

INDUSTRY AND EXPORTS (FINANCIAL SUPPORT) ACT 2009

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Industry and Exports (Financial Support) Act which received Royal Assent on 21 May 2009. They have been prepared by the Department for Business, Enterprise and Regulatory Reform in order to assist the reader in the understanding of 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 Industry and Exports (Financial Support) Act amends section 8(5) of the Industrial Development Act 1982 (the IDA) and section 1(1) of the Export and Investment Guarantees Act 1991 (the EIGA).

Amendment to the Industrial Development Act 1982

4. Section 8 of the IDA contains the principal power of Ministers to give financial assistance to industry outside areas which have been granted Assisted Area Status. Assistance may be given provided:
 - a) it will benefit the UK economy or any part or area of the UK;
 - b) it is in the national interest; and
 - c) assistance cannot appropriately be provided in any other way.
5. The purposes for which assistance may be granted are set out in section 7(2) of the IDA. They include:
 - a) promoting the modernisation or efficiency of an industry;
 - b) creating, expanding or sustaining productive capacity in an industry;
 - c) promoting the reconstruction, reorganisation or conversion of an industry;
 - d) encouraging the growth of an industry; and
 - e) ensuring the orderly contraction of an industry.
6. Financial assistance may take the form of investment, loans, grants or guarantees. Examples of uses of section 8 include the Enterprise Finance Guarantee, the recent support package announced for the automotive industry, and Regional Venture Capital Funds.

*These notes refer to the Industry and Exports (Financial Support)
Act 2009 (c.5) which received Royal Assent on 21 May 2009*

7. There is a financial ceiling on the exercise of the section 8 power. This was originally set in the IDA at £1,900 million and was raised in four £200 million tranches by statutory instrument to an overall maximum of £2,700 million. The limits were amended by the Industrial Development (Financial Assistance) Act 2003 which established a new initial ceiling of £3,700 which could be increased by order in four tranches of up £600 million each to an overall maximum of £6,100 million.
8. Four orders were made under the 2003 Act, bringing the overall maximum to £6,100 million. As a result of an expansion of existing schemes, and recently announced interventions such as the support measures for the automotive industry and proposals for new schemes to support businesses through the economic downturn (some of which provide financial assistance in the form of guarantees for large sums), the ceiling of £6,100 million would have been reached by the end of July 2009.
9. The Act therefore amends section 8(5) by increasing the initial ceiling to £12,000 million and allowing for four orders increasing that limit by up to an additional £1,000 million each, so giving a new maximum limit of £16,000 million.
10. The Act does not alter the procedure for orders increasing the new initial ceiling. The orders must be made by statutory instrument and require approval in draft by a resolution of the House of Commons. In addition, the requirement for a Commons resolution where assistance for one project would exceed £10 million remains. The Government will also continue to publish the Industrial Development Act Annual Report detailing interventions covered under section 8.

Amendment to the Export and Investment Guarantees Act 1991

11. Under section 1(1) of the EIGA, the Secretary of State, acting through ECGD, has the power to make arrangements with a view to facilitating the supply of goods or services from persons carrying on business in the United Kingdom to persons carrying on business outside the United Kingdom. Under section 1(4) of the EIGA, these arrangements may take the form of financial facilities or assistance for, or for the benefit of, persons carrying on business. The financial facilities or assistance may be in any form, including guarantees, insurance, grants or loans.
12. The power under section 1(1) allows ECGD to make arrangements to facilitate future exports, for example, by assisting a person who wishes to export goods or services. But the wording of section 1(1) restricts ECGD's ability to give support to exports which have already taken place. There is a continued increase in demand from exporters for ECGD support in the form of "reimbursement cover", that is, for an ECGD guarantee of repayment of a loan taken out to refinance the cash purchase of UK exports. In addition, requests for ECGD support are often made at a stage when the goods or services will be exported before ECGD can take a decision, particularly where ECGD must satisfy itself that it has complied with relevant Government policies. In the Government's view, it is necessary to ensure that ECGD is able to provide support in respect of an export, whether or not that export has been made.
13. The Act achieves this by amending section 1(1) of the EIGA to enable ECGD to make arrangements "in connection with" exports rather than "with a view to facilitating exports".

TERRITORIAL EXTENT AND APPLICATION

14. The Act extends to the United Kingdom.

THE ACT

Commentary on Sections

Section 1: Increase in limit on selective financial assistance for industry

15. This section replaces subsection (5) of section 8 of the Industrial Development Act 1982, as amended by the Industrial Development (Financial Assistance) Act 2003. The section retains the structure of tranches in the existing legislation but replaces the numerical ceilings with new, higher ones. The initial ceiling on financial assistance will be increased from £3,700 million to £12,000 million and the subsequent four tranches from up to £600 million to up to £1,000 million each.

Section 2: Assistance in connection with exports of goods or services

16. Section 2(1) replaces section 1(1) of the EIGA. The new subsection (1) allows ECGD to make arrangements for providing financial facilities or assistance in connection with exports. Subsection (1A) expressly provides that the arrangements may be in connection with exports that have been made, are to be made or may be made.
17. Section 2(2) is a transitional provision which provides that arrangements may be made in connection with exports that take place before the amended provisions come into force.

COMMENCEMENT

18. The Act comes into force on Royal Assent.

HANSARD REFERENCES

19. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
House of Commons		
Introduction	4 March 2009	Vol 488 Col 849
Second Reading	16 March 2009	Vol 489 Col 669
Committee	21 April 2009	Vol 491 Col 155
Third Reading	21 April 2009	Vol 491 Col 163
House of Lords		
Introduction	22 April 2009	Vol 709 Col 1502
Second Reading	19 May 2009	Vol 710 Col 1366
Third Reading	20 May 2009	Vol 710 Col 1418

Royal Assent – 21 May 2009