

Research Project: Environmental Protection & Justice: Environmental Regulation.

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Background: Although the principles of CSR focus on those actions that businesses adopt voluntarily over and above their legal obligations, environmental regulations still represent a significant influence on the sustainability of our consumption and production systems, and regulators represent a key business stakeholder. BRASS research has sought to understand how modes of regulation may evolve in the future to encourage the adoption of more sustainable practices and business models by companies, and to directly assist regulators through the conduct of impact assessments and assisting in the drafting of regulation.

Aims and objectives:

- To explore the relationships between public and private processes of regulation and the implications of this relationship for governance and accountability;
- To assist regulators in the preparation of legislation and policy documents relating to the transposition of European Commission Directives;

About the research: This project involved several elements including:

- **Public/Private Interest Regulation:** Considering the symbiotic relationship between formal public systems of regulation and private processes of regulation in the shadow of the public system. The work demonstrates that the private ordering (e.g. through supply chains) often imposes higher standards and more efficient enforcement than the public systems. Work here links across a number of other BRASS research streams including food (see A8), waste (see A16) and contaminated land (see A17).
- **Regulatory Support for Northern Ireland:** The Department of the Environment in NI has required assistance with a range of environmental regulations and BRASS has been involved in developing some of the documents required as part of the regulatory process. This has involved close liaison with the Northern Ireland Department of the Environment (including the Environmental Policy Division and the Environment & Heritage Service). The work being carried out under this research area is focused on the writing of regulatory impact assessments, and the development of consultation documents using a mixture of secondary data provided by the DOE NI with some primary data collection from affected stakeholders.
- **Explorations of regulatory failure:** Regulatory interventions are commonly invoked to cure market failures, but might the regulation itself prove worse than allowing the functioning of an admittedly imperfect market? The Foot & Mouth work (see A18) constitutes a case study of a system of regulation that provided perverse incentives and proved too complex to provide an effective answer to the need for bio-security.
- **Modes of environmental regulation.** A range of projects based on analysis of regulation and policy have sought to understand the evolution of regulatory mechanisms particularly in the context of moving from an approach based on environmental protection to one based more on the promotion of sustainability. This has included work looking at the extent to which human rights legislation can promote the development of environmental rights (see A19); work looking at the implementation of EU regulation within UK regions; work on the Convention of Migratory Species funded by the UNEP; and work with the Society of Environmental Toxicologists and Chemists (SETAC) assisting with the legal and societal issues in setting technical standards for environmental protection. This has also included work undertaken with the UK Environmental Law Association to create an online survey and supporting interview programme to explore business attitudes to environmental regulation.

Results and outputs: The work looking at the potential of the Human Rights Act to also promote environmental rights and extend remedies for environmental harm showed that this has so far not been the case and seems unlikely to do so in future for three reasons: the retention of a strong model of parliamentary sovereignty; the need to mould human rights principles alongside the common law; the traditional reluctance of the courts to determine questions of utility where questions of resource allocation arise.

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Impacts achieved/potential for impact:

This work made a very direct set of impacts through a series of Regulatory Impact Assessments for DOE Northern Ireland including on Extended Producer Responsibility regulation (see A21) and on the transposition of revisions to the European Hazardous Waste List (94/904/EC) as incorporated within the European Waste Catalogue (2001/532/EC).

New work has also been undertaken with the UK Environmental Law Association to create an online survey and supporting interview programme to explore business attitudes to environmental regulation. The project report for the work on business responses to regulation with UKELA was launched at Kings College London and credited by Defra as being useful and informative work that would assist with their 'red tape challenge'.

Prof Lee also reviewed and reported back on the operation of environmental regulation in Vietnam for the World Bank Group/UN Development Programme.