiction was sufficient to potentially dissuade them from entering a market. There was a general view that people-related issues were the main concerns of a business operating in

a new market. For many respondents, compliance in their home jurisdiction was a sufficient challenge without considering the legal situation in another.

- 4.80 Businesses highlighted more readily more general barriers to cross-border trade such as access to information, VAT-related issues, the exchange rate between the Euro and sterling, and the lack of recognition of accreditations, certificates and qualifications between the two jurisdictions, echoing some of the previous work undertaken by the Business Regulation Forum.
- 4.81 In general, the businesses that participated in this research were not overly familiar with any differences (or similarities creating potential duplication of effort) in the selected regulations. Indeed, several participants held slight misconceptions of the nature of the obligations on them in either jurisdiction. There were also varying perceptions of the severity of enforcement in the North and the South. Awareness was probably highest of the Data Protection Act and the Working Time Regulations, though not all participants were fully aware of their obligations under these regulations.
- 4.82 Other regulations identified as problematic by participants included those pertaining to waste management, although, in the main, any difficulties encountered related more to the perceived burden of compliance in the home jurisdiction rather than the impact of additional regulations arising from the border. The immigration regulations relating to the mobility of non-EU workers did create issues for some participating companies, particularly those in the IT and other service sectors which are becoming more reliant on graduates and others with specialist skills from non-EU countries.
- 4.83 Overall, businesses reported that they wanted: more standardisation and simplification, easier access to information, greater recognition of similar certifications and accreditations, more user-friendly regulations, and, overall, greater alignment in terms of regulations, between the two jurisdictions.

# 5 Conclusions

## Introduction

- 5.1 The final section of the report draws together the key findings from the research and presents some conclusions and suggestions that might ease the regulatory burden of doing business across the border on this island.

### Key findings from the scoping and mapping exercises

- 5.2 The scoping exercise phase of this assignment was substantial, serving to underline the complexity and scale of the regulatory landscape for businesses. In order to select the regulations for further study, a number of criteria were established in consultation with the Steering Group. These included cross-sectoral application, likely familiarity, relevance to business, length of time in force, and potential cost to business.
- 5.3 Regulations were assessed against these criteria and other factors, such as the desire to include areas with potentially significant and widespread impact such as employment regulations. The five selected regulatory areas were then mapped to identify the key differences between the relevant pieces of legislation North and South. There are a number of key findings for this study which emerged from this research and which underline the view that there is “no golden key” to reducing administrative burdens.

- 5.4 Firstly, mapping each of the complementary pieces of legislation accounted for a considerable amount of time on the part of the PwC legal team. This activity mirrors that which a business would have to undertake (or commission) to become familiar with the legislation itself, and then the cross-border differences. This process would evidently be more onerous for SMEs, with, in all likelihood, less access to in-house or external legal expertise. There would also be proportionate costs for any business seeking to have this exercise undertaken by a professional company.
- 5.5 Secondly, the mapping illustrated that there are a number of ways in which differences in legislation, North and South, can impact on business. These are summarised under five key headings in Table 5.1.

**Table 5.1:**  
Desk research: key findings

Finding	Example
Difficulty in sourcing equivalent regulations	The PwC corporate legal team had to use a variety of sources to identify and map the equivalent legislation North and South, including consultations with counterparts in the PwC Dublin office. This mirrors the process which businesses would have to undertake in exploring the obligations on them in the other jurisdiction. It is likely that SMEs in particular would have difficulty in distinguishing the comparable legislation.
Duplication requirements in relation to compliance matters	A business which holds or processes data in Northern Ireland and is also established in Ireland has to register with the data commissioner and maintain that registration appropriately in both jurisdictions. The Relevant Contracts Tax scheme in Ireland and the Construction industry Scheme in Northern Ireland use different forms for broadly the same procedures. The relevant contractor and subcontractor needs to be registered separately in each jurisdiction. Neither jurisdiction acknowledges the status in the home country of the subcontractor.
Subtle but important differences in regulation essentially aimed at the same mischief	Pursuant to the distance selling regulations, in the case of telephone communication in relation to distance sales in Northern Ireland, the identity of the business and the reason for the call must be stated at the beginning of the conversation. There is no requirement to do this at the outset of the call in Ireland so long as the identity of the supplier and the purpose of the commercial call is made explicitly clear at some stage during the call.
Differences in the timing for the implementation of regulations	Although one would expect corresponding nationally derived legislation not to be implemented at the same time, there are also discrepancies between the implementation time for EU derived legislation. This is due to the fact that when adopted, an EU directive gives Member States a timetable for the implementation of the intended outcome. Therefore different Member States will implement the changes at different times with the potential to create confusion.
A failure to recognise differing yet adequate standards imposed in each jurisdiction	Where a construction related contract is performed partly in Northern Ireland and partly in Ireland (for example haulage activities) the Relevant Contracts Tax scheme needs to be applied to the part of the contract that is performed in Ireland. This is the case notwithstanding that the Construction Industry Scheme may not be applicable to the Northern Ireland element of the contract.

- 5.6 It is not just the differences or duplication in legislation that pose a problem for businesses trading on a cross-border basis but the totality of the burden in complying with the regulations in both jurisdictions. In a real sense “one plus one” can equal more than two when it comes to the totality of the burden. This scoping and mapping phase formed the basis of consultations with stakeholders, businesses and the regulatory bodies.
- 5.7 The, mostly, subtle differences in legislation which were identified during the mapping exercise are detailed in Appendix 3, accompanying this report. Table 5.2 highlights just a few of these differences to provide a flavour of the potential impacts on businesses.

**Table 5.2:**  
Subtle differences in legislation emerging from the mapping exercise

Northern Ireland	Ireland	Selected differences in regulation
Data Protection Act 1998	Data Protection Act 1988, as amended by the European Communities (Data Protection) Regulations 2001 and the Data Protection (Amendment) Act 2003	In Northern Ireland, a data controller must take reasonable steps whereas in Ireland, he or she must take all reasonable steps. Further, in Ireland, data controllers must ensure that the people they employ are aware and comply with the relevant security measures.
Consumer Protection (Distance Selling) Regulations 2000	EC (Protection of Consumers in respect of contracts made by means of distance communication) Regulations 2001	In the Northern Ireland regulations, the identity of the supplier and the purpose of the commercial call must be achieved at the outset of the call. This is not the case in Ireland.
The Working Time Regulations (NI) 1998	The Organisation of Working Time Act 1997	The amount of weekly rest is broadly similar in both jurisdictions, although there is a further obligation in Ireland insofar as weekly rest, should be on a Sunday, unless otherwise agreed between employer and employee.
The Transfer of Undertakings (Protection of Employment) Regulations 2006	The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003	In Ireland there is no regulation confirming the specifics of the information to be provided regarding transferring employees.
Construction Industry Scheme	Relevant Contracts Tax	Under the CIS, monthly returns are required and there are penalties for late returns. The RCT requires an annual return.
Immigration Act 1971	Immigration Act 1999 as amended by the Immigration Act 2003	Differences arise on the mobility of non-EU citizens across the border.

### Key findings from the fieldwork exercise

- 5.8 In the fieldwork phase of this research, little evidence emerged of an in-depth knowledge of the detail of the difference in regulations between North and South. The extent to which businesses experienced barriers derived in the main from a lack of information or signposting and the practical implementation or outworkings of the regulations. It was therefore difficult, and indeed impossible, for businesses to attribute a cost to the time incurred by the administrative burden posed by the border: in most cases, participants were unable to state the time spent on complying in their home jurisdiction, let alone the time spent addressing cross-border compliance issues, simply because they were unaware of the regulatory requirements of the other jurisdiction.
- 5.9 Furthermore, any knowledge of the differences in regulation that was apparent was driven by the individual circumstances and characteristics of the business, such as its sector, level of development in its lifecycle, or whether it had previously encountered a barrier through non-compliance.
- 5.10 The stakeholder organisations which participated in this research tended to suggest that the incidence of regulatory burdens would increase as cross-border trade increases. However, future growth in this area will be subject to the health of the respective economies North and South.
- 5.11 There was some concern that SMEs (particularly micro and emerging businesses) are not aware of the regulatory environment and that this awareness takes time. There was a common view that regulatory compliance is more difficult for small businesses and start up companies with no experience or resource for advisory expertise on these issues. Getting to grips with regulations potentially represented a significant

cost for SMEs if they decide to ascertain what compliance entails. Many companies rely on either the outside services of lawyers and accountants or in-house legal and accountancy teams. It is evidently easier for larger companies to absorb the costs of these.

- 5.12 For some businesses, the potential cost of achieving compliance in another jurisdiction was sufficient to potentially dissuade them from entering a market. There was a general view that people-related issues were the main concerns of a business operating in a new market and that compliance was not necessarily a key priority. For many respondents, compliance in their home jurisdiction was a sufficient challenge without considering the legal situation in another.
- 5.13 Businesses highlighted more readily the general barriers to cross-border trade such as access to information, VAT-related issues, the exchange rate between the Euro and sterling, and the lack of recognition of accreditations, certificates and qualifications between the two jurisdictions. This echoes some of the previous work undertaken by the Business Regulation Forum.
- 5.14 In general, the businesses that participated in this research were not overly familiar with any differences (or similarities creating potential duplication of effort) in the selected regulations. Indeed, several participants held slight misconceptions of the nature of the obligations on them in either jurisdiction. There were also varying perceptions of the severity of enforcement in the North and the South. Awareness was probably highest of the Data Protection Act and the Working Time Regulations, though not all participants in the research were fully aware of their obligations under these regulations.

- 5.15 Other regulations identified as problematic by participants included those pertaining to waste management, although, in the main, any difficulties encountered related more to the perceived burden of compliance in the home jurisdiction rather than the impact of the border. The immigration regulations relating to the mobility of non-EU workers did create issues for some participating companies, particularly those in the IT and other service sectors which are becoming more reliant on graduates and others with specialist skills from non-EU countries.

- 5.17 Several employers called for more standardisation and simplification of legislation in the future, for example, stating that simplification of legislation is required to promote cross-border mobility of workers. Some suggested that there should be greater collaboration between the legislative authorities North and South and that enforcement should be focused on a risk-based approach. There was a general view that greater harmonisation between the relevant Government agencies, North and South, would be beneficial, for example in the area of vehicle licensing.

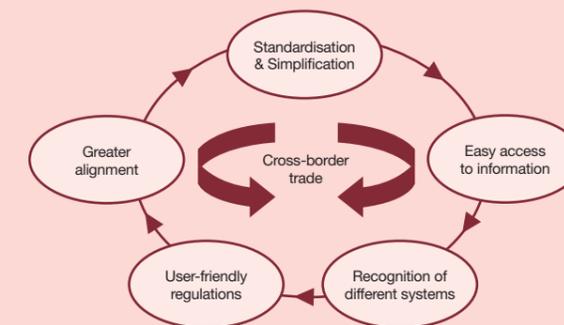
### A summary of the business perspective

- 5.16 Overall, businesses reported that they wanted:
- More standardisation and simplification;
  - Easy access to information;
  - Greater recognition of similar certifications and accreditations;
  - More user-friendly regulations; and
  - Greater alignment of regulation between the two jurisdictions.

- 5.18 Several respondents suggested that legislation should be simplified and the burden of paperwork should be removed as companies (particularly SMEs) do not have the capacity to deal with the intricacies surrounding compliance on many regulations, within two separate legal jurisdictions. Greater use of electronic systems and a reduction in duplication of paperwork were suggested as possible solutions. Emerging or small companies wanted a reduction in cost to enable them to “get up and running”. In their view, greater leniency and flexibility in the early stages of their business would facilitate this.

Figure 5.1 summarises this business ‘wish list’ which emerged from the research.

Figure 5.1: The business perspective



- 5.19 Many respondents, when asked if they would know where to go to get regulation based information were unaware of one main source. Instead, they said that they would seek private consultant or solicitor input. Several participants suggested that an advisory service for employees and businesses would be beneficial. Others considered that implementation of the regulations could be improved through mutual recognition in public sector contracts of specific accreditations. Some employers suggested greater transparency in the development of regulations and wanted to understand better the rationale for some legislation. Others suggested that Codes of Practice could, in some cases, be produced in a more user-friendly fashion.

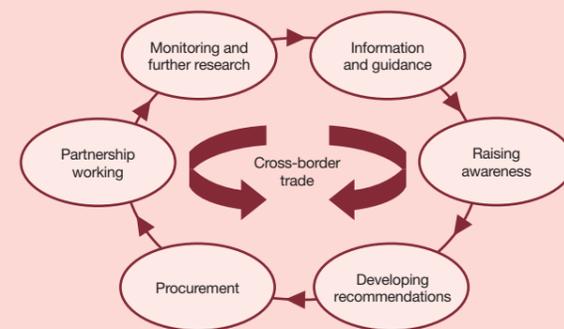
5.20 There is a desire to see greater clarification of immigration regulations as the research has revealed that current immigration regulations in force in the North and South regarding the mobility of non-EU citizens across the border do impact on businesses trading across the border. This is likely to be a particular issue for the technology sector employing IT graduates from countries such as India and China. Consideration should therefore be given to exploring a range of options to facilitate companies wishing to send non-EU employees across the border to other offices or client sites, including, for example, issuing short-term (perhaps five day) visas to such employees. The study reveals that, while there are many subtle differences in the selected regulations and that mapping these differences is a complex and at times an onerous task, businesses are largely unaware of some of these differences and are therefore unable to attribute administrative costs to the regulatory impact of the border. It is the perception of the cost burden that acts as a barrier to increased cross-border trading, rather than the cost itself.

## Conclusions

5.21 However, it should be recognised that, in most instances, there is a clear rationale for a specific piece of legislation and that there is therefore an implicit cost of non-compliance, not only for an individual business that infringes a regulation and subsequently, for example, must pay a fine, but also in a wider sense for society. This includes the additional costs to other businesses that are complying (creating, perhaps, an ‘unlevel playing field’) and to, for example, employees and the public who are offered protection under the specific piece of legislation.

5.22 In light of this, and based on our analysis of the findings of this research, we have made a number of observations for further consideration. These are discussed in further detail below under six main headings, as illustrated in Figure 5.2.

**Figure 5.2: Conclusions - six key areas**



### Easier access to information for businesses

5.23 As noted above, the research has found that, amongst employers, awareness of the regulatory requirements on businesses trading across the border was generally low. Many of the participants in this research suggested that the process of accessing information on compliance is time-consuming, particularly for SMEs, and that, in their view, many employers do not have the necessary knowledge to navigate the regulatory landscape.

5.24 Furthermore, subject to the state of the economy North and South, several of the representative bodies thought that cross-border trade is likely to increase in the future from a relatively low base. If this is the case, easier access to timely, accurate and straightforward information will become even more important. Two potential options for further consideration are presented below.

5.25 A “first-stop shop”: several participants requested a “first-stop shop” which would provide information and advice on compliance, in both an actual and virtual format. Examples cited included a website listing all health and safety or environmental regulatory requirements. While there are some logistical issues in co-ordinating such a service between the two jurisdictions, there is some evidence of a demand for such a service from employers. Consideration could be given, in the first instance, to developing such a service for a specific sector with significant cross-border trade, such as construction, by way of a pilot.

5.26 Virtual networks: consideration could also be given to developing an interface or portal to join up existing sources of information on regulatory requirements and differences. Examples of existing databases include EURES, the European job mobility portal, Business online and SOLVIT. This would provide a single point of entry for firms with regulatory queries, which, alongside a dedicated helpline, could help businesses navigate around their regulatory requirements. Such a network could also provide cross-border guidance on more operational issues such as PAYE and VAT.

SOLVIT is an on-line problem solving network in which EU Member States work together to resolve, without legal proceedings, problems caused by the misapplication of Internal Market law by public authorities. There is a SOLVIT centre in every European Union Member State (as well as in Norway, Iceland and Liechtenstein). SOLVIT Centres can help with handling complaints and issues from both citizens and businesses. They are part of the national administration and are committed to providing real solutions to problems within ten weeks, free of charge. SOLVIT has been in operation since July 2002. The European Commission co-ordinates the network,

which is operated by the Member States. The European Commission provides the database facilities and, when needed, helps to speed up the resolution of problems. The Commission also passes formal complaints it receives on to SOLVIT if there is a good chance that the problem can be solved without legal action<sup>22</sup>. At present, the majority of queries that SOLVIT centres receive are from individuals and SOLVIT representatives are therefore keen to work with trade organisations and other bodies to raise awareness of the benefits of the system amongst the business community. The Irish SOLVIT website gives the following examples of situations where the centre can intervene:

“If goods carrying the EC mark are exported from Ireland to another Member State which blocks their importation because they don’t carry the standard mark of that Member State, the Irish SOLVIT Centre will contact the SOLVIT Centre of the Member State concerned to ascertain why the goods have been blocked, to get them released, if they were blocked illegally, and to have the matter resolved quickly.”

“If a member of a regulated profession who was trained in another Member State wishes to work here but is experiencing a delay in having his or her qualifications processed by the relevant professional body here, the Irish SOLVIT Centre will request the professional body to inform the person concerned in good time (a) that he or she is entitled to practice his or her profession in Ireland or (b) that he or she is not entitled to do so, and if so why<sup>23</sup>.”

5.27 It should be noted, however, that there is an existing infrastructure across Ireland to provide such information and that care should be taken ‘not to reinvent the wheel’.

<sup>22</sup> More information is available at [http://ec.europa.eu/solvit/site/about/index\\_en.htm](http://ec.europa.eu/solvit/site/about/index_en.htm).

<sup>23</sup> <http://www.entemp.ie/trade/marketaccess/singlemarket/solvit.htm>

## Raising awareness of compliance requirements

- 5.28 Linked to easier access to information is the need to raise awareness amongst businesses regarding the importance of compliance. Several participants in this research were not fully aware of the regulations impacting on their sector with some stating that if they were compliant in one jurisdiction they thought that they would be compliant in the other. Some of the representative organisations also suggested that a lack of understanding of the need for a specific regulation created some level of frustration amongst their members, which may potentially hinder compliance.
- 5.29 Incorporating regulatory training into business development programmes: the existence of a number of export growth and export start-up programmes, North and South, provides an opportunity to support further training on cross-border compliance to new or expanding businesses. The research has shown that the experience of businesses in terms of compliance differs according to their stage in the business lifecycle. Providing such training through these business development programmes would enable the content to be targeted at the specific needs of businesses in a timely manner, prior to expanding into other markets. Furthermore, as many of these programmes are targeted at sectors such as high-tech or financial services, such training could be tailored to encompass specific regulations impacting on the relevant sector.
- 5.30 Communication of the rationale for regulations: as noted above, there is some evidence that employers are not fully aware of the rationale for some of the regulations and that this creates a certain level of dissatisfaction and confusion amongst businesses. Clearer communication

of the need for specific regulations, through for example, the Explanatory Notes accompanying legislation, relevant Government websites, the “first-stop shop” recommended above, or the various business stakeholder organisations could reassure businesses of the need for regulation and the importance of compliance. Case studies of the benefits deriving from regulations or from compliance could be powerful tools in this regard.

- 5.31 Co-ordinated consultation with business: linked to the point above, further co-ordinated consultation between legislators and the business community raises awareness amongst law-makers of the needs of businesses and the constraints which operate on them.

## Consideration of the cross-border element in the development of regulations

- 5.32 The mapping exercise has demonstrated that small differences in regulations can potentially have an impact on businesses and that comparing the relevant legislation is an onerous task. Evidence from the employers that we spoke to suggests that this is a greater burden on SMEs, which are not in a position to engage legal teams to assist them. In many cases it was thought that compliance only became an issue when a regulation is infringed – creating a situation which is potentially more damaging for SMEs than the normal cost of compliance. In our view, there are a number of ways in which compliance could be facilitated during the drafting and development stage of legislation:
- Regulatory Impact Assessments: given that the Regulatory Impact Assessment (RIA) processes are currently under review in both the North and the South, there is an opportunity, which is now timely, to

ensure that the cross-border dimension is incorporated into the RIAs of the relevant Government Departments in both jurisdictions. An analysis of the likely or potential impact of a specific regulation on cross-border trade will help ease the burden on businesses in the future. The RIAs could, for example, explore the opportunities for a ‘de minimus’ approach in relation to, for example, the provision of short-term work permits for non-EU workers to facilitate cross-border mobility;

- Cross-border collaboration on the presentation of common legislation: the mapping exercise has also demonstrated that while many regulations derive from European legislation, the structure and presentation of the domestic interpretation of these regulations differs, thus making it more difficult to achieve a ready ‘read across’. It is recommended that, potentially through the mechanism of existing North/South structures, consideration is given to the presentation of such regulations so that, as far as possible, common features are ordered in the same fashion in both jurisdictions whilst retaining sufficient flexibility to tailor the interpretation of the legislation to the context of each jurisdiction;
- Relationship with Europe: given the importance of European law in both jurisdictions noted above, and in light of the British Chambers of Commerce observation that European Impact Assessments are relatively high-level, consideration should be given to encouraging both the UK and Irish Governments to consider the potential impact of any new legislation at an early stage and to make prompt representations to the Commission as appropriate. Any such early

assessment should consider the likely impact on the border; and

- Role of the regulators: consideration should be given in both jurisdictions to maintaining and enhancing the role of regulators as “information-providers” as well as “enforcers” and to ensuring that any new regulatory bodies have such a dual role. While there was some evidence of co-operation between the regulators, further consideration should be given to developing stronger and more formal linkages between the regulatory authorities North and South.

## Public sector procurement

- 5.33 Several of the employers that participated in this research noted their experience of additional burdens created by some public sector contractual processes in both the North and South. There are two main dimensions to this:
- Assistance in navigating public procurement systems: several participants in this research reported difficulties in accessing the public procurement systems in each jurisdiction, particularly in terms of providing the right information at the right time. Consideration could be given to providing further assistance and support to businesses in this regard and to streamlining the registration processes for each system; and
  - Mutual recognition of certain industry accreditations: other respondents noted the additional burden of training their workforce in two different systems with which they need to comply. For example, different health and safety accreditations, to similar levels of quality or compliance. In order to mitigate against this burden, consideration

# Appendix 1

should be given to ensuring that, where the relevant authorities are satisfied that a common level of compliance is attained in such accreditations, both accreditations are specified or recognised in public sector contracts.

provide not only an indication of the impact of any reforms emerging from this review and other on-going work to reduce regulatory burdens, but also important contextual information on specific issues facing businesses across both jurisdictions. Valuable quantitative information could be obtained by including relevant questions in existing InterTradeIreland surveys or by commissioning custom-designed survey data on cross-border trading issues.

5.36 Finally, the research has also highlighted the high number of environmental regulations relating to business and noted some of the general concerns expressed by participants. Given the scale of legislation in this area, a stand-alone study into the impact of environmental regulations on business is required.

## Promoting partnership arrangements

5.34 While the focus of this research is on minimising the cross-border regulatory burdens on businesses and recognising that both jurisdictions should continue to strive to reduce any burden, there is evidence to suggest that other approaches also assist in minimising the burden on businesses. Several of the businesses interviewed, for example, reported that the border was not an issue for them as they had established partners in the other jurisdiction who were responsible for compliance in that area.

- Assisting businesses to link together: consideration could therefore be given to assisting businesses to source partners such as distributors, agents or businesses interested in joint ventures, in the other jurisdiction, through for example joint networking events or a dedicated website. This could also include more assistance in the development of consortia, North and South, capable of competing with larger multinational companies in procurement exercises.

## Monitoring the impact of the border on business

5.35 Several of the representative bodies noted that cross-border trade has recently started to increase from a relatively low base. While the current downturn in the economy may impact on the rate at which cross-border trade continues to grow, monitoring the impact of the border would

	Not tied to one distinct trade	Familiarity assumed	Aimed at business	In force for sufficient period	Potential for cost burden	Transferred matter
Money Laundering Regulations 2003	•	•	•	•	•	
The Financial Services and Market Act		•	•	•	•	
Sale of Goods Act 1979	•	•	•	•	•1	•2
The Consumer Protection (Northern Ireland) Order 1987	•	•	•	•	•1	•2
Food Safety (Northern Ireland) Order 1991		•	•	•	•	•
Sale and Supply of Goods Act 1994	•	•	•	•	•	•2
Unfair Terms in Consumer Contracts Regulations 1999	•	•	•	•	•1	•
Consumer Protection (Distance Selling) Regulations 2000	•	•	•	•	•1	•2
The Sale and Supply of Goods to Consumers Regulations 2002	•	•	•	•	•1	•2
General Food Regulations (Northern Ireland) 2004		•	•	•	•	•
The Road Traffic (Northern Ireland) Order 1981		•	•	•	•	•3
The Road Traffic (Northern Ireland) Order 1995		•	•	•	•	•3
The Road Traffic Regulations (Northern Ireland) Order 1997		•	•	•	•	•3
Goods Vehicle (Testing) Regulations (Northern Ireland) 2003		•	•	•	•	•
The Road Traffic (Northern Ireland) Order 2007		•	•	•	•	•3
Date Protection Act 1998	•	•	•	•	•	
The Companies (Northern Ireland) Order 1986	•	•	•	•	•	•4
Insolvency (Northern Ireland) Order 1989	•	•	•	•	•	•
The Companies (Northern Ireland) Order 1990	•	•	•	•	•	•
The Companies Act 2006	•	•	•	•	•	•
The Unfair Contract Terms Act 1977	•	•	•	•	•1	•
The Late Payment of Commercial Debts Regulations 2002	•	•	•	•	•	•
Contracts (Rights of Third Parties) Act 1999	•	•	•	•	•	•
The Employment Rights (Northern Ireland) Order 1996	•	•	•	•	•	•4
The Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003	•	•	•	•	•	•4
The Sex Discrimination (Northern Ireland) Order 1976	•	•	•	•	•	•4
The Race Relations (Northern Ireland) Order 1997	•	•	•	•	•	•4
The Disability Discrimination Act 1995	•	•	•	•	•	•4
The Working Time Regulations (Northern Ireland) 1998	•	•	•	•	•	•4
The Transfer of Undertakings (Protection of Employment) Regulations 2006	•	•	•	•	•	•4
The Fair Employment and Treatment (Northern Ireland) Order 1998	•	•	•	•	•	•4
The Employment Equality (Age) Regulations (Northern Ireland) 2006	•	•	•	•	•	•4
The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007	•	•	•	•	•	•
Food Labelling Regulations (Northern Ireland) 1996		•	•	•	•	•
Trade Descriptions Act 1968	•	•	•	•	•	•
Health & Safety at Work (Northern Ireland) Order 1987	•	•	•	•	•	•

1 Consider common law position

2 'Consumer Safety' is a reserved matter

3 Criminal Law and the creation of offences and penalties are reserved matters

4 The subject matter of the National Minimum Wage Act 1998 and certain protections in relation to pension schemes are reserved matters.

# Appendix 2

Findings from the Report of the Business Regulation Forum (2007)		
Area	Key themes	Selected evidence
Structure/process	<ul style="list-style-type: none"> <li>The expansion of the current Regulatory Impact Analysis (RIA) process to cover more legislation, to be more transparent and to include more detailed cost/benefit analysis.</li> <li>The need for greater levels of consultation between regulators and business.</li> <li>The need for more harmonisation of regulations and regulators' requirements.</li> </ul>	<ul style="list-style-type: none"> <li>A harmonisation of standards across inspection bodies, regions and inspectors is required. Irish Tourist Industry Confederation.</li> <li>Government Departments should consolidate (and share) information through the use of information technology. Small Firms Association.</li> <li>Greater consultation should be carried out prior to the enactment of new laws. Association of Chartered Certified Accountants.</li> </ul>
Tax	<ul style="list-style-type: none"> <li>Changes to VAT thresholds and other aspects of VAT regulation.</li> <li>Simplification of the administration procedures of the Revenue Commissioners such as accessibility to appropriate experts and more clarity about Revenue requirements.</li> <li>Withholding tax on professional fees.</li> </ul>	<ul style="list-style-type: none"> <li>Withholding tax on professional fees should be removed. Association of Consulting Engineers of Ireland and Fitzpatrick Associates.</li> <li>The process of handling requests for tax registration and VAT numbers should be improved. Consultative Committee of Accountancy Bodies (Ireland).</li> <li>Revenue visits at business start-up should be reintroduced. ISME.</li> </ul>
Banking/ finance	<ul style="list-style-type: none"> <li>More clarity on the definitions and terms used by the Financial Regulator;</li> <li>RIA and cost/benefit analysis of new legislation and regulations need more transparency and more robustness in the process.</li> <li>More consultation between regulators and businesses; consultation to date is not regarded as effective enough.</li> <li>Unregulated financial entities should be included under the same system of rules that govern banks.</li> </ul>	<ul style="list-style-type: none"> <li>Definitions need to be clarified in a number of areas, for example: Compound Annual Rate, Annual Percentage Rate, "mortgage intermediary", "tied insurance agent", etc. Ulster Bank.</li> <li>Section 149 of the Consumer Credit Act should be reviewed. The Competition Authority, Ulster Bank and the Irish Bankers Federation.</li> <li>The three layers of legislation under which insurance brokers operate should be simplified to one. Professional Insurance Brokers Association.</li> </ul>
Waste management	<ul style="list-style-type: none"> <li>It was felt that the Environmental Protection Agency (EPA) or some other agency should be given the responsibility and resources to regulate the whole market.</li> <li>Competition between local authorities and private sector operators was seen to be unfair and not to operate on a level playing field.</li> <li>The streamlining of administration, especially in the area of licensing, was seen as important, as was the creation of an All-Island Waste Market.</li> </ul>	<ul style="list-style-type: none"> <li>All enforcement functions in waste management should be transferred to the EPA (along with appropriate resources to fulfil this requirement) and away from local authorities. Greenstar.</li> <li>Local authorities should not be both market players and regulators. This situation should be resolved. Irish Waste Management Association.</li> <li>The Waste Management (Collection Permit) Regulations, 2001, should be revised to reflect the national nature of waste collection. Small Firms Association.</li> </ul>
Employment law/health & safety	<ul style="list-style-type: none"> <li>Administration requirements related to employment law are seen to be unnecessarily onerous in some circumstances.</li> <li>More clarity and advice about the legislation in this area would be of great value to the business community.</li> <li>The issue of work permits for asylum seekers was also raised.</li> <li>Most of the recommendations made relating to health &amp; safety regulation implied that a more risk-based approach to enforcement is necessary: businesses feel rules should be less onerous in situations of low risk and for smaller companies (for example, HACCP5 rules should be simplified for small companies).</li> </ul>	<ul style="list-style-type: none"> <li>Employment and Health &amp; Safety legislation should be consolidated into one Act. Currently there are 25 Acts and 8 bodies. Chambers Ireland.</li> <li>EU fire certificates for fabrics, seating and bedding should be acceptable in Ireland; UK certificates are currently insisted upon. Irish Tourist Industry Confederation.</li> <li>The requirement for a company to carry a safety statement that refers to each individual job the company is doing should be modified where the process is similar in each case. ISME.</li> </ul>
Company law	<ul style="list-style-type: none"> <li>Consolidation, simplification and clarity in the area of company law.</li> </ul>	<ul style="list-style-type: none"> <li>For cost reasons, it is desirable that particular remedies under the Companies Acts, which at present can be granted only by the High Court, should – in appropriate cases – be capable of being dealt with also at District and/or Circuit Court level. Office of the Director of Corporate Enforcement.</li> <li>Legislation should be drafted in clear and simple language. A review process should be initiated to rewrite key areas of legislation so that end-users can more easily understand their rights, obligations and entitlements. Office of the Ombudsman.</li> <li>The remit of the Company Law Review Group should be extended to all law, with a view to simplification or removal, where appropriate. ACCA.</li> </ul>



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