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

COMMENTARY ON SECTIONS

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 25 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.