These notes refer to the Small Business, Enterprise and Employment Act 2015 (c.26) which received Royal Assent on 26 March 2015

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Small Business, Enterprise and Employment Act 2015 which received Royal Assent on 26 March 2015. They have been prepared by the Department for Business, Innovation and Skills in conjunction with HM Treasury (HMT), HM Revenue and Customs (HMRC), United Kingdom Export Finance (UKEF), the Cabinet Office (CO), the Department for Education (DfE), the Department for Communities and Local Government (DCLG), the Department for Energy and Climate Change (DECC), the Department of Health (DH), the Government Equalities Office (GEO) and the Insolvency Service (IS) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND AND SUMMARY

3. The Act takes forward a range of Government commitments which are intended to ensure that the United Kingdom continues to be recognised globally as a trusted and fair place to do business and open up new opportunities for small businesses to innovate and compete. It will strengthen the current system and deliver the UK's 2013 G8 commitments to introduce new rules requiring companies to obtain, and hold, information on who owns and controls them, with a view to increasing trust and encouraging investment and growth within the UK. It will also give the Treasury a power to require public sector workers to repay exit payments if they are re-employed in the public sector; tackle misconduct by directors and unfair employment practices; provide reforms to increase the efficiency of the Employment Tribunals system and further reduce its burden on small businesses; and ensure a strong regulatory regime for those that administer insolvencies.

4. The Act contains provisions on a range of policies which span the responsibilities of the Department for Business, Innovation and Skills, HMT, HMRC, UKEF, the Cabinet Office, DCLG, the DfE, DECC, DH, GEO and the Insolvency Service.

Part 1: Access to Finance

Power to invalidate terms of contracts prohibiting etc. assignment of receivables and UK businesses: duty to publish report on payment practices

5. On 7 December 2013, the Government published the *"Late payment of finance: building a responsible payment culture"* discussion paper, a consultation on which ran until 31 January 2014. The paper proposed a number of possible measures that could

be introduced to prevent or discourage companies from paying their suppliers late or imposing unreasonably long payment terms on them – a problem that is estimated to adversely impact on 85% of small businesses. The paper also called for views on what could be done to improve public procurement processes and make alternative financing options, such as factoring and invoice financing, more accessible for small businesses.

6. In May 2014, the Government published a response document, which provided a summary of replies received to the discussion paper and outlined the Government's proposed actions. These include a combination of legislative measures and collaborative work to be carried out with industry and stakeholders, including the Chartered Institute of Credit Management, designed to increase transparency over companies' payment terms and encourage companies to commit to reducing these where excessive and/or unfair. The response document also sets out the Government's intention to address contractual barriers that can make it more difficult for small businesses to raise finance using their receivables.

7. This Part contains provisions which:

   i. will allow the Secretary of State to introduce a reporting requirement requiring large UK companies and limited liability partnerships to publish their payment performance to other businesses; and

   ii. will allow the Secretary of State to introduce regulations that would make ineffective any ban on assignments of receivables in contracts, with the exemption of contracts for some financial products.

Small and Medium Sized Business Credit Data

8. At Budget 2013 the Government announced that it would investigate options for improving access to small and medium sized business credit data. The Government further announced in the Autumn Statement that it would consult on proposals to require banks to share information on their small and medium sized business customers with other lenders through Credit Reference Agencies (CRAs).

9. When assessing the creditworthiness of small businesses with a view to making a loan an important source of information for the lender is a business' past financial performance. This information is, however, often held by the bank that provides the business' current account and is not widely shared. New lenders and alternative finance providers therefore do not have access to the same level of information as the bank with which the small business already has a relationship.

10. In the UK, CRAs provide the infrastructure through which lenders share credit data on a voluntary and reciprocal basis. This system generally works well - the UK receives the highest ranking available from the World Bank for depth of available credit information. However, the current system can produce barriers to entry for new lenders and alternative finance providers.

11. This is because certain data (notably current account data) is not widely shared by banks and, where it is, there is not equal access to it for alternative finance providers. This is because the data is shared within closed groups which only certain lenders have access to. This represents a considerable barrier to entry for new lenders and alternative finance providers.

12. The problem of a lack of available credit data has been highlighted by a range of informed comment on small and medium sized business access to finance. The Office of Fair Trading, the Competition Commission and the review headed by Tim Breedon (*"Boosting Finance Options for Business")* have all cited a lack of information about the creditworthiness of small and medium sized businesses as a potential barrier to competition in the market for the provision of banking services (and lending in particular) to such businesses.

13. Section 4 gives the Treasury power to make regulations imposing a duty on designated banks to provide specified information about their small and medium-sized business customers to designated CRAs, and a duty on designated CRAs to provide such information to lenders, subject to the agreement of the business to which the information relates.

Small and medium sized businesses: information to finance platforms

14. The largest four banks account for over 80% of UK smaller business' main banking relationships. Many small businesses approach only these largest banks when seeking finance. Although a large number of these applications are rejected - in the case of first time small and medium sized business borrowers the rejection rate is around 50% - a proportion of these are viable and are rejected simply because they do not meet the risk profiles of the largest banks. There are often challenger banks and alternative finance providers with different business models that may be willing to lend to these small and medium sized businesses.

15. The Government therefore announced at Budget 2014 that it would consult on whether, and if so how, to take legislative action to help match small and medium sized businesses that have been rejected for loans with challenger banks and alternative finance providers that are looking to offer finance.

16. The consultation sought views on whether there should be a process backed by legislation whereby smaller business that are rejected for finance could have information about them provided to platforms that would help them to make contact with alternative lending opportunities. The Government published a summary of responses in August 2014, confirming that there was widespread support for these proposals, and that it would proceed with legislation.

17. Section 5 contains provisions giving the Treasury power to make regulations:

    (a) requiring designated banks to share information on businesses that they reject for finance (where those businesses have agreed) with online platforms that will help them to make contact with alternative lenders;

    (b) enabling HMT, on advice of the British Business Bank, to designate private sector platforms to receive the information;

    (c) setting out clear criteria for the designation of platforms, including: ensuring small and medium sized businesses' information is properly protected, and removed at businesses' request; and giving fair access to credible alternative lenders; and

    (d) enabling HMT to de-designate platforms that fail to meet minimum standards.

18. These provisions are designed to complement the provisions on Small and medium sized businesses credit data (section 4).

VAT Data Sharing

19. The Government consulted on proposals for VAT data sharing as part of the HMRC *'Sharing and publishing data for public benefit'* consultation published on 17 July 2013. The consultation closed on 24 September 2013, having received 54 responses. The Chancellor announced on 19 March 2014 that the Government intended to proceed with a controlled release of non-financial VAT data as set out in Chapter 4 of the consultation paper. Section 8 gives effect to that commitment by providing HMRC the power to release non-financial VAT data for the purpose of assessing creditworthiness, fraud risk or compliance with financial services regulation. It also enables the purposes for which data may be disclosed to be amended by regulation.

20. The permissive (as opposed to mandatory) nature of the power implicitly allows for conditions to be placed on any disclosure, for example with regard to security. The

section provides that those to whom data has been disclosed may not onwardly disclose that data to another party without the specific consent of HMRC.

Disclosure of exporter information

21. There is increasing demand from the public and private sectors for access to export information that HMRC holds. This would be used to help efforts to boost exports by enabling appropriate services and support to be made available to a wider range of businesses and would create greater visibility of UK exporters, especially small businesses, to new overseas customers. The Commissioners for Revenue and Customs Act 2005 does not, however, permit HMRC to share this information and the absence of a reliable publicly available data source has been highlighted as a constraining factor to delivering better export services.

22. To address this, section 10 gives the Commissioners for HMRC the power to make regulations to permit sharing of certain information on exports. This is deliberately tightly drawn and specifies the categories of information that may be disclosed under the regulations, but limited to less sensitive but nonetheless useful information. The formal consultation on 'Sharing and publishing export data for public benefit' will be completed before HMRC makes any regulations, to ensure that all views are taken into account.

Power of the Secretary of State under section 1 of the Export and Investment Guarantees Act 1991 (EIGA) and Commitment limits

23. In February 2011, the Government published the Trade and Investment for Growth White Paper, noting that '*trade and investment will be crucial to achieving strong, sustainable and balanced growth'*. This White Paper set out the Government's goal of improving growth and productivity by overcoming the barriers to doing business overseas. A number of commitments were set out in the White Paper with a view to increasing access to trade finance for businesses. The Government has also set targets to improve the UK's export performance, specifically, to achieve by 2020 £1 trillion of exports per annum, increase by 100,000 the number of companies that export and for UK companies to win a greater number of overseas High Value Opportunity projects.

24. The Government's policy is to widen the ability of the Export Credits Guarantee Department to support UK exports and exporters, to assist them in contributing towards these goals. This is in the context of the role of the Export Credits Guarantee Department to complement private sector provision of relevant products and services.

25. This Act contains provisions the effect of which is to give the Export Credits Guarantee Department:

    i. a broad ability to assist and support businesses in the UK that are, or wish to become, involved in exporting or exporting supply chains;

    ii. the ability to support exports of intellectual property rights and other intangibles; and

    iii. the ability to support exports in circumstances where there are complex contracting chains and financing arrangements or where exports are made via overseas subsidiaries or joint venture companies.

26. Other technical changes are also being made through measures contained within the Act, including to:

    i. consolidate the foreign currency and sterling limits on the liabilities that can be incurred by the Export Credits Guarantee Department in supporting UK exports and investments overseas and in managing its portfolio of risks; and

ii. remove the requirement that the Secretary of State must consult the Export Guarantees Advisory Council on matters relating to the provision of reinsurance to other export credit insurers.

Cheque Clearing

31. Payment systems sit at the heart of the economy. They are the mechanisms that allow money to flow continually among and between households and businesses. Cheques continue to form an important part of the British payments landscape, accounting for ten percent of all payments made by individuals in 2012, and forming a fifth of all outgoing payments made by sole traders, other micro businesses and small businesses.

32. Section 13 makes provision for cheques and other similar instruments to be presented by providing an electronic image, in place of presentment of the cheque itself. It also enables HMT to make regulations enabling compensation to be claimed from the bank which receives payment of the instrument, for any specified kind of loss suffered in connection with electronic presentment.

Payment Systems Regulator

33. The Financial Services (Banking Reform) Act 2013 ("the 2013 Act") made provision for a new Payment Systems Regulator (PSR). The PSR has objectives to promote competition, innovation and the interests of end-users of payment systems. Its remit covers all retail payment systems operating in the UK, where these have been designated by HMT.

34. Section 14 removes an unintended restriction on the ability of the PSR to exercise its powers for the purpose of requiring access to be granted to systems designated under the Settlement Finality Directive. Section 14 corrects the application of that restriction so that it applies to payment systems to which the provisions of the Payment Services Directive relating to access apply.

35. Section 14 also amends the 2013 Act to extend the Payment Systems Regulator's power to order divestment of ownership interests in payment systems to ownership interests in infrastructure providers to payment systems, to ensure that the ownership of both payment systems and the underlying infrastructure by a small number of banks does not act as an impediment to open access and competition in the market for payment systems and payment services.

Part 2: Regulatory Reform

Streamlined Company Registration

36. The current process to establish a new company in the UK is fragmented and involves providing several Departments and Agencies with different levels of information about the business in order to obtain all of the necessary permissions and licences to trade.

37. Over recent years there has been considerable discussion as to whether it is possible to provide what has been colloquially termed 'one click registration' or 'tell us once' to aid the process of company incorporation at Companies House and registration for tax purposes at HMRC by means of supplying a set of data on a single occasion.

38. This will form a part of the on-going strategic package of better regulation by keeping unnecessary regulatory burdens on business to a minimum, specifically making life easier for persons setting up a company to fulfil their legal obligations by simplifying the process of incorporating and getting registered for tax by ensuring a person can provide data once and in digital form only.

39. This Part contains provisions which will:

i. impose a duty on the Secretary of State to ensure that the first phase of a solution to create a more streamlined company registration process is delivered by the end of May 2017; and

ii. commit the Secretary of State to report annually to Parliament on progress made towards achieving the target and, in the final report in March 2017, to include an assessment of what steps, if any, the Secretary of State expects to take to extend the solution.

Review of business appeals procedure

44. The Act creates a duty on the relevant Minister of the Crown to appoint a person ("Small Business Appeals Champion") to each non-economic regulator in scope. The aim is to ensure that there are clear and effective procedures and processes in place so that a business can challenge regulatory decisions, should they feel they have been treated unfairly.

45. This was announced by the Government in December 2013 in the '*Small Business: Great Ambition'* publication and addresses issues identified by the *Focus on Enforcement Programme*, which found that businesses were not always confident that there was a clear pathway to challenge decisions by a regulator.

46. Further details of the proposal were published in April 2014 in a consultation entitled '*Small Business Appeals Champion and Non-Economic Regulators'*. The Government's response to the consultation was published on 4 June 2014.

47. The Act provides that the Small Business Appeals Champion will be responsible for reviewing the complaints and appeals processes of the relevant regulator, ensuring that these meet the needs of business, and must produce a yearly report including any recommendations for how these processes could be improved. The regulators will be required to respond to this report. Both the report and the response will be published by the relevant minister of the Crown for each regulator.

Business Impact Target

48. The Act supports the Government's regulatory reform agenda by creating a statutory framework for managing and reporting of the economic impacts of new regulation on business and voluntary or community bodies.

49. One-in One-out (and, since 2013, One-in, Two-out) has provided a framework under which departments are required to ensure that business impacts are properly assessed before new regulatory measures are introduced, and that regulations are designed in a way to deliver the desired outcomes at the lowest possible net cost – with new burdens offset by a reduction in burdens elsewhere. There is transparent reporting on performance through the Statement of New Regulation, published every six months, including independent verification of burdens by the independent Regulatory Policy Committee. The proposals in the Act will ensure that these disciplines around regulatory management are maintained on a statutory footing. However decisions on the choice of target, together with its scope and detailed methodology will be made by the Government of the day.

Duty to Review Regulatory Provisions

50. The Act strengthens existing arrangements for ensuring that new regulations affecting business are subject to periodic review. In 2011, the Government set out its policy requiring a statutory review provision to be included in certain categories of new legislation, placing a legal obligation on the relevant Minister to carry out a review of the legislation and publish a report setting out the conclusions within five years of the legislation coming into force. There are now several hundred pieces of legislation in force that contain such a provision.

51. The measures in the Act strengthen these arrangements by creating a statutory obligation on Ministers to include a review provision, except in circumstances where a review is not appropriate.

Definition of small and micro business

52. The Act provides for statutory definitions of the terms "small business" and "micro business", with power to flesh out the detail in regulations. The definitions are based on the approach in the widely used EU definitions of "small enterprise" and "microenterprise". This is to ensure that definitions are available for use in secondary legislation made by UK Ministers, for example where smaller businesses are exempted from new regulatory obligations.

Home businesses

53. Part 2 of the Landlord and Tenant Act 1954 contains provisions giving security of tenure to tenants of premises that are occupied for business purposes. Because of this, residential landlords often prohibit business use in the tenancy agreement and refuse requests from tenants to be allowed to run a home business, in order to avoid the possibility that it will be more difficult to recover possession of the premises at the end of a tenancy. The measures in the Act amend Part 2 to exclude home business from its provisions. Providing this certainty is expected to make landlords less likely to bar home businesses in their property.

Competition and Markets Authority (CMA) recommendations

54. The Act gives the CMA a new power, to use at its discretion, to publish recommendations on the impact on competition of proposals for legislation. This relates to an aspect of Government's 'Strategic Steer' to the CMA where Government stated that it 'sees the CMA playing a key role in challenging Government where Government is creating barriers to competition'.

55. Government has committed to accept the CMA's recommendations for improving competition, and there is a presumption that all will be accepted unless there are strong policy reasons not to do so.

Part 3: Public Sector Procurement

56. Public procurement is regulated by a number of EU Directives, including Directive 2014/24/EU. The Public Contracts Regulations 2015 (S.I. 2005/102) which implement the provisions of Directive 2014/24/EU, came into force on 26 February 2015. These regulations also include provisions to implement the initial set of procurement reforms recommended by Lord Young of Graffham:

- Abolishing Pre-Qualification Questionnaires (PQQs) for most contracts below the EU financial threshold, and introducing a standardised PQQ to be used for contracts above the EU threshold (where a PQQ is needed);
- introducing a requirement that contracting authorities must pay suppliers within 30 days of receipt of a valid, undisputed invoice, requiring contracting authorities to include terms in their contracts passing the benefits of prompt payment down their supply chain, and requiring contracting authorities to report on late payment of invoices; and
- mandating that most contract opportunities are accessible on the Contracts Finder website and that contract award notices are published on that site.

57. Part 3 of the Act contains a regulation-making power which will allow Government to implement further measures relating to public procurement in the future. Government may use the power to make regulations which require procuring authorities to run an efficient and timely procurement process, accept electronic invoices and make

available, free of charge, information or documents necessary for any potential supplier to apply for a contract. Part 3 also contains a provision to put the Cabinet Office Mystery Shopper scheme on a statutory footing. The scheme is currently an informal service investigating examples of poor practice in public sector procurement highlighted by suppliers, and conducting spot-checks.

Part 4: Pubs Code and Adjudicator

58. There have been longstanding concerns about imbalance, unfairness and lack of transparency in the relationship between tied pub tenants and pub-owning businesses. These concerns have been explored by several Business Select Committees over a period of ten years, with further evidence supplied by responses to a Government Call for Evidence in 2012 and correspondence to Ministers. This led to a public consultation in 2013 and the Government Response to that consultation in June 2014. In response to the concerns about the relationship between tied tenants and pub-owning businesses, Part 4 of the Act introduces a statutory Pubs Code for England and Wales setting out obligations on certain pub-owning businesses in their dealings with their tied pub tenants, and an independent Pubs Code Adjudicator to enforce it. It also gives those tenants the option, at certain trigger points, to replace their tied arrangements with a market rent only agreement. The objective is to ensure that tied tenants of certain pub-owning businesses are no worse off than free-of-tie tenants, that tied agreements offer a fair share of risk and reward to both parties and that the relationship between them is based on the principle of fair and lawful dealing.

Part 5: Childcare and Schools

59. In January 2013, the Government published *'More Great Childcare: raising quality and giving parents more choice'* (MGC) which sought to tackle issues of affordability and availability of childcare. The report included a proposal to remove the requirement for schools to register separately with Ofsted when offering provision to two-year-olds. Since September 2012, schools have been able to accept two-year-olds, but they must register separately with Ofsted before they are able to do so. However, schools do not have do this when they take three- and four-year-olds as there is an existing exemption in section 34(2) of the Childcare Act 2006, which did not extend to the provision for two-year-olds.

60. In July 2013, the Government consulted on the "Regulation of Childcare" to seek views on reforming the regulatory system including removing burdens and simplifying processes for childcare providers. The Government response to the public consultation, which was published in February 2014, set out proposals including allowing childminders to operate on suitable non-domestic premises for up to half their time, and allowing providers to register multiple premises in a single registration process (or to add additional premises to an existing registration).

61. In March 2014, the Government announced that the Early Years Pupil Premium (EYPP) would be introduced in April 2015. The aim of the EYPP is to improve the quality of early years provision for disadvantaged three- and four-year-olds. The Government consulted on detailed proposals for the EYPP in the summer 2014, including checking eligibility and how the funding should be used. The Government's response to the EYPP consultation, which was published in October 2014, set out the Government's proposal to enable local authorities to use the existing Eligibility Checking Service to check children's eligibility for the EYPP.

62. The measures included in Part 5 of the Act seek to enact these proposals.

Part 6: Education Evaluation

63. Sections 78 to 80 are intended to make the sharing of information between Government Departments and schools, colleges and other assessment centres easier. This is expected to have the following benefits: enable parents and students to make more

informed choices concerning education and employment destinations; help providers of education and training to evaluate their effectiveness in delivering qualifications; help schools and colleges to assess their information, advice and guidance services, and, along with higher education institutions, to tailor their provision to labour market demands; inform Government about which qualifications and courses lead to sustained employment and higher incomes, and the link between family income and education outcomes; and make data available and more transparent.

Part 7: Companies: Transparency

64. At the G8 summit in Lough Erne in June 2013 the UK, alongside the rest of the G8[1], committed to a number of measures to enhance corporate transparency in order to tackle the misuse of companies. The Government published a discussion paper on these proposals in July 2013, and published the Government response to the views received on the discussion paper in April 2014. The measures included in Part 7 of the Act (linked to measures in Parts 8 and 9) are intended to deliver these commitments. These include the commitment to introduce a register of individuals who exercise significant control over a company; the removal and prohibition of the use of bearer shares; the prohibition of corporate directors, except in certain circumstances and measures to deter opaque arrangements involving directors and make individuals controlling directors more accountable.

Part 8: Company Filing Requirements

65. The Companies Red Tape Challenge identified a number of measures to simplify the company filing requirements and reduce duplication of the requirements. The Department for Business, Innovation and Skills consulted on these measures in November 2013 and published the Government response to the consultation in April 2014. The measures included in Part 8 of the Act include changes to the annual return process to give companies more flexibility to use a 'check and confirm' process at any point in a year; and the option of holding some of a company's registers at Companies House instead of at the company's registered office. This Part also includes changes to the disputes processes for a company's registered office address and for the appointment of directors as well as a faster process to strike a company off the Companies House register.

Part 9: Directors' Disqualification etc.

66. In July 2013 the Department for Business, Innovation and Skills consulted by seeking feedback to a discussion paper, amongst other things, on measures to strengthen the director disqualification regime and for tackling misconduct by directors. The Government response to the consultation was published in April 2014, and the proposals made included those to provide a new ground for disqualifying a director convicted abroad of a company-related offence; changes to the matters that a court must take into account when considering a disqualification and measures to provide a process for pursuing compensation for creditors following the disqualification of a director. Part 9 of the Act contains measures that seek to put these proposals into legislation.

Part 10: Insolvency

67. Insolvency practitioners (IPs) act as office holders in insolvency procedures. To be qualified to act as an IP, the Insolvency Act 1986 requires an individual to be authorised to act by virtue of membership of a professional body which has been recognised for this purpose by the Secretary of State. There are seven of these 'Recognised Professional Bodies' (RPBs). As at 1 January 2015 there are 1,745 authorised IPs, of whom 1,359 take appointments in insolvency procedures.

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68. Once authorised, IPs are regulated through a system of self-regulation by the RPBs overseen by the Secretary of State acting through the Insolvency Service (an Executive Agency of the Department for Business, Innovation and Skills) as oversight regulator.

Insolvency Red Tape Challenge

69. The Insolvency Red Tape Challenge identified a number of measures to improve the efficiency of insolvency processes, which will reduce costs of administering insolvency proceedings leading to higher returns for creditors. The Insolvency Service consulted on these measures in July 2013 and published the Government response to the consultation in January 2014. Part 10 of the Act contains measures that result from these proposals and includes removing the requirement to hold physical meetings in every case.

Administration: sales to connected persons

70. This section creates a power for the Government to make regulations in respect of sales in administration to connected parties. Such regulations could prohibit such sales or stipulate conditions to be met to allow such sales to proceed. This follows a report, 'The Graham Review into Pre-Pack Administration' which recommended a package of voluntary reforms to improve the transparency and outcomes of pre-pack administrations. It also recommended that government take a power along the lines set out in section 129 to cover all business sales to connected persons in administrations, not just what are traditionally thought of as pre-packs (in case the market did not adopt the Review's voluntary reforms).

71. The conditions and requirements that could be stipulated include, in particular, the requirement to seek the approval of creditors, the court or an independent person. This would subject the connected sale to independent scrutiny.

Regulation of the regulators

72. The RPBs are recognised and regulated by the Secretary of State (acting through the Insolvency Service). The Secretary of State currently has only one sanction against an RPB which is not regulating effectively and that is to revoke its recognition as an RPB. This is the ultimate sanction. It would be disproportionate in all but the most serious circumstances and has never been used.

73. Sections 137 to 146 amend Part 13 of the Insolvency Act 1986 to introduce:

i. regulatory objectives for the RPBs when regulating IPs

ii. a range of sanctions so that proportionate action can be taken where the Secretary of State (as oversight regulator) is satisfied that an RPB is not adequately fulfilling its role as a regulator, or where it is in the public interest to do so, apply to court for a direct sanctions order against an IP and

iii. a reserve power for the Secretary of State to designate a single regulator of IPs. This power will lapse if not used within 7 years of it coming into force.

Part 11: Employment

Equal pay: Transparency

74. The gender pay gap is an important indicator of a range of gender equality issues, including occupational segregation and lower seniority of women within business. The Government wants to build on the voluntary gender reporting initiatives by using the powers under section 78 of the Equality Act 2010 (gender pay gap information) to require employers with at least 250 employees to have more formal reporting arrangements.

75. Section 147 therefore requires the Secretary of State to make regulations under section 78 of the Equality Act 2010 no later than a year after this Act receives Royal Assent. Employers and others with an interest must be consulted on the proposals.

Whistleblowing

76. During the passage of the Enterprise and Regulatory Reform Act 2013, the Government committed to run a call for evidence on whistleblowing in order to establish if there was a case to make changes to the existing statutory framework. The responses to the call for evidence included comments on the role of regulators and other bodies who are prescribed as recipients of whistleblowing disclosures for the purposes of Part 4A of the Employment Rights Act 1996. The comments indicated a lack of consistency in the approach taken by these "prescribed persons" and a lack of communication by them. Section 148 aims to address these problems by giving the Secretary of State a power to require prescribed persons to report annually on the whistleblowing disclosures they receive.

77. On 11 February 2015, Sir Robert Francis QC published the report of his whistleblowing review ("Freedom to Speak Up") which considered how to build an open and honest reporting culture in the NHS. The report stated that legal protection should be enhanced and referred specifically to job applicants who faced discrimination by employers (about whom the protected disclosure had not been made) on the basis that they had previously made a protected disclosure. Section 149 aims to address such discrimination and provides the Secretary of State with a power, through regulations, to prohibit defined NHS employers from discriminating against a job applicant because it appears to the NHS employer that the applicant has made a protected disclosure.

Employment Tribunals

78. This Act includes provisions to address two issues that impact upon the operation of the Employment Tribunal system – the problems caused by late notice and multiple postponements of hearings, and the failure of a number of respondents to pay the awards Tribunals make against them.

79. Unnecessary or short notice postponements can increase the time Employment Tribunals take to reach a decision and lead to additional costs for those involved. To reduce the time and costs associated with postponements the Act will:

    i. allow the Secretary of State, in secondary legislation, to place a limit on the number of successful applications for postponements a party can have in a case, other than in exceptional circumstances; and

    ii. require the Secretary of State, in secondary legislation, to oblige Employment Tribunals to consider the use of cost orders where a successful late application for postponement is made at short notice before a hearing.

80. Currently only around half of claimants receive any form of payment of their Employment Tribunal award prior to enforcement. This improves for those who pursue their award, but the levels of those receiving no payment remain high.

81. To help address this problem, this Act will allow the imposition of a financial penalty on non-compliant respondents with the aim of encouraging compliance with Employment Tribunal rulings and the prompt payment of awards. The provisions will also cover non-payment of sums owed in settlement agreements reached following ACAS conciliation.

National Minimum Wage

82. The National Minimum Wage Act 1998 ("NMWA") provides that, subject to some exceptions, a worker who qualifies for the national minimum wage ("NMW") shall be remunerated by the employer at a rate which is not less than the NMW. Any employer who has underpaid one or more of its workers can be served with a notice of

underpayment ("NOU") which sets out the level of arrears for each worker covered by the NOU and the period to which it relates. Unless the Secretary of State has otherwise directed, the NOU also sets out a fixed penalty calculated by reference to the arrears owed to the workers covered by notice for the period covered by the NOU. This penalty is subject to a maximum figure for the notice; this figure can be amended by secondary legislation and at present is £20,000.

83. On 27 November 2013 the Prime Minister David Cameron announced "We are also clamping down on those who employ people below the minimum wage. They will pay the price with a fine of up to £20,000 for every under-paid employee". Part 11 of the Act contains measures that amends section 19A of the NMWA so that the maximum penalty will be determined by the amount owed to each worker as stated in the NOU and the limit on the penalty will be on the extent to which the amount owed to each individual worker can be taken into account.

Exclusivity Terms in Zero Hours Contracts

84. Zero hours contracts have no exact definition but can broadly be described as employment contracts that do not guarantee the individual hours of work or income. Following a review in 2013, which involved discussions with trade unions and business groups, the Government decided to consult on the issue of zero hours contracts. In particular, the consultation focused on a lack of transparency about these contracts and the merit of exclusivity terms, which prevent an individual from working for more than one employer. That consultation ran from December 2013 to March 2014, and received over 36,000 responses. The vast majority (83%) of these responses were in favour of banning exclusivity terms in zero hours contracts as they were considered to be unjustifiable.

85. Following that first consultation, the Government decided to render unenforceable exclusivity terms in zero hours contracts. This will allow individuals engaged on a zero hours contract, whose current employers are unable to offer them enough work, to boost their income by working elsewhere if they so wish.

86. The Small Business, Enterprise and Employment Act 2015 includes an order making power that allows for Regulations to tackle avoidance of the exclusivity ban and provide routes of redress. Following a consultation in 2014 on that order making power, draft proposals for those Regulations were published on 11 March 2015.

Public Sector Redundancy Payments

87. Sections 154 to 157 will give HMT (or, in relation to Scotland, the Scottish Ministers) a power to place obligations on public sector workers that receive exit payments. This will include requiring the repayment of the exit payment where an individual is re-employed in the same part of the public sector after a period of less than 1 year. The sections will also allow the appropriate Secretary of State (or the Scottish Ministers) to waive this requirement in certain circumstances.

Concessionary coal

88. On 4 March 2015, it was announced that the Government would assume responsibility and meet the costs of around 700 employees of UK Coal Production Ltd and certain other UK Coal companies. The Act enables the Government to support UK Coal Production Ltd by way of meeting the company's concessionary fuel obligation to members of its workforce in accordance with the rules on regular and proper expenditure.

89. Due to the rules on what constitutes regular and proper expenditure, this expenditure cannot rest on the Supply and Appropriation Act. This Act applies to a person's contractual entitlement to concessionary coal or payments in lieu of concessionary coal arising in connection to his employment at UK Coal Production Ltd, UK Coal Thoresby

Limited and UK Coal Kellingley Limited. This person includes an employee, redundant person, retired person or in some cases, a dependant of such persons. In the case of a dependant, they will not have a direct contractual entitlement with the company but their entitlement would be referable to a contractual right. UK Coal Production Ltd, UK Coal Thoresby Limited, UK Coal Kellingley must be carrying on the business of deep coal-mining (as opposed to opencast coal-mining) on 1 January 2014.

OVERVIEW AND STRUCTURE OF THE ACT

90. This Act contains 12 Parts and 11 Schedules.

91. Provisions in Part 1 aim to help business, and small businesses in particular, by making the payment practices of businesses more transparent, incentivising improvements in payment culture, and helping small businesses agree fair payment terms. Further provisions aim to help business by improving access to finance through increasing the availability of investment for small businesses, allowing HMRC to provide non-financial VAT registration data to approved parties increasing the reliability to credit reports and the introduction of 'Cheque Imaging', giving the added option of depositing cheques remotely via Smartphone or tablet, thus enabling a faster clearing cycle. There are also provisions which amend legislation to increase the powers available to UK Export Finance to support UK exports and exporters.

92. Part 2 deals with better regulation. Measures include requirements to make it easier for new companies to set up online, the establishment of a new office holder to scrutinise the processes for appeals and complaints against regulators to make them more effective for business, a requirement that regulations affecting business are reviewed frequently to remain effective, and a requirement for the Government to publish a target for itself about the removal of regulatory burdens in each parliamentary term, including transparent reporting on progress. There is also a DCLG measure to amend the Landlord and Tenant Act 1954 to make landlords less likely to bar home businesses in their property. This part also includes a power for the Competition and Markets Authority to make recommendations about proposals for legislation and a new statutory definition of small and micro businesses for use in future secondary legislation in order to allow businesses of this size to be exempted from that legislation in some cases.

93. Part 3 contains powers to streamline public procurement to remove barriers and help small business gain fair access to the £230 billion public procurement market and give additional powers to the Cabinet Office's Mystery Shopper scheme to monitor public procurement practice.

94. Part 4 contains provisions about the pubs industry. These aim to bring fairness to the sole traders and small businesses that run 13,000 or so tied pubs across England and Wales owned by businesses with 500 or more tied pubs. The provisions include a new Statutory Code and independent Adjudicator to ensure that publicans who are tied to certain pub-owning businesses are treated fairly, and the option at certain trigger points to replace their tied arrangements with a market rent only agreement.

95. Part 5 contains measures that amend requirements for various aspects of registration required for the provision of childcare, and extends the existing exemption from Ofsted registration (that schools already have for providing care for children younger than school age) down to two-year-olds. It also contains measures which will give the Secretary of State and English local authorities access to tax credit and social security data for the purpose of determining eligibility for funding related to free early years childcare provision.

96. Part 6 contains measures for the sharing of information about students and former students to enable a fuller understanding of the impact of education choices.

97. Part 7 contains measures which amend UK company law. These aim to increase transparency around who owns and controls UK companies and to deter and sanction

those who hide their interest in UK companies to facilitate illegal activities or who otherwise fall short of expected standards of behaviour. The measures include requiring every company to keep a register of people with significant control over the company, the abolition of bearer shares and corporate directors and the extension of directors' duties to shadow directors.

98. Part 8 contains provisions that concern the filing requirements of companies. The measures amend requirements about the information which must be delivered to the registrar of companies in certain cases, providing a more flexible regime for companies in their dealings with the registrar. It also makes changes to improve the ability of the registrar to deal with situations where disputes as to the contents of the register arise.

99. Part 9 amends the directors' disqualification regime to strengthen the rules that prevent an individual from acting as a director where that individual through their conduct has shown him or herself to be 'unfit'. The measures introduce new grounds for disqualification, create a new way in which creditors may receive financial redress for loss suffered through director misconduct, and update the matters that courts must take into account when considering a director disqualification. The Part also makes changes to increase the efficacy of the disqualification regime.

100. Part 10 amends insolvency law to remove unnecessary costs and burdens to creditors and others. It also contains provisions that will ensure effective oversight of insolvency practitioners.

101. Part 11 of the Act contains employment law provisions. These aim to deter employers from breaking National Minimum Wage legislation by amending the power to set the maximum penalty for under payment so it can be calculated on a per worker basis; to stop the unfair use of 'exclusivity clauses' in zero hours contracts, which prevent individuals from working for another employer, even if the current employer is offering no work; and reform the employment tribunal system to encourage more efficient management of postponements to reduce delay and cost; and introduce a penalty to ensure that awards are paid so that the majority of employers that do comply with the process are not put at disadvantage by those that avoid their responsibilities and liabilities. There are also provisions to allow the recovery of exit payments from public sector workers who are re-employed in the public sector and that enable the Government to support UK Coal Production Ltd by way of meeting the company's concessionary fuel obligation to members of its workforce.

102. Part 12 of the Act contains general and supplementary provisions.

TERRITORIAL EXTENT AND APPLICATION

103. The extent and application of the provisions of the Act are as follows.

- The whole Act extends to England and Wales, with the exception of sections 91, 112 (and the accompanying Schedule 8) and 116 which extend to Northern Ireland only.
- All of the provisions that extend to England and Wales apply in relation to both countries except for Part 5, which does not apply in relation to Wales.
- The following provisions also extend to Scotland:
  - Parts 1 to 3, with the exception of sections 35 and 36;
  - in Part 6, section 78;
  - Parts 7 and 8, with the exception of section 91
  - Part 9, with the exception of section 112 (and the accompanying Schedule 8) and 116;

— in Part 10, sections 117 to 120, 122 and 124, section 126 (and those provisions of the accompanying Schedule 9 which themselves amend provisions of the Insolvency Act 1986 which extend to Scotland) and sections 127 to 131 and 137 to 146;

— Parts 11 and 12.

- The following provisions extend (or also extend) to Northern Ireland:

— Parts 1 to 3, with the exception of sections 35 and 36;

— Parts 7 and 8 (with the exception of section 90(1) and (2));

— in Part 9, sections 112 (and the accompanying Schedule 8), 113, 114 and 116;

— in Part 11, section 147 (but it has no application in Northern Ireland) and sections 152 and 154 to 158;

— Part 12.

COMMENTARY ON SECTIONS

Part 1: ACCESS TO FINANCE

Assignment of receivables

Section 1: Power to invalidate certain restrictive terms of business contracts

104. This section provides a power for the appropriate authority to make regulations restricting the effect of terms in business contracts that restrict the ability of one of the parties to assign a right to be paid under the contract (known as a "receivable") to a third party. The appropriate authority is the Secretary of State, except in relation to contracts to which the law of Scotland applies, for which the Scottish Ministers are the appropriate authority. Businesses commonly obtain up-front finance against the value of unpaid invoices, assigning the right to the payment due under those invoices to a third party finance provider. Contractual terms which restrict the ability to assign rights to be paid have an impact on businesses' ability to obtain finance in this way.

105. Subsection (1) enables regulations made under the power to make such terms ineffective either generally or in relation to particular persons or for specified purposes. Subsection (2) defines the type of contractual term concerned. This covers terms which prohibit assignment or impose conditions or other restrictions on a contracting party's ability to assign a right to be paid, whether under that contract or any other contract between the parties.

106. Subsection (3) sets out which types of contracts come within the scope of the power to make regulations. It applies to contracts for goods, services or intangible assets, where at least one of the parties is acting in the course of a business. Financial services contracts are, however, excluded from scope: the definition of a financial services contract for these purposes is set out in subsection (4) and section 2, although the regulations are to prescribe the types of financial services contract which are excluded.

107. Subsections (7) and (8) provide ancillary powers for the Scottish Ministers in consequence of regulations made under Section 1. These include the power to make transitional, transitory and saving provision and to amend, repeal, revoke or otherwise modify provisions made by or under an enactment (including an Act of the Scottish Parliament).

108. Subsection (10) makes the making of regulations by the Secretary of State under the power subject to affirmative procedure, so that a draft of the regulations must be approved by both Houses of Parliament, before the regulations can be made.

Regulations made by the Scottish Ministers are subject to the affirmative procedure in the Scottish Parliament.

Section 2: Section 1(4)(a): meaning of 'financial services'

109. This section defines "financial services" for the purposes of section 1, subsection (4). The definition covers any service of a financial nature and includes an indicative list of the types of service covered. These include insurance related services, banking and other financial services.

Business payment practices

Section 3: Companies: duty to publish report on payment practices

110. This section provides a new power to enable the Secretary of State to require certain companies to publish information about their payment practices, policies and performance relating to business to business contracts.

111. Subsections (2) and (3) define the scope of the power in terms of the types of company and types of contract to which regulations made under it may apply. The scope extends to all Companies Act companies apart from micro-entities, small and medium-sized companies. As subsection (3) uses the Companies Act definitions of micro-entity, small company and medium-sized company, which do not include public companies within their scope, the reporting requirement can be applied to any public company, regardless of whether it meets Companies Act 2006 accounting thresholds. The duty to publish information on payment practices and policies can be applied to large Limited Liability Partnerships via secondary legislation, making use of powers available in the Limited Liability Partnerships Act 2000.

112. Subsection (2) also sets out the types of contract to which regulations made under the power may apply. The regulations will apply to contracts for goods, services or intangible assets where at least one of the parties is acting in the course of a business and where the contract is of a description prescribed in the regulations. The Government considers that it will be appropriate for some specific types of contract to be excluded from the scope of the reporting requirement, notably financial services contracts, and will consult further on the detail of this.

113. Subsection (4) sets out an indicative list of the specific matters on which regulations made under the power may require companies to report in respect of relevant contracts. The list given in the subsection is not definitive, enabling the detailed requirements that will be set out in the secondary legislation to be informed by further consultation.

114. Subsection (5) provides that the regulations may designate a specified person within a company who will be responsible for approval or signature of the information to be disclosed, for example a company director.

115. Subsection (6) provides that the regulations may require that companies make the reporting information available to certain people, such as a new supplier entering into a significant contract with the company.

116. Subsection (7) sets out a power to create an enforcement regime for compliance with the reporting requirement. In line with Companies Act reporting provisions, subsection (7) creates a power for the imposition of a criminal sanction. For these purposes the sanction is limited to a fine on summary conviction.

117. Subsection (8) requires the Secretary of State to undertake further consultation before the regulations are made. Subsection (9) requires the power to be exercised by regulations to be made by affirmative resolution, so that a draft of the regulations must be approved by both Houses of Parliament before the regulations can be made.

Financial information about businesses

Section 4: Small and medium sized businesses: information to credit reference agencies

118. Section 4 gives the Treasury the power to make regulations imposing a duty on designated banks to provide information about their small and medium sized business customers to designated credit reference agencies ("CRAs"), and to impose a duty on designated CRAs to provide information about small and medium-sized businesses to finance providers. Subsections (2) and (3) require that the recipient request the information and the business to which the information relates agree to the information being provided, before the duties apply. Subsection (4) enables the regulations to impose other conditions that must be met before the duty applies to a CRA, such as the finance provider that has requested the data providing information about its small and medium sized business customers to the CRA.

119. Subsection (5) requires the regulations to describe the information that must be provided by designated banks and CRAs (and by finance providers requesting information, if a condition is imposed requiring the provision of data by finance providers). Subsection (7) requires the regulations to provide for the designation of banks and CRAs by the Treasury, which may include matters such as conditions that banks or CRAs must meet before they may be designated, considerations or advice that the Treasury may take into account, how the list of designated banks and CRAs is to be published, and the revocation of designations.

120. The Act allows regulations to make different provision for different purposes, cases or areas. This means that the regulations may make different provisions for banks, CRAs and finance providers, or for particular types of bank, CRA or finance provider. The regulations may also provide that the criteria for designating banks or CRAs under subsection (7) differ as between different parts of the UK.

Section 5: Small and medium sized businesses: information to finance platforms

121. Section 5 gives HMT the power to make regulations imposing a duty on designated banks to provide information about small and medium sized business customers that they reject for finance to designated finance platforms. Subsection (2) requires that this duty may only apply where the business has agreed to its information being shared with designated platforms, and enables the regulations to require designated banks to seek such agreement or further information from businesses, and to provide the information to the designated platforms within a specified period. Subsection (3) allows the regulations to make further provision about the duty on designated banks, including specifying the types of applications that will be in scope of the duty, what constitutes a rejection, and which platforms must be provided with the information.

122. Subsection (4)(a) allows the regulations to impose a duty on designated platforms to provide the information they receive to finance providers who request access to it. Subsection (5) requires that such information must be anonymised. Subsection (4)(b) allows the regulations to require platforms to provide information about a particular business where a finance provider has requested it and the business has agreed to its provision. Subsection (6) allows the regulations to provide that the duty on platforms to share information with finance providers does not apply to finance providers that have not agreed to platforms' terms and conditions or do not comply with specified requirements about use and disclosure of the information.

123. Subsection (7) allows the regulations to make further provision about the duty on finance platforms to provide information to finance providers; including the timeframe in which platforms must provide information to finance providers; how requests for information must be made to finance platforms, how businesses may agree to their information being provided to finance providers; how long platforms must retain information on businesses; and the removal of information from the finance platform.

124. Subsection (8) allows the regulations to prohibit or permit the charging of fees by platforms to small and medium sized businesses for their service.

125. Subsection (9) requires the regulations to provide for the designation of banks and finance platforms by the Treasury, which may include matters such as conditions that banks or platforms must meet to be designated, considerations or advice that the Treasury may take into account, how the list of designated banks and platforms is to be published, and the revocation of designations.

Section 6: Sections 4 and 5: supplementary

126. This section supplements the power for the Treasury to make regulations in sections 4 and 5. Subsections (1) to (3) enable the regulations to confer functions on the Financial Conduct Authority, to do with the monitoring and enforcement of compliance with the regulations, which may include applying a modified version of the monitoring and enforcement regime in the Financial Services and Markets Act 2000.

127. Subsection (4) provides the Treasury with a power to extend the remit of the Financial Ombudsman Service (FOS) so that a complaint may be referred to the FOS about a designated CRA or designated finance platform. This will allow the remit of the FOS to be amended such that a person who would be able to seek a FOS decision when dealing with a CRA or finance platform authorised by the Financial Conduct Authority is also able to seek a FOS decision when dealing with a designated CRA or finance platform that is not so authorised. And it will also enable all those businesses that generally have recourse to the FOS (those with turnover of less than £2 million) to seek FOS decisions in respect of the activities of designated CRAs and finance platforms, rather than just individuals and small firms as at present.

128. Subsection (5) enables the regulations to require designated CRAs to provide information received under the regulations to the Bank of England, subject to provision to protect the confidentiality of the information.

129. Subsection (6) enables the regulations to provide that where a designated bank or CRA has failed to comply with a duty to provide information, a person may sue to recover any loss suffered as a result of that failure.

130. Subsection (7) enables the regulations to apply provisions in the Data Protection Act 1998 and the Consumer Credit Act 1974 about access and correction of information about individuals and small firms to designated CRAs that are not authorised by the Financial Conduct Authority under the Financial Services and Markets Act 2000 in the same way that those provisions apply to CRAs that are authorised, so that the same protections apply to information about individuals and small firms provided to a CRA under the regulations, whatever the status of the CRA.

131. Subsection (8) enables the regulations to provide a small or medium-sized business with the right to apply to a court for an order to rectify, block, erase or destroy data held about the business by a designated CRA. This enables the regulations to mirror an equivalent provision in section 14 of the Data Protection Act 1998 which applies only to personal data about individuals.

132. Subsection (9) provides for the regulations to impose a duty on designated finance platforms to provide statistical information to the Treasury.

133. Subsection (10) requires regulations under sections 4 and 5 to be approved by both Houses of Parliament before being made by the Treasury.

Section 7: Sections 4 to 6: interpretation

134. Section 7(1) defines the small and medium sized businesses about which regulations may be made under sections 4 and 5, one element of which is a turnover of less than £25 million, and subsections (3) to (5) enable the Treasury to make regulations changing

the figure of £25 million. Subsection (2) defines finance platforms, and the finance providers to which designated CRAs and finance platforms may be required to provide information under sections 4 and 5.

Section 8: Disclosure of VAT registration information

135. Section 8 provides for HMRC to release non-financial VAT data for the purpose of assessing creditworthiness, the risk of fraud or compliance with regulations relating to financial matters (a "financial assessment"). Further disclosure of any information shared is barred without the specific consent of HMRC.

136. The section also makes provision for HMRC to attach conditions as part of the sharing of information with any 'person' and lists specific (although non-exhaustive) examples of the type of conditions that may be provided for in such arrangements. Finally, it enables additional purposes for which data may be disclosed to be provided for by regulations made by the Treasury. Any such regulations will be subject to the affirmative resolution procedure.

Section 9: Offences for the purposes of Section 8

137. Section 9 creates offences for the misuse of any data shared under section 8. These are equivalent to those which already exist under section 19 of CRCA. The section also applies the sanctions which apply under that section.

Exports

Section 10: Disclosure of exporter information

138. Section 10 provides HMRC with a power to make regulations authorising the disclosure of specified data in relation to the exports of goods. The information will be obtained from customs declarations made by exporters to HMRC. Section 8 of the Finance Act 1988 already allows HMRC to disclose specified data from customs declarations in relation to importers of goods. The power will be exercisable by way of affirmative resolution.

139. Section 10 (3) provides a limit on the information that may be disclosed under the regulations by confining the data that may be specified to a list of categories.

Section 11: Power of the Secretary of State under section 1 of the EIGA 1991

140. Section 11 amends section 1 of the Export and Investment Guarantees Act 1991 (the "EIGA") and changes that section's title to reflect those amendments.

141. The amended section 1(1) will empower the Secretary of State, acting through the Export Credits Guarantee Department, to make arrangements which he considers are conducive to supporting or developing (in both cases whether directly or indirectly) exports or potential exports, of goods, services or intangible assets by persons carrying on business in the United Kingdom.

142. The amended section 1(1) will broaden the powers of the Secretary of State with regard to support for exports in certain respects. Principally, it will make it easier for the Secretary of State to support more complex export contracting structures, to support businesses engaged, or wishing to become engaged, in exporting or in exporting supply chains in the United Kingdom and to provide support for exports of intangibles, such as licences of software or other intellectual property.

143. The new section 1(5) empowers the Secretary of State to provide advice to exporters in addition to the financial support which he is already empowered to provide.

Section 12: EIGA 1991: further amendments

144. Section 12 amends section 6 of the Export and Investment Guarantees Act 1991 (the "EIGA").

145. The amendment to section 6(1) consolidates the present sterling and foreign currency limits on the liabilities which the Secretary of State, acting through the Export Credits Guarantee Department, may incur under sections 1 & 2 of the EIGA, in supporting UK exports and UK investments overseas, into a single limit expressed in special drawing rights and equivalent to the aggregate value of the existing limits.

146. The amendment to section 6(3) consolidates the corresponding limits in section 6(3) for liabilities arising under portfolio management arrangements entered into under section 3.

147. The consolidations will allow the Secretary of State to access the spare capacity under the relatively unutilised sterling limits.

148. The amendment to section 6(4) allows the Secretary of State, by order, to increase either of the new limits up to three times following the commencement of the Small Business, Enterprise and Employment Act 2015.

149. The amendment to section 13 of the EIGA repeals section 13(4) of that Act.

150. Section 13(4) of the EIGA requires the Secretary of State to consult the Export Guarantees Advisory Council (EGAC) when exercising his duty under section 11(2) of the EIGA to determine, from time to time, whether it is in the national interest for him to reinsure persons providing insurance for classes of risk that he might himself have insured under section 1 of the EIGA.

151. The repeal of s13(4) removes that requirement because the remit of EGAC is now to advise the Secretary of State on the application of ECGD's ethical policies and there is no longer any need for the Secretary of State to consult the EGAC on matters relating to the provision of reinsurance.

Presentment of cheques etc

Section 13: Electronic paying in of cheques etc.

152. Section 13 inserts a new Part 4A into the Bills of Exchange Act 1882, replacing the existing alternative method of presenting cheques for payment at sections 74B and 74C of the 1882 Act (which are repealed by subsection (4)).

153. In new section 89A of the 1882 Act, subsection (1) provides that a relevant paper payment instrument may be presented by providing an electronic image of the front and back of the instrument.

154. Subsections (3) and (4) enable the Treasury to make regulations to restrict the circumstances in which presentment by image is permissible.

155. Subsections (4) to (6) remove existing requirements that apply to the presentment of a cheque or other instrument that would be inconsistent with presentment in an electronic system, such as the exhibition, presentment and delivery of the paper instrument itself, and a particular place and time of presentment.

156. Subsection (7) ensures that the duties of the bankers involved in presentment and payment are the same as they would be if the paper instrument were presented.

157. New section 89B describes the types of payment instrument that may be presented under section 89A. Key requirements are that the instrument is one which enables a person to obtain payment from a banker, that it is an instrument that must be presented for payment, and that it could not otherwise be presented electronically.

158. New section 89C provides that the new method of presentment is not available where a bank imposes terms on a customer which require the customer to provide an image of the instrument for paying in, and prevent the customer from providing the instrument itself to the bank.

159. New Section 89D enables HMT to make regulations requiring a bank which pays a cheque or similar instrument to provide a copy of the instrument to the paying customer on request, and providing that this copy stands as evidence that the sum payable has been received.

160. In new section 89E, subsection (1) enables the Treasury to make regulations allowing claims for compensation for certain types of loss arising out of electronic presentment of an instrument to be made against the bank which is responsible for collecting the funds on behalf of the customer (that also being, in almost all circumstances, the bank which is responsible for the decision about how and by whom the electronic image is created). The regulations may also cover situations where there is no proper presentment, for example where there is no valid underlying instrument or the instrument did not qualify for electronic presentment. Such regulations could, for example, provide for a claim by the drawer of a cheque or the bank that paid the cheque where the payment was made to the wrong account because of a defect in the image, or where the image had been created fraudulently. Subsection (5) enables the regulations to provide for strict liability, and for the liability to be reduced by the contributory negligence of the claimant. Subsection (6) ensures that if a bank has to pay compensation under the regulations, it is not prevented from making a claim against another party for a contribution towards the compensation.

Payment systems

Section 14: Powers of the Payment Systems Regulator

161. This section amends section 108 of the Financial Services (Banking Reform) Act 2013 so that:

i. the existing restriction in that section on the Payment Systems Regulator's exercise of its powers to enable access to a payment system does not apply in relation to systems to which the access provisions of the Payment Services Directive, as implemented in UK law via the Payment Services Regulations 2009, do not apply (including, most significantly, systems designated under the Settlement Finality Directive); and

ii. a similar but narrower restriction is applied in relation to those systems to which the access provisions of the Payment Services Directive do apply.

162. This section also amends section 58 of the Financial Services (Banking Reform) Act 2013 so that the power for the Payment Systems Regulator to require disposal of ownership interests in payment systems extends to an ownership interest in an infrastructure provider for a regulated payment system.

Part 2: REGULATORY REFORM

Streamlined company registration

Section 15: Target for streamlined company registration

163. This measure relates to duties, responsibilities and processes relating to company incorporation and tax registration under the Companies Act 2006, Value Added Tax Act 1994 and the Finance Act 2004.

164. The purpose of this measure is to ensure that by the end of May 2017, the Government streamlines this process for companies by enabling them to register for Corporation Tax, VAT and PAYE and incorporate their company easily online, without the need to

repeatedly provide the same information. The aim is for this to be done by "electronic means" as defined s.1168 (4) Companies Act 2006 i.e. able to be sent and received by means of electronic equipment for the processing or storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

165. The measure stems from the Government's commitment to reducing burdens upon business, to utilise new technology and to deliver more public services electronically. It aims to make the UK an easier place to set up a company and, by doing so, to encourage a more entrepreneurial culture within the UK as a whole.

166. The measure imposes a duty on the Secretary of State to ensure a streamlined company registration system is in place by the end of May 2017. A system for streamlined company registration is one that enables a person to deliver electronically the information required to register a company with Companies House and to register for Corporation Tax, VAT and PAYE with HMRC. It does not require that company incorporation and tax registration is approved on the same occasion, but that the system is streamlined so as to avoid a person having to repeatedly provide the same information. The use of a statutory target to ensure the system is in place by the end of May 2017 sets a binding deadline which the Government considers to be stretching but achievable, with accountability to Parliament for delivery.

167. This measure does not provide enabling powers to facilitate delivery of the target. If further work identifies the need for such powers, this will be dealt with through another legislative vehicle.

Section 16: Streamlined company registration: duty to report on progress

168. The initial scope of the streamlined registration system is limited to new companies (not partnerships or sole traders) and to Corporation Tax, VAT and PAYE. The Government is committed to simplify the process of setting-up and running a business and throughout the lifetime of this project Government will continue to look for opportunities to extend this system to other business related processes, for example, licences and permissions to trade.

169. The section commits Government to report to Parliament annually on progress toward achieving a streamlined company registration system in section 15. Reports will be submitted at the end of the financial year in March 2016 and 2017. The final report, due in March 2017, will also include an assessment of what steps, if any, the Secretary of State expects to put in place for a system to streamline other information delivery processes between Government and businesses.

Review of business appeals procedures

Section 17: Review of regulators' complaints and appeals procedures

170. Subsection 1 places a duty on a Minister of the Crown to appoint a Champion in respect of certain regulatory functions.

171. The Champion must be appointed by the relevant Minister of the Crown for the regulator, either as a statutory office holder within the regulator (where legal basis of that regulator permits) or a statutory officeholder appointed by a Minister of the Crown in respect of the regulatory functions of a regulator. In most cases, the Minister of the Crown (as defined in subsection (12)) will be the relevant Secretary of State of the parent department of the Regulator, but where Departments are not headed by a Secretary of State, the most relevant Minister will make the appointment.

172. The Government's intention is that one Champion will be appointed in respect of each national non-economic regulator or, in some cases, group of regulators (for instance, where several regulators regulate a similar industry, group of businesses or have similar

functions). The means of specifying the relevant regulatory functions (and therefore bringing regulators within scope of section 17) is set out in section 18.

173. Describing the Champion by reference to regulatory functions allows appointment to (or in respect of) regulators in a wide range of circumstances (for example where there is no legal personality or where the legislation founding the regulator is too prescriptive to allow the appointment).

174. The section wording also allows for the Champions' to have a wide range of job descriptions. For example, the Minister of the Crown could designate an existing Committee member or Board member of the regulator or Department to the role. Further types of appointment are also possible.

175. The section also sets out the duties and functions of the Champion. In the context of an overall objective to encourage the regulator to improve and simplify the appeals and complaints processes that business should follow if they wish to challenge or appeal a regulatory decision, subsections (2), (4) and (6) state that, once appointed, every year, each Reviewer must:

i. review the effectiveness of the relevant regulator's procedures for handling and resolving complaints and appeals by businesses; and

ii. prepare a report about his findings, which may include an assessment of whether these are accessible and fair as well as recommendations for improvement. These recommendations could either be directed to the relevant Minister of the Crown if they involve changes in law, or to the regulator for other matters such as changes in procedures.

176. In these sections, 'business' has a wide definition, and the intention is that the Champions' scope should cover all businesses, but should focus particularly on the experience of small businesses.

177. Subsections (7), (8) and (9) require the Champion to send this report to the regulator and the relevant Minister of the Crown as soon as reasonably practicable. The regulator has three months to prepare a response. The report, and the regulator's response, must be published and laid before Parliament by the relevant Minister.

178. Subsection (5) prevents the Champion from intervening in individual appeal or complaint cases. His role is confined to reviewing the processes for appeals and complaints.

179. Subsection (10) puts a duty on the Regulator (or relevant Minister of the Crown) to provide the Champion with relevant information on request. By default, the Champion is bound to handle any information provided appropriately and in line with existing legal restrictions on the disclosure, handling and disposal of sensitive information.

180. Subsection (11) clarifies that the duty in subsection (10) does not apply if there is prior legislation that would prevent the regulator from disclosing such information (unless that legislation contains provision for such disclosure where another Act, such as this, requires that information is provided). This is to prevent a situation where the regulator is both under a duty to disclose information to the Champion but is prevented from doing so by other legislation. In all circumstances, it is expected that the regulator will meet information requests where possible and think of alternative ways to provide the information requested by the Champion if there is legislation that prevents him from fulfilling the original request.

Section 18: Power to specify regulatory functions

181. This section sets out the process for specifying regulatory functions and bringing them within the Reviewer's remit. It provides that the Secretary of State may, by making regulations, specify regulatory functions to which the duty set out in section 17 applies.

Subsection (3) permits him to refer either to the regulator undertaking the functions by name, or to the enactment under which those functions were conferred, which facilitates greater flexibility.

182. Subsection (2) defines the "regulatory functions" in respect of which the power may be used, by reference to s32 of the Legislative and Regulatory Reform Act 2006. In that Act, "regulatory functions" means:

i. a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or

ii. a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity.

183. That Act allows the Secretary of State to issue statutory guidance to regulators about the performance of their functions. The power has been used as the basis for the revised Regulators' Code which was approved by Parliament in April 2014.

184. Broadly, it is the Government's intention that Reviewers should be appointed in respect of national non-economic regulators currently in scope of the Regulators' Code. However, Government will give individual consideration to the application of the policy to each regulator before implementation, given the range of statutory arrangements and practices involved, and some regulators within the scope of the Regulators' Code will be excluded (for example, the financial services regulators – the Prudential Regulation Authority and the Financial Conduct Authority - due to their existing statutory arrangements).

185. Subsection (4) provides that Reviewers can only be appointed in respect of "reserved matters" – i.e. they cannot be appointed in respect of regulatory functions which are the responsibility of the devolved administrations in Scotland, Northern Ireland and Wales.

186. Under subsection (5), regulations specifying the regulators in scope will be subject to the Parliamentary affirmative resolution procedure.

Section 19: Guidance by the Secretary of State

187. This section allows the Secretary of State to publish guidance on how the Reviewers should exercise their functions. The intention is that this guidance, to which the Reviewer must refer when exercising their functions, will play a key role in shaping the role of the Reviewer. The section gives a power to the Secretary of State to revise this guidance when appropriate.

Report on investigations under financial regulators' complaint scheme

Section 20: Independent Complaints Commissioner: reporting duty

188. This section inserts new subsections (9A) and (9B) into Section 87 of the Financial Services Act 2012 (investigations of complaints against regulators) ("the 2012 Act"). The new subsections require the scheme established by the financial services regulators for the investigation of complaints against them ("the complaints scheme") to place a duty on the investigator to produce an annual report on its investigations under the scheme. In this context the financial services regulators means the Prudential Regulation Authority, the Financial Conduct Authority and the Bank of England ("the regulators").

189. The investigator is an independent appointee of the regulators, but is approved by the Treasury. The investigator is responsible for conducting investigations in accordance with the provisions of the complaints scheme. The scheme itself is prepared and published by the regulators following public consultation.

190. Subsection (2) inserts new subsection (9A) into section 87 of the 2012 Act, to introduce the requirement for the complaints scheme to provide for the annual report. New subsections (9A)(a)-(c) provide that the annual report is prepared and published by the investigator, who must send a copy of the report to each regulator and the Treasury. If the report makes recommendations or criticisms about the regulators' handling of complaints, the regulators must produce and publish a response. The regulators must send a copy of their response to both the investigator and the Treasury. The Treasury must lay the annual report and any responses before Parliament.

191. Subsection (2) also inserts new subsection (9B) into section 87 of the 2012 Act. This provides express power for the complaints scheme to include provision about the period to which each annual report must relate, and about the contents of the report.

192. In addition new subsection (9B) requires the complaints scheme to provide for the report to include specific contents. In particular the report must include:

i. information concerning any general trends emerging from the investigations undertaken by the investigator during the reporting period (new subsection (9B)(a));

ii. any recommendations the investigator considers appropriate as to how the regulators should respond to such trends (new subsection (9B)(b));

iii. a review of the effectiveness of the procedures of the regulators for handling complaints which have been investigated by the investigator (new subsection (9B)(c));

iv. an assessment of how accessible and fair those procedures were, including where appropriate an assessment of how the procedures affected different categories of complainant such as businesses and individuals (new subsection (9B)(d)); and

v. any recommendations about how those procedures could be improved (new subsection 9B(e)).

Business impact target

Section 21: Duty on Secretary of State to publish business impact target etc.

193. This section creates a duty on the Secretary of State to publish a business impact target for the Government. The target must relate to the economic impact on business activities of all measures (or provisions) that fall within the definition of "qualifying regulatory provision" (see section 22) and either come into force or cease to have effect between two general elections. "Business activities" includes activities undertaken by voluntary or community bodies (defined in section 27).

194. An interim target must also be published covering the same measures over the period between the most recent general election and three years after the start of the Parliament.

195. Both targets must be published within 12 months of the start of a new Parliament i.e. the first Queen's speech after the general election.

196. At the same time that the target is set, the Secretary of State must publish the types of measures that are to be classed as qualifying regulatory provisions. These are the measures that will be scored against the target. The Secretary of State must also publish the methodology that will be used to calculate the economic impact of each qualifying regulatory provision. The target, interim target, methodology and definition of qualifying regulatory provisions must all be laid before Parliament.

197. Subsection (5) sets out the factors that the Secretary of State must have regard to when setting the targets and the definition of qualifying regulatory provisions. These include: the effect of regulation of economic growth and competitiveness; minimising

any disproportionate impact of regulation on small businesses; and delivering efficiency in regulating business activities while keeping the costs of regulation to a minimum.

198. Subsection (8) provides that duty to publish a target and the other associated sections only apply where these provisions come into force before the start of a new Parliament, or within the first twelve months of the new Parliament.

199. Subsection (10) provides that in the event of an early election held within 12 months of the start of the new Parliament, the duties under this section and sections 22 to 27 are disapplied.

Section 22: Sections 21 and 23 to 25: "qualifying regulatory provisions" etc.

200. This section defines the term "qualifying regulatory provisions", by reference to two related terms: "statutory provision" and "regulatory provision".

201. A "statutory provision" is defined in subsection (6). It includes public Acts made in the UK Parliament, subordinate legislation made by UK Ministers, and other similar provisions – for example statutory guidance. Any provision relating to a devolved or transferred function or competence is excluded (subsection (7)).

202. A "regulatory provision" is a statutory provision that has a regulatory effect - as defined in subsections 3 (a)(b) (the definition follows section 32 of the Legislative and Regulatory Reform Act 2006). Tax measures (including tax administration), procurement measures, grant measures and temporary measures that have effect for less than 12 months are excluded (subsection (4)).

203. A "qualifying regulatory provision" is a regulatory provision determined by the

Secretary of State to be a qualifying regulatory provision under section 22.

Section 23: Duty on Secretary of State to publish reports

204. This section sets out the duty on the Secretary of State to publish reports covering the impact of qualifying regulatory provisions.

205. For a five year fixed-term Parliament, there are five reporting periods: the first period (between the general election and the 12 month anniversary of the Queens' speech); three successive 12 month periods; and a final period ending at the next general election (subsection 7). Reports must be published within one month of the end of each reporting period, except for the final report which must be published before the dissolution of Parliament (subsection 10).

206. In the event of an early election held within 12 months of the start of the new Parliament, the reporting obligations are disapplied (see subsections (9) and (10) of section 21). For an early election held after that date, a final report would still be required, but one or more of the three annual reports may be omitted (depending on the timing of the election) (subsections (8) and (9)).

207. The reports, which must be laid before Parliament, must include:

i. a list of all the qualifying regulatory provisions that came into force (or ceased to have effect) during the reporting period, together with their economic impacts, and a total for all measures for that reporting period (subsection 3 (a) to (c)). For the final report, this may include measures that are expected to come into force within the reporting period, but which are not actually in force at the date of publication.

ii. other than for the first report, the aggregate impacts across all reporting periods since the general election (subsection 3(d)).

iii. an assessment of the contribution of each Government department to the overall impacts for the period, and since the general election (subsection (3)(e)).

iv. a list of other regulatory provisions that came into force or ceased to have effect which are not classed as qualifying regulatory provisions and which do not score towards the targets.

208. The report must cover also cover two other topics:

i. the actions of Government departments during the reporting period to mitigate disproportionate burdens on small businesses (subsection 4);

ii. any examples of "gold-plating" (i.e. going beyond minimum provisions necessary for implementation) of EU or international obligations during the reporting period, together with the reasons (subsections (5) and (6))

Section 24: Additional matters to be included in reports

209. This section makes further provisions in relation to the reports.

210. Subsection (2) stipulates that the assessment of the impacts of a qualifying regulatory provision can only be included in the report if it has been verified by the independent verification body appointed under section 25. This mirrors the current administrative arrangement under which the Regulatory Policy Committee verifies the cost to business of all measures that fall within the scope of the One-in Two-out target before performance is reported in the Statement of New Regulation. Where an impact has not been agreed at the time of publication of the report covering the period in which the provision came into force, subsection (4) requires that it is included in the report covering the next reporting period.

211. The third report, which will cover the period in which the interim target applies, must include an assessment of the extent to which that target has been met (subsections (5) and (6)). Similarly, the final report (which will be published at the end of the Parliament) must include an assessment against the overall business impact target (subsections (7) and (8)).

Section 25: Appointment of body to verify assessments and lists in reports

212. This section sets out the duty on the Secretary of State to appoint an independent verification body. The body must verify the estimates of economic impact of all measures in scope of the business impact target, and the classification of the regulatory provisions as qualifying regulatory provisions (subsection 1). These functions are at present carried out by the Regulatory Policy Committee. The appointment, which must be for the full period until the next election, must be made before the business impact target is set (subsections 3 and 4).

213. The body must, in the opinion of the Secretary of State, be independent from the Secretary of State (subsection 5). For example, the Secretary of State could not appoint a body comprising the Secretary of State's officials to perform the role.

214. The body must also have relevant expertise in assessing the economic impact of regulation on business activities, including smaller businesses (subsection 6).

Section 26: Amending the business impact target etc

215. This section provides powers for the Secretary of State to change the target and associated definitions during the Parliament. For example, the current Government set an initial target of One-in One-out at the start of the Parliament, but added a supplementary target of One-in Two-out starting in 2013 – it may be that a similar scenario could arise in future. Similarly the current Government has also updated the methodology for calculating impacts under One-in two-out to improve the incentive effects around pro-competition measures.

216. The Secretary of State can change either of the targets, the definition of qualifying regulatory provisions, or the methodology. Any changes must be published and laid before Parliament. Reports that have already been published must be amended and laid before Parliament where required.

Section 27: Sections 21 to 25 etc: interpretation

217. This section defines the key terms used in the previous six sections. "Business activities" includes both activities carried on by a business, and activities carried on by a voluntary or community body (defined in subsection (5)) – except activities that are carried on by a business or body that is part of the public sector, or activities undertaken on behalf of a public authority.

218. A business or body is treated as part of the public sector if it is controlled by a public authority. It is intended that this will be determined in line with any determination by the Office for National Statistics (in accordance with relevant international standards) that an entity is classified to the public sector. Guidance will be published by the Secretary of State to establish this (subsection (4)).

Secondary legislation: duty to review

Section 28: Duty to review regulatory provisions in secondary legislation

219. This section creates a duty on Ministers making or amending certain secondary legislation either to include a review provision, or to publish a statement that a review is not appropriate. A review provision creates a legal obligation on the Ministers to carry out and publish a review of the legislation within a certain period of it coming into force and at intervals afterward. (The content of such a review is specified in section 30).

220. The duty applies where the legislation makes or amends a regulatory provision relating to a qualifying activity (both terms are defined in subsequent sections). However it does not apply to measures related to tax, procurement, and grants; to measures that will cease to have effect within five years; or to measures where the relevant legislation already contains a review provision.

Section 29: Section 28(1) (b): interpretation

221. This section defines "qualifying activity". An activity is a qualifying activity if it is undertaken by a business or a voluntary or community body, for the purposes of that organisation. For example if a business was carried on by a sole trader, the buying and selling of goods or services under that business would fall within the definition of qualifying activity, but other activities undertaken by the business owner in their capacity as a private individual would not.

222. Subsection (3) excludes from the definition of qualifying activities those activities undertaken by businesses (or voluntary and community bodies) that are part of the public sector, or activities undertaken on behalf of a public authority (for example the provision of NHS services by many dentists or pharmacists).

223. A business or body is treated as part of the public sector if it is controlled by a public authority. It is intended that this will be determined in line with any determination by the Office for National Statistics (in accordance with relevant international standards) that an entity is classified to the public sector. Guidance will be published by the Secretary of State to establish this (subsection (4)).

Section 30: Section 28(2) (a): "provision for review"

224. This section sets out the requirements for review provisions made under the new duty. These follow the standard template for review provisions used in some secondary legislation at present.

225. The Minister is required to carry out a review, and publish a report setting out the conclusions within five years of the legislation coming into force, and on a five year cycle thereafter (starting from the date of the publication of the most recent report). The report must contain an assessment of the extent to which the original objectives of the regulation have been achieved, whether they remain appropriate, and (if so) whether they could be achieved in a less burdensome way. For legislation that implements international or EU obligations, the report should also consider how the obligation is implemented in other countries or member states.

Section 31: Section 28(2) (b): appropriateness of making provision for review

226. This section concerns the circumstances in which a Minister may publish a statement that a review would not be appropriate under subsection (2)(b) of section 28.

227. Subsection (2) provides two examples of such circumstances: where a review would be disproportionate (for example where the impacts associated with the measure are very small); or where there are specific policy reasons (for example an exceptionally high need for long term certainty). This is not an exhaustive list: there may be other grounds on which Ministers could decide that a review was not appropriate. Subsection (3) provides a power for the Secretary of State to publish guidance on the factors to be taken into account when determining that a review would not be appropriate. Subsection (4) requires Ministers to have regard to the guidance when making such a determination.

Section 32: Sections 28 to 31 etc: supplementary

228. This section defines the terms used in sections 28 to 31 and makes other supplementary provision.

229. The definition of "Minister" follows the definition in the Ministers of the Crown Act 1975. It does not include Ministers in the devolved administrations.

230. The definition of "regulatory provision" follows section 5 of the Legislative and Regulatory Reform Act 2006.

231. Subsection (7) provides that if there is a question as to whether a Minister has complied with the new duty, the relevant secondary legislation remains valid.

Definition of small and micro business

Section 33: Definitions of small and micro business

232. This section provides for statutory definitions of the terms "small business" and "micro business". Subsections (2) and (3) set out basic definitions by reference to staff headcount and other conditions, and subsection (4) gives the Secretary of State powers to make regulations further defining these terms. It is intended that the approach to defining these terms will closely follow the approach of EU Commission Recommendation 2003/361/EC to defining "small enterprise" and "microenterprise". Regulations made under this section will be subject to the negative procedure (see subsection (7)).

233. Subsection (6) defines expressions used in this section. Among other things, it defines the term "undertaking", which is used in the definitions of "small business" and "micro business". Undertakings comprise individuals, companies, and other entities carrying on a business – and also community and voluntary bodies, as defined in section 27 but also including foreign equivalents.

234. Subsection (1) enables the definitions of "small business" and "micro business" to be relied on in subordinate legislation made by UK Ministers, and this could occur for example where smaller businesses are exempted from new regulatory obligations. Subsection (5) enables such subordinate legislation to rely on modified versions of the definitions.

Section 34: Small and micro business regulations: further provision

235. This section sets out the permitted content of regulations under section 33 (the regulations will also define expressions used in section 33(2) and (3), such as "headcount of staff": see section 33(6)). Regulations made under these powers are referred to as "the small and micro business regulations".

236. The permitted content includes provision about the following: the calculation of staff headcount, turnover, and balance sheet total (subsection (1)(a)); the extent to which a connection with another business (for example a parent-subsidiary relationship) affects the small or micro status of a particular business (subsections (1)(b) and (2)); the periods to be used for assessment (subsections (3)(a) and (4)); and how a new business will be assessed (subsection (3)(b)).

237. Subsections (5), (6) and (7) contain powers to make provision to safeguard against abuse of the definition – for example by artificially transferring business activities to a new undertaking purely to avoid loss of small or micro status.

238. Subsection (8) allows the small and micro business regulations to provide that certain types of undertaking cannot qualify as small or micro businesses, irrespective of their size.

Home Businesses

Section 35: Exclusion of home businesses from Part 2 of the Landlord and Tenant Act 1954

239. Part 2 of the Landlord and Tenant Act 1954 ("the 1954 Act") contains provisions giving security of tenure to tenants of premises that are occupied for business purposes, or for those and other purposes. Thus prima facie they would apply to homes in which business is also carried on in the premises. The 1954 Act provisions may offer tenants rights to remain in premises that exceed those available under legislation applicable to dwellings. The application of the 1954 Act can however be simply avoided by the inclusion of a covenant against business use by virtue of section 23(4) of the Act, barring consent or acquiescence by the landlord. Accordingly, the law as it stands establishes a strong incentive for landlords to include such a covenant in the tenancies of dwellings. This means also that tenants among the large and growing number of people who do conduct business activities in their homes are likely to be doing so in breach of the terms of their tenancies.

240. The section is intended to remove the incentive to include an absolute covenant against business use in tenancies of dwellings, and thus facilitate the operation of home businesses, by establishing a new concept of the "home business", which may be carried on in the home without the home therefore coming within the ambit of the 1954 Act. Subsection (4) of the section introduces a new section into 1954 Act. Subsection (4) of that section defines a home business as "a business of a kind which might reasonably be carried on at home"; subsection (5) excludes the sale and consumption of alcohol on licensed premises from that definition, and subsection (6) establishes a power in to prescribe further cases of what are, or are not, to be home businesses.

241. To come within the home business exception the tenancy should comply with the conditions in subsection (2) of the new section for the creation of a "home business tenancy". The conditions are that the tenancy must relate to a home let as a separate dwelling, to an individual tenant or tenants, for occupation as a home, must permit a home business, or permit a home business only with consent of the landlord, and must not permit the carrying on of a business other than a home business. Alternatively, and by virtue of the amendment in subsection (3) of the section, where the original tenancy prohibits any business use, if the landlord subsequent consents to, or acquiesces in the carrying on of a home business, then the tenancy will also come within the exception.

Section 36: Section 35: supplementary and consequential provision

242. The section provides supplementary provision to ensure that a "home business tenancy" also applies in situations where the property is held on trust and where at least one trustee or beneficiary of the trust is living in the dwelling.

243. The section also ensures that a dwelling let on a home business tenancy will be "let as a separate dwelling" within the meaning of that expression in the Rent Act 1977 (protected tenancies), Housing Act 1985 (secure tenancies), the Housing Act 1988 (assured tenancies), and any other England and Wales enactment relating to protected, secure or assured tenancies.

CMA recommendations

Section 37: CMA to publish recommendations on proposals for Westminster legislation

244. This section amends section 7 of the Enterprise Act 2002 (provision by CMA of information and advice to Ministers etc.) to give the Competition and Markets Authority (CMA) a power to publish recommendations about the impact on competition of legislative proposals. The use of this power is entirely at the discretion of the CMA.

245. The aim of the power is to improve the compatibility of legislation with Government's commitment to competition and competitive markets, with the associated benefits for consumers and growth.

246. The power extends to both primary and secondary legislation that is proposed by the UK Government. It does not extend to existing legislation, unless there are proposals to change existing legislation.

247. Recommendations by the CMA are to relate to the impact of legislative proposals on competition in any market or markets within the United Kingdom (including markets operating partly in the UK and partly in another country and markets operating in only one part of the UK).

248. The recommendations are to be made to the Minister of the Crown proposing the legislation, and they are to be published in such a way as to bring them to the attention of persons likely to be affected by them.

Liability of bodies concerned with accounting standards

Section 38: Exemption from liability for bodies concerned with accounting standards etc.

249. This section replaces section 18 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 with new section 18A. Section 18 is an exemption on the face of the Act from liability for damages for bodies concerned with accounting standards etc. which have received a grant from the Secretary of State. New section 18A replaces this provision with a power to provide (by order or by regulations) that a body concerned with accounting standards etc. has such an exemption. Unless this is made a condition of the order or regulations, it will not be the case that such a body has to have received a grant for the exemption to apply.

Part 3: PUBLIC SECTOR PROCUREMENT

Section 39: Regulations about procurement

250. This section provides the Minister for the Cabinet Office and the Secretary of State with an enabling power to make regulations that impose duties on "contracting authorities" in respect of functions relating to procurement. It also provides Ministers with a power

to issue guidance relating to those regulations, to which contracting authorities must have regard.

251. Subsection (2) provides that the exercise of functions relating to procurement includes preparing for entering into contracts and the management of contracts. So, for example, the regulations could make provision about the acceptance of electronic invoices.

252. For these purposes, "contracting authority" has the same meaning as it does under the Public Contracts Regulations 2015 (see subsection (3)), except that authorities whose functions are wholly or mainly devolved functions are excluded (subsection (4)).

253. Subsection (5) provides that the power may in particular be used to make regulations which impose:

i. duties to exercise functions relating to procurement in an efficient and timely manner;

ii. duties relating to the process by which contracts are entered into;

iii. duties to make available without charge information or documents, and processes (for example, accreditation) which are required to be completed in order to bid for a contract;

iv. duties relating to accepting electronic invoices (including any systems that must be used to accept these); and

v. duties to publish reports about compliance with the regulations.

254. An EU Directive on e-invoicing (2014/55/EU) will enable a harmonised e-invoicing standard to be adopted at EU level. Contracting authorities will be obliged to accept e-invoices conforming to that standard that are issued in relation to a contract that was subject to the EU Directives' procurement processes. However, the Commission has up to three years (from April 2014) to create and adopt the standard and the transposition deadline is November 2018. The Government may use the power in the Act to mandate the acceptance of e-invoices by UK contracting authorities before the EU common standard is adopted.

Section 40: Investigation of procurement functions

255. This section provides the Minister for the Cabinet Office and the Secretary of State with a power to investigate the exercise by a contracting authority of relevant functions relating to procurement. This puts on a statutory footing the Cabinet Office's existing "Mystery Shopper" service.

256. "Contracting authority" has the same meaning as it has under section 39, except that Ministers and other Government departments are excluded. Ministers and Government departments will continue to comply with the current Mystery Shopper service as a matter of interdepartmental co-operation.

257. Subsection (3) gives the Minister the power to request from contracting authorities information or documents relating to the matters being investigated, which must be provided within 30 days of a notice being given. It also requires a contracting authority to give the Minister reasonable assistance with the investigation.

258. For the purposes of this section, "relevant functions relating to procurement" are functions to which the Public Contracts Regulations 2006 (S.I. 2006/5), the Defence and Security Public Contracts Regulations 2011 (S.I. 2011/1848), the Public Contracts (Scotland) Regulations 2012 (S.S.I. 2012/88) or the Public Contracts Regulations 2015 (S.I. 2015/102) apply, or would have applied but for the fact that a financial threshold was not met. The power will not be available in relation to a procurement that is excluded from the application of the regulations because, for example, the proposed

contract is for the acquisition of land, or the application of the regulations would have obliged the UK to disclose information contrary to its essential security interests.

259. Subsection (6) provides that an investigation may also cover preparatory steps and contract management. So, for example, the investigation could cover the timeliness of payments to suppliers.

260. Subsection (7) excludes from the scope of the section functions of school governing bodies and Academy proprietors, and functions already regulated by the NHS (Procurement, Patient Choice and Competition (No.2) Regulations 2013 (S.I. 2013/500).

261. Subsection (8) allows the Minister to publish the results of an investigation.

Part 4: THE PUBS CODE ADJUDICATOR AND THE PUBS CODE

The Pubs Code Adjudicator

Section 41: The Adjudicator

262. This section legally establishes the office of Pubs Code Adjudicator. The section also gives effect to Schedule 1.

Schedule 1: The Pubs Code Adjudicator

Part 1: The Pubs Code Adjudicator

Status

Paragraph 1 – Legal status

263. The Adjudicator has the legal status of a 'corporation sole'. Being a corporation sole will ensure that the Adjudicator is able to enter contracts, and to sue and be sued, in his or her capacity as an office holder rather than any individual capacity.

Paragraphs 2 and 3 – Appointment of the Adjudicator to represent the Crown

264. The Adjudicator is appointed by the Secretary of State and acts on behalf of the Crown.

Deputy Adjudicator

Paragraphs 4 and 5– Appointment of a Deputy Adjudicator

265. If the Secretary of State wishes, he/she may appoint a Deputy Adjudicator to carry out any of the Adjudicator's functions. This should provide flexibility if the Adjudicator is, for example, absent through illness or occupied with other functions.

Terms of office etc

Paragraphs 6 and 7 – Period in office and how it may end

266. The Adjudicator and Deputy Adjudicator, neither of whom are civil servants, may each be appointed for up to four years and may then be appointed for one or two further terms of up to three years each. Either can resign by giving written notice to the Secretary of State; or the Secretary of State may dismiss either of them for being unable, unwilling or unfit to perform their official functions.

Remuneration

Paragraph 8 – Remuneration decisions

267. Although the Adjudicator may pay remuneration, allowances and payments related to pensions to the Adjudicator and Deputy Adjudicator, the amounts are controlled by the Secretary of State.

Staff

Paragraph 9 – Secondments

268. The Adjudicator is not permitted to appoint staff directly but may make arrangements for staff to be seconded to serve as members of the Adjudicator's staff. Before doing so, the Adjudicator must obtain the Secretary of State's approval of his policy as regards the number of seconded staff, any payments made to or in respect of their secondment and the terms and conditions on which staff are seconded.

Conflicts of interest

Paragraphs 10 and 11 – Arrangements for when the Adjudicator, Deputy Adjudicator or any of their staff have an interest that may conflict with their duties

269. The Adjudicator must make and publish procedural arrangements for dealing with conflicts of interest. If both the Adjudicator and, if appointed, Deputy Adjudicator are unable to act due to a conflict of interest, the Adjudicator may require the Secretary of State to appoint an acting Deputy to deal with the matter where the conflict arises. Because sections 48(5)(b) and 50(4)(b) would enable the Adjudicator to appoint someone else to act as arbitrator in a dispute where the Adjudicator may have a conflict of interest, these paragraphs are primarily intended to assist in relation to other functions of the Adjudicator, such as investigations.

Validity of acts

Paragraph 12 – Appointment errors

270. If there has been a fault in the way the Adjudicator, Deputy Adjudicator or acting Deputy Adjudicator has been appointed, that does not impair the validity of what they do in their appointed roles.

Application of seal and proof of documents

Paragraphs 13 and 14 – Use of the Adjudicator's seal

271. These paragraphs set the conditions for the application of the Adjudicator's seal to a document and the correct treatment of such a document: it is to be received in evidence and treated as duly executed unless this is shown to not be the case. The seal itself has to be certified as authentic by the Adjudicator's signature or the signature of someone authorised by the Adjudicator.

Accounts

Paragraph 15 – Financial reporting

272. This paragraph requires the Adjudicator to produce a statement of accounts for each financial year, to be approved by the Comptroller and Auditor General and then laid before Parliament by the Secretary of State.

Incidental powers

Paragraph 16 – Aiding the work of the Adjudicator

273. This paragraph allows the Adjudicator to do anything that will help with his/her work.

Assistance from the Secretary of State

Paragraph 17 – Help with resourcing

274. The Secretary of State may provide staff, premises and other facilities to the Adjudicator and may decide whether or not to do so at a charge.

Exemption from liability for damages

Paragraph 18 – Protection against most claims for damages

275. This paragraph protects the Adjudicator, Deputy Adjudicator and any staff from claims for damages by third parties, except where they have acted in bad faith or in breach of human rights. In the absence of this protection it might, for example, be possible for a pub tenant or pub-owning business to claim against the Adjudicator in the tort of negligence in relation to some advice given by the Adjudicator or the way the Adjudicator had carried out an investigation. The Government intends that the Adjudicator should not be required to spend time and funding in dealing with such claims. The Adjudicator will be subject to the normal public law duties and constraints of a public authority.

Part 2: Information powers of the Pubs Code Adjudicator

Paragraph 19 – Requirement to provide information

276. Part 2 describes the Adjudicator's powers to require information and documents. Paragraph 19(1) allows the Adjudicator to require them for the purposes of an investigation under Section 53. This power will be exercisable against pub-owning businesses and others, but only once an investigation has commenced. Paragraph 19(2) allows the Adjudicator to require information from pub-owning businesses for the purposes of monitoring whether a pub-owning business has followed an earlier recommendation. This information could be used to help decide whether to commence an investigation. Paragraph 19(3) allows the Adjudicator to require documents and other information for the purposes of exercising any functions conferred on the Adjudicator by the Pubs Code in relation to parallel rent assessments and the market rent only option (see sections 42(5) and 44(1)(b)).

277. In each case the Adjudicator may require a person to provide documents or other information, including orally. Paragraph 19(8) protects information that could not be required to be provided in civil proceedings, such as information subject to legal privilege.

Paragraphs 20 to 22 – Offences

278. Paragraphs 20 and 21 create offences, punishable by a fine, for intentional failure to comply with a requirement to provide information (subject to a defence of reasonable excuse) and for knowingly providing false information.

Part 3: Amendments of legislation

Paragraphs 23 to 26 – Amendments of legislation

279. Paragraphs 23 to 25 insert references to the Pubs Code Adjudicator, Deputy Pubs Code Adjudicator and member of staff of the Pubs Code Adjudicator in legislation relating to holders of a public office.

280. Paragraph 26 inserts a reference to the Act into Schedules 14 and 15 to the Enterprise Act 2002. This has the effect of applying the provisions concerning disclosure of information in Part 9 of that Act to information which may be obtained by, or may be useful to, the Adjudicator in the exercise of the Adjudicator's functions under this Act.

The Pubs Code

Section 42: The Pubs Code

281. Subsections (1) and (2) of this section provide that the Secretary of State must make regulations, to be known as the Pubs Code, within one year of this section coming into force, which will be two months after this Act receives Royal Assent – see section 165(3)(d)(i). The Pubs Code, which applies to England and Wales, must set out the practices and procedures which pub-owning businesses must follow when dealing with their tied pub tenants.

282. The Code is intended to ensure that pub tenants with an alcohol tie to a pub-owning business – as described in section 68 – are treated fairly. The Code's purpose is to provide such tenants with increased transparency and fair treatment in their dealings with their pub-owning business, particularly in regard to rent assessments. This Act provides them with the right to take disputes on issues covered by the Code to the Adjudicator. The Code imposes obligations on pub-owning businesses with tied pub tenants, and everything else in this Part relates to that – for example, the Adjudicator's arbitration and enforcement powers relate to whether the pub-owning business has complied with its obligations in the Code.

283. The Secretary of State must seek to ensure that the Pubs Code is in line with the principles of fair and lawful dealing and that tied tenants should be no worse off than if they were not bound by any product or service tie (subsection 3).

284. Subsection (4) sets out what the Pubs Code may cover; for example, the Code can set out requirements relating to the information which pub-owning businesses must provide to their tied tenants and can require pub-owning businesses to provide rent assessments to their tied tenants in certain circumstances. The Government plans to set out in the Code, following consultation, different rent assessment periods in situations where different amounts of substantial capital investment have been made, extending the rent assessment interval beyond the usual five years where it is appropriate to do so. This would have the effect of deferring the Market Rent Only option for that period until the next rent assessment (unless a significant price increase as set out in section 43(6)(c) or a trigger event beyond the tenant's control as set out in section 43(9) take place. The Code will also set out the safeguards that must be met for an extended rent assessment interval to apply.

285. As some tenants make payments linked to the pub's turnover rather than a fixed rent, the Pubs Code can also require pub-owning businesses, in certain circumstances, to provide an assessment of any money payable by the tenant in lieu of rent (subsection (4)(b)(ii)).

286. The Pubs Code may also require pub-owning businesses, in certain circumstances, to provide parallel rent assessments to their tied tenants (subsection (5)). As set out in section 72(1) a "parallel rent assessment" will be defined in regulations.

Section 43: Pubs code: market rent only option

287. This section provides for a Market Rent Only option to be offered to tied tenants of pub-owning businesses covered by section 70(1)(a), i.e.: existing tenants of the business but not to prospective tenants who are negotiating to take on a tenancy or licence.

288. Pub-owning businesses will be required, in circumstances to be specified further in the Pubs Code, to offer their tied tenants the right to pay no more than a 'market rent' and to release them from all product or service ties, other than for the insurance of the tied pub. These circumstances must include the renewal of the pub's arrangements for renting or taking a licence or with regard to any of its tie arrangements; rent reviews or reviews of the assessment of money paid by a tenant in lieu of rent; a significant and unexpected price increase in a tied product or service; or a 'trigger' event. A 'trigger' event will also be defined in the Pubs Code but must be one which is beyond the tenant's control, not reasonably foreseeable and one having a significant impact on the level of trade that could reasonably be expected at the tied pub.

289. Subsection (2) has the effect that a tenancy or licence will be 'MRO-compliant' if the rent is either one agreed between the pub-owning business and the tied tenant that is in accordance with the MRO procedure or, failing such agreement, a market rent which it would be reasonable to pay for occupation of the particular premises based on the five assumptions set out in subsection (10)(a) and (b).

290. Subsection (4) says that a tenancy or licence will be 'Market Rent Only compliant' if it complies with the description of terms and conditions to be set out in the Pubs Code. However, it must not contain any unreasonable terms or conditions, must not be a tenancy at will and must be considered together with any contractual arrangement between the tied tenant and the pub-owning business that relates to the tenancy, licence or alcohol tie.

Section 44: Market rent only option: procedure

291. This section outlines the procedure, to be detailed in the Pubs Code, for the Market Rent Only (MRO) option to be exercised. It makes clear that the Pubs Code may confer relevant functions on the Adjudicator (subsection (1)(b)); provides for the tied tenant to notify the pub-owning business when it considers that circumstances have arisen that entitle it to a MRO offer; specifies a negotiation period before the next stage of the procedure takes place, during which the two would be expected to try to agree a rent for a MRO-compliant tenancy; requires the appointment of an independent assessor at the end of the negotiation period to determine the market rent within a specified reasonable period; requires that appointment to be made jointly by the tied tenant and the pub-owning business or, if they cannot agree, by the Adjudicator; and may require the Adjudicator to set criteria for someone to qualify as an independent assessor for these purposes.

292. The Pubs Code may also specify that the independent assessor has to determine the market rent in accordance with specified documents – for example, the Code may specify guidance produced by the Royal Institution of Chartered Surveyors.

293. Subsection (4) allows the Pubs Code to specify the circumstances when the MRO procedure should be treated as having come to an end. The Code may also provide for tenancy, licence or other contractual agreements in force when an MRO option procedure is initiated to continue until that point (subsection (3)).

Section 45: Market rent only option: disputes

294. The Secretary of State may by regulations empower the Adjudicator to resolve disputes relating to a Market Rent Only option offer.

295. He may also by regulations give the Adjudicator authority to determine whether a proposed tenancy or licence meets the requirements for being MRO-compliant, whether

an independent assessor's determination of the market rent has been made in accordance with the Pubs Code, and whether any other required MRO procedure has been followed. These regulations may also specify circumstances in which the Adjudicator has the authority to decide the market rent of a pub tenancy or licence.

296. The provisions in sections 43 and 44 are separate from the arbitration provisions in sections 48 to 52; nothing in the latter applies to the former, though there may be some similarities in the provisions made under sections 43 and 44.

Section 46: Review of the Pubs Code

297. This section states that the Secretary of State must carry out an initial review of the Pubs Code by 31 March following the second anniversary of it coming into force; and further reviews every 3 years after that. Once a review has been completed, the Secretary of State must, as soon as practicable, publish a report of the review's findings and lay a copy of the report before Parliament. This is in line with the Government's better regulation objective that all regulations should be reviewed as to their effectiveness and whether they are achieving their objectives (subsections (1) to (4)).

298. Subsection (5) specifies that reviews of the Pubs Code must look at how far the principles at section 42(3) have been met and whether the Pubs Code should be revised to reflect these principles more fully.

Section 47: Inconsistency with Pubs Code etc

299. Subsection (1) of this section provides a power for the Secretary of State to make regulations about terms of tenancies or other agreements between pub-owning businesses and tied pub tenants. The regulations might provide that terms which are inconsistent with the Pubs Code would be void or unenforceable. The regulations might also cover terms which would penalise the tied tenant for requiring a pub-owning business to behave in accordance with any provision of the Pubs Code the pub-owning business is bound to comply with; or which say that a rent assessment or fee in lieu of rent due for a tied tenancy may only be initiated by the pub-owning business or that a rent or fee assessment may conclude only that the amount payable is to be increased.

300. Subsection (3) allows the regulations to make provision about terms of agreements entered into before the regulations come into force.

301. Any agreement between a pub-owning business and a tied pub tenant is void to the extent that it prevents or penalises the tenant from referring a dispute to the Adjudicator for arbitration in accordance with section 48; and the agreement is unenforceable if it is an arbitration agreement that is inconsistent with sections 50 and 51, covering arbitrations, or with regulations covering the award of costs against a tied tenant in respect of an arbitration, made under section 51(7).

302. Subsection (6) states that subsections (4) and (5) apply to terms in agreements made before – as well as after – this section comes into force.

Arbitration by Adjudicator

Section 48: Referral for arbitration by tied pub tenants

303. The aim of this section is to provide a statutory right of arbitration for a tied pub tenant against a pub-owning business. A tenant may refer a dispute for arbitration by the Pubs Code Adjudicator if it relates to an allegation that the business has failed to comply with the Pubs Code.

304. Subsections (3) and (4) provide that certain provisions in the Pubs Code may be stated to be arbitrable and certain provisions stated to be not arbitrable. The intention is that a tenant would be allowed to refer to arbitration only on key points of the Code. If the Code does not differentiate between arbitrable and non-arbitrable provisions, then a tied

tenant may refer a dispute as to whether a pub-owning business has failed to comply with any provision of the Code to the Adjudicator (subsection (5)).

305. Subsection (5) specifies that where a tied pub tenant refers a dispute to arbitration, the Adjudicator has to act as arbitrator or appoint another person to do so. In most circumstances, the Adjudicator is expected to arbitrate such disputes. The Adjudicator could appoint another person where a conflict of interest may exist (for example, where the Adjudicator has previously advised on or investigated an issue which is relevant to the dispute) or where the Adjudicator does not have enough time to act as the arbitrator.

Section 49: Timing of referral for arbitration by tied pub tenants

306. This section sets out the period within which a tied tenant may refer a dispute to the Adjudicator. Subsection (2) specifies that a tied tenant may not refer a dispute to the Adjudicator until a period of 21 days has passed after the date on which the tenant notified the pub-owning business, in writing, of the alleged breach of the Code. The 21-day period is to allow the parties a reasonable time to try to resolve the dispute at this point without the need to resort to arbitration.

307. The exception to subsection (2) is where a tenant alleges that the pub-owning business has failed to produce a parallel rent assessment within the period specified by the Adjudicator (subsection (3)). In that instance, the tied tenant may refer the dispute to the Adjudicator no earlier than the day after the date by which the Adjudicator specified the assessment should be provided.

308. No dispute may be referred to the Adjudicator for arbitration once 4 months have elapsed since the earliest date it could have been referred (subsection (4)).

Section 50: Arbitration commenced by pub-owning businesses

309. This section applies where a pub-owning business has commenced arbitration under an arbitration agreement (for example one contained in a tenancy agreement), where the matter relates to a dispute which the tenant could have referred to the Adjudicator under section 48. The effect of the section is to require (in circumstances described in subsection (3)) the Adjudicator to arbitrate a dispute which relates to a breach of the Pubs Code where the arbitration has been commenced by the pub-owning business under an arbitration agreement.

310. Subsection (4) requires the Adjudicator to arbitrate a dispute (or appoint another person to do so) if the parties agree under the arbitration agreement that the Adjudicator should be the arbitrator, or if the tenant wishes the Adjudicator to arbitrate (even if the pub-owning business does not want the Adjudicator to be appointed to arbitrate).

311. If the tenant wishes the Adjudicator to arbitrate, but the business does not agree, the tenant must give notice as set out in subsections (5) to (7). The tenant must notify the pub-owning business and the Adjudicator in writing within 21 days of the arbitration having been commenced by the pub-owning business.

312. Subsection (6) sets out the time limit for giving a notice where, under an arbitration agreement, a third party has been charged with appointing the arbitrator but the tenant wishes the arbitrator to be the Adjudicator . In these circumstances the tenant must inform the pub-owning business and the Adjudicator of this within 21 days of being notified of the appointment of the proposed arbitrator by the third party.

Section 51: Arbitration: supplementary

313. Subsections (1) and (2) provide that the tenant must pay a fee for making a referral for arbitration to the Adjudicator under section 48 or where the tenant has given notice that the Adjudicator should be appointed, as mentioned in section 50(3)(b). The fee must be specified in regulations. Subsection (3) specifies that the regulations may provide for the fee to be returned to the tenant in certain specified circumstances

314. Except where specified otherwise in these provisions, subsection (5) requires that any arbitration carried out by the Adjudicator or by someone appointed by the Adjudicator must be conducted in accordance with the rules issued by the Chartered Institute of Arbitrators or the rules of another dispute resolution body specified by the arbitrator.

315. The pub-owning business that is party to the arbitration is required by subsection (6) to pay the fees and expenses of the arbitrator except where the arbitrator considers the referral made by the tenant to be vexatious.

316. Subsection (7) states that the Secretary of State may by regulations make provision about how much the tenant should pay towards the costs of an arbitration. Costs of an arbitration include the pub-owning business's costs as well as the tenant's own costs. The regulations may provide that the costs faced by the tenant can be limited and the specific circumstances in which the tenant may be required to pay costs above that limit.

Section 52: Information about arbitration

317. This section enables the Adjudicator to obtain information on an arbitration carried out by an alternative arbitrator appointed by the Adjudicator. This is designed to help the Adjudicator carry out its functions, such as preparing annual reports and providing advice and guidance on the Pubs Code. Subsection (2) states that the Adjudicator may enforce this requirement through civil proceedings.

Investigations by Adjudicator

Section 53: Investigations

318. Once the Adjudicator has published guidance about investigations (as set out in section 61), the Adjudicator may investigate whether a pub-owning business has failed to comply with the Pubs Code or has failed to follow a recommendation made by the Adjudicator after a previous investigation. As set out in section 69(7), the Adjudicator's powers to investigate a pub-owning business do not apply to those which qualify as pub-owning businesses only because they have bought a pub with extended protection, as defined in section 69(4).

319. The Adjudicator's powers to require someone to provide information for an investigation are set out in Part 2 of Schedule 1.

320. The Adjudicator has no similar power to require people to provide information for the purpose of deciding whether to commence an investigation, except for the powers in Part 2 of Schedule 1 which allow the Adjudicator to require pub-owning businesses to provide information about whether they have complied with a previous recommendation. This limit on the Adjudicator's information gathering powers does not prevent the Adjudicator from making contacts and receiving information voluntarily, so far as this is permitted by the general law.

321. It is not intended that the findings of an investigation need be limited to the possible breaches, or possible failure to follow a recommendation, that gave the Adjudicator reasonable grounds for suspicion as referred to in subsection (1).

Section 54: Investigation reports

322. This section requires the Adjudicator to publish a report at the end of an investigation.

323. Subsection (2) specifies that an investigation report must specify any findings and any action taken or proposed. The report does not have to disclose the identity of the pub-owning business in question. This is because there may be cases where the Adjudicator considers that the objectives of the Pubs Code can be effectively achieved whilst dealing with the relevant pub-owning business privately. If the Adjudicator does choose to identify the pub-owning business in an investigation report, the business must be given an opportunity to comment on a draft of that investigation report before it is published.

324. Where an investigation finds that a pub-owning business has failed to comply with the Pubs Code, and that failure has affected a particular tenant, the finding of the investigation will not constitute a determination of liability of the pub-owning business to that tenant on which the tenant can rely. The tenant would need to make its own claim against the pub-owning business in order to obtain a remedy.

Section 55: Forms of enforcement

325. If the Adjudicator concludes following an investigation that a pub-owning business has failed to comply with the Pubs Code or has not followed a previous recommendation, the Adjudicator may make recommendations under section 56, require information to be published under section 57 or impose financial penalties under section 58. The Adjudicator may impose one or more of these enforcement measures. If more than one pub-owning business is the subject of an investigation, the Adjudicator may choose to impose different enforcement measures on different businesses and this may include choosing not to impose any enforcement measures on one or more businesses (subsection (2)).

Section 56: Recommendations

326. If the Adjudicator concludes that a pub-owning business has failed to comply with the Pubs Code, the Adjudicator can recommend what the pub-owning business should do to comply with the Pubs Code. The Adjudicator is then required to monitor whether recommendations are followed (subsection (2)) and report on this in the annual report under section 62. For the purposes of monitoring, pub-owning businesses can be required to provide information to the Adjudicator (see Part 2 of Schedule 1).

327. Recommendations are likely to be used in circumstances where the breach of the Pubs Code is less serious. They may also be used alongside a requirement to publish information or the imposition of financial penalties for more serious breaches of the Code. There is no express sanction for failure to comply with a recommendation, but failure to show that a recommendation has been followed could trigger a new investigation (see section 53) or be taken into account when considering what sanction to impose following a future investigation.

Section 57: Requirements to publish information

328. If the Adjudicator concludes that a pub-owning business has failed to comply with the Pubs Code, then the Adjudicator may require the pub-owning business to publish information about the Adjudicator's investigation. The Adjudicator will need to inform the pub-owning business in writing of the information required to be published, the manner in which it must be published and the time by which it must be published (subsection (2)). For example, the Adjudicator could require publication by press release, through the pub-owning business's annual report or website or through a newspaper advertisement. If necessary, the Adjudicator may take further legal steps to enforce his/her ruling (subsection (3)).

Section 58: Financial penalties

329. The Adjudicator may impose a financial penalty on a pub-owning business if, following an investigation, the Adjudicator concludes that the business has failed to comply with the Pubs Code. This penalty may not exceed the maximum penalty (see subsection (6)). The Adjudicator imposes a financial penalty by giving the pub-owning business written notice of the reasons for the penalty, the amount of the penalty, the period within which it must be paid and how it must be paid (subsection (2)).

330. The pub-owning business could appeal to the High Court against the imposition of the penalty or the amount of a penalty (subsection (3)). Subsection (5) states that financial penalties would be paid into the Consolidated Fund and so would not be used to support the Adjudicator's activities.

331. Subsection (6) states that the Secretary of State must make regulations specifying the permitted maximum financial penalty or how it is to be calculated.

Section 59: Recovery of investigation costs

332. This section provides that the Adjudicator may require a pub-owning business to pay some or all of the costs of an investigation if the Adjudicator finds that the pub-owning business has failed to comply with the Pubs Code or failed to follow a recommendation.

333. Subsection (2) states that where a person has made a complaint which was found to be vexatious or wholly without merit, the Adjudicator may require that person to pay some or all of the costs of a resulting investigation.

334. The Adjudicator must provide notice in writing to the person who is required to make a payment, informing them of the requirement to pay costs, the reasons for imposing the requirement, the amount to be paid, the time period within which it must be paid and how it must be paid (subsection (3)). The person required to pay may appeal against the decision or the amount to the High Court.

Advice and guidance by the Adjudicator

Section 60: Advice

335. This section allows the Adjudicator to give tenants and pub-owning businesses, whether generally or individually, advice about any aspect of the Pubs Code. It also allows the Adjudicator to give advice to organisations that represent the interests of tied pub tenants and pub-owning businesses. This power is likely to be exercised with a view to encouraging compliance with the Pubs Code.

Section 61: Guidance

336. Subsection (1) provides that the Adjudicator must publish guidance on the criteria for deciding whether to carry out investigations, the practices and procedures for investigations, the criteria for using enforcement powers, and the criteria for deciding the amount of financial penalties. This ensures that guidance is available before the Adjudicator exercises its investigatory powers.

337. The Adjudicator may also publish additional guidance about the practices and procedures the Adjudicator intends to follow when carrying out other functions and about any matter relating to the Pubs Code. For example, this would enable the Adjudicator to give general guidance about the application of a particular provision of the Pubs Code (subsections (2) and (3)).

338. Subsection (4) states that the Adjudicator must consult as appropriate before issuing any guidance. The Adjudicator must provide initial guidance covering the topics set out in subsection (1) within 6 months of section 41 coming into force.

Adjudicator's reporting requirements

Section 62: Annual Report

339. This section provides that the Adjudicator must publish an annual report after the end of each reporting period and send it to the Secretary of State (subsections (1) and (4)). The first reporting period will begin when section 41 comes into force (i.e. when the Adjudicator is established) and end on 31st March. Subsequent reporting periods are each twelve-month period after that.

340. The annual report must include summaries of arbitrations and investigations conducted by the Adjudicator, the use of enforcement powers, and cases where the Adjudicator has exercised functions in relation to the offer of a Market Rent Only option the provision of parallel rent assessments by pub-owning businesses under the Pubs Code. Where the

use of enforcement powers has included recommendations, the report should include an assessment of whether these have been followed (subsections (2) and (3)).

341. Each annual report should therefore contain information which is useful to the Secretary of State in reviewing the Adjudicator under section 65, as well as to users of the Pubs Code generally. Subsection (5) requires that the Secretary of State lay a copy of the report before Parliament.

Funding of Adjudicator

Section 63: Levy Funding

342. The Adjudicator is to be funded primarily by pub-owning businesses through the levy provided for in this section, though some fees and/or costs payments may come from tenants (see sections 42(5)(b) and 51(2)). In addition, the Adjudicator may recover the cost of investigations where a person's complaint was found to be vexatious or wholly without merit (section 59(2)).

343. This section enables the Adjudicator to require pub-owning businesses to pay an annual levy towards the Adjudicator's expenses. It will be for the Adjudicator to decide when to impose a levy, and for how much, but the levy must be approved by the Secretary of State and the Adjudicator must publish an explanation of how the amounts have been decided (subsections (1), (2) and (8)).

344. Subsection (5) enables the Adjudicator to require pub-owning businesses to pay differing amounts based on criteria reflecting the time and expense the Adjudicator expects to incur in dealing with matters relating to these pub-owning businesses. The intention is that once the Adjudicator is functioning it will be easier to determine, based on evidence, which pub-owning businesses – or which types of pub-owning business activity – are creating the most work for the Adjudicator and determine a funding model which reflects this.

345. Any surplus funds held at the end of a financial year may be repaid by the Adjudicator to pub-owning businesses (subsection (9)).

Section 64: Loans by Secretary of State

346. This section enables the Secretary of State to make loans to the Adjudicator. This is envisaged only in limited circumstances, for example at the time of establishing the Adjudicator and before the Adjudicator has imposed and collected the levy on pub-owning businesses.

Supervision of Adjudicator

Section 65: Review of Adjudicator and guidance from Secretary of State

347. The Secretary of State is required to review the Adjudicator's performance after an initial period of approximately two years, and every three years thereafter (subsections (1)-(2)). Following a review, the Secretary of State must publish a report of the findings and lay a copy before Parliament (subsection (6)). These requirements are in line with the Government's better regulation objective that all regulators should be reviewed as to their effectiveness and whether they are achieving their objectives.

348. Subsection (4) specifies that a review of the Adjudicator must consider how effective the Adjudicator has been at enforcing the Pubs Code.

349. Subsection (7) provides that the Secretary of State may issue guidance to the Adjudicator following a review. For example, the Secretary of State might consider that enforcement powers should be exercised differently or that the Adjudicator should be more active in giving advice or guidance.

Section 66: Abolition of Adjudicator

350. The Secretary of State may by regulations abolish the Adjudicator. The Secretary of State may do so if a review by the Secretary of State (under section 65) finds that the Adjudicator has not been sufficiently effective in enforcing the Pubs Code or that there is no longer a need for the Adjudicator to enforce the Code, or if the Code itself is revoked.

Section 67: Information to Secretary of State

351. The Secretary of State will be able to require information from the Adjudicator to assist him/her in carrying out a review or other functions under the Act.

Supplementary

Section 68: Tied Pub

352. This section defines a "tied pub" as premises occupied under a tenancy or licence, with a premises licence to sell alcohol for consumption on the premises and where that is also the main activity or one of the main activities, and where the tenant has a contract for some or all of their alcohol to be supplied from the landlord or the group undertaking to which the landlord belongs or someone nominated by the landlord or the group undertaking.

353. Subsections (6)-(8) define a 'stocking requirement'. This is relevant for when a tied pub chooses the Market Rent Only option (see sections 43-45). Section 43(4)(a)(ii) stipulates that a MRO-compliant tenancy or licence must not include any product or service tie (other than one relating to insurance of the pub). Subsection (6) makes clear that a stocking requirement is not a tie. Thus subsection (7) allows pub-owning businesses that are breweries to impose a stocking requirement on tenants and licensees with MRO-compliant tenancies or licences. The stocking requirement applies only to beer and cider produced by the pub-owning business, and the tenant must be able to buy the beer or cider from any supplier of their choosing. The stocking requirement also allows the pub-owning business to impose restrictions on sales of competing beer and cider in line with prevailing competition law, so long as the restrictions do not prevent the tenant from selling such products.

Section 69: "Pub-owning business"

354. Subsection (1) defines a "pub-owning business" as the landlord of 500 or more tied pubs. For the purpose of this calculation any pubs owned by a group undertaking in relation to the landlord are included in the figure (subsection (2)).

355. Subsections (3)-(7) cover circumstances a) in which a tied pub is sold by a pub-owning business to a new owner who does not own 500 or more tied pubs or b) when a tied pub is protected by the Pubs Code and Adjudicator by virtue of being owned by a pub-owning business but then the business no longer qualifies as a pub-owning business – for example, through selling sufficient pubs to drop below the 500 tied pub threshold. In both these circumstances the tied pub would have "extended protection" and its owner would be considered a "pub-owning business" under this legislation, in respect of that pub until the pub's next rent review or until the end of the tenancy/licence, whichever is sooner. A business that is a pub-owning business solely because of these circumstances would not be covered by sections 43-45 (Market Rent Only option) or sections 53-59 (Investigations) but would be covered by all the remaining sections of this Part of the Act, including those relating to parallel rent assessments and arbitrations.

356. Subsection (8) allows the Secretary of State by regulations to expand the remit of the Pubs Code and Adjudicator to cover group undertakings rather than just the individual pub-owning business concerned. In this way they would ensure the legislation is sufficiently flexible to encompass adequately any parent or subsidiary companies.

357. Subsection (9) allows the Secretary of State by regulations to amend the number of tied pubs, the qualifying period for categorisation as a pub-owning business and the method of calculating the number of tied pubs. This is intended as a safeguard against unforeseen changes in circumstances or pub-owning business behaviour. Any changes would require approval by both Houses of Parliament through the affirmative resolution procedure, following consultation.

Section 70: "Tied pub tenant", "landlord", "tenancy" and "licence"

358. This section clarifies that a "tied pub tenant" includes someone negotiating for a prospective tied tenancy, that "tenancy" covers different kinds of tenancy, licence and leasing agreements, including a tenancy at will, and that "landlord" refers to the immediate landlord or licensor, not to a person or organisation that leases premises to a pub-owning business, i.e. a superior landlord.

359. The definition of "tenancy" in the Act includes a tenancy under which a fee is paid instead of rent (for example, a fee related to turnover, as is the case with some pub franchises).

Section 71: Power to grant exemptions from the Pubs Code

360. As there may be circumstances where it is necessary to exempt from the Pubs Code dealings between a specified pub-owning business or pub-owning business of a specified description with a particular type of tenant, or in relation to particular types of pub premises, this section gives the Secretary of State a power to make appropriate regulations. Also, the regulations may set out circumstances in which a tied pub fitting a specified description is not counted for the purpose of calculating whether a business is a pub-owning business under this legislation

361. The Government intends to use this power to introduce regulations to exempt tenancies at will and temporary agreements that are genuinely short-term from coverage by the Pubs Code. The Government will consult on what the maximum duration of such an agreement should be in order to qualify for the exemption.

362. The Government also intends to use this power to exempt franchised pubs from the Market Rent Only provisions (sections 43 to 45) and will consult on the appropriate definition of a franchise pub for this purpose.

Section 72: Interpretation: other provision

363. This section provides for the definition of "the Adjudicator", "arbitration agreement", "financial year", "independent assessor", "market rent", market rent only option", "MRO procedure", "MRO-compliant", "parallel rent assessment", "product or service tie", "product tie", "the Pubs Code", "service tie" and "stocking requirement".

Regulations under this Part

Section 73: Regulations under this Part

364. This section sets out the Parliamentary procedure which attaches to regulations which may be made under this Part. All regulations are subject to the affirmative procedure, except for the regulations under section 66(1)(c) which allow for the abolition of the Adjudicator if the Pubs Code has been revoked and not replaced.

365. Subsection (3) states that the hybrid instrument procedure in the House of Lords will not apply, even if any regulations made under the power to grant exemptions from the Pubs Code would otherwise apply to them, were it not for this subsection.

Part 5: CHILDCARE AND SCHOOLS

Section 74: Funding for free of charge early years provision

366. The section amends sections 13A and 13B of the Childcare Act 2006 ("the 2006 Act"). Section 13A of the 2006 Act allow the Commissioners for HMRC and the Secretary of State (in practice the Secretary of State for Work and Pensions) to supply information that they hold for tax credit and social security functions to the Secretary of State (in practice the Secretary of State for Education) and English local authorities to use for the purpose of determining eligibility for free of charge early years provision (such provision is defined in regulations under section 7 of the 2006 Act).

367. The amendment to section 13A(3) extends the purpose for which data specified at 13A(1) and (2) can be used by the Secretary of State and English local authorities to include checking which children meet the qualifying criteria for additional funding for free of charge early years provision. The section also amends subsection 13A(6) to allow information to be supplied to individuals working on behalf of local authorities for the specified new purpose.

368. The section also amends the existing offence under section 13B of the 2006 Act relating to unauthorised disclosure of data. An individual who has received information lawfully under subsection 13A(3) and (5) can disclose that information in connection with assessing eligibility for funding for free of charge early years provision.

Section 75: Exemption from requirement to register as early years provider

369. This section will amend section 34(2) in Part 3 of the 2006 Act and make related changes to sections 63 of the 2006 Act and 94 of the Education and Skills Act 2008. The impact of these changes means that the existing exemption for schools not to register separately will be extended downwards to include two-year-olds.

370. Section 34 sets out the requirement for early years providers, other than childminders, to be registered. Such early years providers must register in respect of particular premises. However, the revised subsection (2) will exempt from this requirement early years provision made for children aged two and over at a maintained school, non-maintained special school or independent school where that provision is made by the school and one or more pupils attend it.

371. The other changes are required to bring those sections in line with section 34(2). Section 63(1) makes provision for providers of early or later years provision which is not otherwise required to be registered with HMCI to register with HMCI on a voluntary basis in Part B of the General Childcare Register established under Part 3 of the 2006 Act. The change to section 34(2) means changes are also necessary to section 63(3) so that a school may not register its childcare provision on the voluntary register when the provision is for a child who has attained the age of two, rather than the age of three.

372. The Childcare (Exemptions from Registration) Order 2008 provides, at article 9, an exemption from registration under section 34(1) for provision made at a school as part of the school's activities, by the proprietor or employee of the school, where the provision is for a registered pupil who has not attained the age of three but will do so before the expiry of the child's first term at the school. We intend to amend or remove this article in due course as it will no longer be relevant in light of the changes to section 34(2).

373. Changes to section 94 of the Education and Skills Act 2008 are necessary to amend section 94(5)(b) so that it refers to the Early Years Foundation Stage (EYFS) being part of the "independent school standards" for children who have attained the age of two. Making this change should remove the burden on independent schools with pupils age two from having to register on the Early Years Register, while continuing to allow effective inspections under the 2008 Act and ensuring that the EYFS is implemented as the standard for children age two.

Section 76: Childminding other than on domestic premises

374. Childcare providers in England such as childminders and other providers are regulated under Part 3 of the 2006 Act. Under that Part childminding is defined as provision on domestic premises for reward (i.e. payment or goods/services). "Domestic premises" means premises which are used wholly or mainly as a private dwelling. The section amends the definitions of childminding in section 96(4), (5), (8) and (9) of the 2006 Act to enable childminders to also operate on non-domestic premises for reward for up to half of their time using their childminder registration.

375. The amendments to sections 34 and 53 of the 2006 Act are consequential on the changes to the definitions of childminding in section 96 and make clear childminders continue to be required to register under Sections 33(1) and 52(1) of the 2006 Act rather than sections 34 and 53 of the 2006 Act which apply to other providers such as nurseries.

Section 77 (and Schedule 2): Registration of childcare: premises

376. This section introduces Schedule 2, which amends Part 3 of the 2006 Act in order to remove the requirement for certain childcare providers to be registered separately in respect of each of the premises from which they operate. However these providers will still be required to notify Ofsted and receive its approval before they can operate from individual premises. Schedule 2 also contains any necessary consequential amendments.

Part 6: Education Evaluation

Section 78: Assessments of effectiveness

377. This section amends Part 3 of the Education and Skills Act 2008 ("the 2008 Act") to widen the information that can be shared under that Part and the purposes for which it can be used.

378. Section 87 of the 2008 Act as it stands allows the Secretary of State, the Scottish Ministers and the Welsh Ministers to use and share certain information relating to education and training (and, in the case of the Secretary of State, certain information relating to social security) for use in connection with particular functions of the Secretary of State and devolved authorities relating to education and training that is provided for over-19s, other than higher education. Section 88 of the 2008 Act allows Her Majesty's Revenue and Customs to share information relating to income tax or tax credits for use in connection with those same functions.

379. At the moment, the information relating to education and training and social security that can be used and shared under section 87 does not include information about an individual who has not attained the age of 19. The amendments made by subsection (2)(a) of this section will remove the restriction that prevents this.

380. In addition, training- and education-related information about an individual that can be used and disclosed under section 87 does not include information about higher education undertaken by him or her, and information that is used or disclosed under sections 87 and 88 cannot at the moment be used in connection with any of the relevant functions of the Secretary of State and devolved authorities (i.e. those functions mentioned in Section 87(4)) so far as they relate to under-19 education or higher education. The amendments made by subsections (2)(b) to (d) and (3) of this section will remove these restrictions.

Section 79: Qualifications

381. This section inserts a new section 253A into the Apprenticeships, Skills, Children and Learning Act 2009 ("the 2009 Act"). New section 253A enables persons in England and Wales to share "student information" with a range of persons. "Student information" is

defined in subsection (6) of new section 253A as information relating to an individual who is seeking or has sought to obtain, or has obtained, a "regulated qualification" or a "relevant qualification". "Regulated qualification" and "relevant qualification" cover a wide range of qualifications. "Regulated qualification" has the meaning given by section 130 of the 2009 Act and "relevant qualification" has the meaning given by section 30 of the Education Act 1997 – see subsection (6) of new section 253A.

382. Student information will only be capable of being shared under new section 253A if it falls within a description prescribed in regulations. Regulations will also determine the circumstances in which sharing of student information may take place and the persons or categories of person with whom it may be shared (in addition to the Secretary of State and the Welsh Ministers, with whom information may be shared by persons in England and in Wales respectively, and information collators)

383. Under subsection (4) of new section 253A, student information that is shared under the new section is not generally to be published in a form which identifies the individual to whom it relates.

Section 80: Destinations

384. This section inserts a new section 49B into the Further and Higher Education Act 1992. Subsection (1) of the new section enables the Secretary of State to share "destination information" with further education institutions in England. Subsection (2) of the new section enables the Welsh Ministers to share such information with further education institutions in Wales. "Destination information", in relation to further education institutions, means information relating to their former students, including information on activities of the students once they have left the institution (subsection (3) of the new section). Regulations will prescribe what those activities are. Under subsection (5) of the new section, destination information that is shared under the new section is not generally to be published in a form which identifies the individual to whom it relates.

Part 7: COMPANIES: TRANSPARENCY

Register of people with significant control

Section 81: Register of people with significant control

385. This section introduces Schedule 3, which amends the Companies Act 2006 (CA 2006) to require companies to keep a register of people with significant control over the company. The requirements and the meaning of a 'person with significant control' are set out in that Schedule.

Schedule 3: Register of people with significant control

386. This Schedule defines what is meant by a 'person with significant control' (PSC) (section 790C and paragraph 2 of Schedule 3, inserting new Schedule 1A to CA 2006) and sets out a company's requirements to obtain required information on such people and hold it in a register kept available for public inspection (the "PSC register"). The Schedule also sets out the obligations that apply to people with significant control and certain legal entities.

387. The requirement for companies to provide information in the PSC register to the registrar in the context of their confirmation statement is set out in section 92, which substitutes a new Part 24 into CA 2006 ('Duty to deliver confirmation statement instead of annual return'). The registrar will make this information public, with limited exceptions as set out in paragraph 8 of Schedule 3 and Section 96.

Part 1: Duty to obtain information and keep register

Part 21A: Information about people with significant control

Chapter 1: Introduction

790A: Overview

388. Section 790A outlines the content of Part 21A in order to assist readers' navigation of the provisions.

790B: Companies to which this Part applies

389. Section 790B sets out the companies to which Part 21A applies.

390. Subsection (1) (a) provides that the Part does not apply to companies which are DTR5 issuers. This is because such companies already make information about major shareholders public and, in view of the general regulatory provisions to which they are subject, are thought to be lower risk generally of being used for criminal purposes.

391. 'DTR5 issuer' is defined in subsection (3) and refers to companies required to comply with Chapter 5 of the Financial Conduct Authority's Disclosure Rules and Transparency Rules sourcebook ('DTR rules'), or those provisions as amended or replaced. These are companies who have shares admitted to trading on UK regulated or prescribed markets, for example the Main Market of the London Stock Exchange. Chapter 5 sets out the vote holder and issuer notification rules that apply when major shareholdings are bought and sold. These notifications are publicly available.

392. Subsection (1) (b) provides that the Secretary of State may by regulations exempt other types of company. In making regulations the Secretary of State must have considered whether those companies are subject to disclosure rules broadly similar to those that apply to DTR5 issuers (subsection (2)). Regulations might, for example, exempt UK companies listed on overseas markets with comparable disclosure and transparency rules.

790C: Key terms

393. Section 790C defines key terms used in Part 21A.

394. Subsections (2) to (3) provide that an individual meeting one or more of the specified conditions, as set out in Part 1 of Schedule 1A ("the specified conditions"), is a person with significant control (PSC) over the company.

395. Section 790C also sets out the circumstances in which a legal entity rather than an individual may be noted in the PSC register. Such entities are called "relevant legal entities" (RLEs) (subsection (6)). An RLE is a legal entity that would have been a PSC had it been an individual and which is subject to its own disclosure requirements. These disclosure requirements are set out in subsection (7).

396. The effect of provisions in respect of RLEs is that if, for example, company A is owned by company B and company B maintains a PSC register under Part 21A, a person (P) with significant control over both B and A as a result of the same shareholding (held through B) need not be registered as a PSC in relation to A, provided that P has no other interest in the company through any other means. Instead, by virtue of section 790M(5), B will be noted in A's PSC register as an RLE. Those looking at A's register will be able to then look to B's register to identify P. This aims to avoid, where appropriate ownership disclosure arrangements are already in place, duplicative reporting.

397. Individuals with significant control over a company and RLEs are either registrable or non-registrable (subsections (4) and (8)). The term refers to whether or not the

individual or RLE's details must be entered or noted in the company's PSC register (see section 790M).

398. An individual or RLE is non-registrable if they have significant control over the company by having significant control through one or more RLEs and no other interest in the company. Subsections (2) and (3) and Schedule 1A determine whether an individual or an RLE holds an interest in a company, holds that interest through another legal entity or has significant control over that legal entity (subsection (9)).

399. If an individual or RLE is not non-registrable, it is registrable.

400. The register that a company is required to keep in relation to its PSCs under section 790M is referred to in this Part as the company's "PSC register" (subsection (10)).

401. Subsection (12) provides that some entities are to be treated as if they were individuals (i.e. registrable or non-registrable persons) for the purpose of Part 21A. These are corporations soles, governments and government departments, international organisations (provided its members include two or more countries, territories or governments), and local authorities and local government bodies. Although these entities are not subject to the disclosure rules set out in subsection (7), they cannot practically or usefully be 'looked through' to identify an individual or individuals who meet the specified conditions. This means that unless express provision is made, there will be no entry on the PSC register in such cases. This could be misleading or unhelpful for users of the PSC register. For this reason these entities are treated as individuals for the purpose of this Part, whether or not they are legal persons. Regulations may be made to modify the application of Part 21A in respect of such entities.

Chapter 2: Information-gathering

Duty on companies

790D: Company's duty to investigate and obtain information

402. Section 790D sets out a company's duty to investigate and obtain information on registrable persons and RLEs.

403. A company must take reasonable steps to find out if there is anyone who is a registrable person or RLE in relation to it and identify them (subsection (1)), and must give notice to anyone whom it knows or has reasonable cause to believe to be a registrable person or RLE (subsection (2)). The duty in subsection (2) does not limit the company's obligations under subsection (1).

404. In addition, a company may give notice to a person it knows or has reasonable cause to believe knows the identity of a registrable person, an RLE (whether registrable or non-registrable) or an entity that would be an RLE were it subject to its own disclosure requirements. A company may also give notice to a person likely to know someone who would know the identity of such persons. This is set out in subsections (5) and (6). A company may give notice to a person under subsections (2) and (5) simultaneously.

405. Subsection (5) is intended to provide the company with a means to obtain information on registrable persons and RLEs where it does not itself know their identity, including where there are entities in the ownership chain which are not RLEs but which might know the identity of a registrable person or RLE. For example, a company may know that a person (X) is acting on behalf of a PSC (P), but may not know any of P's details. The company may serve notice on X in order to obtain information on P. 'Knowing the identity of a person' is defined in subsection (13).

406. A company may serve notice on a lawyer under subsection (5) to obtain information. It will be rare for information held by a lawyer about PSCs or RLEs to be subject to

legal professional privilege. However, where that is the case the lawyer is not required to provide information to the company (subsection (12)).

407. Subsections (3) to (4) and (7) to (8) make provision in relation to the giving of notice. They stipulate the information that the notice must contain and must require from the recipient. For example, an individual receiving a notice under subsection (3) must state whether or not they are a registrable person and correct, complete or confirm the particulars included in the notice. "Particulars" is defined in subsection (13)(b). Further provision about the giving of notices may be made by regulations (subsection (9)).

408. As the company's duty to obtain information under section 790D is on-going and continuous there is no defined period within which steps must be taken or notice given. Addressees must however respond to a notice within one month of the date of the notice (subsection (8)).

409. A company need not give notice if it already knows that a person is a registrable person or RLE and has all of the required information (subsection (11)). In respect of registrable persons, the information must have been provided by the individual or with their knowledge. If this is not the case, the company must give notice to that individual. This is to ensure that individuals are in all cases aware of their entry in the company's PSC register. This is important, for example, in the event that the individual wants to apply for their information to be protected from disclosure (see Chapter 5) and to ensure that the individual knows to update the company should their personal details change.

790E: Company's duty to keep information up-to-date

410. Section 790E requires a company to keep information in its PSC register up-to-date.

411. Subsections (2) and (5) require the company to give notice to registrable persons and RLEs as soon as reasonably practicable once the company knows or has reasonable cause to believe that a "relevant change" has occurred, a relevant change being ceasing to be a registrable person or RLE or a change in particulars (subsections (3) and (4)).

412. The notice must require the addressee to confirm whether the change has occurred and, if so, to state the date of the change and to correct, complete or confirm the particulars included in the notice (subsection (6)). As under section 790D, addressees must respond within one month from the date of the notice and further provision may be made by regulations in relation to the giving of such notices (subsection (7)).

413. A company need not give notice if it has already been informed of the relevant change. As under section 790D, information on registrable persons must have been provided by the individual or with their knowledge (otherwise the company must give notice to that individual).

790F: Failure by company to comply with information duties

414. It is an offence, triable either way, for a company to fail to take steps or give notice under sections 790D and 790E. The offence is committed by the company and every officer of the company in default (see section 1121 CA 2006), punishable by imprisonment or a fine.

Duty on others

790G: Duty to supply information

415. Section 790G complements section 790D (which places an obligation on companies to identify registrable persons and RLEs) by placing a proactive disclosure obligation on registrable persons and RLEs in certain circumstances. The intention is to ensure that registrable persons and RLEs who are not known to or identified by the company under section 790D are nevertheless entered in the company's PSC register.

416. The requirements are loosely based on sections 198 to 211 of the Companies Act 1985, which were replaced by regulations under the Financial Services and Markets Act 2000. Those regulations implement the Transparency Directive and place a disclosure obligation on investors in certain publicly listed companies (see the DTR rules and the exemption in section 790B for DTR5 issuers as a result).

417. The obligation to notify the company arises where a person knows or ought reasonably to know that they are a registrable person or RLE and where their particulars are not already registered in the company's PSC register, provided they have not received a notice from the company and that these circumstances have continued for a period of at least one month (subsection (1)). This means that a person's obligation will normally only arise where a company has failed to identify them under section 790D. However, nothing in section 790G prevents a person from notifying the company that they are a PSC or RLE before a month has elapsed, should they wish to do so.

418. Where the duty under section 790G applies, registrable persons and RLEs must notify the company that they are a registrable person or RLE, stating the date on which they became such a person and giving the company their required particulars (see section 790K) (subsection (2)). They must notify the company no later than one month after all the conditions in subsection (1) were first met (subsection (3)).

790H: Duty to update information

419. Section 790H complements section 790E, requiring a registrable person or RLE to notify the company of relevant changes to information in the PSC register. The intention is to ensure that changes to information in the PSC register that are not known to or identified by the company are nevertheless recorded, thereby supporting the accuracy of the company's PSC register.

420. The obligation arises where the person is entered in the company's PSC register and knows or ought reasonably to know that a relevant change has occurred, a relevant change being defined in section 790E(3); and where the company's PSC register has not been altered to reflect the change and the person has not received notice from the company under section 790E within one month of the day on which the change occurred (subsection (1)). As under section 790G, this means that a person's obligation will normally only arise where the company is not already aware of the change. The person may however inform the company in advance should they wish to do so.

421. The notification must state the date on which the change occurred and provide any information needed by the company to update the register (subsection (2)). The notification must be given by the later of two months after the change occurred (providing one month for the company to send a notice and then one month for the person to make a notification if required) or one month after the person discovered the change. The latter may arise if the person only became aware of the change some time after it had occurred.

Compliance

790I: Enforcement of disclosure requirements

422. Section 790I provides that offences for failure to comply with a notice under section 790D or 790E or a duty under section 790G or 790H are contained in Schedule 1B.

Exemption from information and registration requirements

790J: Power to make exemptions

423. The Secretary of State may exempt an individual or legal entity from the requirements of Part 21A where there are special reasons to do so. This provision broadly reflects

section 796 of the CA 2006 ('Notice requiring information: persons exempted from obligation to comply').

424. The effect of the exemption is set out in subsection (2) and provides that no information on such persons need be held by the company or provided to the registrar.

Required particulars

Section 790K: Required particulars

425. Section 790K details the information that must be held by the company in respect of registrable persons (both individuals and entities treated as individuals under section 790C(12)) and RLEs. These are the "required particulars".

426. Subsection (1) provides that in respect of individuals, with the exception of former name and business occupation (which are not thought relevant in the context of people with significant control), the personal information replicates that currently held on company directors (see section 163 of CA 2006, 'Particulars of directors to be registered: individuals'):

i. name

ii. a service address

iii. country or state of usual residence

iv. nationality

v. date of birth

vi. usual residential address.

427. This information should provide for the unique identification of individuals registered in the vast majority of cases.

428. Subsection (2) provides that in respect of entities to be treated as individuals for the purposes of Part 21A, the following information should be held:

i. name

ii. principal office

iii. legal form and law by which it is governed.

429. Subsection (3) provides that in respect of registrable RLEs, the information about the entity replicates that currently held on corporate directors (see section 164 of CA 2006, 'Particulars of directors to be registered: corporate directors and firms'):

i. corporate or firm name

ii. registered or principal office

iii. legal form of the entity and law by which it is governed

iv. register of companies in which it is entered and registration number (if applicable).

430. Information in subsection (2) and (3) should enable the entity in question to be appropriately identified by users of the register.

431. The PSC register must also hold details of the date on which a person became a registrable person or RLE and the nature of that control (subsections (1)(g), (1)(h), (2)(d), (2)(e), (3)(e) and (3)(f), and see Schedule 1A). This will allow those searching the register to see how a person controls the company and the period over which this control has been exercised.

432. In the case of individuals, the PSC register must also state whether restrictions on using or disclosing the individual's information are in force, following the making of an application under regulations made under section 790ZG (subsection (1)(i)). This will enable the register available for public inspection to indicate that information has been withheld from public disclosure.

433. The Secretary of State may make further provision by regulations about the way in which details of a registrable person or RLE's control are to be recorded (subsection (5)). The intention is to ensure that given details of control are relevant, appropriate and proportionate.

Section 790L: Required particulars: power to amend

434. Section 790L enables the Secretary of State to make regulations under the affirmative resolution procedure to add or remove data fields from the required particulars in section 790K (and see equivalent power that exists in respect of company directors' particulars under section 166 of CA 2006, 'Particulars of directors to be registered: power to make regulations'). This power will help ensure that the policy can be kept under review and adapted in the light of changing circumstances.

Chapter 3: Register of people with significant control

Section 790M: Duty to keep register

435. Section 790M requires a company subject to Part 21A to keep a register of people with significant control over the company (the "PSC register", see section 790C(10)). This will be one of the registers that companies are required to keep under CA 2006, alongside others including the register of members and directors (sections 113 and 162 of CA 2006 respectively). Together these registers will provide publicly available information on the management, ownership and control arrangements of the company.

436. The PSC register must include the required particulars of registrable persons once all of those particulars have been confirmed. A company must not enter any information about a registrable person in its register until it has all of the information and all of it has been confirmed. This is to avoid the inclusion of 'partial data' in the PSC register which may make it more difficult to identify where a company or individual has failed to comply with a duty under Chapter 2.

437. Particulars are "confirmed" if they have been provided or confirmed to the company by the person or with the person's knowledge; or if they were included in the statement of initial significant control delivered to the registrar under section 9 ('Registration documents', and see paragraph 4 of Schedule 3). This will ensure that individuals are aware of their inclusion in the register – this is important in the event that they want to apply for their information to be protected from disclosure, for example (see Chapter 5).

438. The company must also note details of any registrable RLEs in its register (subsection (5)). Such particulars need not be 'confirmed', as the same considerations are not felt to apply in respect of legal entities since they cannot have their information protected. However, as for registrable persons, the company should not note any information about an RLE in the register until it has all of the required particulars.

439. Where a person becomes a registrable person or RLE in respect of the company on its incorporation, the date to be entered in the register as the date when the person became such a person will be the date of the company's incorporation (subsection (10)).

440. Where a relevant change occurs (see section 790E), the company must enter the date and details of the change in its PSC register. This means information that is no longer current will be clearly marked in the register (and see section 790U for provision on the removal of entries). The company must not enter details of the change in respect of registrable

persons unless that information has been confirmed (subsection (6)) for the same reason as it may not enter any particulars of a registrable person without confirmation.

441. Additional information may need to be noted in the PSC register to ensure clarity for those searching the register. For example, where the company reasonably believes it has no registrable persons or RLEs, that fact. Subsection (7) provides that the Secretary of State may by regulations subject to the affirmative resolution procedure require additional matters to be noted in the PSC register.

442. Subsection (11) further clarifies certain matters relating to the entry of information in the PSC register, including that section 126 of the CA 2006 ('Trusts not to be entered on register') does not affect what the company may record or send to the registrar in respect of the PSC register. Subsection (14) clarifies that entry in a company's PSC register does not give rise to any obligation on the part of the company to have any regard to the interests of the persons so registered. The latter builds on the precedent in section 808(7) CA 2006 ('Register of interests disclosed').

443. It is a summary offence for a company to fail to keep a register. The offence is committed by the company and every officer of the company in default and is punishable by a fine. A daily default fine for continued contravention also applies (subsections (12) and (13)). This offence provision replicates the offence provision that applies for failure to keep a register of members (section 113 CA 2006, 'Register of members').

Sections 790N to 790V

444. Sections 790N to 790V set out how a company must maintain and make the PSC register available. These provisions are based on sections 114 to 121 and 125 of the CA 2006, which make broadly similar provision in respect of a company's register of members. It is considered important that the same regime applies to these two registers where appropriate, given that the two registers together will provide the complete picture of the company's ownership and control.

Section 790N: Register to be kept available for inspection

445. Section 790N provides that a company's PSC register must be kept available for inspection at its registered office or at a place specified in regulations under section 1136 of CA 2006 ('Regulations about where certain company records to be kept available for inspection'). This is based on section 114 CA 2006, 'Register to be kept available for inspection'. Failure to give notice to the registrar of where the PSC register is kept or of any change in that location is a summary offence punishable by fine. The offence is committed by the company and every officer in default (and see section 114(5) to (6) CA 2006).

446. An index will not be required to be kept in respect of the PSC register (in contrast with section 115 CA 2006 ('Index of members')). It is felt there will be few companies who have more than 50 entries. In addition, it is anticipated that most companies will have an electronic register that can be easily searched without the need for a statutory index provision.

Section 790O: Rights to inspect and require copies

447. Section 790O sets out a person's right to inspect and require copies of a company's PSC register. Any person may, on request and for a proper purpose, inspect the company's PSC register without charge and require a copy of the register on payment of such fee as may be prescribed by the Secretary of State. 'Proper purpose' may be read in light of the fact that the purpose of the PSC register is to provide public information about a company's ownership and control. Subsection (4) enables the company to check that information is only to be used and disclosed for such a purpose.

448. Section 790O is based on section 116 of CA 2006 ('Rights to inspect and require copies'). Unlike the register of members it is however considered important that any person may inspect the register free of charge due to the scope of those who may be registrable persons or RLEs in respect of a company (and may therefore wish to inspect a company's register), as opposed to a limited category of people (e.g. members, and see section 116(1) CA 2006). Similarly, the person requesting access to the PSC register need not state whether they will disclose the information to any other person. This is to avoid any unintended restriction on the use of PSC information for a proper purpose.

Section 790P: PSC Register: response to request for information or copy

449. Section 790P is based on section 117 of CA 2006 ('Register of members: response to request for inspection or copy'). It sets out how a company must respond to a request made under section 790O, requiring a company to either comply with the request or apply to the court where it considers that a request has not been made for a proper purpose.

Section 790Q: PSC register: refusal of inspection or default in providing copy

450. Section 790Q is based on section 118 of CA 2006 ('Register of members: refusal of inspection or default in providing copy'). If the provisions of section 790O are breached a summary offence punishable by fine is committed by the company and every officer in default (section 790Q(2)). A daily default fine for continued contravention also applies.

Section 790R: PSC register: offences in connection with request for or disclosure of information

451. Section 790R provides that it is an offence for a person to knowingly or recklessly make a misleading, false or deceptive statement in a request made under section 790O; or for a person who has obtained information under that section to do (or fail to do) anything that results in the information being disclosed to another person if they know or suspect that person may use the information for an improper purpose. This is based on provision in section 119 of CA 2006 ('Register of members: offences in connection with request for or disclosure of information'). The offence is triable either way and punishable by imprisonment and/or a fine.

Section 790S: Information as to state of register

452. Section 790S is based on section 120 of CA 2006 ('Information as to state of register and index') and provides that a company must inform a person inspecting or receiving a copy of the PSC register of the most recent date of any alterations and whether there are any further alterations to be made. Failure to do so is a summary offence committed by the company and every officer of the company in default, punishable by a fine.

Section 790T: Protected information

453. Section 790T makes clear that a company's duty to keep its PSC register available for inspection does not extend to information protected from public disclosure under regulations made under Chapter 5.

Section 790U: Removal of entries from the register

454. Section 790T provides that an entry in the PSC register relating to a person who used to be a registrable person or an entity that used to be a registrable RLE may be removed ten years after the date on which they ceased to be a registrable person or RLE. This is based on section 121 of CA 2006 ('Removal of entries relating to former members').

Section 790V: Power of court to rectify register

455. Section 790U provides that a person aggrieved or "any other interested party" (defined in subsection (5) as a member of the company or any other person who is a registrable person or RLE in relation to the company) may apply to the court for rectification of the PSC register if information is or is not entered in the register without sufficient cause; or if there is delay or default in recording that a person is no longer a registrable person or RLE (subsection (1)). Subsections (2) and (3) set out the action the court may take in response to such an application. The court must require the company, in rectifying its register, to also give notice of the rectification to the registrar (subsection (4)). This section is based on section 125 of CA 2006 ('Power of court to rectify register').

Chapter 4: Alternative method of record keeping

Section 790W: Introductory

456. Chapter 4 sets out rules which allow private companies to keep information on the public register at Companies House (referred to in this Chapter as "the central register") instead of in their PSC register. This is consistent with provision made in respect of other registers elsewhere in the Act (see section 94).

457. Section 790W introduces Chapter 4 and provides that Chapter 3 of Part 21A must be read with this Chapter (subsection (3)).

Section 790X: Right to make an election

458. Section 790X provides that a private company may elect to keep its PSC register on the central register. Election may be made on incorporation, by the subscribers wishing to form a company (subsection (1)(a)); or post-incorporation by the company itself (subsection (1)(b)).

459. The company must have given notice to registrable persons and RLEs whose particulars are stated in the PSC register at least 14 days before making the election ("eligible persons", subsection (3)). Should a registrable person or RLE object to the proposed election within that time, the company may not make the election (subsection (2)).

460. On incorporation, notice of an election must be given to the registrar with the documents required to be delivered on incorporation.

461. Post-incorporation, notice of an election must be given to the registrar with all the information that is contained in the PSC register, and is current, at the date of the election (subsection (6)).

462. In both cases the company or subscribers must provide a statement that no objection to the election has been received.

463. A company must provide any updated information in the event of any change in the details in the PSC register between the time the election is delivered to the registrar and the time the election takes effect (subsection (7)). If the PSC register is rectified, the company must also update the central register (subsection (8)). Failure to do so is a summary offence, punishable by fine, committed by the company and every officer in default.

464. Subsection (11) provides that in Chapter 4, "current" refers to persons who are registrable persons or RLEs at that time or date (as opposed to persons who used to be registrable persons or RLEs and whose information may still be in the register under section 790U); and to any other matters that are current at that time or date.

Section 790Y: Effective date of election

465. Section 790Y provides that an election takes effect when it is registered by the registrar (subsection (1)). The election remains in force until the company ceases to be a private company or withdraws the election under section 790ZD (subsection (2)).

Section 790Z: Effect of election on obligations under Chapter 3

466. During the period an election is in force, a company does not have to maintain a PSC register (subsection (2)). Where the election was made post-incorporation, the company must continue to keep the register that it was required to hold prior to the election (a "historic" register). However it does not need to update the historic register to reflect changes that occur whilst the election is in force (subsection (3)).

467. Rights contained in Chapter 3 of Part 21A, including the rights to inspect or require copies of the PSC register, continue to apply in respect of the historic register whilst the election is in force (subsection (4)).

468. The historic register must be annotated to state that an election is in force; the date of that election and that up-to-date information is available on the central register (subsection (5)). The offence applied in sections 790M (12) and 790M (13) ('Duty to keep register') applies equally to section 790Z(5).

Section 790ZA: Duty to notify registrar of changes

469. Instead of updating its PSC register, during the period of an election, a company must deliver information to the registrar that would otherwise be entered in the company's PSC register (subsection (2)). Information must be delivered as soon as reasonably practicable once the company becomes aware of it and no later than the time by which they would have been required to enter the information in their PSC register (subsection (3)).

470. Failure to do so is a summary offence committed by the company and every officer in default, punishable by fine. A daily default fine applies for continued contravention (subsections (4) and (5)).

Section 790ZB: Information as to state of central register

471. A person inspecting or requesting a copy of material on the central register that would, were the election not in force, be available on the company's PSC register, may ask the company to confirm whether the company has delivered all relevant information to the registrar (subsection (1)).

472. Failure by the company to respond to such a request is a summary offence committed by the company and every officer in default, punishable by fine (subsections (2) and (3)).

473. This section is equivalent to a person's rights to inspect a company's PSC register under section 790S.

Section 790ZC: Power of court to order company to remedy default or delay

474. Section 790ZC makes provision equivalent to section 790V. It provides that a person aggrieved or "any other interested party" (defined in subsection (6)) may apply to the court for rectification of material held on the central register if information is or is not included in material delivered to the registrar without sufficient cause; or if there is delay or default in notifying the registrar that a person has become or ceased to be a registrable person or RLE (subsection (1)). Subsections (3) and (4) set out the action the court may take in response to such an application. This section does not affect a person's rights under section 1095 CA 2006 ('Rectification of register on application to registrar') or section 1096 CA 2006 ('Rectification of the register under court order') (subsection (5)).

Section 790ZD: Withdrawing the election

475. Section 790ZD deals with the withdrawal of an election. This is achieved by the company giving notice of withdrawal to the registrar (subsection (2)). No additional provision (e.g. the giving of notice to the PSCs) is felt necessary in this context.

476. The withdrawal takes effect when the notice is registered by the registrar (subsection (3)). From that point, the company must maintain a PSC register in line with its obligations under Chapter 3 of Part 21A. This includes all the information about its PSCs that is current at that time. It does not however include information that was current when the election was in force if that information is no longer current (subsection (5)).

477. The company must annotate its PSC register to state that the election has been withdrawn; the date that the withdrawal took effect; and that information relating to the period of the election is available on the central register (subsection (6)). The offence applied in section 790M(12) and section 790M(13) ('Duty to keep register') applies equally to section 790ZD(7).

Section 790ZE: Power to extend option to public companies

478. Section 790ZE gives the Secretary of State the power to make regulations under the affirmative resolution procedure to amend CA 2006 to extend the option to keep information on the central register instead of in the PSC register to public companies, with modifications or consequential amendments as may be required (subsection (1)). This is consistent with the power contained elsewhere in the Act in relation to other registers (section 94 and Schedule 5).

Chapter 5: Protection from disclosure

Section 790ZF: Protection of information as to usual residential address

479. Section 790ZF applies sections 240 to 244 of CA 2006 ('Directors' residential addresses: protection from disclosure') to protected information under section 790ZF(2). Protected information is a PSC's usual residential address (URA) and information that their service address is their residential address.

480. The application of sections 240 to 244 suppresses protected information from the public register maintained by Companies House and from the company's PSC register. Both the company and Companies House must omit this protected information from the register available for public inspection (section 790T and see paragraph 8 of Schedule 3). This is considered appropriate in light of the potential risk to the PSC if the information were to be publicly available.

481. The application of section 243 ('Permitted use or disclosure by the registrar') means that the Secretary of State may make regulations setting out the way that protected PSC information may be used and disclosed. Powers under section 243 have been exercised for directors under the Companies (Disclosure of Address) Regulations 2009. The intention is to make broadly equivalent provision for PSCs. This will include enabling protected information to be shared with specified public authorities such as law enforcement agencies.

482. Subsection 790ZF(3) clarifies that subsection (1) does not apply where an application has been granted under regulations made under section 790ZG (see below).

Section 790ZG: Power to make regulations protecting material

483. There may be circumstances in which a PSC's required particulars (over and above the URA and day of date of birth (see Section 96)) should be suppressed from public disclosure to protect individuals at serious risk of harm. For instance, where the

company's activities may put the individual at risk (e.g. in the case of companies that conduct animal testing).

484. Section 790ZG therefore provides that the Secretary of State may make provision by regulations for some or all PSC information to be suppressed from the public register maintained by Companies House and the company's PSC register in certain circumstances. Both the company and Companies House must omit this protected information from the register available for public inspection (section 790T and see paragraph 8 of Schedule 3). Such provision may not however be made in relation to an entity treated as an individual under section 790C(12) as the same potential risks are not considered to apply.

485. Regulations may require the company and the registrar not to use or disclose information, other than in prescribed circumstances, where an application to that effect is made (subsection (1)). Regulations will set out the public authorities to whom this information may be disclosed.

486. Regulations may make provision as to the criteria for applications and the process by which applications are made and determined (subsection (3)). They may also make provision in respect of the duration of the protection; procedures for its revocation; and the charging of fees by the registrar in relation to access to such information in prescribed circumstances. The scope of this power is broadly similar to that in section 243(5) CA 2006 ('Permitted use or disclosure by the registrar'). Subsection (3)(f) enables regulations to set out how a company should make its register available for public inspection and respond to requests for access where an application under section 790ZG has been made.

487. Regulations may also give the registrar discretion to determine an application and to refer questions to others in so doing (subsection (4) and see section 243(6) CA 2006).

488. Subsection (6) clarifies that this section does not affect the use or disclosure of a person's details in any other capacity, for example, as a director or member of a company.

Schedule 1A: References to people with significant control over a company

489. Paragraph 2 of Schedule 3 inserts Schedule 1A to CA 2006. Schedule 1A sets out what is meant by references to people with significant control over a company and to their holding an interest in the company through another legal entity.

490. Section 790C(2) provides that a person with significant control over a company is an individual ("X") who meets one or more of the "specified conditions" in relation to the company ("company Y"). The specified conditions are set out in Part 1 of Schedule 1A ("The specified conditions"). Part 2 specifies what is meant by holding an interest in a company, including through a relevant legal entity, for the purposes of Part 21A of the Companies Act 2006. Part 3 of Schedule 1A sets out rules for the interpretation of the Schedule ("Supplementary provision").

Part 1: The specified conditions

Ownership of shares

491. The first condition is that X holds, directly or indirectly, more than 25% of the shares in company Y (paragraph 2)

Ownership of voting rights

492. The second condition is that X holds, directly or indirectly, more than 25% of the voting rights in company Y (paragraph 3).

Ownership of right to appoint or remove directors

493. The third condition is that X holds the right, directly or indirectly, to appoint or remove a majority of company Y's directors (paragraph 4).

Significant influence or control

494. The fourth condition is that X has the right to exercise, or actually exercises, significant influence or control over company Y (paragraph 5).

495. This provision will capture individuals who exercise control other than through the first, second or third conditions. 'Significant influence or control' is intended to capture individuals with a level of control broadly equivalent to those with an interest in more than 25% of the company's shares or voting rights.

496. In deciding whether a person has significant influence or control, a person must have regard to guidance about its meaning (paragraph 24). That guidance will be subject to the negative resolution procedure

Trusts, partnerships etc.

497. The fifth condition is that the trustees of a trust or the members of a firm (as defined in section 1173(1) CA 2006) that is not a legal person meet one or more of the other specified conditions (or would do if they were individuals) and that X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or firm (paragraph 6).

498. The purpose of this condition is to ensure that where an individual (or individuals) other than the trustees or members of the firm has significant influence or control over the activities of the trust or firm, that individual is also identified as a PSC.

Part 2: Holding an interest in a company etc

499. Part 2 of Schedule 1A enables a person ("V") to work out when they hold an interest in a company ("W") and when that interest is regarded as being held through a relevant legal entity. This allows the person to identify whether they are a registrable or non-registrable person, based on the specified conditions in Part 1 of the Schedule.

500. The grounds on which a person is regarded as holding an interest in a company (paragraph 8) are linked to the five specified conditions. Interests are regarded as being held through a legal entity under paragraph 9 by reference to paragraph 18.

Part 3: Supplementary provision

Joint interests

501. Shares or rights in a company may be held jointly. For example, in the case of a partnership, the partners may hold the shares jointly and indivisibly. In the case of shares held in trust, the trustees will hold the shares jointly.

502. In such cases, each person is treated for the purpose of this Schedule as holding the shares or right in their own right (paragraph 11). For example, if A and B have a joint interest in 26% of the shares in company Y, each of them will be a registrable person in respect of Y by virtue of each holding 26% of Y's shares.

Joint arrangements

503. Shares or rights in a company may also be subject to joint arrangements between persons, where those persons agree to act jointly in respect of the shares or rights in question. Paragraph 12 provides that in such cases, each person is treated for the purpose of this Schedule as holding the combined shares or rights of both of them. For example,

if A and B each hold 20% of shares in company Y and have made a joint arrangement, each of them will be a registrable person in respect of Y by virtue of holding 40% of Y's shares.

504. "Arrangement" is defined in paragraph 21. Paragraph 12(2) provides that a "joint arrangement" is an arrangement between the holders of shares or rights that they will exercise all or substantially all their respective rights together, as pre-determined by the arrangement in question. In such cases, all parties to the arrangement are registrable persons or RLEs.

Calculating shareholdings

505. Paragraph 13 sets out the way shareholdings are to be calculated, including where a legal entity does not have a share capital. All shares issued by the company, as set out in the company's statement of capital, are to be factored in to the calculation.

Voting rights

506. Paragraph 14 sets out the way voting rights are to be calculated, including in legal entities which do not have, or are not required by law to have, general meetings where matters are decided by the exercise of voting rights.

507. When calculating the percentage of voting rights held for the purpose of this Schedule, any voting rights held by the entity itself in treasury should not be included when calculating the total voting rights in the entity (paragraph 15).

Rights to appoint or remove members of the board

508. Paragraph 16 clarifies that the third condition relates to directors holding a majority of the voting rights on all or substantially all matters.

509. This provision is intended to capture scenarios which would give the holder of the right a level of control over the company broadly equivalent to holding more than 25% of the shares or voting rights. It reflects similar provision elsewhere in CA 2006 (see section 1162(2)(b), in relation to parent and subsidiary undertakings) and in the Financial Services and Markets Act 2000 (FSMA) (see section 89J(4)(b), in relation to the power of competent authority to call for information). Those provisions equally seek to define what is meant by one party having control over another.

510. If an entity does not have a board of directors, references are to be read as references to the equivalent management body of the entity (paragraph 17).

Shares or rights held "indirectly"

511. Paragraph 18 sets out what is meant by shares or rights held indirectly.

512. A person holds shares in company Y indirectly if they have a majority stake in a legal entity and that entity holds the shares in question (paragraph 18(1)(a)).

513. If that legal entity is part of a chain of legal entities, a person will hold the shares indirectly if each entity in the chain has a majority stake in the entity immediately below it in the chain, and the last entity in the chain holds the shares in question (paragraph 18(1)(b)).

514. A person has a right "indirectly" if they have a majority stake in a legal entity and that entity has the right in question (paragraph 18(2)(a)).

515. If that legal entity is part of a chain of legal entities, a person will exercise the right indirectly if each entity in the chain has a majority stake in the entity immediately below it in the chain, and the last entity in the chain has the right in question (paragraph 18(2)(b)).

516. "Majority stake" is defined in paragraph 18(3) by reference to voting rights, dominant influence or control, and the right to appoint or remove directors. It reflects provision made in section 89J(4) FSMA, which describes how one person may have control over another.

517. The majority stake allows the person to control the legal entity in question. The person can then, by extension, control – for example - the way in which the legal entity votes its shares in company Y. Without a majority stake in the legal entity, the person will not normally have sufficient control to do this in respect of company Y. He or she cannot therefore be said to have significant control over company Y. In a chain of entities, this level of control needs to be reflected at each point in the chain in order that the person can be said to indirectly hold the shares or rights in company Y. Reference to share ownership alone is not included in the definition of "majority stake" as without control of voting rights it would not give a person the requisite amount of control in a chain structure.

518. Paragraph 18(4) provides that for the purpose of this paragraph, a legal entity is treated as having the right to appoint a director if a person is appointed as director of company Y as a result of being appointed director of the legal entity; or if the legal entity is the director of company Y.

Shares held by nominees

519. Paragraph 19 provides that where a share is held by a nominee on behalf of a person, the share is treated as held by that person for the purpose of this Schedule. This means that person – and not the nominee – will be entered in the PSC register where the relevant specified condition is met by the nominee.

Rights treated as held by a person who controls their exercise

520. Similarly to paragraph 19, paragraph 20 provides that where a person controls a right, the right is treated as held by that person for the purpose of this Schedule. This means that the controller of the right – and not the holder, unless they are also a controller - will be entered in the PSC register where the relevant specified condition is met.

521. Paragraph 20(2) sets out when a person has control of a right. This is by reference to an arrangement between a person and others.

522. The definition of "arrangement" in paragraph 21 is broad, but provides that there must be a degree of stability about the arrangement. The intention is to exclude one-off actions or decisions which would not equate to 'significant control'.

Rights exercisable only in certain circumstances etc.

523. Some rights in a company are only exercisable in certain circumstances. Paragraph 22 provides that for the purpose of determining whether a person has significant control, such rights should only be taken into account when the circumstances have arisen and for as long as they continue to exist; or when the circumstances are within the person's control.

524. This provision intends to ensure that only 'live' interests in the company are entered in the PSC register. It is based on similar provision made in Schedules 6 ('Meaning of "subsidiary" etc: supplementary provisions') and 7 ('Parent and subsidiary undertakings: supplementary provisions') to CA 2006.

525. The exception to this is in the case of an administration. Paragraph 22(2) specifies that the rights of administrators and creditors during relevant insolvency proceedings should not be taken into account for the purpose of the PSC register. The control exercised in such circumstances is not considered relevant for entry in the PSC register due to the exceptional nature of the circumstances and its limited duration. "Relevant insolvency proceedings" are defined in sub-paragraph (3).

526. Paragraph 22(4) clarifies that rights temporarily incapable of exercise – for example, because they have been suspended – should continue to be taken into account.

Rights attached to shares by way of security

527. Where shares are provided by a person as security, the rights attached to those shares are to be treated in this Schedule as belonging to that person (paragraph 23). This is provided that the rights are only exercisable in accordance with that person's instructions and in that person's interests (with the exception of the right to preserve or realise the value of the security).

528. This provision is based on similar provision made in Schedules 6 ('Meaning of "subsidiary" etc: supplementary provisions') and 7 ('Parent and subsidiary undertakings: supplementary provisions') to CA 2006.

Limited partnerships

529. Where a limited partnership is deemed to hold shares or rights in a company, the limited partners will hold those shares or rights jointly and will meet the specified conditions accordingly (see paragraph 11).

530. Limited partners in limited partnerships registered under the Limited Partnerships Act 1907 will not however normally be involved in the management of the partnership business (see section 6(1) of that Act). They do not therefore have control over the company in the same way as other holders of shares or rights. Similar considerations apply in relation to particulars in certain overseas arrangements.

531. Paragraph 25 accordingly provides that an individual does not meet the first, second or third specified condition (see above) by virtue only a being a limited partner, unless they are involved in the management of the partnership business (see definition of "limited partner" in sub-paragraph (4)) or a foreign limited partner (see definition of "foreign limited partner" in sub-paragraph (5)).

532. Similarly, sub-paragraph (2) provides that individuals who directly or indirectly hold shares or rights in relation to a limited partner are not considered to meet the first, second or third specified condition by virtue only of that interest.

533. Sub-paragraphs (1) and (2) do not apply in relation to identifying whether a firm meets the specified condition in paragraph 6(a).

534. Sub-paragraph (5) defines "foreign limited partner" by reference to regulations made under the power in sub-paragraph (6). This power allows the Secretary of State to prescribe the characteristics of non-UK arrangements in regulations subject to the affirmative resolution procedure.

Part 3: Power to amend thresholds etc.

535. Paragraph 26 gives the Secretary of State the power to amend Schedule 1A for a permitted purpose. This power would be exercised by regulations made under the affirmative resolution procedure.

536. The permitted purposes are to increase or decrease the 25% threshold; change or add to the specified conditions in Part 1; and change or add to Part 2 in consequence of changes made to Part 1. Part 1 may only be amended to include circumstances that give individuals a level of control over company Y broadly similar to the other specified conditions.

537. The threshold may need to be amended to react to changing circumstances and on-going monitoring and review. Part 1 may need to be amended to ensure that Schedule 1A adequately covers scenarios involving, for example, more complex corporate structures

– particularly as new corporate structures develop or individuals seek new ways to evade the disclosure requirements.

Schedule 1B: Enforcement of disclosure requirements

538. Schedule 1B is intended to incentivise compliance with the requirements of Part 21A. It provides a means other than the threat of criminal prosecution by which companies may encourage persons to respond to notices issued under sections 790D or 790E. This may be particularly helpful where those in receipt of the notice are outside the UK.

539. Provisions are loosely based on the provisions in section 794 of CA 2006 ('Notice requiring information: order imposing restrictions on shares') and subsequent. However, rather than require companies to apply to the court in order to apply restrictions, the company may itself apply the restrictions subject to the requirements detailed below. This is intended to reduce the administrative cost and burden for the company and the court, whilst maintaining due regard to the rights of individuals and third parties.

Right to issue restrictions notice

540. Paragraph 1 provides that if a company serves notice on a person with a relevant interest (see paragraph 2, below) under section 790D or 790E and that person fails to comply within the specified timeframe, the company may give the person a warning notice that they intend to issue the person with a restrictions notice. A restrictions notice may be served one month after a warning notice has been given if the person has not complied with the section 790D or 790E notice and no valid reason has been provided as to why they have not done so.

541. The company must have regard to the rights of third parties in respect of the relevant interest in deciding whether to issue a restrictions notice (sub-paragraph (6)).

Relevant interests

542. "Relevant interest" refers to any shares or rights held by the person on whom notice has been served (paragraph 2). Part 3 of Schedule 1A applies to determine whether a person has a relevant interest. The exception is where shares are treated under paragraph 19 or 20 of Schedule 1A as held by a person other than the holder of the share or right. For the purpose of Schedule 1B, both the holder and the controller of the share or right are considered to have a relevant interest.

Effect of restrictions notice

543. Paragraph 3(1) sets out the effect of a restrictions notice issued under paragraph 1, and circumstances in which the restrictions do not apply. Interests subject to restrictions may not be transferred and no rights may be exercised or shares issued in right of that interest. The company may not pay any sums due in respect of the interest other than in a liquidation.

Protection of third party rights

544. Paragraph 4 provides that following application by any person aggrieved that a restrictions notice issued by the company under paragraph 1 unfairly affects the rights of third parties in respect of the interest subject to restrictions, the court may give a direction that certain acts do not constitute a breach of the restrictions. The direction is given by the court for the purpose of protecting the third party rights in question and is subject to such terms as the court thinks fit.

Breach of restrictions

545. Paragraph 5 specifies the actions that constitute offences in relation to an interest subject to restrictions. These include where a person who knows their interest to be subject to restrictions fails to tell any person with the right to vote in respect of that interest of that fact (unless they know the person to be aware of that fact) (sub-paragraph (3)) and where a person enters into an agreement in respect of the interest that is void, knowing that to be the case (sub-paragraph (4)).

546. It is also an offence, committed by the company and every officer in default, for a company to issue shares in contravention of a restrictions notice (paragraph 6).

547. Offences under paragraph 5 and 6 are triable either way and punishable by a fine (paragraph 7). These offences may not however be prosecuted without the consent of the Secretary of State (see section 1126 CA 2006, 'Consents required for certain prosecutions', as amended by paragraph 9 of Schedule 3). This is based on the precedent for equivalent offences in Part 22 of CA 2006 (see section 798, 'Penalty for attempted evasion of restrictions').

Relaxation of restrictions

548. Under paragraph 8, a person aggrieved may apply to the court for the restrictions to be lifted. The court may only do so if the relevant facts about the interest have been disclosed without any person having gained an unfair advantage or if the interest is to be sold (see paragraph 9). Sub-paragraphs (4) and (5) make further provision in the case of shares to be sold.

Orders for sale

549. Paragraphs 9 and 10 set out the procedure by which shares subject to restrictions may be sold. Application to the court to do so may only be made by the company in question. Provision is made, where shares are sold, for the proceeds of the sale (less costs) to be paid into the court for the benefit of persons beneficially interested in the relevant interest, so that such persons may apply to the court to have the proceeds paid to them.

Company's power to withdraw restrictions notice

550. A company must itself withdraw the restrictions imposed if it is satisfied that there is a valid reason to justify the person's failure to comply with the notice; or if the relevant information in respect of the notice is provided; or if it discovers that there is an unfair impact on third parties in respect of the interest subject to restrictions (paragraph 11). This provision does not prevent the company from withdrawing the restrictions notice in other circumstances.

Supplementary provisions

551. Paragraph 12 provides that the Secretary of State may make regulations under the negative resolution procedure in relation to the issuing and withdrawing of restrictions notices. In particular, regulations may prescribe the form and content of warning and restrictions notices, and the manner in which they must be given.

552. They may also make provision in respect of the factors constituting a "valid reason" for failure to comply with a notice and what happens to matters pending at the point restrictions are lifted (for example, if a dividend is due to be paid but has not been issued in respect of that interest).

Offences for failing to comply with notices

553. Paragraph 13 provides that is an offence for a person (including the officers of the entity in the case of legal persons) to whom a notice is addressed under section 790D or 790E to fail to comply with the notice or to knowingly or recklessly make a false statement.

554. The offence does not however apply if the person can prove that the requirement was frivolous or vexatious (paragraph 13(3)). The offence is triable either way, punishable by imprisonment or a fine. This is based on the offence provision in section 795 of CA 2006 ('Notice requiring information: offences'), which applies to persons failing to comply with notices issued under section 793 ('Notice by company requiring information about interests in its shares'). The offences are considered sufficiently similar such that the same penalty should apply.

Offences for failing to provide information

555. Paragraph 14 provides that the penalty for a person failing to comply with a duty under section 790G or 790H or knowingly or recklessly making a false statement in respect of that duty is the same as that under paragraph 13 (see above). It is considered that the offences are sufficiently similar such that the same penalty should apply.

556. The offence will not apply to a person who could not reasonably have known that they were a registrable person or RLE in relation to the company or that a relevant change had occurred (see sections 790G(1)(b) and 790H(1)(c)).

Part 2: Related amendments

557. Part 2 of Schedule 3 sets out amendments related to these new provisions.

558. Section 9 of CA 2006 ('Registration documents') sets out the information and documents that must be delivered to the registrar in an application to register a company. Paragraph 4 of Schedule 3 inserts new section 9(4)(d) which requires a statement of initial significant control (see new section 12A, below) to be contained within the application. A company may not be registered by the registrar unless this information is provided (see section 14 of CA 2006, 'Registration').

559. Paragraph 5 inserts new section 12A into CA 2006 ('Statement of initial significant control'). The statement must contain the required particulars of any individuals and legal entities who will be registrable persons or RLEs in relation to the company on incorporation and include any other matters that would be required on incorporation to be entered in the PSC register under section 790M. This would include provision made in regulations under section 790M, for example, that a company believes it has no registrable persons or RLEs.

560. The required particulars are those listed in section 790K. If an application under regulations made under section 790ZG has been made, that fact must be reflected in the required particulars. It is not necessary to include the date on which the person became a registrable person or RLE. That date will be the date of the company's incorporation, which will not be known to the company at the time the statement is made. A statement that any information on individuals is included with the knowledge of those individuals must also be made (subsection (3)). As in Part 21A, this is intended to ensure that individuals know of their inclusion in the PSC register.

561. Paragraph 6 amends section 120 CA 2006 ('Information as to state of register and index') to clarify that a company must tell those inspecting or receiving a copy of the register of members whether there are any further changes to be made to it. This brings section 120 into line with new section 790S.

562. Paragraph 7 amends section 1068 of CA 2006 ('Registrar's requirements as to form, authentication and manner of delivery') to provide that the registrar may require documents delivered under Chapter 4 of Part 21A (i.e. where an election to keep PSC information on the central register is made) to be delivered by electronic means. Equivalent provision is made in respect of the register of members where an election has been made (see paragraph 30 of Schedule 5 to the Act). Paragraph 8 amends section 1087 of CA 2006 ('Material not available for public inspection') to provide

that protected information under Chapter 5 of Part 21A (see above) must not be made available for public inspection by the registrar.

563. Paragraph 9 amends section 1126 of CA 2006 ('Consents required for certain prosecutions') to provide that certain offence provisions in Schedule 1B may only be prosecuted with the consent of the Secretary of State (see above) and that section 1112 CA 2006 ('General false statement offence') may only be prosecuted with the consent of the Secretary of State or the Director of Public Prosecutions. This will ensure that all prosecutions, including private prosecutions, are brought in the public interest. No provision is made for Scotland, since private prosecutions may not be brought in the Scottish courts under these provisions.

564. Paragraph 10 amends section 1136 of CA 2006 ('Regulations about where certain company records to be kept available for inspection') to provide that the PSC register and historic PSC register (where applicable) may be included in scope of such regulations. This is felt necessary for the purposes of consistency with other provisions relating to company registers.

Section 82: Review of provisions about PSC registers

565. This section provides that the Secretary of State must carry out a review of Part 21A and related provisions of CA 2006 inserted by this Act within three years of Section 92 coming into force. Section 92 makes provision for information in the PSC register to be delivered to the registrar of companies ('the registrar'). It is considered appropriate for the review to take account of both the company's requirement to maintain a register (Part 21A) and the requirement to provide this information to the registrar and make it publicly available (section 92). Three years is considered an appropriate period of time within which to review the operation of the requirements.

566. The Secretary of State must publish and lay before Parliament a report setting out the conclusions of the review. Subsection (2) sets out particular factors that must be included in that report.

Register of interests disclosed

Section 83: Amendment of section 813 of the Companies Act 2006

567. Part 22 of CA 2006 ('Information about interests in a company's shares') sets out how a public company may obtain information about persons with an interest in its shares. In so doing, the company must maintain a register of information received (section 808, 'Register of interests disclosed') and keep it available for inspection.

568. Section 813 of CA 2006 ('Register of interests disclosed: refusal of inspection or default in providing copy') sets out the offence that applies where a company fails to make the register available or makes default in providing a copy.

569. Section 83 is a technical provision to clarify the current application of section 813. It provides that an offence is not committed where the refusal or default is in accordance with section 812 of CA 2006 ('Court supervision of purpose for which rights may be exercised').

Abolition of share warrants to bearer

Section 84: Abolition of share warrants to bearer

570. This section inserts a new provision in section 779 of the Companies Act 2006 (CA 2006) in order to prohibit the creation of new share warrants, commonly referred to as 'bearer shares'.

571. Subsection (3) of the section introduces Schedule 4, which puts in place arrangements for the conversion or cancellation of existing bearer share warrants. The new section and Schedule will together effect a full abolition of bearer shares in UK companies.

Schedule 4: Abolition of share warrants to bearer

572. Part 1 of this Schedule sets out the provisions for the transitional arrangements required for the conversion and cancellation of bearer share warrants, to achieve abolition. Part 2 of the Schedule contains the amendments to specific sections of the Companies Act 2006 (CA 2006) which are required by the new provisions.

Part 1: Arrangements for Cancellation and Conversion

573. Part 1 of the Schedule sets out the surrender period for bearer share warrants, then the process for cancellation of any remaining bearer share warrants.

574. Paragraph 1 specifies a nine month "surrender period" for bearer shareholders to surrender their warrants to the company for cancellation and for registration of the shares specified in the warrants.

575. Paragraphs 2 and 4 set out the requirements for a company to give notice to their bearer shareholders – informing them of their rights to surrender and the consequences of not exercising them. This notice must be given within the first month of the surrender period, and again before the end of the eighth month if there are bearer shares remaining at that point. Failure to give notice will constitute an offence by the officers of that company.

576. Paragraph 3 provides for the consequence of failure to surrender a bearer share warrant during the first seven months of the "surrender period." At the end of that period, the bearer share warrants will become non-transferable and all other rights attached to them will be suspended

577. Paragraph 5 requires a company with any bearer share warrants remaining at the end of the nine month "surrender period" to apply to court within 3 months for an order cancelling the warrants and the related shares. Sub-paragraphs (3) and (5) of paragraph 5 specify that the former bearer share holders must be notified about the application and that the Registrar of Companies must be notified when a cancellation order is made.

578. Paragraph 6 details the court orders to effect cancellation of bearer share warrants remaining at the end of the nine month "surrender period." If the court is satisfied that a company has fulfilled the notice requirements with respect to the bearer share holder during the surrender period, it will make a cancellation order; if it is not satisfied then it will make a suspended cancellation order. Sub-paragraph (3) describes the suspended cancellation order, including the requirement of the company to give notice to its bearer share holders within 5 working days of the court order of the start of a 2 month period from the date of the order in which they can surrender the share warrants (the "grace period"). Cancellation must be entered in a company's register of members.

579. Paragraph 7 specifies a requirement for a company to provide the Registrar with certain documents specified in the Schedule relating to the cancellation including a revised statement of capital. Paragraph 8 provides that if cancellation results in a reduction in share capital below the authorised minimum in the case of a public company the company must be re-registered as a private company before the cancellation is registered.

580. Paragraph 9 requires payment by a company into court on cancellation of the bearer share warrants of the nominal value of the shares and any premium paid on them, together with the value of any dividends accrued on the shares since the rights attached to them were suspended.

581. Paragraph 10 provides that a former bearer share holder may apply to the court to claim the sum paid in to court by the company (in respect of their shares and any dividend) on cancellation of the shares. Such an application may be made between 6 months and 3 years after the cancellation date. Paragraph 10 sets out that the court will only make such a payment in the case of exceptional circumstances which prevented the holder of the bearer share warrant surrendering the share during the surrender period. The purpose is to provide that where there has been a genuine and profound impediment to surrendering bearer share warrants in the time specified, then a limited period of time should be available to allow anyone so affected to claim their property. Exceptional circumstances might include serious, incapacitating and long term illness during the surrender period, for instance.

582. Paragraph 11 provides for circumstances where a company enters administration or goes into liquidation or appoints an administrative receiver after the making of a cancellation or suspended cancellation order. In these circumstances the office-holder may apply to the court for the sum paid into court in respect of any relevant warrants, excluding any accrued dividends.

583. Paragraph 12 specifies that sums remaining with the court after three years be paid into the Consolidated Fund.

584. Paragraph 13 prevents a company with issued bearer share warrants from making an application for striking off.

585. Paragraph 14 sets out the requirements of the notices that must be given by the company with issued bearer share warrants under the various provisions of this Schedule.

586. Paragraph 15 applies the language requirements of the Companies Act 2006 to documents delivered to Companies House under the Schedule.

587. Paragraphs 16 to 18 set out details relating to the offences that apply in relation to various provisions of the Schedule.

588. Paragraph 19 applies various sections of the Companies Act 2006 to the Schedule.

589. Paragraph 21 defines terms used in this Schedule.

590. Paragraph 21 provides that until sections 94 (option for keeping information on central register) and 97 (Contents of statement of capital) come into force, the provisions in schedule 4 operate without reference to those provisions.

Part Two: Consequential Amendments

591. Part 2 of the Schedule amends CA 2006 for consistency with the provisions to abolish share warrants to bearer.

592. Paragraph 23 amends section 122 of CA 2006 to reflect the fact that once section 84 is in force no more share warrants will be able to be issued.

593. Paragraph 24 amends section 617 of CA2006 to allow for a company to alter its share capital on the basis of the requirements in this Schedule. Paragraph 25 amends section 652 of CA 2006 to ensure a member of the company is not liable in respect of any share to any call or contribution exceeding the nominal amount notified to the Registrar in a statement of capital resulting from a reduction of capital on the basis of the requirements in this Schedule.

594. Paragraph 26 amends CA 2006 to remove section 780 which currently requires a company to provide a share certificate on surrender of a bearer share warrant, since this will no longer be needed when bearer share warrants are abolished.

595. Paragraphs 275 and 28 amend CA 2006 to provide for restoration of a company through the administrative route or by the court if it had bearer share warrants in issue at the

time of strike-off or dissolution. Any bearer share warrants and the shares specified in them will be cancelled on restoration. If, as a result, the company has no share capital it must make an allotment of shares.

Section 85: Amendment of company's articles to reflect abolition of share warrants

596. In order to reflect the fact that once section 84 is in force it will be unlawful for a company to issue share warrants, this section provides that a company whose articles of association authorise the issue of share warrants may amend its articles without recourse to specific procedures set out in CA 2006, so without the need for a special resolution or for compliance with any relevant provision for entrenchment contained in the articles.

Section 86: Review of section 84

597. This section requires the Government to review the provisions in 84 of the Act no later than 5 years after these provisions come into force. The Government's policy of sunset and review of regulations can be found in section 1.7 of the Better Regulation Framework Manual (July 2013). In accordance with this guidance the new provision to which this section applies is the abolition of share warrants to bearer.

Corporate Directors

Section 87: Requirement for all company directors to be natural persons

598. This section will introduce the general requirement that company directors need to be natural persons (individuals). It inserts new sections into the Companies Act 2006 (CA 2006) to require that company directors should be natural persons and prohibits (subject to exceptions) the appointment of legal persons as directors (for example companies). It provides a power for the Secretary of State to set out exceptions – situations where legal persons can be directors.

599. Subsection (2) removes section 155 from CA 2006 which requires all companies to have at least one director who is a natural person (section 155(1)) and permits natural persons to be appointed by virtue of the office they hold (section 155(2)). As subsequent sections set out, these requirements are now superseded.

600. Subsection (4) inserts sections 156A, 156B and 156C into the Companies Act 2006:

i. Section 156A introduces the general requirement that company directors must be natural persons. It reintroduces the provision which allows individuals to be appointed by virtue of the office they hold. If a legal person is appointed a director by a company that appointment will be void. However, any liability attaching to the person in the role of director is not affected. Also provisions which place liability on persons other than appointed directors (where they purport to act as directors or are shadow directors) will still apply even though they are legal persons). It will be an offence to breach these requirements. These restrictions apply subject to any exceptions made to the general requirement that directors must be individuals (see below).

ii. Section 156B gives the Secretary of State the power to make regulations setting out the exceptions to the general requirement that directors must be individuals. If this power is exercised it must include the compliance process, including registration requirements, and must require that the company has at least one director who is an individual. This power can also be used to require the approval of a regulator to the appointment of a corporate director. Specific regulators will be designated in regulations.

iii. Section 156C sets out the transition period for companies with corporate directors. After one year of the coming into force of section 156A a corporate director not in scope of exceptions defined in regulations under section 156B will cease to be

a director. The company will need to make the necessary register alterations and notifications to the Registrar.

Section 88: Review of section 87

601. This section requires the Government to review provisions in section 87 of the Act every 5 years, with the first review taking place no later than 5 years after these provisions come into force. The Government's policy of sunset and review of regulations can be found in section 1.7 of the Better Regulation Framework Manual (July 2013). In accordance with this guidance, which requires review sections for new legislation that regulates business, the new provision to which this section applies is the requirement for all company directors to be natural persons.

Shadow directors

Section 89: Application of directors' general duties to shadow directors

602. The general duties of directors are set out in sections 170 to 177 of the CA 2006 and are based on common law rules and equitable principles. They set out how directors are expected to behave.

603. At present the general duties of directors can only apply to shadow directors in the same way as the corresponding common law rules and equitable principles can. In future, the starting point for shadow directors will be that the general duties apply to them unless they are not capable of applying (removing the current restriction). This is achieved by replacing section 170(5) of the CA 2006. This change in default position is neither intended to preclude the courts from looking at the application of the duties on a case by case basis, nor from drawing on existing case law in any given case.

604. Subsection (3) gives the Secretary of State the power to make regulations directly applying or disapplying one or several of the general duties to shadow directors with or without modification, to facilitate their application to shadow directors. The power is subject to the affirmative procedure.

Section 90: Shadow directors: definition

605. This section amends the CA 2006, Insolvency Act 1986, and the Company Directors Disqualification Act 1986 to refine the definition of a shadow director.

606. It makes clear that where advice, guidance, directions or instructions are given in exercise of a function conferred by or under legislation, including legislation made by the Devolved Administrations, the definition of shadow director will not be met. To achieve this, it amends the definition of "enactment" in the CA 2006 to refer to legislation made in Wales. It also sets out that a Minister of the Crown acting in their official capacity will not be considered a shadow director when issuing advice or guidance.

Section 91: Shadow directors: provision for Northern Ireland

607. This section inserts the new definition of shadow director inserted by section 90 into the Insolvency (Northern Ireland) Order 1989, and the Companies Directors Disqualification (Northern Ireland) Order 2002. This ensures consistent treatment of shadow directors in Northern Ireland, England, Wales and Scotland.

Part 8: COMPANY FILING REQUIREMENTS

Annual return reform

Section 92: Duty to deliver confirmation statement instead of annual return

608. This section substitutes a new Part for Part 24 of the Companies Act 2006 (CA 2006). These changes remove the requirement for companies to deliver an annual return. The annual return is a document containing basic company information that was required to be delivered by companies to the registrar of companies on an annual basis.

609. New section 853A(1) introduces a new requirement on all companies to deliver to the registrar a confirmation statement stating that the company has delivered all the information required to be delivered to the register for the confirmation period. Subsection (2) states which duties to deliver information are the subject of the confirmation statement.

610. The confirmation period is the period covered by the confirmation statement. It starts from either the incorporation date of the company or the day after the date specified in the company's last confirmation statement. It ends with the date specified in the confirmation statement (subsection (3)).

611. The confirmation statement must be delivered to the registrar before the end of 14 days after the review period. The review period is the maximum period which can be covered by a confirmation statement. Subsection (5) defines the review period as the 12 month period following either the incorporation date of the company or the day after the end of the previous review period.

612. However, the company has the ability to submit a confirmation statement at any point in the review period. Subsection (6) provides that if the company delivers a confirmation statement before the end of the review period, the next review period of 12 months will be set from the day after the date of confirmation statement.

613. To allow a company to make a confirmation statement in good faith when it is delivering information at the same time, or has shortly before delivered information to the registrar, section 853A (7) allows the company to assume that any documents delivered to the registrar at the same time as, or during the 5 days prior to making the confirmation statement have been accepted by the registrar. A company may not make such an assumption if it has had notification that the information was not properly delivered (section 853A(8)).

614. Section 853B sets out the duties to notify the registrar of a relevant event which a company must confirm have been satisfied as part of the confirmation statement. These are:

   i. details of change of registered office;

   ii. details of company registers relating to directors, company secretaries (if appropriate) and people with significant control (PSC);

   iii. any obligations that arise as a result of a decision by a company to keep any of its registers on the central register; and

   iv. details of where a company keeps company records if it uses a single alternative inspection location.

615. A company will be required to include in the confirmation statement any change in its principal business activities (section 853C).

616. For a company with a share capital, there are additional obligations to be included in the confirmation statement. Such a company must:

i. deliver a statement of capital where there has been any change since the last statement was delivered to the registrar (section 853D);

ii. deliver a statement as to whether shares were admitted to trading and if the company is a DTR5 issuer (i.e. subject to chapter 5 of the Financial Conduct Authority's Disclosure Rules and Transparency Rules) (section 853E); and

iii. in addition, non-traded and certain traded companies must deliver certain information about shareholders, which is set out in sections 853F and 853G respectively.

617. Section 853H requires a company that is not a DTR5 issuer and to which Part 21A CA 2006 does not apply to deliver a statement of this fact to the registrar. This is to enable the registrar and the searcher to see whether a company is required to keep a PSC register under the new Part 21A CA 2006 as inserted by the Act.

618. Section 853I requires a company to send the information in its PSC register (if subject to the provisions in Part 21A CA 2006) when it delivers a confirmation statement to the registrar, if there has been any change since the information was last delivered to the registrar. This information, together with the information as to shareholding, will allow the searcher of the register to build up a complete picture of the ownership and control of the company.

619. Section 853J is a power to make regulations relating to the duties to notify certain shareholder information, the trading status of a company's shares, whether a company is exempt from Part 21A and the PSC register. In particular, the regulations could require companies to file updates to their shareholders and to their register of persons with significant control at specified intervals, which might not necessarily coincide with the confirmation statement. The power also allows for regulations to provide for offences if a company does not provide the specified information. Any regulations made under this power are subject to the affirmative resolution procedure.

620. Section 853K gives the Secretary of State power to make regulations which amend or repeal the information required to be included in the confirmation statement, and may make provisions for exceptions. This section derives from what was section 857 CA 2006, which gave the same power to make regulations amending the requirements of the annual return. Any regulations made under this power are subject to the negative resolution procedure, unless the regulations add obligations to the confirmation statement, in which case the regulations will be subject to the affirmative resolution procedure.

621. If the company does not submit a confirmation statement prior to the end of the 12 month review period the company has 14 days following the end of the period to submit its confirmation statement (s853L(1)). If the company fails to do this, the company and any company officers in default will commit an offence (section 853L(2)). The offence continues until the confirmation statement is delivered (section 853L(3)). Section 853L(4) ensures that directors and secretaries are able to use a defence which proves that the individual took all reasonable steps to avoid the continuation of the offence.

Section 93: Section 92: related amendments

622. This section makes a number of consequential amendments which result from the changes made to the Companies Act 2006 in section 92.

623. Amendments to section 9 require companies to supply details of their principal activities at the time of incorporation, and provide that the prescribed classification system (as currently applies for the purposes of the annual return) should be used.

624. The amendment made to section 108 enables a private company to rely on the last statement of capital delivered to Companies House if no changes have been made rather than supplying a new statement of capital when re-registering as unlimited.

625. Subsections (5) and (6) remove specific references to the annual return and amend them to appropriate alternatives relevant to the new system for confirming that all information has been delivered to the registrar.

Additional information on the register

Section 94: Option for companies to keep information on central register

626. The Companies Act 2006 ("CA 2006") requires companies to keep and maintain private registers containing the details of directors, directors' residential addresses, members and secretaries. The Act also contains a new requirement to keep and maintain a register of people with significant control.

627. Section 94 gives effect to Schedule 5 which amends the CA 2006 to give private companies the option of keeping the information on the registers of members, directors, directors' residential addresses and secretaries on the register under section 1080 of the CA 2006 ("the public register") instead, and no longer keeping and maintaining these private registers. Equivalent provisions in relation to the register of people with significant control are in Schedule 3.

Schedule 5: Option to keep information on central register

628. Schedule 5 inserts new provisions into the CA 2006 containing provisions to enable private companies to only keep certain information on the public register instead of in a private company register.

Part 1 – creation of the option

Register of members

629. Paragraph 3 inserts a new Chapter 2A into Part 8 of the CA 2006. The provisions in new Chapter 2A (new sections 128A to 128K) set out the rules which allow private companies to keep information on the public register instead of the register of members.

630. New section 128B provides that a private company may elect to keep its register of members on the public register. All members must assent to the election (subsection (2)). Notice of an election must be given to the registrar:

i. On incorporation, with the documents required to be delivered on incorporation and any additional information that would otherwise be required to be entered in the register of members (subsection (4)); or

ii. Post-incorporation, with a statement that all members have assented to the election and, if the company had kept any overseas branch registers, that these have been discontinued.

631. The company must provide all the information that must be contained in the register of members at the date of the election that is current at that date, that is, particulars of the members as at the time of the notice (subsections (5) and (10)). It must provide any updated information in the event of any change in the details in the register of members between the time the election is delivered to the registrar and the time the election takes effect (subsection (6)). If the register of members is rectified, the company must update the public register as well (subsection (7)). It is an offence for a company not to comply with this duty (subsections (8) and (9)).

632. New section 128C provides that an election takes effect when it is registered by the registrar. An election remains in force until either a company ceases to be a private company or withdraws the election (subsection (2)).

633. New section 128D sets out the effects of an election on a company's obligations to maintain a register of members. During the period an election is in force, a company does not have to maintain a register of members (subsection (2)). A company must continue to keep the register that it was required to hold prior to the election ("the historic register"), but it need not update that register to reflect subsequent changes whilst the election is in force (subsection (3)). The current rights in the CA 2006 for a person to inspect and require copies of the register of members continue in respect of the historic register (subsection (5)). The company must place a note in the historic register that an election is in force and that up to date information about the members can be found on the public register (subsection (6)). A company that does not place such a note in the historic register commits an offence (subsection (7)).

634. New section 128E imposes a duty on the company, whilst an election is in force, to deliver information to the registrar that would otherwise be put onto the register of members (subsection (2)). However, subsection (3) provides that the company does not have to deliver information relating to the date a person becomes a member of the company where this date will be the date of registration by the registrar (under the amendments to section 1081 contained in paragraph 31). In this case, the company must indicate to the registrar that the date to be recorded is the date of registration (subsection (5)). It is an offence for a company not to comply with this duty (subsections (6) and (7)).

635. New section 128F provides a right for a person who has inspected or requested a copy of material on the public register that would otherwise be on the register of members to ask the company to confirm that all the information the company is required to deliver has in fact been delivered (subsection (1)). It is an offence for a company not to respond to this request (subsections (2) and (3)). This is the equivalent to the rights of a person to obtain information about the state of the register in section 120 of the CA 2006.

636. New section 128G provides a power to the court to order rectification of the material on the register. The court may act where a person has either been included, or not included, as a member of the company without sufficient cause; or where the company has failed, or has unreasonably delayed, in notifying the registrar that a person has become, or ceased to be, a member of the company (subsection (1)). This is equivalent to the power of the court to rectify the register of members in section 125 of the CA 2006.

637. New section 128H provides that the public register is prima facie evidence of material that would otherwise have been on register of members if an election had not been made (subsection (1)). This is equivalent to section 127 of the CA 2006. Section 127 still applies to information sent in as part of the election (subsection (2)).

638. New section 128I sets out the time limit for claims against the company in relation to material that has, or has not been delivered to the registrar. This is equivalent to section 128 of the CA 2006.

639. New section 128J deals with the withdrawal of an election. A company must give notice of withdrawal to the registrar (subsection (2)). The withdrawal is effective on registration by the registrar (subsection (3)). On withdrawal, the obligations in Chapter 2 of the CA 2006 to maintain a register of members apply to the company (subsection (4)). Subsection (5) provides that, on withdrawal of an election, a company must enter in its register of members all the information relating to matters that are current that is required to be contained in the register. The company is not required to enter information relating to the period when an election was in force that is no longer current (for example, the details of a person who has ceased to be a member during the election period). The company must note on the register of members that an election has

been withdrawn and that information about members in the period when the election was in force can be found on the public register (subsection (6)).

640. New section 128K gives the Secretary of State the power to make regulations to extend the option to public companies (subsection (1)). Regulations are subject to the affirmative resolution procedure (subsection (2)).

Register of overseas members

641. Paragraph 4 provides that a company cannot keep information about its members on the public register if it is also keeping an overseas branch register.

Register of directors and register of directors' residential addresses

642. Paragraph 7 inserts new sections 167A to 167F into the CA 2006 setting out the rules which allow private companies to keep information on the public register instead of the register of directors and/or the register of directors' residential addresses.

643. New section 167A provides that a private company may elect to hold the register of directors and/or the register of directors' residential addresses on the public register.

644. New section 167B provides that an election takes effect when it is registered by the registrar. An election remains in force until either a company ceases to be a private company or withdraws the election (subsection (2)).

645. New section 167C provides that, during the period when an election is in force, a company does not have to keep a register of directors and/or the register of directors' residential addresses.

646. New section 167D imposes a duty on the company, whilst an election is in force, to deliver information to the registrar that would otherwise have to be notified to the registrar under section 167 (subsection (2)). It is an offence for a company not to comply with this duty (subsections (4) and (5)).

647. New section 167E deals with the withdrawal of an election. A company must give notice of withdrawal to the registrar (subsection (2)), which takes effect on registration by the registrar (subsection (3)). On withdrawal, the obligations in sections 162, 165 and 167 to maintain a register and notify the registrar of changes apply to the company (subsection (4)). Subsection (5) provides that, on withdrawal of an election a company must enter in its register all the information relating to matters that are current that is required to be contained in the register. However, a company is not required to enter information relating to the period when an election was in force that is no longer current (for example, the details of a person who has ceased to be a director during the election period).

648. New section 167F gives the Secretary of State the power to make regulations to extend the option to public companies (subsection (1)). Regulations are subject to the affirmative resolution procedure (subsection (2)).

Register of secretaries

649. Paragraph 12 inserts new sections 279A to 279F into the CA 2006 setting out the rules which allow private companies to keep information on the public register instead of the register of secretaries.

650. New section 279A provides that a private company may elect to hold the register of secretaries on the public register.

651. New section 279B provides that an election takes effect when it is registered by the registrar. An election remains in force until either a company ceases to be a private company or withdraws the election (subsection (2)).

652. New section 279C provides that, during the period when an election is in force, a company does not have to keep a register of secretaries.

653. New section 279D imposes a duty on the company, whilst an election is in force, to deliver information to the registrar that would otherwise be notified to the registrar under section 276 (subsection (2)). It is an offence for a company not to comply with this duty (subsections (4) and (5)).

654. New section 279E deals with the withdrawal of an election. A company must give notice of withdrawal to the registrar (subsection (2)), which takes effect on registration by the registrar (subsection (3)). On withdrawal, the obligations in sections 275 and 276 to maintain a register of secretaries and notify the registrar of changes apply to the company (subsection (4)). Subsection (5) provides that, on withdrawal of an election a company must enter in its register all the information relating to matters that are current that is required to be contained in the register. However, a company is not required to enter information relating to the period when an election was in force that is no longer current (for example, the details of a person who has ceased to be a secretary during the election period).

655. New section 279F gives the Secretary of State the power to make regulations to extend the option to public companies (subsection (1)). Regulations are subject to the affirmative resolution procedure (subsection (2)).

Part 2 – related amendments

656. Paragraphs 11 to 34 make a number of consequential amendments which result from the changes made to CA 2006 in Part 1 of the Schedule.

657. The amendment made to section 1068 enables the registrar to require a document delivered in or following an election to keep the register of members on the public register to be delivered electronically.

658. The amendment to section 1081 requires the registrar to annotate the public register to show the date of registration of the following information:

i. the date a person is registered as a member;

ii. the date when membership of a limited company increases from one member; and

iii. the date a person ceases to become a member and the date when a company becomes a single member company (where this information is not provided by the company).

Section 95: Recording of optional information on register

651. This section inserts new section 1084A into the Companies Act 2006 to give a power to the Secretary of State to make regulations to enable companies voluntarily to deliver certain categories of information to the registrar of companies. This information, which will be additional to the information that companies are statutorily required to deliver to the registrar, will then be made publicly available by the registrar in accordance with section 1080 of the Companies Act 2006.

652. Regulations made under new section 1084A may include requirements on companies in relation to keeping this optional information up to date and the consequences if companies fail to do this. The regulations will be subject to the affirmative resolution procedure.

Directors' dates of birth

Section 96: Protection of information about a person's date of birth

653. This section amends section 1087 and inserts new complementary sections 1087A and 1087B in the Companies Act 2006. The section requires the registrar to omit the "day" of the date of birth of company directors and people with significant control over a company from the material on the register available for public inspection. The "month and year" will still be available for public inspection on the register.

654. Companies will still be required to send the registrar full details of the dates of birth of their directors and people with significant control. This information will remain available for inspection on the company's own register (unlike directors' usual residential addresses). The day element will be suppressed from public inspection on the register, except in certain situations (new section 1087A(4)):

i. When a private company, or subscribers wishing to form a private company, make an election to hold the company's register of directors or register of people with significant control on the public register. In such instances the public register will contain the full date of birth that would otherwise be available on inspection of the company's own register; and

ii. Where the document containing the date of birth information was registered by the registrar before section 94 comes into force.

655. The registrar must not disclose date of birth information to third parties, other than as permitted by new section 1087B. New section 1087B allows the registrar to disclose the full date of birth information to public authorities specified under regulations made by the Secretary of State and credit reference agencies. Subsection (3) applies subsections 243(3) to (8) of the Companies Act 2006 ('Permitted use or disclosure by the registrar') for the purposes of subsection (2) which enables the Secretary of State to make further provision in relation to the discharge of a person's full date of birth in regulations, including specifying conditions for the disclosure.

Statements of capital etc

Section 97: Contents of statements of capital

656. The statement of capital is a written statement, required by the Companies Act 2006, which gives a snapshot of a company's share capital. Companies are required to produce a statement of capital at particular times, mainly where the share capital is altered. This section gives effect to the changes to the requirements for a company's statement of capital contained in Schedule 6.

Schedule 6: Contents of statements of capital

657. Schedule 6 removes the requirement for the statement of capital to include the amount paid up and unpaid on each share. It also inserts a requirement for the statement of capital to include the aggregate amount unpaid on the total number of shares.

Section 98: Public companies: information about aggregate amount paid up on shares

658. This section amends the Companies Act 2006 to require companies to state the aggregate amount paid up on the shares of the company in certain circumstances.

659. Subsections (2) and (3) set out the circumstances where such a statement is required:

i. on an application by a private company to re-register as a public company; and

ii. on an application by a public company for a trading certificate.

660. Subsection (4) provides that the statements provided as a result of subsections (2) and (3) must be published.

Registered office disputes

Section 99: Address of company registered office

661. The Companies Act 2006 (CA 2006) requires a company to have a registered office. The registered office is the company's address for service and is used by the registrar of companies for official communications.

662. Subsection (1) of this section inserts a new section 1097A into the CA 2006. The new section gives the Secretary of State a power to make regulations under which, following a successful application, the registrar of companies will be required to change the registered office address of a company, where the registrar is satisfied that the company is not authorised to use its current address.

663. Upon a successful application, the registrar must change the registered office to a "default address" of the registrar's choosing. Under subsection (3) of new section 1097A, the regulations may specify such issues as who may make an application, how an application may be made, in what time period and how an application may be determined (including the evidence the registrar may rely on).

664. Subsection (5) of new section 1097A sets out particular provisions, which may be included in the regulations, to deal with the operation of a default address. This includes suspension of the company's obligations relating to trading disclosures and the inspection of company records whilst its registered office address is the default address provided for by the registrar. Subsection (6) provides that either the applicant or the company may appeal the outcome of an application to the court; under subsection (7) the court must direct the registrar to register whatever address for the company the court considers appropriate.

665. Section 1087 of the CA 2006 specifies material which must not be made available by the Registrar for public inspection. Subsection (2) of this section amends section 1087, so that any application, or other document (apart from a court order or direction), delivered to the registrar in relation to a dispute about a registered office address will not be available for public inspection.

Director disputes

Section 100: Company filing requirements: consent to act as director or secretary

666. Companies are required to notify the registrar of companies within 14 days of the appointment of a person as a director or company secretary. This notification must currently be accompanied by consent by the person to act in that capacity.

667. This section amends the Companies Act 2006 to replace the requirement for this consent to act with a requirement for the company or, in the case of the formation of a new company, the subscribers to the memorandum of association, to make a statement that the person has consented to act.

668. Subsection (2) applies this to proposed directors and secretaries on the formation of a company; subsection (3) applies this to proposed secretaries where a private company re-registers as a public company. Subsections (4) and (5) apply this to directors and secretaries appointed post formation.

Section 101: Registrar's duty to inform new directors of entry in register

669. This section inserts a new section 1079B into the Companies Act 2006. This imposes a duty on the registrar of companies to send a notice to newly appointed directors as soon as reasonably practicable after the appointment has been registered.

670. The contents of the notice are set out in subsection (3) of new section 1079B. The notice must state that the registrar has been notified of the director's appointment and must include such information about the role and duties of a director (or details of where this information can be found) as the registrar is directed to include by the Secretary of State.

Section 102: Removal from register of material about directors

671. This section amends section 1095 of the Companies Act 2006 to provide a new procedure for removing material about directors from the public register.

672. Section 1095 currently provides a means of removing material from the public register. The Registrar of Companies and Applications for Striking Off Regulations (SI 2009/1803), made under section 1095, allow specified persons to make applications to the registrar to remove inaccurate information, or any information deriving from anything invalid or ineffective, from the register. If any valid objection to an application is made, the registrar must reject the application.

673. The new subsections 1095(4A) to (4D) replace the current section 1095 mechanism in relation to any person appearing on the public register as a director who wishes to be removed. The person, or someone acting on the person's behalf, must apply to the registrar, stating that the person did not consent to act as a director. If the company does not respond to the registrar within a specified timeframe stating, with the necessary evidence, that the person did consent to the appointment, the registrar will effect the removal.

674. An application may be made under the new subsection 1095(4A) by, or on behalf of, a director appointed on incorporation notwithstanding the fact that the director is deemed to have been appointed as from the date of incorporation under section 16(6) of the CA 2006.

Accelerated strike-off

Section 103: Reduction in notice periods etc for striking off companies

675. This section amends Chapter 1 of Part 31 of the Companies Act 2006 (CA 2006). The section reduces the period after which the registrar may strike off (remove) a company from the register.

676. Under section 1000 of CA 2006 the registrar may only strike off a company if he has reasonable cause to believe it is not carrying on business or is not in operation. Before doing so, the registrar must communicate their intention to strike the company from the register and publish notice of proposed strike off in the Gazette. This entire process takes approximately 6 months and provides the opportunity for the company or third parties to object to the proposed strike off.

677. The amendments made to section 1000 CA 2006 by subsection (2) of this section reduces the time the registrar must wait before sending additional communications to the company from "1 month" to "14 days", and also enables the registrar to strike off a company 2 months after publication of notice in the Gazette rather than the current 3 months. The combined effect of these changes will be to reduce the period it takes the registrar to strike off a company from approximately 6 to 4 months.

678. Subsection (3) and (4) also accelerate the timescales for striking off a company under sections 1001 CA 2006 (duty on registrar to act in case of company being wound up) and section 1003 CA 2006 (striking off on application by a company). In each of those sections, the registrar must cause notice to be published in the Gazette before striking the company off. The amendments to sections 1001 and 1003 CA 2006 reduce the notice period from 3 months to 2 months.

679. Subsections (6) to (8) ensure that the new timescales only apply to procedures initiated after the commencement of the section.

Part 9: DIRECTORS' DISQUALIFICATION ETC.

New grounds for disqualification

Section 104: Convictions abroad

680. This section introduces a new ground for bringing disqualification proceedings under the Company Directors Disqualification Act 1986 ("CDDA 1986"). It allows the Secretary of State to apply to the court for the disqualification as a director of a person who has been convicted of certain offences overseas.

681. Subsection (3) of the new section specifies those types of offence, conviction of which may be used as the basis for bringing disqualification proceedings on this ground. The relevant offences are those serious offences in connection with the promotion, formation or management of a company overseas.

682. Subsection (4) of the new section enables the Secretary of State to accept a disqualification undertaking from a person instead of applying or proceeding with an application for a disqualification order on this ground.

Section 105: Persons instructing unfit director

683. This section inserts new sections into the CDDA 1986 to introduce a new ground for disqualification for persons who are not directors but who exert requisite influence over a director.

684. This applies where a director has been disqualified, or has given a disqualification undertaking for conduct under sections 6 (directors of insolvent companies) or 8 (disqualification of director on finding of unfitness) of the CDDA 1986. If any of the conduct for which the director was disqualified was caused because the director followed the instruction or direction of someone else, the person giving that direction or instruction may also be disqualified. Applications to court for disqualification orders on these grounds are subject to a public interest test.

685. The Secretary of State will also be able to accept a disqualification undertaking instead of making an application to court.

Determining unfitness

Section 106: Determining unfitness and disqualifications: matters to be taken into account

686. This section amends the CDDA 1986 to broaden the matters to which the court must have regard when determining whether a person should be disqualified as a director.

687. Subsections (5) and (6) amend the CDDA 1986 to require a court to take into account a range of matters connected with a person's behaviour, as set out in the new Schedule 1 to the CDDA 1986, when considering whether a person is unfit to be a director of a company, whether to exercise a discretion to disqualify a person, and what a period of disqualification should be. A power is included to allow the modification of Schedule 1 of the Companies Directors Disqualification Act 1986 by order approved by a resolution of both Houses of Parliament.

688. Subsection (2) enables the court to take conduct in relation to overseas companies into account when considering a disqualification application in relation to the conduct of a director of an insolvent company.

689. Subsection (3) enables a person's conduct in relation to more than one company, including any overseas companies, to be taken into account by the court when deciding whether or not to make a disqualification order under section 8 of the CDDA 1986 and when deciding whether to accept a disqualification undertaking.

Section 107: Reports of office-holders on conduct of directors of insolvent companies

690. This section inserts a new section 7A into the CDDA 1986 that simplifies the procedure whereby an office-holder (the official receiver, liquidator, administrator or administrative receiver) reports on the conduct of directors of insolvent companies.

691. Currently the CDDA 1986 (see section 7(3)) requires office holders to submit a report to the Secretary of State if it appears to them that the conduct of the director makes them unfit to be concerned in the management of a company.

692. The new section requires submission to the Secretary of State of a conduct report on every director of a company that become insolvent. The conduct report must describe any conduct which may assist the Secretary of State in deciding whether it is in the public interest to apply for the making of a disqualification order. The report must be submitted in all cases within 3 months of the insolvency date.

693. New subsections (5) and (6) require an office-holder to send any new information that should have been included in a conduct report as soon as practically possible after it comes to the attention of the office-holder.

694. New subsections (7) and (8) remove the requirement for office-holders to submit a report where a report has already been submitted by an office-holder, either where the company has moved between insolvency procedures or where a new office-holder has been appointed in the same procedure.

Director disqualification: other amendments

Section 108: Unfit directors of insolvent companies: extension of period for applying for disqualification order

695. This section amends section 7 of the CDDA 1986 to increase the period of time within which the Secretary of State or official receiver on direction by the Secretary of State may apply to the court for disqualification of an unfit director of an insolvent company from two to three years from the date that company became insolvent.

Section 109: Directors: removal of restriction on application for disqualification order

696. This section amends section 8 of the CDDA 1986 to remove the restriction on the type of investigative material that may be used by the Secretary of State to decide whether or not to bring disqualification proceedings against the directors of a company in the public interest.

697. Currently only reports made by certain inspectors, and information or documents obtained under certain legislative powers may be used for this purpose. By removing this restriction, the Secretary of State may use any information to decide whether or not to bring disqualification proceedings against a director or shadow director of a company.

Compensation awards

Section 110: Compensation orders and undertakings

698. This section gives the court a new power to make a compensation order against a person, on the application of the Secretary of State, where the conduct for which that person has been disqualified has caused loss to one or more creditors of an insolvent company of which they have at any time been a director.

699. Subsection (2) of new section 15A of the CDDA 1986 allows the Secretary of State to accept a compensation undertaking from a director where the conditions for the making

of a compensation order are met, instead of applying or proceeding with an application to court for a compensation order.

700. Subsection (5) of new section 15A requires an application for a compensation order to be made within two years of the date on which the person subject to the application was disqualified.

701. New section 15B of the CDDA 1986 requires any person against whom a compensation order has been made, or who has had a compensation undertaking accepted by the Secretary of State, to pay the amount specified in the order or undertaking to the person or persons specified.

702. Subsection (3) of new section 15B of the CDDA 1986 sets out the factors which the court or Secretary of State must have particular regard to when deciding on the amount of compensation to award or seek.

703. New section 15C of the CDDA 1986 allows a person who is subject to a compensation undertaking to apply to the court for an order removing or varying the terms of the compensation undertaking.

Consequential amendments and corresponding provision for Northern Ireland

Section 111: Sections 104 to 110: consequential and related amendments

704. This section and Schedule 7 make various amendments to the CDDA 1986 and other enactments consequential on or related to the amendments made by sections 104 to 110 of this Part.

Section 112: Provision for Northern Ireland corresponding to Sections 104 to 111

705. This section and Schedule 8 make amendments to the Company Directors Disqualification (Northern Ireland) Order 2002 and the Insolvency (Northern Ireland) Order 2005, which extend to Northern Ireland, that correspond to those that sections 104 to 111 make to the legislation that extends to Great Britain.

Bankruptcy: Scotland and Northern Ireland

Section 113: Disqualification as director: bankruptcy, etc. in Scotland and Northern Ireland

706. This section amends the CDDA 1986 to add to the list of people prohibited from acting as a director of a company in Great Britain all persons who are subject to bankruptcy restrictions in Scotland and Northern Ireland.

Section 114: Company Directors Disqualification (Northern Ireland) Order 2002: bankruptcy, etc. in England and Wales or Scotland

707. This section amends the Company Directors Disqualification (Northern Ireland) Order 2002 to add to the list of people prohibited from acting as a director of a company in Northern Ireland all persons who are subject to bankruptcy restrictions in Great Britain.

Section 115: Disqualification as insolvency practitioner: bankruptcy, etc. in Scotland or Northern Ireland

708. This section amends the Insolvency Act 1986 to extend the list of persons who are prohibited from acting as an insolvency practitioner in Great Britain to persons who are subject to bankruptcy and debt relief restrictions in Northern Ireland, bankruptcy restrictions orders in Scotland and debt relief restrictions orders in England and Wales.

Section 116: Disqualification as insolvency practitioner in Northern Ireland: bankruptcy, etc. in England and Wales or Scotland

709. This section amends the Insolvency (Northern Ireland) Order 1989 to extend the list of persons who are disqualified from acting as insolvency practitioners in Northern Ireland to persons who are subject to bankruptcy restrictions in Great Britain, debt relief orders in England and Wales and debt relief restriction orders in Northern Ireland and England and Wales.

Part 10: INSOLVENCY

Office-holder actions

Section 117: Power for administrator to bring claim for fraudulent or wrongful trading

710. This section amends the Insolvency Act 1986 to permit an administrator to bring an action for wrongful or fraudulent trading where a director (or in the case of fraudulent trading, any person) has caused the business of an insolvent company to trade wrongfully or fraudulently.

711. Sections 246ZA and 246ZB mirror the analogous provisions which apply to liquidators under sections 213 and 214 of the Insolvency Act 1986.

Section 118: Power for liquidator or administrator to assign causes of action

712. This section amends the Insolvency Act 1986 to allow a liquidator or administrator ('the office-holder') to assign causes of action that arise on a company going into liquidation or administration.

713. The causes of action to which the section relates are actions which already exist within insolvency law (or are introduced by section 117) whereby liquidators and administrators can take action on behalf of the body of creditors to recover monies or reverse certain transactions where the directors and others have acted in a way that has caused harm to creditors.

714. The section allows the office-holder to assign not only the right to bring the action itself but also the proceeds of such an action.

Section 119: Application of proceeds of office-holder claims

715. This section amends the Insolvency Act 1986 to clarify the order of priority for the distribution of proceeds arising from an office-holder claim or from the assignment (or assignation in Scotland) of such a claim (see section 118). New section 176ZB codifies the legal position established by case law by providing that the proceeds of these types of claim do not form part of the company's property which is available for the satisfaction of debts owed to a creditor with floating charge security.

Removing requirements to seek sanction

Section 120: Exercise of powers by liquidator: removal of need for sanction

716. This section amends Part 4 of and Schedule 4 to the Insolvency Act 1986. The amendment gives liquidators the ability to exercise any of the powers contained in Schedule 4 without the need to obtain sanction (approval) of either the court or a creditors' committee (or where there is none, the Secretary of State or a meeting of creditors).

717. Removing the requirement to obtain sanction brings the provisions for liquidations into line with administration, in that administrators do not need sanction for any of the acts, which if undertaken by a liquidator would require sanction.

Section 121: Exercise of powers by trustee in bankruptcy: removal of need for sanction

718. This section amends Part 9 and Schedule 5 to the Insolvency Act 1986. The amendment gives trustees in bankruptcy the ability to exercise any of the powers contained within Schedule 5 and section 314(2)) without the need to obtain sanction (approval) of either the court or a creditors' committee (or where there is none, the Secretary of State).

719. These amendments mirror, for bankruptcy, the amendments made to the liquidation regime by section 120 (see above).

Position of creditors

Section 122: Abolition of requirements to hold meetings: company insolvency and Section 123: Abolition of requirements to hold meetings: individual insolvency

720. The process of having a meeting of creditors to agree a resolution in insolvency proceedings is longstanding. At a meeting of creditors, attendees are able to vote on proposals and give their approval to the office-holder for certain actions, for example agreeing a voluntary arrangement proposal, approving an office holder's release from office, or approving the office-holder's remuneration. Meetings of contributories, who are current or former shareholders of a company liable to contribute to its assets, may also take place in insolvency proceedings. Provisions are already in place for all of these meetings to take place remotely or, in certain cases, for resolutions to be made by correspondence.

721. These sections amend the Insolvency Act 1986 so that physical meetings will not be the default mechanism for seeking decisions from creditors and contributories in insolvency proceedings. The changes will apply to England and Wales and Scotland in respect of company insolvency, and to England and Wales in respect of individual insolvency. They will come into force by commencement regulations.

722. The sections allow office-holders in insolvency proceedings to choose the most appropriate way of engaging with creditors and contributories when required to do so, with the exception that there will only be a physical meeting if this has been requested certain numbers of the creditors or contributories, as the case may be.

723. Those numbers are stated as being 10% of the total value of claims, 10% of the total number of creditors or contributories, and an absolute number of 10 requests. There is provision for these thresholds to be altered by regulations using the affirmative resolution procedure.

724. The sections set out a process of deemed consent, where office holders will be able to write to creditors or contributories with a proposal, and provided that objections are received from less than 10% of creditors or contributories by total value of claims, the proposal will be deemed to be approved. In the event that more than that amount object to the proposal, the office holder will be required to use an alternative decision making process if they still wish to seek a decision on the matter. The amount of 10% by total value of claims is also subject to alteration by regulations, using the affirmative resolution procedure.

725. Deemed consent may not be used for approval of an office holder's remuneration, or where a particular decision is expressly required to be made by way of a decision-making procedure, either in legislation or by the court.

726. The sections make provision for the Insolvency Rules to prescribe how creditors or contributories may request that a physical meeting be held and to prescribe further in relation to the deemed consent and other decision making procedures. The Insolvency Rules will also be able to provide for the use of particular methods of decision making, including physical meetings of creditors or contributories, under specific circumstances

and for certain parties, such as company officers and bankrupt individuals to be able to participate, but not vote, in decision making procedures.

Section 124: Ability for creditors to opt not to receive certain notices: company insolvency and Section 125: Ability for creditors to opt not to receive certain notices: individual insolvency

727. Creditors are kept informed of the progress of insolvency proceedings by way of notices, such as the results of decision making processes, progress reports, and receipts and payments accounts from the office holder.

728. These sections amend the Insolvency Act 1986 by providing that, where the rules require notices to be given to a company's, or an individual's creditors, the rules will be able to state that these will not need to be sent to creditors who have opted out of receiving such notices

729. Creditors who have opted out will still receive notices of any intended dividends. They will be able to opt back in to receiving correspondence at any time.

730. Section 124, which applies to company insolvency, will apply to England and Wales and Scotland, and section 125, which applies to individual insolvency, will apply to England and Wales.

Section 126: Sections 122 to 125: further amendments

731. This section introduces Schedule 9, which contains amendments of the Insolvency Act 1986, needed in order that the policy underpinning sections 122 to 125 can work effectively for the various insolvency processes described. Schedule 9 removes requirements to hold physical meetings of creditors and contributories, and makes provision for notices to no longer be sent to opted-out creditors.

732. Schedule 9 also removes the requirement for final company meetings in liquidation proceedings.

Administration

Section 127: Extension of administrator's term of office

733. Administration is an insolvency proceeding where the affairs, business and property of the company are managed by an administrator. The primary aim of an administration is to ensure the company's survival as a going concern, and failing that to achieve a better result for the company's creditors than would be likely if the company was wound up. An administrator may be appointed by the company, directors or a qualifying floating charge holder by giving notice and filing prescribed documents at court. Alternatively, an administrator may be appointed by the court on application by the company, directors or creditors.

734. This section amends paragraph 76 of Schedule B1 to the Insolvency Act 1986 and like that Schedule applies to England and Wales and Scotland. The amendment extends the maximum time period creditors may consent to an extension of an administration to a specified period not exceeding one year.

735. Administration automatically ends after one year, a feature designed to emphasise that the administrator should progress matters expeditiously to allow for the swift resolution of the administration. Administration may already be extended by the court or with the consent of creditors. Currently paragraph 76(2)(b) of Schedule B1 to the Insolvency Act 1986 provides that an administration may be extended with the consent of creditors for a specified period not exceeding six months.

736. This section will come into force at the end of the period of two months beginning with the day on which the Bill becomes an Act.

Section 128: Administration: payments to unsecured creditors

737. This section amends Part II and Schedule B1 of the Insolvency Act 1986 to provide that the court's permission is not required where the administrator makes the prescribed part payment to unsecured creditors. This will apply to England and Wales and Scotland.

738. In administration and insolvent liquidations (creditors' voluntary and court winding up) proceedings, part of a company's net property must be set aside for a payment to unsecured creditors, and this is known as the prescribed part.

739. In an administration, the office holder must seek the court's permission before making payments to unsecured creditors. The reason for this is that where there are funds left over after secured creditors have been paid, the office holder should consider whether the administration should be converted into a creditors' voluntary liquidation, a process which provides for increased engagement of unsecured creditors. The requirement to seek the court's permission has been widely interpreted as applying to payments made to unsecured creditors from the prescribed part.

740. A similar amendment is made to the process whereby the administration may be converted to a creditors' voluntary liquidation to reflect that a prescribed part payment should not trigger this change.

741. This section will come into force at the end of the period of two months beginning with the day on which the Bill becomes an Act.

Section 129: Administration: sales to connected persons

742. The section creates a power for the Secretary of State to make regulations prohibiting or imposing conditions on sales, disposals or, hiring out of the assets or business of the company in administration to connected parties.

743. The power to make regulations will enable the Secretary of State to:

i. prohibit sales

ii. allow sales to take place subject to the imposition of restrictions or conditions.

iii. provide for the requirement to obtain approval from the court, the creditors of the company, or other person of a description specified in the regulations.

744. The section targets the restriction on 'connected persons' – which is where a person or the company purchasing the business has a relationship with the insolvent company. This includes directors, shadow directors or their associates. Associate captures, amongst other connections, where the person buying the company is the spouse, civil partner, relation of, or in business partnership with those acting as directors of the insolvent company.

745. The section also captures where common individuals exercise control over both companies. The existing legislative definition of 'control' of a company includes those persons who are not directors but whom the directors are accustomed to acting in accordance with their instructions.

Section 130: Attachment of floating charges on administration (Scotland)

746. Administration is an insolvency proceeding where the affairs, business and property of the company are managed by an administrator. The primary aim of an administration is to ensure the company's survival as a going concern, and failing that to achieve a better result for the company's creditors than would be likely if the company was wound up. An administrator may be appointed by the company, directors or a qualifying floating charge holder by giving notice and filing prescribed documents at court. Alternatively, an administrator may be appointed by the court on application by the company, directors or creditors.

747. This section amends paragraph 115 of Schedule B1 to the Insolvency Act 1986 and like that paragraph forms part of the law of England and Wales and Scotland. The amendment inserts a trigger point for the crystallisation of a floating charge in Scotland which is activated when the court t gives permission to an administrator to make a distribution to a creditor of the company who is neither secured nor preferential.

748. A payment to a floating charge-holder can only be made once the charge has attached or crystallised over the assets covered by the charge. In England and Wales, this 'crystallisation trigger' can be contractual but in Scotland the trigger points are provided for in statute, and it is not competent for parties to provide by contract for a floating charge to attach.

749. Currently paragraph 115 provides that in Scotland a floating charge attaches to the property which is subject to the charge at the point when an administrator files a notice at Companies House stating that the company has insufficient property to make a payment to unsecured creditors, thereby crystallising the charge.

750. This works well in cases where only payments to the holder of a floating charge are expected. However, it does not work in cases where there are also likely to be payments to unsecured creditors.

751. This is because the order of priority in insolvency proceedings requires that holders of floating charges be paid in full before any funds are returned to non-preferential unsecured creditors. However, as stated above, for payments to floating charge-holders to be made in Scottish administrations, the charge must have first attached to the assets. This attachment cannot happen in cases where the administrator wishes to distribute to unsecured creditors, as the statutory trigger is the filing of a notice by the administrator stating that there is insufficient property held by the company for such payments to be made. In such cases, it is necessary for the administrator to put the company into liquidation (which is another statutory route to crystallise the charge), before distributing the funds to floating charge-holders and unsecured creditors. This section will avoid the need for such action.

Small debts

Section 131: Creditors not required to prove small debts: company insolvency

752. To receive a dividend in an insolvency, a creditor must first submit a claim to the officeholder, which must contain certain statutory information. The office-holder may ask for further evidence from the creditor if thought necessary. Such claims must be scrutinised by the office-holder prior to distribution.

753. This section creates a power to make rules which will allow an officeholder in a corporate insolvency to pay a dividend to a creditor without the need for the creditor to submit a claim where the debt owed to a creditor in respect of which the dividend relates, is below a prescribed amount (the intention is to set this initially at £1,000). The officeholder may do so on the basis the creditor's debt has been recorded based on the insolvent's statement of affairs submitted to the officeholder or their accounting records.

754. Where a creditor disputes the amount shown in the insolvent's statement of affairs or accounting records, they will still be able to submit a claim and provide documentary evidence in support of it. Where the officeholder is unclear on the amount owed, or has other doubts regarding the claim, they may still require a claim form and/or ask for documentary evidence from the creditor.

Section 132: Creditors not required to prove small debts: individual insolvency

755. This section provides the like power to that in section 131 to make rules for the payment of debts without a claim being submitted in bankruptcy proceedings.

Trustees in bankruptcy

Section 133: Trustees in bankruptcy

756. The Insolvency Act 1986 currently provides that when the court makes a bankruptcy order the official receiver (the "OR") is appointed receiver and manager of the bankrupt's estate unless the court appoints an insolvency practitioner as trustee. This means that the OR's duties are limited to protecting the estate and dealing with any urgent realisations of asset that are required pending the appointment of a trustee. In many bankruptcy cases it is the OR who is subsequently appointed as the trustee, who then has full powers to deal with all the assets.

757. The initial appointment as receiver and manager has not been shown to have any practical benefit in the administration of bankruptcy cases and serves to delay the realisation of assets.

758. This section introduces a new section 291A to the Insolvency Act 1986 which provides for the OR to be appointed trustee on the making of the bankruptcy order unless the court orders otherwise. It also introduces Schedule 10, which contains consequential amendments to Part IX and Schedule 10 of the Insolvency Act 1986, and also to Schedule 19 to the Enterprise and Regulatory Reform Act 2013. It will apply to England and Wales.

759. At present under section 293 the OR must decide whether to summon a meeting of creditors within 12 weeks of the bankruptcy order to appoint a trustee. The amendments in this section will remove that obligation, but will not remove the option for an insolvency practitioner to be appointed trustee in place of the official receiver or the ability of the creditors to request that this occurs.

760. This section will come into force by commencement order.

Voluntary arrangements

Section 134: Time limit for challenging IVAs

761. This section amends section 262(3) of the Insolvency Act 1986 so that a challenge to the outcome of a process whereby creditors consider an individual voluntary arrangement, where there was no previous interim order, must be made within 28 days of the date of the decision. Like section 262, this section extends only to England and Wales.

762. Interested parties such as creditors may challenge the outcome of a process where an individual voluntary arrangement is considered, on the grounds either that there is an unfair prejudice of interests, or that there has been some kind of material irregularity.

763. In cases where the court has made an interim order protecting the debtor from action prior to consideration of the proposal, the time limit for this challenge is 28 days from the date on which the report of the decision is filed with the court

764. However in most other situations there is no equivalent time limit prescribed where the court has not made an interim order. The amendment seeks to provide a time limit of 28 days for those situations.

765. This section will come into force at the end of the period of two months beginning with the day on which the Bill becomes an Act.

Section 135: Abolition of fast-track voluntary arrangements

766. Fast-track voluntary arrangements (FTVA) are a streamlined Individual Voluntary Arrangement (IVA) procedure for cases where a debtor has already been made bankrupt. They were first introduced in April 2004, along with other changes to the personal insolvency regime included within the Enterprise Act 2002.

767. In a FTVA the official receiver acts as nominee and supervisor. One of the requirements of an FTVA is that the debtor is an undischarged bankrupt at the time the proposal is made. There is no private sector insolvency practitioner involvement in FTVAs.

768. FTVAs have been little used since they were enacted, and in the last 4 years there have only been 4 FTVAs approved.

769. This section amends Part 8 of the Insolvency Act 1986 by removing the provisions for FTVAs.

770. Individuals who are undischarged bankrupts who wish to propose an IVA will still be able to do so, but an insolvency practitioner will act as nominee and supervisor, not the official receiver.

Progress reports

Section 136: Voluntary winding-up: progress reports

771. This section amends sections 92A and 104A of the Insolvency Act 1986 to clarify that a progress report must be issued if the liquidator changes within the first year of the liquidation.

772. Where a voluntary liquidation continues for more than a year, the liquidator is required to issue the members of the company and creditors with an annual progress report, which includes information about receipts and payments into the estate, unrealised assets, and the office holder's remuneration.

773. A progress report also becomes due if the liquidator changes, and on each anniversary of the change thereafter. However, as presently drafted this trigger only takes effect after the liquidation has continued for more than a year.

774. Sections 92A and 104A apply to England and Wales only but extend to Great Britain. Similarly, the section extends to Great Britain but will, therefore, only apply in England and Wales.

775. This section will come into force at the end of the period of two months beginning with the day on which the Bill becomes an Act.

Regulation of insolvency practitioners: amendments to existing regime

Section 137: Recognised professional bodies: recognition

776. This section replaces section 391 of the Insolvency Act 1986. It relates to the recognition of professional bodies and sets out the way in which a body may apply to the Secretary of State to become a Recognised Professional Body ('RPB'). It requires that, going forward, RPBs rules and practices for authorising and regulating insolvency practitioners ('IPs') are designed to ensure that the regulatory objectives (as set out in section 138) are met.

777. Currently, the Insolvency Act does not prescribe the way in which a body may make an application for recognition, this section inserts new section 391A which provides for an application process.

778. This section will not affect the recognition of any current RPBs under the existing section 391.

Section 138: Regulatory objectives

779. This section inserts new sections 391B and 391C into the Insolvency Act 1986.

780. These new sections define the meaning of regulatory functions and regulatory objectives which will apply to RPBs. At present, these do not exist in law.

781. The introduction of regulatory objectives will provide RPBs with a framework within which to carry out their activities. Regulatory objectives are intended to encourage consistency of approach, and to provide a reference point for discussions between IPs and RPBs, and between RPBs and the Secretary of State "oversight" regulator.

782. New section 391B sets out that RPBs must act and carry out their functions in a way that is compatible with the regulatory objectives.

783. The regulatory objectives are set out in new section 391C and are intended to ensure that:

i. the RPBs have a system of regulating IPs that:

a. delivers fair treatment for persons affected by an IPs' acts and omissions;

b. reflects the regulatory principles: that the RPB's regulatory activities are transparent, accountable, proportionate, consistent and targeted; and

c. ensures consistent outcomes;

ii. the RPBs are encouraging an independent and competitive IP profession, whose members deliver high quality services at a fair and reasonable cost, act with transparency and integrity and consider the interests of creditors in the case;

iii. IPs seek to maximise returns to creditors and are prompt in making those returns; and

iv. the public interest is protected and promoted during the insolvency process.

Section 139: Oversight of recognised professional bodies

784. RPBs are bodies, or professional organisations, who authorise IPs to act. They regulate these IPs by maintaining and enforcing rules for securing that those who they permit to act, are fit and proper persons to do so and have the correct levels of education, experience and practical training. The RPBs also have the power to discipline members. A body may be recognised by the Secretary of State pursuant to section 391(1) or (2).

785. This section introduces new sections 391D to 391K to the Insolvency Act 1986. These sections set out the way in which the Secretary of State will be able to sanction RPBs and also the appeals process available to them.

786. New sections 391D and 391E of the Insolvency Act 1986 will allow the Secretary of State to issue directions to an RPB; they set out what sort of requirements the directions may impose and the procedure for issuing such directions. The Secretary of State would consider using the power to direct an RPB to take such steps as the Secretary of State considers will counter any adverse impact of a failure to act compatibly with the objectives, mitigate its effect or prevent its occurrence or recurrence. An example which might prompt a direction might be if the RPB has failed to address the Secretary of State concerns following a review of the way the RPB handles complaints or an RPB's failure to carry out a targeted monitoring visit of its IPs where the Insolvency Service has requested that it be done.

787. These sections set out the procedure and the way in which the Secretary of State may direct a recognised body to act following an act or omission which has resulted in one or more of the regulatory objectives not being complied with or which has an unfavourable impact on those objectives. The Secretary of State must give at least 28 days notice to the RPB of the proposed direction. The RPB will have the opportunity to make written representations to the Secretary of State, which must be considered before a direction is imposed.

788. New sections 391F, 391G, 391H and 391I concern the ability of the Secretary of State to impose a financial penalty on an RPB if it has failed to comply with a direction imposed

under section 391D, or any other requirement imposed on it under the Insolvency Act 1986 or secondary legislation made under that Act, and it is appropriate to impose a financial penalty. Such a penalty should deter future transgressions. Any sums paid over to the Secretary of State under this provision will be paid into the Consolidated Fund. There is no financial limit on the penalty. Before imposing a financial penalty, the Secretary of State must give at least 28 days notice of the proposed financial penalty, during which time the RPB can make written representations to the Secretary of State. Before imposing any penalty, the Secretary of State must have considered any such representations.

789. An RPB may appeal a financial penalty on a number of grounds. These grounds are set out in new section 391H and include that the Secretary of State was not acting within his powers; that the RPB had in fact complied with the requirement – that is the financial penalty should not have been imposed; the correct procedure had not been followed; the amount of the penalty was unreasonable; or that the time given to pay was unreasonable.

790. New sections 391J and 391K introduce a reprimand as a sanction available to the Secretary of State. This means that the Secretary of State will be able to publish a statement reprimanding a RPB for an act or omission which has an adverse impact on one or more of the regulatory objectives. This provision enables the Secretary of State to publicly register his disapproval of a RPB's act or omission if it has (or has had) an adverse impact on the regulatory objectives. The RPB must have been given at least 28 days notice of the Secretary of State's proposal to use the power under this section and the Secretary of State must consider any written representations that are made by the RPB ahead of publishing the reprimand.

791. New section 415(1B) clarifies that the fee the Secretary of State is able to charge the RPBs for the maintenance of their recognition can include, but is not limited to, the costs in connection with a direction issued to an RPB under sections 391D and E, a reprimand to an RPB given under sections 391J and K and revocation of an RPB's recognition, where it has been requested under section 391N.

Section 140: Recognised professional bodies: revocation of recognition

792. This section introduces new sections 391L, 391M and 391N to the Insolvency Act 1986. It relates to removal of an RPB's recognition and subsequently, its ability to regulate and approve a person to act as an insolvency practitioner. The revocation of the recognition to authorise insolvency practitioners can be at the instigation of the Secretary of State (section 391L) or at the instigation of the RPB itself (section 391N). At present, revocation of recognition is the only sanction available to the Secretary of State.

793. Currently, the Secretary of State is not required to follow a statutory procedure before revoking an RPB'S recognition. The new sections inserted by this section introduce the conditions to be met before a revocation order is made, the procedure to be followed and the date from which a revocation order comes into effect. This section allows for two types of revocation order: a revocation order and a partial revocation order. Partial revocation of a body's recognition will mean that the RPB is no longer recognised as capable of providing IPs with both full and partial authorisation, only as capable of providing partial authorisations of the kind specified. Full authorisation enables individuals to act in relation to both company and personal insolvency, whilst partial authorisation enables individuals to act only in relation to either company or personal insolvency.

Section 141: Court sanction of insolvency practitioners in public interest cases

794. This section introduces new sections 391O, 391P, 391Q and 391R to the Insolvency Act 1986. These new sections introduce the power for the Secretary of State to apply to the court for a direct sanctions order against an IP when it is in the public interest for the Secretary of State to take such action.

795. New section 391O sets out the sanctions that the court may impose, if certain conditions set out in new section 391Q are satisfied (see below), which include requiring the relevant RPB to take the necessary steps to ensure that:

i. the IP is no longer authorised to act as such;

ii. the IP is no longer fully authorised to act, but may be partially authorised to act as specified;

iii. the IP's authorisation is suspended;

iv. other restrictions (as specified in the court order) are placed on the IP while so acting; and

v. the IP repays part of what he/she has received or expects to receive as remuneration from a particular case to particular creditor(s).

796. The Secretary of State will not be able to seek a direct sanctions order against an IP whose authorisation to act as an IP is or was granted by the Department of Enterprise, Trade and Investment in Northern Ireland. This is because the Secretary of State is not responsible for overseeing the regulation of such IPs.

797. New section 391P sets out that the Secretary of State should only apply to the court for a direct sanctions order if it appears to the Secretary of State that it would be in the public interest for the order to be made. As part of its consideration of the application, the court will have regard to what, if any, disciplinary action the relevant RPB may have taken against the IP.

798. New section 391Q sets out the conditions that must be satisfied before a court will impose a direct sanctions order. Of these conditions the first must be satisfied (that is that the person acting as an IP has not complied with the rules of their profession) and at least one other. The other conditions include: that the person is not a fit and proper person to act as an IP; the person is not a fit and proper person to act as a fully authorised IP (but could be to partially act); that a loss has been suffered to creditors as a result of the IP's failure to comply with the rules of their profession.

799. New section 391R allows the Secretary of State to give a direction to the relevant RPB, in relation to a person acting as an IP who is authorised by them, to impose any sanction available under a direct sanctions order, provided the IP has consented to this. This would occur instead of the Secretary of State applying to the court for a direct sanctions order. The conditions set out in 391Q also apply to a direct sanctions direction.

Section 142: Power for Secretary of State to obtain information

800. This section introduces new section 391S to the Insolvency Act 1986 which gives the Secretary of State the power to require information from specified people to enable the Secretary of State to carry out functions under Part 13 of the Insolvency Act 1986.

801. The people that the Secretary of State can in writing require information from are:

i. an RPB;

ii. any individual who is or has been authorised to act as an IP; and

iii. any person who is connected to such an individual.

802. A person 'connected' to the IP in question includes an employee of that individual, a person who acted on that IP's behalf in any other way and; the employer of the IP.

Section 143: Compliance orders

803. This section introduces new section 391T into the Insolvency Act 1986. It will allow the Secretary of State to make an application to the court if it appears that an RPB has

failed to comply with a requirement imposed under Part 13 of the Act or that any person has failed to comply with a requirement under section 391S.

804. This section will apply to an RPB which has failed to comply with, for example, a direction imposed under new section 391D or to a person who has failed to provide the Secretary of State with the information required under new section 391S.

Power to establish single regulator of insolvency practitioners

Section 144: Power to establish single regulator of insolvency practitioners

805. This section allows the Secretary of State, by regulations made by the affirmative resolution procedure, to designate a body for the purposes of authorising and regulating IPs. The body may be a new body set up by regulation, or it may be an existing body. The power to move to a single regulator will only be used if the changes proposed by sections 137 to 143 do not succeed in improving confidence in the regulatory regime for IPs.

806. The section sets out the functions that the regulations may confer on the designated body and include:

i. setting out the criteria for assessing whether a person is fit and proper to act as an IP, including the requirements as to education, practical experience and training they must meet;

ii. setting out technical standards for IPs and enforcing compliance with those standards; and

iii. investigating complaints about IPs.

807. The section allows the regulations to require that the designated body, in discharging regulatory functions, acts in a way which is compatible with the regulatory objectives (as introduced by section 138 of this Act).

808. It introduces Schedule 11 which makes supplementary provisions in relation to the designation of a body by regulations. For example, how many members the body should have; appointing the chair of the body and the setting of fees.

Section 145: Regulations under section 144: designation of existing body

809. This section sets out that the Secretary of State may make regulations designating an existing body as the single regulator if the body is able and willing and it has arrangements in place for its functions to be exercised effectively. It sets out in what circumstances an existing body may become the single regulator and what the Secretary of State must do to make this designation.

Section 146: Regulations under section 144: timing and supplementary

810. This section sets out that the powers to make regulations designating a single regulator of IPs will expire unless they are used within seven years of coming into force. The power to designate a single regulator will only be used if the changes to the regulatory regime in sections 137-143 of this Act do not bring about the intended improvements.

811. To the extent that the regulations made under this power are hybrid, this section allows them to be treated as if they are not hybrid. Although the introduction of a single regulator would have a significant impact on the current RPBs, the power would not be used without full consultation and assessment of the costs and benefits of the proposed change.

Section 147: Equal Pay: Transparency

812. This section requires the Government to make regulations under section 78 of the Equality Act 2010 (gender pay gap information). Regulations are to be made no later than a year after Royal Assent to the Act and the Government must consult before laying those regulations.

813. Section 78 of the Equality Act 2010, which is not yet commenced, enables a Minister of the Crown to make regulations requiring specified employers with at least 250 employees in Great Britain to publish information about the differences in pay between their male and female employees. The regulations may specify, among other things, the form and timing of the publication, which will be no more frequently than annually. The regulations may also specify penalties for non-compliance. Regulations under section 78 are subject to the affirmative procedure and may not be made unless a draft of the regulations has been laid before and approved by both Houses of Parliament.

Part 11: EMPLOYMENT

Whistleblowing

Section 148: Protected disclosures: reporting requirements

814. This section inserts a new section 43FA in to Part 4A of the Employment Rights Act 1996 (ERA), which provides protection for workers who blow the whistle on malpractices by their employers or third parties.

815. The whistleblowing framework was established by the Public Interest Disclosure Act 1998. Its purpose is set out in the preamble as, "an Act to protect individuals who make certain disclosures of information in the public interest; to allow such individuals to bring action in respect of victimisation".

816. A worker who blows the whistle, by making a protected disclosure in accordance with the criteria set out in Part IVA sections 43B to 43H of the ERA, has the right not to be unfairly dismissed or suffer a detriment as a result of having made that disclosure.

817. For a disclosure to be protected by the provisions, the worker must make sure it is either made internally to their employer or another responsible person or to various external bodies including a legal advisor, a Minister of the Crown or a prescribed person listed on the Public Interest Disclosure (Prescribed Persons) Order 1999 (PID(PP)O).

818. Under the existing legislation, there is no legal obligation on prescribed persons to take any action in relation to the public interest disclosures that they receive.

819. During the passage of the Enterprise and Regulatory Reform Act 2013, the Government committed to run a call for evidence on whistleblowing in order to establish if there was a case to make changes to the whistleblowing framework. The responses to the call for evidence indicated a lack of consistency in the approach taken by bodies on the PID(PP)O, and a lack of communication by prescribed persons.

820. This section provides a power for the Secretary of State to require certain bodies listed on the PID(PP)O to report annually on disclosures by workers. The content of the report will be prescribed by regulations, which will also determine how the report is published and timing of the report. The Secretary of State also has the power to make further regulations setting out additional bodies to report annually. These regulations will be subject to parliamentary scrutiny by debate in both Houses.

821. The section makes provisions to protect both the identity of the individual who has made the disclosure and the employer or organisation to which the disclosure relates.

822. This section also allows the Secretary of State to make later amendments to the content of the annual report or prescribe different methods or timing for publication of the

report. This would be subject to a lighter parliamentary procedure. This flexibility enables the Secretary of State to ensure that the information being captured and reported is relevant as circumstances change over time and to ensure that the method of publication remains effective.

Section 149: Protection for applicants for employment etc. in the health service

823. This section inserts a new section into the Employment Rights 1996, which gives the Secretary of State a power, through Regulations, to prohibit defined NHS Employers in England, Scotland and Wales from discriminating against job applicants because it appears to the NHS employer that the applicant has made a protected disclosure (within the meaning given by section 43A of the Employment Rights Act 1996). For the purposes of this section, an NHS employer discriminates against an applicant if, because it appears to the NHS employer that the applicant has made a protected disclosure, the NHS employer refuses the applicant's application or in some other way treats the applicant less favourably than it treats or would treat other applicants in relation to the same contract.

824. The section defines who would be an 'applicant' for the purposes of Regulations. In addition, the Secretary of State through such regulations may also confer jurisdiction (including exclusive jurisdiction) on employment tribunals or the Employment Appeal Tribunal, make provisions for the grant or enforcement of remedies specified by a court or tribunal, and make provision for the making of awards of compensation calculated in accordance with the regulations.

Employment Tribunals: Failure to pay sums

Section 150: Financial Penalty for failure to pay sums ordered by employment tribunal etc

825. This section inserts a new Part, 2A, into the Employment Tribunals Act 1996 to allow financial penalties to be imposed on employers who do not pay workers the award that the Employment Tribunal has ordered (or awards ordered on a relevant appeal) including costs and sums to cover preparation time as awarded by an Employment Tribunal. Employers who do not pay costs (in Scotland, expenses) awarded against them to cover a worker's Employment Tribunal fee can also be required to pay a penalty under the new provisions, as can employers who fail to pay sums due under Acas conciliated settlements (new sections 37A to 37D). The financial penalty regime will be operated by enforcement officers appointed or authorised by the Secretary of State (new section 37M).

826. The way that the provisions will work in the case of an unpaid Employment Tribunal award is that the procedure for imposing a penalty will start, at the earliest, when the time for appealing the Employment Tribunal decision has expired without an appeal being made (new section 37B(5)) and there are no unresolved matters in relation to an application for costs. As a first stage in the procedure, the employer will be told – in a warning notice – that the intention is to impose a financial penalty on them. They will then have 28 days either to pay the whole unpaid amount of the award or settlement sum or to set out their case for why no financial penalty should be imposed (new section 37E). Where the unpaid amount is paid before the end of the 28 day period it is to be treated as paid in full.

827. If, having taken what the employer has said into account, the enforcement officer is still minded to impose a financial penalty, the officer will issue a penalty notice. The amount of the penalty will be based on the total amount that remains unpaid to the worker, including interest on the award payable on the last date for responding to the warning notice, as well as any amount the employer has been told to pay in respect to employment tribunal fees: it will be 50% of the sum owed with a minimum of £100 and a maximum of £5000 (new section 37F). In cases where an employer has defaulted on an

agreement to pay by instalments, the penalty will be based on the whole unpaid amount (new section 37D). Penalties will be payable to the Secretary of State and ultimately into the Consolidated Fund (new section 37H (6)).

828. Where a penalty notice has been issued the amount of the penalty can be reduced by 50% if both the penalty and the whole unpaid amount are paid within 14 days of the penalty notice (new section 37F (9) to (11)).

829. There are procedures for withdrawing and replacing warning notices (new Section 37I) and penalty notices (new section 37J) if they are defective. If a penalty notice has been served following a warning notice which is later withdrawn, that penalty notice will cease to have effect and the employer will be repaid with interest any amount that they have paid under the penalty notice.

830. If an enforcement officer withdraws a penalty notice they may remedy the defects and serve a replacement penalty notice to the employer. If a penalty notice is withdrawn and not replaced, an employer must be repaid any sum with interest that they have paid under the withdrawn notice.

831. Under new section 37G an employer has 28 days beginning with the day the penalty notice was served to appeal the notice or the amount of the financial penalty specified. The appeal is to an Employment Tribunal.

832. Where a penalty is not paid if will be subject to interest and recoverable through the relevant court (new section 37H).

833. New sections 37N and 37O provide the Secretary of State with powers to make regulations to make specific amendments to Part 2A of the Employment Tribunals Act 1996 and allow the provisions to apply with modifications in certain circumstances.

834. Subsections (4) and (7) of the section make provisions in relation to disclosure of information for the purposes of the provisions. Subsection 4 means that a worker cannot be prevented from providing information about their ACAS conciliated settlement to an enforcement officer if a settlement sum is unpaid. Subsection (7) also amends the Trade Union and Labour Relations (Consolidation) Act 1992 to put an enforcement officer on the same footing as anyone else to whom ACAS discloses information.

Employment tribunals: Postponements

Section 151: Employment tribunal procedure regulations: postponements

835. This section amends sections 7 (employment tribunal procedure regulations), 13 (costs and expenses) and 13A (payments in respect of preparation time) of the Employment Tribunals Act 1996 ('the 1996 Act') to insert powers to make rules on the determination of applications for postponement, and on the possible cost implications of postponements being granted.

836. Subsection (2) inserts a new provision into section 7 of the 1996 Act to expressly allow Employment Tribunal procedure regulations to include rules limiting the number of postponements that can be granted to a party on their application and provide for the procedure regulations to set out in more detail how the new rule would apply. It further explains that the provision also applies to adjournments.

837. Subsection (3) amends section 13 of the 1996 Act so that Employment Tribunal procedure regulations on costs have to include provisions obliging an Employment Tribunal to consider making a cost order against the successful applicant for a late postponement of an Employment Tribunal hearing.

838. Subsection (4) inserts a similar provision into section 13A of the 1996 Act in respect of time preparation orders.

National Minimum Wage

Section 152: Amount of financial penalty for underpayment of national minimum wage

839. This section amends section 19A of the National Minimum Wage Act 1998. Under section 19 of this Act an enforcement officer can issue a notice of underpayment to an employer requiring that employer to pay its workers any underpayment of the national minimum wage specified in the notice. The notice of underpayment also contains a financial penalty calculated in accordance with section 19A of the Act. Section 19A sets maximum and minimum limits for the penalty; the maximum is £20,000 per notice. This section amends section 19A so that the maximum penalty which can be imposed on an employer by a notice of underpayment is limited by the amount owed to each worker within the scope of the notice.

840. Subsection (3) provides that the arrears owed to each worker, subject to a maximum figure for each worker, forms the basis of the penalty calculation. The maximum arrears per worker provided for is £20,000 but can be increased (or decreased) by statutory instrument. The relevant percentage of the arrears owed which is taken into account in setting the penalty (currently 100%) can also be replaced by a different percentage by statutory instrument.

841. Subsections (4) and (5)(b) remove the power to make regulations to set an overall limit on the penalty which can be imposed through a notice of underpayment.

Exclusivity in zero hours contracts

Section 153: Exclusivity terms unenforceable in zero hours contracts

842. This section inserts two new sections, 27A and 27B into the Employment Rights Act 1996 ('ERA').

843. Section 27A renders unenforceable a provision in a zero hours contract which prohibits the worker from working for another employer. Section 27A(1) defines a zero hours contract as a contract of employment or a workers' contract under which a worker agrees to perform personally work or services when that work is offered by an employer, but where there is no certainty any hours of work will be made available.

844. Section 27A(3) provides that a provision in a zero hours contract which prohibits the worker from doing work under any other arrangement is unenforceable. This means that a worker on a zero hours contract can work for another employer and the employer cannot take any legal action to prevent the worker from doing so.

845. However, when an Employment Tribunal considers mutuality of obligation in terms of determining the employment status of an individual working under a zero hours contract, the Employment Tribunal can ignore the prohibition on exclusivity terms in section 27A(3). This avoids any risk that by prohibiting exclusivity terms in zero hour contracts, an individual who might have been held to be an 'employee' by virtue of such an exclusivity clause, could lose that status and their eligibility to certain rights. Exclusivity terms are rendered void and unenforceable against the worker for other purposes.

846. This provision does not affect the current common law position regarding restrictive covenants (including exclusivity clauses) in contracts other than zero hour contracts. Under the common law, it is expected that an exclusivity clause in a contract of employment will be upheld by the courts, as long as it is no more than is adequate to protect the employer's legitimate interests in the circumstances. An employer will need a good reason to justify an exclusivity clause in any contract of employment as it could be deemed an unreasonable restraint on the individual's freedom to work.

847. On commencement, section 27A will apply to existing zero hour contracts as well as those which are entered into after the new section comes into force.

848. Section 27B(1) provides a power for the Secretary of State to make regulations to further ensure that zero hours workers are not restricted from working for another employer. This power could be used to deal with attempts by employers to avoid the ban on exclusivity terms in zero hour contracts provided for in section 27A. This is not a power to regulate zero hours contracts in general. It is a power to regulate contractual provisions which restrict a worker from doing other work. This could involve extending the prohibition on exclusivity terms to other types of contract and/or providing remedies or causes of action for those already protected under section 27A.

849. Section 27B(2) provides a power for the Secretary of State to extend the definition of 'zero hours workers' to cover other individuals who work under other prescribed contracts. The Secretary of State can, when doing so, consider matters such as the income, rate of pay or working hours specified in that contract. For instance, if considered appropriate, the provisions which make exclusivity terms unenforceable in zero hour contracts could be extended to protect individuals who earn below a certain threshold or income or work below a certain threshold of guaranteed hours.

850. Section 27B(5) also sets out further provisions that may be made by the Secretary of State to deal with exclusivity clauses. These might include provisions to amend affected contracts, measures to impose financial penalties on employers or measures to compensate zero hours workers. Furthermore, the power to make further provisions will also allow the Secretary of State to consider whether any express rights need to be conferred on zero hours workers to better protect their interests. This might include a new cause of action in the Employment Tribunal, for example, if this is considered appropriate.

Public sector exit payments

Section 154: Regulations in connection with public sector exit payments and Section 155Section 154(1): further provision

851. These sections establish a power to make regulations to require the repayment of a staff exit payment made to a public sector worker in the case that they return to work in the public sector within 12 months. The power can be used to specify which workers, which employers, and which staff exit payments are in scope, and how much of the staff exit payment falls to be repaid.

Section 156: Power to make regulations to be exercisable by the Treasury or the Scottish Ministers

852. This section enables the Scottish Ministers to use the power to make regulations in respect of staff exit payments made by Scottish public bodies, and the Treasury to use the power to make regulations in respect of all other staff exit payments made to public sector workers throughout the UK.

Section 157: Power to Secretary of State to waive repayment requirement

853. This section provides the Secretary of State with a power to waive the requirements of the Treasury regulations in specific circumstances, and the Scottish Ministers with the same power in respect of the Scottish regulations.

Section 158: Concessionary Coal

854. Subsection (1) of this section applies to a person's contractual entitlement to concessionary coal or payments in lieu of concessionary coal arising in connection to his employment at UK Coal Production Ltd, UK Coal Thoresby Limited and UK Coal Kellingley Limited. This person includes an employee, redundant person, retired person

or in some cases, a dependant of such persons. In the case of a dependant, they will not have a direct contractual entitlement with the company but their entitlement would be referable to a contractual right. UK Coal Production Ltd, UK Coal Thoresby Limited, UK Coal Kellingley must be carrying on the business of deep coal-mining (as opposed to opencast coal-mining) on 1 January 2014.

855. Subsection (2) provides the enabling power to allow the Secretary of State to make payments in order to secure a person's entitlement to concessionary coal or payments in lieu of concessionary coal.

856. Subsection (3) provides for HMT's consent.

857. Concessionary coal is defined in subsection (4).

Part 12: GENERAL

Section 159: Consequential amendments, repeals and revocations; Section 160 Transitional, transitory or saving provision; Section 161: Supplementary provision about regulations; Section 162: Financial provisions; and Section 163: Extent

858. These sections make general provision for the Act.

859. Section 159 confers upon a Minister of the Crown a regulation making power to amend, repeal, revoke or otherwise modify any provision made by or under an enactment where appropriate in consequence of this Act. Section 161 makes general provision for regulations made under the Act and sets out the procedure which is to apply in respect of the powers conferred by the Act. It states that these powers include the power to make different provision for different cases and to make incidental, consequential, supplementary or transitory provision or savings.

Section 164: Commencement

860. This section sets out the commencement dates for the provisions in the Act. Subsection (1) sets out the default position, which is that provisions are to come into force on a day appointed by a Minister of the Crown in regulations.

861. Subsection (2) provides that the following provisions will come into force on the day the Bill receives Royal Assent—

- Sections 4 to 7 of Part 1 (financial information about businesses);
- Section 39 of Part 3 (regulations about procurement);
- Section 74 of Part 5 (funding for free of charge early years provision);
- Section 151 of Part 11 (employment tribunal procedure regulations: postponements)

862. Subsection (3) provides that the following provisions will come into force two months after the Bill receives Royal Assent—

(a) In Part 1 –

- Sections 1 and 2 (power to invalidate certain restrictive terms of business contracts),
- Section 3 (Companies: duty to publish report on payment practices and performance."),
- Sections 8 and 9 (VAT registration information),
- Sections 10 to 12 (exports), and
- Section 14 (powers of the Payment Systems Regulator);

(b) In Part 2 –

- Sections 15 and 16 (streamlined company registration),
- Sections 21 to 27 (business impact target), and
- Section 37 (CMA to publish recommendations on proposals of Westminster legislation).

(c) In Part 3 – Section 40 (investigation of procurement functions);

(d) In Part 4 –

- Sections 42 to 44 (the Pubs Code),
- Sections 68 to 73 (Part 4: supplementary)

(e) In Part 5, Section 75 (exemption from requirement to register as early years provider);

(f) Part 6 (education evaluation);

(g) In Part 7 –

- Section 83 (amendment of section 813 of the Companies Act 2006)
- Sections 84 to 86 and Schedule 4 (abolition of share warrants to bearer), and
- Sections 89 and 91 (shadow directors);

(h) In Part 8 -

- Section 95 (recording of optional information on register); and
- Section 99 (address of company registered office)

(i) In Part 10 –

- Sections 120 and 121 (removing requirements to seek sanction),
- Sections 127 and 130 (administration),
- Sections 131 and 132 (small debts),
- Sections 134 and 135 (voluntary arrangements), and
- Section 136 (voluntary winding up: progress reports).

(j) In Part 11 -

- Section 158 (concessionary coal).

COMMENCEMENT DATES

867. Section 165 makes provision about the coming into force of the provisions of the Act. The commentary on individual sections and Schedules includes an explanation of the effect of this section.

HANSARD REFERENCES

868. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	***Date***	***Hansard Reference***
House of Commons		

Stage	***Date***	***Hansard Reference***
First Reading	25 June 2014	Vol. 583, part 13, Col. 317
Second Reading	16 July 2014	Vol. 584, part 25, Cols. 906-969
Committee Debate: 1st sitting	14 October 2014	Public Bill Committee, Small Business, Enterprise and Employment Bill
Committee Debate: 2nd sitting	14 October 2014	
Committee Debate: 3rd sitting	16 October 2014	
Committee Debate: 4th sitting	16 October 2014	
Committee Debate: 5th sitting	21 October 2014	
Committee Debate: 6th sitting	21 October 2014	
Committee Debate: 7th sitting	23 October 2014	
Committee Debate: 8th sitting	23 October 2014	
Committee Debate: 9th sitting	28 October 2014	
Committee Debate: 10th sitting	28 October 2014	
Committee Debate: 11th sitting	30 October 2014	
Committee Debate: 12th sitting	30 October 2014	
Committee Debate: 13th sitting	4 November 2014	
Committee Debate: 14th sitting	4 November 2014	
Committee Debate: 15th sitting	6 November 2014	
Committee Debate: 16th sitting	6 November 2014	
Report: 1st sitting	18 November 2014	Vol. 588, part 62, Cols. 145-244
Report: 2nd sitting	19 November 2014	Vol. 588, part 63, Cols. 279-320
Third Reading	19 November 2014	Vol. 588, part 63, Cols. 320-332
Commons consideration	24 March 2015	Vol. 594, part 131, Col. 1341-1363
Royal Assent	26 March 2015	Vol. 594, part 133, Col. 1682
House of Lords		
First Reading	19 November 2014	Vol. 757, part 59, Col. 534
Second Reading	2 December 2014	Vol. 757, part 67, Cols. 1239-1310
Committee: 1st sitting	7 January 2015	Vol. 758, part 80, Cols. GC27-GC80
Committee: 2nd sitting	12 January 2015	Vol. 758, part 82, Cols. GC81-GC148
Committee: 3rd sitting	14 January 2015	Vol. 758, part 84, Cols. GC179-GC229

Stage	***Date***	***Hansard Reference***
Committee: 4th sitting	19 January 2015	Vol. 758, part 87, Cols. GC305-GC356
Committee: 5th sitting	21 January 2015	Vol. 758, part 89, Cols. GC371-GC414
Committee: 6th sitting	26 January 2015	Vol. 759, part 92, Cols. GC1-GC54
Committee: 7th sitting	28 January 2015	Vol. 759, part 94, Cols. GC91-GC168
Report: 1st sitting	3 March 2015	Vol. 760, part 111, Cols. 106-149
Report: 2nd sitting	9 March 2015	Vol. 760, part 114, Cols. 446-526
Report: 3rd sitting	11 March 2015	Vol. 760, part 116, Cols. 663-734
Third Reading	17 March 2015	Vol. 760, part 120, Cols. 1003-1013
Royal Assent	26 March 2015	Vol. 760, part 126, Col. 1590