Department for Business Innovation & Skills

ENTERPRISE AND REGULATORY REFORM ACT 2013:

Policy paper

JUNE 2013

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Enterprise and Regulatory Reform Act 2013

Introduction

This paper accompanies the Enterprise and Regulatory Reform Act 2013, which obtained Royal Assent on 25 April 2013 after its passage through Parliament. The Explanatory Notes issued alongside the Act give a more detailed commentary on the sections. This paper sets out why the Government is undertaking the measures contained in this Act, and explains what each measure aims to achieve.

The Act

The Government is committed to achieving strong, sustainable and balanced growth. Its vision is of a dynamic economy where it is easy to start up and grow a business, and where every business can achieve its potential in fair markets.

The Government's role is to help provide the right conditions for business success; and to promote a new economic dynamism by harnessing our economic strengths and removing barriers that inhibit innovation and enterprise. This Act supports these aims and focuses on:

Encouraging long term growth by:

- Setting the purpose of the UK Green Investment Bank to drive transition to a green economy;
- Giving shareholders extra powers to ensure that directors' remuneration is more closely linked to company performance.
- Enhancing the opportunity for parties to resolve disputes without the need for employment tribunals;
- Promoting competition through a single Competition and Markets Authority;
- Streamlining and strengthening the competition tools to address anti-competitive behaviour;
- Introducing discretionary penalties for breaches of individual employment rights where there are aggravating features;
- Closing the unintended loophole that allowed individuals to blow the whistle on matters of private rather than public interest;

- Introduce a power to enable customers to request their transactional data in an electronic forma;
- Modernising the UK's copyright framework; and
- Introduce powers so that there will be a requirement for letting and managing agents of privately rented homes and residential leasehold properties belong to a redress scheme;
- Any changes to the Royal Charter will require Parliament's agreement.

Simplifying regulation by:

- Future civil claims for breach of health and safety duties can only be brought where it can be proved an employer has been negligent
- Extending the Primary Authority scheme to more businesses for access to reliable and robust advice;
- Allowing more proportionate, risk based compliance inspections;
- Providing greater powers to time-limit new regulations;
- Reforming unduly onerous provisions and removing obsolete laws;
- Abolishes the Agricultural Wages Board, the Agricultural Wages Committees in England and the Agricultural Dwelling House Advisory Committees to reduce burden for the agriculture sector including bringing workers in line of the national minimum wage
- Simplifies and strengthens the equalities regulations through a package of measures focused on relieving the burden on business while preserving key legal protections from discrimination.

1. UK Green Investment Bank

The UK Green Investment Bank (the 'Bank') is at the heart of the Government's commitment to achieving the transition to a green economy and supporting long term sustainable growth.

The Bank, which is fully operational, was formed as a public company called UK Green Investment Bank plc on 15 May 2012, and has all of the usual powers of a Companies Act company. State Aid approval was received from the European Commission in October 2012, allowing the Bank to begin making investments on commercial terms.

The Bank will receive £3 billion of initial funding from the Government to 2015. This will enable the Bank to build up a credible track record in making commercial green investments which mobilise private sector capital in priority green sectors. The Government has received state aid approval from the European Commission in respect of borrowing.

Significant progress has already been made in deploying the £3 billion initial funding, with over [£600 million] of commitments already announced, including investments in the offshore wind, waste and energy efficiency sectors.

To complement the important progress that has already been made, the Government considers that legislation is required with respect to the Bank, primarily for four reasons.

First, it is important that the Bank continues to have a sole focus on the green economy over the long term, regardless of any future potential changes in its ownership. That is why the Government has a permanent restriction on the Bank's statement of objects in its articles of association to ensure it will always have a 'green purpose', and why there is a statutory requirement for the Bank's investment activities, as a whole, to contribute to a reduction of global greenhouse gas emissions.

Second, the Act will facilitate the Bank's independence from Government. It does this by requiring the Secretary of State for Business to lay before Parliament an undertaking to respect the Bank's day-to-day operational or commercial decision-making. Any change to this undertaking must also be laid before Parliament. The Secretary of State provided this undertaking to the Bank on its incorporation.

Third, the legislation provides a bespoke power to enable the Government to fund the Bank on an ongoing basis, and enables the Bank to borrow from the National Loans Fund and benefit from its preferential rates.

Finally, legislation ensures that the Bank will be subject to quoted company reporting requirements, including an enhanced business review,

strengthening transparency and supporting monitoring of its green performance.

2. Employment

On 27 January 2011, the Government published its “Resolving Workplace Disputes” consultation seeking views on a series of proposals to reform the Employment Tribunal System. This consultation was the first significant step in the Government’s Employment Law Review, under which all employment regulations are being considered area by area, over the duration of this Parliament.

The Government response to the consultation was published on 23 November 2011 and announced the intention to proceed with a series of measures to:

- encourage the early resolution of disputes in the workplace;
- deliver a more efficient and streamlined Employment Tribunal system for all users, and
- give employers more confidence to hire new staff – supporting growth.

Implementation of the whole package of reforms will deliver benefits of more than £40 million per annum to business. Some measures requiring secondary legislation (which include, extending the qualifying period for unfair dismissal claims from 1 to 2 years and increasing the maximum limit for deposit orders and cost awards to £1,000 and £20,000 respectively) came into force on 6 April 2012. Further measures that require primary legislation have been introduced as part of this Act, including legislative changes arising from the Fundamental Review of the employment tribunal rules of procedure, and the “Ending the Employment Relationship” consultation.

2.1 Early Conciliation

This measure will introduce the requirement for almost all potential employment tribunal claims to be lodged with Acas in the first instance. Acas will offer parties the opportunity to engage in conciliation in an attempt to resolve the matter without recourse to the employment tribunal. Both parties will have the option to decline conciliation. If either party refuses to engage or if the conciliation is unsuccessful, Acas will certify that the Early Conciliation stage has been completed and the claimant will then be able to lodge an employment tribunal claim if they wish.

The Early Conciliation process will give Acas the chance to explain how conciliation works and the benefits it offers to individuals who may not have considered conciliation as a means of resolving their dispute. But even where Early Conciliation is refused or is unsuccessful, the claimant will have been given information about the employment tribunal process, enabling them to make a more informed decision about whether to pursue their claim.

A further consultation had been conducted on the detail of the process to underpin Early Conciliation. The necessary regulations will be implemented through secondary legislation.

2.2 Legal Officer Determinations

General comments during the Resolving Workplace Disputes consultation process suggested further options for increasing efficiency in the tribunal system. In the light of this the Government committed to consider whether and how to introduce a 'Rapid Resolution' scheme to provide quicker and cheaper determinations for straightforward employment tribunal claims – as an alternative to the current employment tribunal process. A scheme of this nature would be designed to deliver benefits to both parties and the tax-payer.

This Act provides a new power to make regulations allowing Legal Officers to make determinations in employment tribunal claims; this would enable the introduction of a Rapid Resolution scheme in the future. Any scheme that we introduce would be subject to a full public consultation.

2.3 Modernising the Employment Appeal Tribunal

The automatic requirement for Judges to sit with lay members to hear and determine cases that reach the Employment Appeal Tribunal is being removed. Judges will have the discretion to direct a full panel with lay members if they consider it necessary, based on the facts of a case.

Matters can only be brought to the Employment Appeal Tribunal if they concern a point of law, and so there is no fact finding role for lay members. Changing the default constitution of the Employment Appeal Tribunal will increase flexibility in the allocation of lay member resources and ensure better value for money.

2.4 Facilitating Settlement Agreements

This measure is designed to provide a safe route to open discussions for a settlement agreement to bring the employment relationship to an end, without this leading to an unfair dismissal claim. This will bridge the existing gap in those cases where the common law *without prejudice* principle (which prevents communications on negotiations aimed at settling a dispute being used as evidence in legal proceedings) does not apply, and where there is currently some uncertainty as to how an employer can safely make a settlement offer. This measure means that the offer of a settlement and the discussions around it cannot be used in evidence at a tribunal in an unfair dismissal case.

The public consultation 'Ending the Employment Relationship' sought views on the principles that will underpin this legislation. The Government

Response, published on 17 January 2013, set out how we will support implementation of the legislative measure, addressing the key issues in a Statutory Code and accompanying guidance. Acas has subsequently consulted on a draft Statutory Code. The Code will be introduced through secondary legislation, subject to the negative procedure.

2.5 Unfair Dismissal Compensatory Award

The cap on compensation for unfair dismissal has increased from £12,000 to £74,200 since 1999. The Act introduces a power to amend the current cap which will provide the Government with flexibility to make changes to the limit to address for example business concerns and the economic climate. The power cannot be used to reduce the cap below the annual average earnings or to increase it above three times the annual average earnings, but can be used to introduce a cap based on an individual's pay in addition to a specified upper limit.

The public consultation 'Ending the Employment Relationship', which considered proposals for an appropriate level of cap on the compensation for unfair dismissal, closed on 23 November 2012. There was broad support from respondents for introducing a pay-based cap, which would link the maximum potential award to an individual's own salary, to provide more certainty for both employees and employers. On 17 January 2013 the Government announced its intention to introduce a 12 months' pay cap, while leaving the overall specified cap at its existing level of £74,200. The applicable limit would be the lesser of the two figures. This cap will be introduced through secondary legislation, subject to the affirmative resolution procedure.

2.6 Financial Penalties

In order to encourage employers to meet their obligations in respect of their employees, tribunals will have a new discretionary power to impose a financial penalty on employers who breach an individual's employment rights. The penalty will have a maximum limit of £5,000 and will be payable to the Exchequer.

This penalty will be levied against employers whose breaches have aggravating features, such as malice or negligence - not businesses which make inadvertent errors. It is designed to encourage business to have greater regard to what is required of them in law and, ultimately, lead to fewer workplace disputes and employment tribunal claims.

2.7 Whistleblowing

A loophole in the existing whistleblowing protections in the Employment Rights Act 1996 ("ERA") will be closed. This loophole has allowed individuals to lodge a whistleblowing claim at an employment tribunal in relation to

matters of purely private rather than public interest e.g. a breach of their own employment contract that does not engage the public interest.

The protections inserted into the ERA by the Public Interest Disclosure Act 1998 are designed to protect workers from being unfairly dismissed by their employer or suffering other detriment whenever they report their concerns about matters that affect the public interest to their employer, regulatory authorities or other designated persons.

In future, whistleblowing claims will only be valid where an employee blows the whistle in relation to a matter for which the disclosure is genuinely in the public interest. This will exclude breaches of individuals' employment contracts and breaches of other legal obligations which do not involve issues of a wider public interest.

The good faith test is a test which needs to be satisfied by claimants bringing a whistleblowing claim. With the introduction of the public interest test, it was considered that the existence of two tests would have a deterrent effect and reduce the number of disclosures. This Act changes the application of the good faith test, so it will now be considered by the tribunal when deciding on remedy, rather than liability. The tribunal will have the power to reduce any compensation award by up to 25% where a disclosure has been made predominantly in bad faith.

In the light of evidence from the Mid Staffs Inquiry, the principle of vicarious liability will be introduced into the whistleblowing provisions of the ERA. This means that, where a worker is subjected to a detriment by a co-worker done on the ground that the worker had blown the whistle, and this detriment is done in the course of the co-worker's employment with the employer, that detriment would be a legal wrong and would be actionable against both the employer and the co-worker. The employer would only be liable for a detriment where it is done by a worker in the course of employment or by an agent of the employer with the employer's authority. Employers who take all reasonable steps to protect workers from the actions of their co-workers will be able to rely on this as a defence and may not be liable. However, the co-workers may still be personably liable.

Certain healthcare professionals in England, Scotland and Wales were identified as outside of the scope of whistleblowing protection due to their contractual arrangements. The definition of "worker" in section 43K of the ERA has been widened by this Act to include these professionals. A power has also been taken to enable the Government to make changes to the definition of "worker" by secondary legislation, so that in the event further changes are needed in the future these can be achieved quickly and without the need for primary legislation.

2.8 Tribunal Procedure

As a result of the Fundamental Review of the employment tribunal rules of procedure, Mr Justice Underhill identified 3 small changes to employment tribunal procedural law which require amendments to primary legislation. The proposed changes concern costs for lay representation, witness expenses for litigants in person and the use of deposit orders.

These changes will remove existing restrictions on deposit orders – so they can be made against part of a claim and weed out weak allegations. This will deliver better targeted case management and is likely to lead to increased use of deposit orders by tribunal judges. We will also make the rules on costs and witness expenses fairer for those who do not use a lawyer or self represent.

2.9 Limits for tribunal awards and statutory redundancy payments

The current uprating formulae for calculating employment tribunal awards and statutory redundancy payments will be changed to prevent future above inflation increases in these limits. The current formulae have led to increasingly higher statutory redundancy payments and employment tribunal awards, imposing additional costs on business and the taxpayer.

The new uprating formula will ensure that future increases in employment tribunal awards and statutory redundancy payments are rounded to the nearest pound and more closely reflect levels of inflation. This will reduce the financial burden on business by £5.4 million per annum.

2.10 Compromise Agreements

The name of compromise agreements has been changed to make them more attractive and more accurately describe an agreement that is about delivering a satisfactory solution for both parties.

These agreements are a way of ending an employment relationship in a consensual and mutually agreed way, and avoiding the cost and distress of an employment tribunal. They are legally binding documents that set out the terms and payments to be made to the employee in return for the settlement of a set of potential claims, and mean that the employee will not be able to take the matters compromised to an employment tribunal.

Compromise agreements will be re-named as “settlement agreements” in order to more accurately describe their purpose and to help people more readily understand what is being suggested. The term settlement agreement is already used in other areas – so it is already well understood. Additional, non-legislative measures are also being implemented alongside the Act, as

part of a broader strategy to simplify and increase the use of settlement agreements.

3. Competition

3.1 The case for reform

Competition is a key driver of growth and one of the pillars of a vibrant economy. A strong competition regime:

- ensures the most efficient and innovative businesses can thrive, allowing the best to grow and enter new markets; and
- gives confidence to businesses wanting to set up in the UK; drives investment in new and better products; and pushes prices down and quality up. This is good for growth and good for consumers.

Whilst the UK's competition regime is highly regarded internationally, the Government considers that there are some significant challenges to the present system:

- Duplication and inefficiencies caused by the division of responsibility for competition enforcement between two competition authorities (the Office of Fair Trading and the Competition Commission);
- Difficulties in successfully prosecuting infringements of the Competition Act 1998 (known as antitrust cases) at reasonable cost and in reasonable time;
- The current voluntary nature of notification requirements in the merger regime has meant that a large proportion of mergers which were referred to the Competition Commission by the Office of Fair Trading had already been completed, making investigation and remedy more difficult.
- The length of time taken to complete market studies and market investigations.

A consultation paper - '*A Competition Regime for Growth*'[1] sought views on a measures designed to improve the number and impact of enforcement cases, and bolster deterrence of anti-competitive behaviour. The Government's response, published on 15 March 2012, set out proposals which the Act implements:

3.2 Creation of a Single Competition and Markets Authority

The Act will create a Competition and Markets Authority that will have a duty to seek to promote competition, both within and outside the UK, for the benefit

[1] A Competition Regime for Growth: A Consultation on Options for Reform, March 2011

of consumers. This duty reflects the new Authority's position as the UK's principal competition body, its leadership role in tackling anti-competitive behaviour as part of ensuring markets work well for consumers, and its domestic and international advocacy role. The Government plans to commence the new Authority's powers and abolish the Office of Fair Trading and the Competition Commission on 1 April 2014.

The Competition and Markets Authority will provide greater coherence in competition enforcement and a more streamlined approach to decision making. Processes will be faster and less burdensome for business. A single strong centre of competition expertise will provide national and international leadership.

Under the Government's wider institutional reforms, the majority of public enforcement of consumer rights will be carried out by trading standards, working in partnership with the Competition and Markets Authority which will have a clear focus on competition and markets. For this purpose, the Authority will have primary expertise under unfair contracts terms legislation and powers under consumer enforcement legislation to address competition problems and features of a market that impact on consumer choice, even where competition is working well. Secondary legislation will deal with the transfers of these enforcement powers to the Competition and Markets Authority.

(i) Independence

To underpin its independence, the Authority will be set up as a Non-Ministerial Department - free to prioritise its own resources and annual plans of activity, and directly accountable to the Public Accounts Committee.

(ii) Decision-Making in the Competition and Markets Authority
In order to balance the need for decisions to be both robust and speedy, the separation of decision-making between the two phases of a merger and market investigation, and the independence of decision-making on regulatory appeals, will be retained.

3.3 Streamlining and strengthening the competition tools

(i) Powers to investigate practices across markets

The Competition and Markets Authority will have powers to conduct investigations of practices that impact on more than one market, such as extended warranties and other secondary point of sale practices, without the need to make multiple market investigation references. These powers will enable the Competition and Markets Authority to take a more targeted approach to tackling recurring sources of consumer complaint.

(ii) Powers to investigate public interest issues alongside competition issues

The Enterprise Act 2002 gives the Secretary of State the power to intervene in merger and market investigations on public interest grounds. A minor change in the Act gives the Secretary of State the power to request the Competition and Markets Authority to investigate public interest issues alongside competition issues in a market investigation. The Government considers this will put the competition regime at the heart of market inquiries currently undertaken by 'commissions' set up from time to time for that purpose. This approach is also designed to enable faster implementation of competition remedies.

(iii) Statutory time limits in the markets regime

In order to ensure greater certainty and to reduce the burden to business, the Act will introduce statutory time limits – specifically, 6 months to consult on a decision to make a market investigation reference and 12 months to conclude all market studies; and it will reduce existing statutory timeframes to complete market investigations from 24 to 18 months. This is supported by information gathering powers at all stages of the markets regime.

3.4 Creating a stronger mergers regime

The Competition and Markets Authority will be given discretion to suspend all integration steps in a proposed merger; and the Act clarifies that the Authority will be able to reverse integration steps that have already taken place. This should ensure that anti-competitive mergers can be stopped and reversed. This power will strengthen the existing "hold separates" power available during phase 1, enabling the Authority to stop integration immediately and then consider with the parties whether any further integration should be allowed.

The Act will also give the Authority the power to impose a penalty and/or to seek a court order to ensure compliance.

(i) Introducing statutory time limits

The Act will introduce statutory time limits at all stages of the mergers process – specifically, a time limit of 40 working days for phase 1 merger investigations; time limits on the undertakings-in-lieu process; and a 12 week statutory time limit from the publication of the final report in phase 2 cases for the Authority either to make an order or accept undertakings.

(ii) Markets and Mergers Remedies

The Act will improve remedy making powers available to the Competition and Markets Authority by enabling it to require parties to appoint an independent third party to monitor, arbitrate, and/or implement remedies; and it will give the Competition and Markets Authority the power to require parties to publish certain non-price information.

3.5 Creating a stronger antitrust regime[2]

The Act will provide for strengthened powers and more robust decision-making in the enforcement of the antitrust prohibitions in the Competition Act 1998 whilst providing appropriate safeguards to parties under investigation. The changes (some of which will be provided under secondary legislation for which the Act makes provision) envisage a separation between the investigation of cases and decision making on them, the statutory underpinning of a role for a Procedural Adjudicator to handle complaints and new powers for the Authority in order to increase efficiency in the conduct of investigations and greater transparency of decision making.

(i) Powers to make antitrust investigations more efficient

The Competition and Markets Authority will be given the power to impose civil financial penalties on parties who do not comply with certain formal requirements during antitrust investigations whilst the previous criminal sanctions (except in respect of intentionally obstructing entry to premises and falsifying, destroying documents etc) will be removed. This should provide a more effective deterrent to non-cooperation.

The Authority will also be empowered to require certain individuals to answer questions as part of an antitrust investigation, subject to certain safeguards such as a requirement to copy the relevant notice to the undertaking with which the individual is connected.

(ii) Power to publish a notice of the opening of an investigation

This measure will help the Authority in carrying out investigations, in particular by enabling it to alert third parties to the existence of an investigation, thus potentially triggering evidence or submissions which may assist the evidence gathering process.

[2] The new or amended powers will also be given to the sector regulators which will enforce the antitrust regime concurrently with the Competition and Markets Authority.

(iii) Lowering of the threshold before interim measures can be imposed

The Authority will be able to impose interim measures in order to prevent "significant damage" (rather than, as previously, "serious, irreparable damage") to a person or category of persons whilst it concludes its investigation. This measure will enable potentially anticompetitive conduct that may be materially weakening competitors to be halted pending final decisions.

(iv) Statutory guidance on financial penalties

Financial penalties imposed for infringement of a prohibition will be required by the Act to reflect the seriousness of the infringement and the need to deter breaches and the Competition Appeal Tribunal will be explicitly required to have regard to the statutory guidance on financial penalties in reviewing them. These measures should mitigate any unwarranted incentives to appeal fines thereby contributing to a more efficient overall process.

3.6 The Criminal Cartel Offence

The criminal cartel offence helps to deter the most serious and damaging forms of anti-competitive conduct but in the inclusion of a requirement to prove an individual's dishonesty has, in the Government's view, made the offence particularly difficult to prosecute. The Act will remove the 'dishonesty' element while introducing new circumstances in which the cartel offence is not committed, that is if certain persons are notified of relevant information or if that information is published in a prescribed manner. In addition, a person will have a defence if s/he can show that they did not intend to conceal the nature of the cartel arrangements from customers or the Competition and Markets Authority or that s/he took taking reasonable steps to ensure their nature was disclosed to professional legal advisers. The Competition and Markets Authority will be required to publish guidance on the principles for determining whether a person should be prosecuted for the offence.

3.7 Concurrency and Sector Regulators

The Government wants to encourage more cooperation between the Competitive and Markets Authority and sector regulators, and to encourage the regulators to be more proactive in their use of the concurrent competition powers. Sector regulators will be required to consider whether the use of their Competition Act 1998 (antitrust) powers is more appropriate before using their licence enforcement powers[3] and the Competition and Market Authority will report annually on the use of concurrent powers in the regulated sectors.

[3] The Secretary of State may commence this duty for Monitor at a future date. This reflects the unique characteristics of the Health sector.

The Act will widen the Secretary of State's existing power to make regulations regarding concurrency arrangements, so that the regulations can require competition authorities to share more information about possible antitrust cases and case management decisions. As part of its enhanced leadership role the Competition and Market Authority will have the power, under the new regulation and following consultation with the relevant regulator, to decide which body should lead on a case. Finally, the Act gives the Secretary of State the power, following notification and consultation procedures, to remove concurrent competition powers of a regulator other than Monitor where he considers this appropriate in order to strengthen the promotion of competition in the interests of consumers.

3.8 Regulatory References and Appeals and other Functions of the Office of Fair Trading and the Competition Commission

The Competition Commission's role in determining regulatory references and appeals and in Energy Code Modification appeals will be transferred to the Competition and Markets Authority, as will the ancillary competition roles of the Competition Commission and Office of Fair Trading. Independent groups of Competition and Market Authority panellists will carry out the roles that are currently undertaken by the Competition Commission.

3.9 Cost recovery

The Government will introduce a system of cost recovery in telecoms price appeals, in which appellants are liable for the Competition and Markets Authority's cost to the extent that their appeal is unsuccessful.

Third party interveners will also be liable for the costs to the Authority caused by their intervention, again to the extent to which the side on which they intervened lost. This measure aims to ensure the telecoms sector will be treated in a similar way to other regulatory appeals and that the cost of appeals are distributed more fairly between business and the taxpayer.

4. Repeals

Repealing laws that are no longer used or needed helps to deliver a commitment of the Coalition Programme for Government to cut red tape. The Act is just one of a number of ways this commitment is being taken forward. The Government is committed to continuing to review the stock of legislation and repealing those laws which are no longer considered necessary. The Act repeals a number of provisions in order to reduce burdens on business. For example:

- The Act repeals laws that require retailers to notify TV Licensing of all their sales and rentals of television sets.
- The Act also removes the ability of bankrupts to get discharge from bankruptcy earlier than one year as it is a costly process to administer with few benefits for bankrupts or creditor. Instead, all bankrupts will be automatically discharged after one year, providing they are not subject to any restrictions or their discharge has not been suspended.

5. Regulatory Reform

Regulatory reform will support growth and enterprise by ensuring that vital public protections are delivered in proportionate, risk-based and consistent ways.

Through this Act we aim to:

- Enable many more businesses to access the benefits of assured advice on regulatory compliance;
- Deliver earned recognition for businesses with recognised compliance capability, through better coordination of inspections;
- Ensure legal obligations can be imposed to review the need for regulations; and
- Remove regulations that the public have told us are no longer required.

5.1 Improving the Primary Authority Scheme

Local Authorities play a significant role in regulation, delivering around 80% of enforcement activity. For example trading standards, food hygiene, and many aspects of health and safety regulations. This provides good flexibility to respond to local circumstances, for example, specific community concerns or problem outlets. But for businesses operating across geographical boundaries, such as retail chains, it also opens up the scope for variation in how enforcement is handled and what advice is provided to them.

The current Primary Authority scheme helps address this tension by providing consistency in enforcement action through assured advice on regulatory compliance. It allows a business to partner with a lead authority – the Primary Authority. The Primary Authority provides robust and reliable advice on compliance that other authorities must take into account. Before other authorities take enforcement action they must notify the Primary Authority, which can then direct them not to do so if the action is inconsistent with appropriate advice it has previously issued.

The Act expands the Primary Authority scheme so that it is open to more businesses, and in particular to a greater number of smaller businesses. Under the scheme as it currently stands, only those businesses that operate across local authority boundaries can benefit from the scheme. When the measure comes into force, the changes made will mean that franchises, trade association members, group companies and other businesses that have a shared approach to compliance (say through a sector-led certification scheme) will also be eligible (provided that, collectively, the businesses are regulated by more than one local authority).

The Act also strengthens the scheme to give inspection plans greater weight: enabling enforcing authorities to better target resources in a risk-based and coordinated way and enabling inspections to be better adapted to a business' compliance capability. Through this, business will be provided with a clearly defined route to *earned recognition*, reducing burdens for responsible businesses that best manage their own compliance.

As things currently stand, enforcing authorities need only 'have regard' to inspection plans. When the measure comes into force, local authorities will be required to follow inspection plans unless the Primary Authority has consented to a deviation. This will make the purpose and operation of the plans much clearer for all parties, and will give businesses and Primary Authorities the confidence to invest their time in developing the plans.

These measures are consistent with the outcome of our public consultation[4, 5, 6] which concluded that the Primary Authority scheme be expanded to allow more businesses – particularly SMEs – to participate. The Government also decided that inspection plans should be strengthened to deliver earned recognition for business.

5.2 Sunsetting Regulations

The Coalition programme for Government includes a commitment to impose sunset clauses on regulations to ensure that the need for each regulation is regularly reviewed.

Detailed guidance for government departments on implementation of the policy on sunsetting regulations was published in March 2011[7]. The guidance sets the rules on where new regulations should include either a statutory review clause, or a sunset clause.

At present, it is only possible to include sunset or review clauses in secondary legislation where there are sufficient legal powers in the relevant primary legislation. The changes proposed in the Act address this constraint through an amendment to the Interpretation Act 1978.

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[4] Transforming Regulatory Enforcement: Discussion Paper: http://www.bis.gov.uk/Consultations/transforming-regulatory-enforcement-discussion?cat=closedawaitingresponse

[5] The future of the Local Better Regulation Office (LBRO) and the extension of the Primary Authority Scheme: http://www.bis.gov.uk/Consultations/future-of-local-better-regulation-office-and-primary-authority-scheme

[6] Government response to the consultation on regulatory enforcement: http://www.bis.gov.uk/assets/biscore/better-regulation/docs/t/11-1408-transforming-regulatory-enforcement-government-response.pdf

[7] Sunsetting Regulations : Guidance http://www.bis.gov.uk/policies/bre/better-regulation-framework/reviewing-existing-regulations/pirs-and-sunset-reviews

The amendment made by the Act ensures the legal powers to include review or sunset clauses in any future secondary legislation. This removes the issue of legal power as a barrier to implement sunsetting of all new regulations that fall within the scope of the policy.

5.3 Heritage Planning Regulation

The heritage measures in the Act implement commitments to legislation made in the Government's response to the Penfold Review of Non-Planning Consents in November 2011. The aim of the Penfold Review was to support growth and competitiveness by ensuring that non-planning consent regimes operate in the most flexible and simplified way possible, whilst delivering the benefits they were established to achieve.

The measures in the Act will enable us to be clearer when listing buildings about what is and is not protected, and will make it easier to apply for a certificate of immunity from listing. They will enable owners and local planning authorities to enter into voluntary partnership agreements to help them manage listed buildings more effectively. They will also remove the requirement for Conservation Area Consent, while retaining the offence of demolishing an unlisted building in a conservation area without permission.

The measures will reduce burdens by granting listed building consent automatically for certain categories of work or buildings through a system of national and local class consents. They will also increase certainty and reduce the numbers of unnecessary consent applications by creating a certificate of lawfulness of proposed works to listed buildings.

In addition, the measures remove a restriction on how English Heritage can use a wing of Osborne House, the former residence of Queen Victoria on the Isle of Wight, to enable the wing to be put to productive use and generate income to cover maintenance costs.

6. Equality and Human Rights Commission

The Government wants the Equality and Human Rights Commission (EHRC) to become a valued and respected national institution.

The Act will help the EHRC to focus on its core functions as a national expert on equality and human rights issues and as a strategic enforcer of the law. The Act repeals vague and unnecessary provisions from the Equality Act 2006, the legislation that established the EHRC.

These repeals do not impact on the EHRC's equality duties in the Equality Act 2006. The EHRC will continue in its important role of promoting understanding of the importance of equality of opportunity, awareness of individuals' rights under equality legislation and ensuring equality law is working as intended. Likewise, the EHRC's human rights duties are not affected by our reforms.

7. Equalities measures

Equality measures in the Act reflect the need to underpin important legal protections from discrimination while removing, under the Red Tape Challenge some measures in the Equality Act 2010 that place unnecessary or disproportionate burdens on business.

Third party harassment law

Under third party harassment provisions, employers could be held responsible for repeated harassment of an employee by someone who didn't work for them and over whom they had no direct control – for example a customer. We believe there is no need for this sort of safeguard and it is unfair to place this potential risk on an employer when there are already legal remedies which may be available where an employee is in this position.

In addition, there is no evidence that these provisions are much used. We are aware of only one case of third party harassment ruled on by an employment tribunal since the provision was introduced in 2008. In the meantime, employers have to live with the uncertainty of claims being made for no good purpose. Having consulted, we are now repealing this measure through the Act.

Procedures for gathering discrimination information

This is a statutory procedure which enables anyone who thinks they have been discriminated against to seek information from the person they think has acted unlawfully against them. We support the process of pre-hearing discovery, particularly if this results in greater use of pre-hearing settlements and weeding out of unmeritorious claims (though it is not clear that the obtaining information provisions do indeed have this effect). However, it is clear that the current time-limits, use of prescribed forms and statutory right of inference by the courts places a considerable burden on business – estimated at between 45,000 and 60,000 staff hours a year; while the law also encourages undesirable micro-management of the process by the Government, including prescribing the nature of the forms to be used, and the time limits involved.

For these reasons, and following consultation, we are repealing the provision, leaving businesses free to decide how and whether they respond to enquiries of this sort.

The Government Equalities Office is, however working with Acas and other parties, including the providers of the new Equality Advice and Support Service, to provide guidance to help ensure the success of the less

burdensome and intrusive early conciliation proposals set out in section 2.1 of this document.

Non-legislative action

To support the simplification agenda we have introduced alternatives to regulation to tackle gold-plating and over-compliance through an industry-led programme to help small and medium sized companies understand what they do and don't need to do, in order comply with the Equality Act 2010.

8. Civil Liability and Health and Safety at Work Regulations

This measure removes the right of civil action against employers for breach of statutory duty in relation to health and safety at work regulations. This will address the potential unfairness that arises where an employer can be found liable to pay compensation to an employee despite having taken reasonable steps to protect them.

This unfairness was identified by Professor Löfstedt in his independent review of health and safety, 'Reclaiming Health and Safety for All' (November 2011) and arises where health and safety at work regulations impose a strict duty on employers, giving them no opportunity to defend themselves on the basis of having done all that was reasonable to protect their employees. The inability of employers to defend themselves in these cases helps fuel the perception of a compensation culture and the fear of being sued is driving businesses to over-comply with regulations, resulting in additional unnecessary costs.

At present, compensation claims for workplace injuries or illnesses can be brought by two routes: breach of statutory duty in which failure to meet a particular standard in law has to be proved, or breach of common law duty of care in which negligence has to be proved.

The Act amends the law so that in future compensation claims can only be made where negligence or fault on the part of the employer can be proved. This change will help redress the balance of the civil litigation system in respect of health and safety at work legislation. It will help employers' confidence, allowing them to focus on a sensible and practical approach to health and safety and keep costs down by avoiding over-compliance.

Employees will continue to have the same level of protection, as the standards set out in criminal law will not change and they will still be able to claim compensation where an employer has been negligent.

9. Home Buying and Selling

Following a recommendation by the Office of Fair Trading, the Government is amending the Estate Agents Act 1979 to take out of scope intermediaries such as private sale portals which merely enable private sellers to advertise their properties and provide a means for sellers and buyers to contact and communicate with one another. As part of the the Red Tape Challenge, the Government has found that at present there is uncertainty about the scope of the legislation in relation to this type of business and the Government wants to remove that uncertainty and thereby give confidence to businesses wishing to offer limited services to private sellers.

10. Bringing agriculture workers into the scope of the national minimum wage and the abolition of the Agricultural Dwelling House Advisory Committees

Ending the separate Agricultural Minimum Wage

The Agricultural Wages Board for England and Wales (AWB) has set the minimum rates of pay and other terms of employment for farm workers for over 60 years. When the Board was established workers had very few statutory employment rights, and there was little opportunity for famers and workers to engage in collective bargaining. Since the AWB was set up in 1948, there have been significant changes in wider employment legislation both nationally and at EU level which protects and benefits workers in all sectors of the economy. In light of these developments, the Act ends the separate minimum wage arrangements for workers employed in the agriculture sector. These workers will be bought into the scope of the national minimum wage. The Act abolishes the AWB itself, and the [15] Agricultural Wages Committees (AWCs) in England. The AWCs have had powers to vary local pay rates, including setting piece rates and to issue craft certificates for skilled workers; however these powers have not been used for some time and are effectively defunct.

Abolition of Agricultural Dwelling House Advisory Committees

The Rent (Agriculture) Act 1976 (the "1976 Act") gives qualifying farm workers living in tied agricultural cottages security of tenure, even if they stop working for the farmer who owns the cottage. The 1976 Act sets out circumstances where a farmer may gain possession of a house occupied by a former worker and local authorities have responsibility for deciding whether the conditions for regaining use of the cottage have been met. Under current arrangements, the farmer, the tenant or the local authority may request advice from an Agricultural Dwelling House Advisory Committee (ADHAC) on an application by a farmer to re-house a worker. The ADHAC will consider whether there is an agricultural need for re-housing and the urgency of the application. The ADHAC's role is purely advisory however, and while the local authority must take account of its findings, it is under no statutory obligation to follow the ADHAC's recommendation. The number of requests to ADHACs has significantly declined in recent years due to changes in housing legislation;

there are expected to be fewer than ten requests each year. Given the declining demand and the ongoing administrative burden of recruitment and training of members, the Government proposes to abolish the 16 different committees covering England. The abolition of ADHACs will not affect the provisions in the 1976 Act which give security of tenure to protected tenants. Hence tenants will not lose any protection because of the abolition of ADHACs.

11. Debtor Petition Reform

The requirement to present a petition to the court for a debtor wishing to make him or herself bankrupt is being replaced with an administrative process. This will free up court resources to deal with matters requiring judicial input and improve accessibility to bankruptcy for those with unmanageable levels of debt. The reforms will also streamline the process by facilitating the introduction of an electronic application for debtors.

Debtor bankruptcy petitions are uncontested and generally procedural in nature. When this measure is implemented the decision to make a bankruptcy order on the application of a debtor will be made administratively by an Adjudicator based within the Insolvency Service. Bankruptcy petitions presented by creditors and other third parties are unaffected by this proposal and will continue to be presented to and heard by the court.

The reforms will also ensure that Ministers, in consultation with stakeholders, are able to modernise and make more efficient bankruptcy filing and document inspection processes.

12. Copyright

Following recommendations in the independent Hargreaves Review of Intellectual Property and Growth[8], the Government consulted on a number of proposals to modernise the UK's copyright regime[9]. These measures aim to make copyright licensing more efficient and to remove unnecessary barriers to the legitimate use of works while preserving the interests of rights holders.

Aside from proposals which follow on from the Hargreaves Review, the Act will enable amendments to be made to copyright exceptions whilst maintaining current levels of penalties for copyright infringement, and enable the updating of the UK's copyright legislation in line with the rest of the EU.

12.1 Removing the exception from copyright for artistic works which are produced through an industrial process

The Act removes an exception which deals with the situation where a copyright holder has authorised mass-produced copies of an artistic work. Currently, 25 years after the copies were first marketed, the artistic work may be copied by third parties without infringing copyright. These copies may also be sold to the public and otherwise dealt with without infringing copyright in the original artistic work.

Repealing this exception will mean that all categories of artistic work will enjoy the full term of copyright duration – that is, the life of the creator plus 70 years, rather than the 25 years to which copyright enforcement is currently limited.

This will update UK law in line with EU law. The UK is one of the only Member States (others include Estonia and Romania) which limits the term of protection for copyright works which are mass produced. Designers argue it undermines the integrity of the design industry and it may make British companies less willing to support long term investment, in areas such as furniture design, than their European competitors.

Repealing the exception will have implications for people who manufacture, distribute or sell those replicas of artistic works which may, in some cases, become illegal as a result of the change. The Government is considering when the new provisions should come into effect and transitional provisions to enable retailers and manufacturers time to adjust.

[8] Hargreaves, I. 2011. '*Digital Opportunity: A Review of Intellectual Property and Growth*'. London: Intellectual Property Office. Available at: http://www.ipo.gov.uk/ipreview
[9] HM Government 2011. *'Consultation on Copyright'.* UK: Intellectual Property Office. Available at: http://www.ipo.gov.uk/consult-2011-copyright.pdf

The Government is also aware that there may be an impact on those (such as publishers and film makers) who use two-dimensional images of certain artistic works. Designers who use motifs from existing designs could also be affected if there is copyright in the underlying work.

12.2 Maintaining penalties for copyright infringement

This provision ensures that the current level of penalties for copyright infringement are maintained when the European Communities Act 1972 (ECA) is used to make changes to the exceptions to copyright and performance rights. Otherwise, were the ECA to be used to make such changes, the maximum penalty that can be imposed on indictment for any criminal offence created or extended by the changes is two years imprisonment. This is in contrast to the level of penalties for copyright infringement already in place in the UK, which includes penalties of up to ten years imprisonment for copyright infringement in certain circumstances.

The provisions in this the Act mean that, when the ECA is used to make changes to copyright exceptions, its restrictions with regard to criminal penalties will not apply. This will allow Government to make necessary changes to exceptions while maintaining existing penalties for infringement and therefore preserve the UK's strong copyright enforcement framework.

12.3 Licensing of orphan works

Orphan works are those copyright works where the rights holder is not known or cannot be located and include, for example, books, films, music and photographs. Orphan works cannot be copied or published without the permission of the rights holder, without risk of copyright infringement. The Hargreaves Review described the orphan works problem as representing "the starkest failure of the copyright framework to adapt" and the Government believes that it benefits no-one to have a wealth of copyright works which cannot be used to their full extent.

The Act provides for the licensing of orphan works for both commercial and non-commercial use, subject to a diligent search for rights holders and other safeguards to protect rights holders who may re-appear. An independent body will license the use of orphan works, including verifying that potential licensees have carried out a diligent search to a sufficiently high standard.

The licensing body will also maintain a register of works subject to current diligent searches and works that the body has licensed. This will increase the chances of works being reunited with their owners as rights holders will be able to view the register to check whether any of their works appear on it. Licensees will be required to pay licence fees upfront at a rate appropriate to the type of work and type of use and these fees will be held by the licensing body for the rights holder in case they reappear. Licensees will be required to

credit rights holders when they use an orphan work if their name is known, or otherwise give details of the orphan works licensing body so that a re-appearing rights holder knows how to regain control of their work.

12.4 Reducing duration of copyright for certain unpublished works in transitional cases

The National Archives and others have reported that a large proportion of orphan works in cultural collections are unpublished. Because of transitional provisions on copyright term for these very old works, much material, such as medieval manuscripts, will remain in copyright until 2039. For example, The National Archives has texts of pre-Conquest private charters which are copyright works, even though they pre-date the first copyright statute by about 700 years. The Act includes a power to reduce the duration of the copyright term for certain of these works. This will lead to a significant reduction in the number of orphan works and allow the UK to apply harmonised term conditions to such works, in line with other EU member states. Unpublished films and unpublished photographs will be exempt from the reduction in term because of the possibility that they can be exploited commercially without having been published. The legal definition of publication requires multiple copies to have been distributed to the public. It is also possible that commercial archives have expectations of copyright in these works running until 2039 at the earliest and have based their business models on this. The Act provides a power allowing for different provisions to be made under regulations for different types of work and different ages of work.

12.5 Voluntary extended collective licensing

The Hargreaves Review also recommended that the UK introduce a system of Extended Collective Licensing (ECL) for copyright works, in order to help simplify the licensing and clearance process. Collective licensing works on an 'opt-in basis' - rights holders have the option to join a collecting society which can then license the use of their works on their behalf. Under these provisions, if a collecting society applied, and was authorised by the Government to operate an ECL scheme, it will be able to license on an 'opt-out' basis within the scope of the authorisation. In this instance, it would act on behalf of all rights holders covered by the authorisation, except any that choose to opt out.

The advantage of ECL is that it creates a more streamlined clearance system, facilitating the legitimate, remunerated use of works. Evidence to the Hargreaves review and the subsequent Government Copyright Consultation stated that the administrative cost involved in clearing large collections of works individually was often prohibitive. ECL can help to resolve this where the market chooses to make use of it, improving access to copyright works while making sure that rights holders are paid for the use of their work.

The Government recognises that ECL might not be suitable in all circumstances (for example, in markets where rights are licensed directly), and the importance of ensuring that the interests of rights holders are protected. Therefore, the following rigorous safeguards are essential to the measures:

- ECL cannot be imposed on a sector - it's for collecting societies (with the explicit consent of their members) to choose whether to apply to use it;
- ECL can only be an option where the collecting society is significantly representative of the rights holders who will be affected;
- A collecting society that wants to operate an ECL scheme must have a code of practice in place which meets the Government's minimum standards; and
- Rights holders must always be able to opt out of any ECL scheme which affects them.

12.6 Codes of practice for Collecting Societies

After looking at the collective licensing landscape in the UK, Hargreaves recommended that collecting societies be regulated with codes of practice to give both users and members greater protections. The Review suggested that collecting societies self-regulate in the first instance and that Government should take a reserve power to put in place statutory codes in the event that self-regulation fails.

Consequently, the Government consulted on a set of minimum standards for inclusion in codes of practice to provide minimum standards of governance, transparency and accountability that collecting societies must adhere to. The minimum standards were published in October 2012 and form the basis of the self regulatory framework being developed by collecting societies themselves under the auspices of the British Copyright Council. The minimum standards are intended to evolve as necessary to take account of market developments. Codes of practice are also required to provide safeguards for non-member rights holders of collecting societies that are authorised to operate extended collective licensing schemes.

The Act allows the Government to require a licensing body to adopt a statutory code of practice. This was almost unanimously supported by users of the system in their consultation responses. It would only be used where a collecting society’s own system of self-regulation failed. The hope is that any such failure would be exceptional.

12.7 Implementation of EU Directive 2011/77 EU – Extension of copyright term for sound recordings and performers' rights

EU Directive 2011/77/EU extends copyright term for sound recordings and performers' rights in sound recordings from 50 to 70 years. It also harmonises copyright term for co-written musical works – for example where the words and music to a song have different authors but they were written to be used together.

The Government could implement the Directive using the European Communities Act, but this would require a reduction in the maximum penalties for infringement (as set out at 7.2, above). Primary legislation is therefore required which enables Parliament to implement the Directive whilst maintaining the UK's current level of penalties for infringement.

13. Directors' Pay

The Government is committed to removing obstacles to growth whilst ensuring responsible corporate behaviour. The UK is widely seen as a leader on corporate governance and this is important for making the UK an attractive place to invest and do business.

The governance arrangements surrounding directors' pay – how it is set, agreed and reported on – need to be strengthened. There is broad agreement that the link between pay and performance has grown weak and the current pattern of growth in directors' pay is unsustainable.

Delivering on the Prime Minister's commitment to reform, the Act will give shareholders of UK quoted companies a binding vote on directors' pay. The vote on a company's pay policy will happen annually unless companies choose to leave the policy unchanged; in which case the vote will happen as a minimum, every three years.

A company will only be able to make remuneration payments and exit payments within the limits that have been approved by a majority of shareholders.

Shareholders will get, as now, an annual advisory vote on how the approved policy is being implemented, including actual sums paid in the previous year. If a company fails the advisory vote they will need to put the pay policy back to shareholders the following year for re-approval in a binding vote.

The purpose of these reforms is to help restore the link between pay and performance by giving shareholders the power to hold the companies they own to account. They come in the context of a drive to encourage stronger working relationships between company boards and shareholders.

14. Letting and managing agents

Many landlords who rent out private homes employ agents to help them find tenants and/or to manage the property on their behalf. Similarly, many landlords in the residential leasehold sector employ agents to manage the property on their behalf. The majority of these letting and managing agents offer the landlords, tenants and leaseholders who use their services access to a redress mechanism, i.e. an independent ombudsman to whom they can take complaints. However, not all agents do offer this.

Using the powers set out in the Act, the Government intends to make orders that will require letting and managing agents of privately rented homes in England, and managing agents of residential leasehold properties in England, to belong to a redress scheme. Such a scheme would need to be approved by the Government (and the Act enables the Government to run such a scheme itself). The conditions for approval of a redress scheme, the procedure for making application for approval and the sanctions for failure to comply with the requirement to belong to a redress scheme will be set out in secondary legislation.

15. Supply of customer data (midata)

The midata programme is part of the growth agenda and the Government believes it will help to build the foundation of a competitive economy which will improve trust between businesses and their customers, promote competition and stimulate innovation.

The "midata" programme is an initiative that came out of the *Consumer Empowerment Strategy: Better Choices: Better Deals* report, published on 13 April 2011. BIS developed a vision for midata with the help of leading businesses, regulators and consumer organisations.

The voluntary midata programme has been working with leading businesses to encourage them to release back to their customers the data they hold on them in an electronic, machine readable format so that their customers are able to use this information to make better purchasing decisions.

The midata programme is currently a voluntary programme led by an independent chair, Professor Nigel Shadbolt. Working with leading businesses, the programme encourages suppliers of goods and services to provide to their customers, upon request, their personal historic transaction and/or consumption data in an electronic machine readable and reusable format. It is our intention to continue with that element of the programme. However, Government is keen to see faster progress on businesses making personal transaction data available to their customers.

BIS published a consultation in July 2012 which set out the benefits of midata and the potential benefits to consumers of data release in an electronic format, as well as giving UK businesses the opportunity to take the lead in the growing market of personal data analysis.

The Government published its response on 19 November 2012, setting out its intention to introduce an order making power to give the Government the option that if there was not sufficient progress, we would be in a position to exercise the power through secondary legislation at a later date. The Government decision on whether to use the power will only be taken following a review of the progress of the voluntary programme. If, following this review, it is felt that regulation is required in a particular sector, or sectors, then a full consultation will be published.

The Act focuses on four core sectors: energy, the mobile phone sector, current accounts and credit cards. The Government believes that these sectors hold data on customer behaviour that is likely to be of significant benefit to consumers. The power retains the flexibility to tackle wider markets

once certain factors have been taken into account, for example where there is evidence that a particular market is not working well for consumers. The requirement would only apply to firms who already hold this information electronically, with the right to data afforded to individual consumers and (possibly) micro-business. Regulations under the power may be targeted on specific sectors or product groups.

The Information Commissioner is listed as a potential enforcer because of parallels with his/her current work on data protection but the Secretary of State will have the authority to designate other persons to act as enforcers.

We are committed to undertaking further, more detailed consultation and impact assessment work prior to bringing forward any regulations to give the power effect. We would continue to engage with stakeholders including the voluntary programme.

The programme will continue to work with business, consumer groups and regulators to encourage the voluntary release of data and find ways to address concerns raised through the midata programme and last year's consultation process, such as those regarding data privacy, security and redress.

When dealing with data transfers, information security and privacy are key concerns for consumers and business. Within the voluntary programme we are working to assess appropriate governance structures that provide customers and business with reassurances, for example, when sharing their data and privacy with a third party. Measures will be consistent with data protection rules and any proposals made public before implementation.

16. Insolvency termination clauses

The Act contains powers that when exercised will assist businesses in insolvency procedures, by increasing the chance of business rescue.

The powers will render void contractual terms that allow an essential supplier in the utility and IT sectors to withdraw supply from an insolvent business, and will also prevent suppliers in these sectors taking advantage of the insolvency by unfairly and unreasonably increasing charges for that supply. The powers also contain provision to include secondary providers of utility services within existing provisions that prevent utility suppliers demanding payment of any outstanding charges as a condition for continuing further supply.

The Government recognises that some of these proposals would affect contractual rights. For this reason the powers are restricted to supplies which are most essential to today's business and which typically cannot be sourced quickly from alternative suppliers.

There are several safeguards contained within the powers for affected suppliers to ensure that the supplier is paid, including the right to require a personal guarantee from the insolvency practitioner for the post-insolvency supply.

The Government intends to consult with interested parties before exercising these powers.

17. Royal Charter and Press Regulation

Following Lord Justice Leveson's inquiry and report into the culture, practices and ethics of the Press, cross-party agreement was reached on a draft Royal Charter that will help deliver a new system of independent and robust press regulation in this country, and which supports the UK's traditions of investigative journalism and free speech, and protects the rights of the vulnerable and the innocent.

This system would ensure up-front apologies, million pound fines, a self-regulatory body with independence of appointments and funding, a robust standards code, an arbitration service that is free for victims, and a speedy complaint-handling mechanism. The Royal Charter would achieve a tough new system of regulation, without the need for detailed legislation.
The Government has introduced a 'no change' section to the Act to ensure the Royal Charter is protected.

This is not a statutory regulation of the press. The Charter says clearly that it can be changed only if there is a vote of two thirds in both Houses. This is repeated in the Act, the point of which is to protect the Royal Charter - it is not legislation to recognise the Royal Charter.

18. Caste as an aspect of race

The existing power to extend “caste” within the definition of “race” in section 9 of the Equality Act 2010 was amended to become mandatory. The Government has made clear that it intends to undertake a full and thorough public consultation before the legislation is commenced. The need for consultation on key issues, such as the definition of caste itself and the need for any related exceptions, was recognised by both Houses during Parliamentary debate on the Act.

19. Equal pay audits

In June 2012, the Government said that we would introduce equal pay audits once we had consulted further on the detail of our proposal. So, in addition to the Equalities repeals (see above), the Act introduces a power into the Equality Act 2010 so that we can enable employment tribunals, at a later date, to order an employer to carry out an equal pay audit when they have breached equal pay law or have discriminated against women, or men, in non-contractual pay, for example discretionary bonuses. Although the number of cases expected per year is likely to be low, this is an important power and will contribute to the Government's commitment to promote equal pay, and economic growth through equality in the workplace.

This publication is also available on our website at www.gov.uk/bis

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BIS/13/905