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

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

1 Now G7

(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.

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.