BIS | Department for Business Innovation & Skills

ENTERPRISE AND REGULATORY REFORM BILL

POLICY PAPER

October 2012

The Enterprise and Regulatory Reform Bill

Introduction

This paper accompanies the Enterprise and Regulatory Reform Bill, which was introduced in to the House of Lords on [18] October 2012 following its passage through the House of Commons. The Explanatory Notes give more detailed commentary on the clauses in the bill. This paper sets out why the Government is undertaking the measures contained in this bill, and explains what each measure aims to achieve.

The bill

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.

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 bill 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;
- Promoting competition through a single **Competition and Markets Authority**;
- Streamlining and strengthening the competition tools to address anti-competitive behaviour;

- Enhancing the opportunity for parties to resolve disputes without the need for **employment tribunals**;
- Introducing discretionary penalties for breaches of individual employment rights where there are aggravating features; and
- Closing the unintended loophole that allowed individuals to blow the whistle on matters of private rather than public interest.
- Giving shareholders extra powers to ensure that directors' remuneration is more closely linked to company performance.
- Modernising the UK's **copyright** framework

Simplifying regulation by:

- 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; and
- Reforming unduly onerous provisions and removing obsolete laws.

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 will receive £3 billion of initial funding from the Government to 2015. It will receive borrowing powers from April 2015, subject to public sector net debt falling. 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 made rapid progress towards establishing the Bank, in readiness for full operation once state aid approval is obtained from the European Commission.

The Bank was formed as a public company called UK Green Investment Bank plc on 15 May 2012. It will have all of the usual powers of a Companies Act company, and the way in which these will be exercised by the directors is set out in the Bank's constitutional documents. No legislation was required to establish the Bank as an entity or provide it with powers, as would be the case if the Government were establishing a statutory corporation.

In its capacity as sole initial shareholder of the Bank, the Government has appointed Lord Smith of Kelvin as the initial Chair of the Bank and Sir Adrian Montague as its Deputy Chair. Their extensive commercial experience is a huge asset to the Bank. The Government has also announced the appointment of Shaun Kingsbury as Chief Executive Officer with effect from 29 October 2012, ensuring that the Bank is in a position to be fully operational as soon as possible after state aid clearance.

Separately, to stimulate investment in the green economy with immediate effect, UK Green Investments (UKGI), a respected team staffed by finance professionals and based in the Department for Business, Innovation and Skills, is dedicated to driving investment in the UK's green infrastructure from April 2012.

The Government has already made some of the £3 billion funding available to invest in smaller waste infrastructure projects through UKGI on a fully commercial basis. Of this, UKGI has committed an initial £80 million to two specialist fund managers who will make and manage investments in the small scale waste infrastructure sector on their behalf. The Government has made available a further £100 million for investment in the non-domestic energy efficiency sector, and stands ready to co-invest on commercial terms in offshore wind projects.

To complement the important steps that have already been taken in establishing the bank and developing its operational readiness, 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 is introducing legislation to put into effect a permanent restriction on the Bank's statement of objects in its articles of association to ensure it will always have a 'green purpose'.

Second, legislation will facilitate the Bank's independence from Government. It does this by requiring the Secretary of State for Business to lay an undertaking to respect the Bank's day-to-day operational or commercial decision-making before Parliament. 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, legislation will provide 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.

The Government expects the Bank to be fully operational in Autumn 2012, subject to obtaining state aid clearance from the European Commission.

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. 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 £1000 and £20,000 respectively) have already been implemented and came into force on 6 April 2012. The remaining measures that require primary legislation are being taken forward in this bill:

2.1 Early Conciliation

This measure will introduce the requirement for 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.

The detail of the process to underpin Early Conciliation will be subject to a public consultation later in the year and implemented through secondary legislation, following Royal Assent, when parliamentary time allows.

2.2 Legal Officer Determinations

General comments during the consultation process suggested further options for increasing efficiency in the tribunal system. In light of this the Government has 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 Bill will provide a new power for Legal Officers to make determinations in employment tribunal claims, to enable the introduction of a Rapid Resolution scheme in the future. Officials will engage with key stakeholders as policy options are developed and the subsequent process to deliver this scheme will be subject to a full public consultation later this year.

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 the maximum 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 will mean that the offer of a settlement and the discussions around it cannot be used in evidence at tribunal in an unfair dismissal case.

On 14 September Government published a public consultation 'Ending the Employment Relationship', which contains further proposals on the principles that will underpin this legislation.

2.5 Unfair Dismissal Compensatory Award

The cap on compensation for unfair dismissal has increased from £12 000 to £72 300 since 1999. We are therefore seeking 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. However, we have made sure 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. The power can be used to introduce a cap based on an individual's pay in addition to a specified upper limit.

On 14 September 2012 Government published a public consultation 'Ending the Employment Relationship', which considers proposals for an appropriate level of cap on the compensation for unfair dismissal. Any change to the cap would be made 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 £5000 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 Public Interest Disclosure Act

A loophole in the existing Public Interest Disclosure Act will be closed. This loophole has allowed individuals to lodge a whistle blowing 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 Public Interest Disclosure Act is 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, Public Interest Disclosure Act 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.

2.8 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.

2.9 Compromise Agreements

The name of compromise agreements is being 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 without the need to go through the usual processes (e.g. performance management). They are legally binding documents that set out the terms and payments to be made to the employee in return for a waiver of their statutory employment rights, 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 developed as part of a broader strategy to simplify and increase the use of settlement agreements.

2.10 Fundamental Review

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.

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

We believe it makes sense to implement these changes while this legislative vehicle is available. These measures are also included in the wider public consultation ‘Employment Tribunal Rules: Review by Mr Justice Underhill’, published on 14 September 2012.

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:

- 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 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**;
- Duplication and inefficiencies caused by the division of responsibility for competition enforcement between 2 **competition authorities**.

A consultation paper - '*A Competition Regime for Growth*'[1] sought views on a measures designed to improve the number and impact of enforcement cases,

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

and bolster deterrence of anti-competitive behaviour. The Government's response, published on 15 March 2012, sets out proposals, a number of which are being taken forward in the Enterprise and Regulatory Reform Bill:

3.2 Creation of a Single Competition and Markets Authority

The Government proposes to 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 of consumers. This duty reflects the new Authority's position as the UK's principle 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 CMA will provide greater coherence in competition enforcement and a more streamlined approach to decision making. Processes will be faster and less burdensome for business, and a single strong centre of competition expertise will help business understand their competition law obligations and 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 CMA which will have a clear focus on competition and markets. For this purpose, the new body 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 Government proposes that the new 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 **robust decision making** with **speedy decisions**, the Government proposes to retain the separation of decision-making between the two phases of a merger and market investigation, and to ensure the independence of decision making on regulatory appeals.

3.3 Streamlining and strengthening the competition tools

(i) Powers to investigate practices across markets

It is proposed that 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 CMA to take a more targeted approach to tackling recurring sources to 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 is proposed to give 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 Government proposes introducing 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 reduce existing statutory timeframes to complete market investigations, from 24 to 18 months. This will be 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 have discretion to suspend all integration steps in a proposed merger; and legislation will clarify that the Authority can 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 Authority will also have the power to impose a penalty and/or to seek a court order to ensure compliance.

(i) Introducing statutory time limits

The Government proposes to 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 to either make an order or accept undertakings.

(ii) Markets and Mergers Remedies

The Government proposes to improve remedies by enabling the Competition and Markets Authority to require parties to appoint an independent third party to monitor, arbitrate, and/or implement remedies; and giving the Competition and Markets Authority the power to require parties to publish certain non-price information.

3.5 Creating a stronger antitrust regime

The administrative system for enforcing the legal prohibitions contained in the Competition Act 1998 ("antitrust") is being enhanced, so that the regime is strengthened whilst safeguards are provided for parties. The Government's proposals should be read alongside the OFT's proposed enhancements to administrative decision making, set out in its consultation on Competition Act 1998 Procedures Guidance[2]. The Government's proposals include statutory change to bolster separation between investigation and decision making and new powers for the CMA, set out below, to improve the efficiency of investigations and transparency of the decision making process. .

(i) Powers to make antitrust investigations more efficient

The Government proposes that the Competition and Markets Authority should have the ability to impose civil financial penalties on parties who do not comply with certain formal requirements during antitrust investigations and, in these cases, to remove the current criminal sanctions (they would remain for intentionally obstructing entry to premises and for falsifying, destroying documents etc).

The Government would expect the Competition and Markets Authority to issue and abide by timetables for its antitrust investigations, but proposes to take a backstop power to introduce statutory time limits should the expected improvements in case times not materialise.

(ii) Absolute privilege from defamation

This measure is designed to 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.

(iii) Lower the threshold before interim measures can be imposed

This measure would enable potentially anticompetitive conduct, that may be materially weakening competitors, to be halted pending final decisions.

[2] http://www.oft.gov.uk/OFTwork/consultations/ca98-investigation-procedures/

(iv) Statutory guidance on financial penalties

The Competition Appeal Tribunal will be explicitly required to have regard to the statutory guidance in reviewing financial penalties, and penalties will be required to reflect the seriousness of the infringement and the need to deter breaches. These measures should mitigate any unwarranted incentives to appeal fines.

3.6 The Criminal Cartel Offence

The criminal cartel offence helps to deter the most serious and damaging forms of anti-competitive conduct. The Government's view is that the inclusion of 'dishonesty' makes the offence particularly difficult to prosecute. The Government therefore proposes removing the 'dishonesty' element while introducing new circumstances in which the cartel offence is not committed 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 CMA or that s/he took taking reasonable steps to ensure their nature was disclosed to professional legal advisers. The CMA is required to publish guidance on the principles for determining whether a person should be prosecuted for the offence.

3.6 Concurrency and Sector Regulators

The Government proposes that sector regulators should be required to consider whether the use of their Competition Act 1998 (antitrust) powers is more appropriate before using their licence enforcement powers and the Competition and Markets Authority will report annually on the use of antitrust powers. As part of its enhanced leadership role the CMA will have the power, following consultation with the relevant regulator, on the basis of agreed arrangements, to decide which body should lead on a case.

The Government also proposes to 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.

3.7 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 will carry out the roles that are currently undertaken by the Competition Commission.

3.8 Cost recovery

The Government proposes to 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.

The Government also proposes that third party interveners should 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 Enterprise and Regulatory Reform Bill 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. Those regulations being repealed in the Enterprise and Regulatory Reform Bill all reduce burdens on business. For example:

- Repeal laws that require retailers to notify TV Licensing of all their sales and rentals of television sets; in order to remove a disproportionate burden
- Another proposed measure will remove the ability of bankrupts to get earlier discharge from bankruptcy as it is a costly process to administer with few benefits for bankrupts or business. Instead, all bankrupts would be automatically discharged after one year, providing they are not subject to any restrictions or their discharge has not been suspended. This would ensure a clear and consistent approach to the bankruptcy discharge regime and would result in a total net benefit to business of £0.6 million per year.

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; and by ensuring that regulations which are no longer required are repealed.

Through this legislation 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 Bill expands the Primary Authority scheme so that it is open to more businesses, and in particular to a greater number of smaller businesses. Currently, only those organisations that operate across local authority boundaries can benefit from the scheme. In future, franchises, group companies and other businesses that have a shared approach to compliance (say through a sector-led certification scheme) will also be eligible.

The scheme will be strengthened to give existing 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.

Inspection plans can already be drawn up within the Primary Authority Scheme – but currently enforcing authorities need only 'have regard' to these. In future, local authorities will be required to follow the plans – this makes the purpose and operation of the plans much clearer for all parties, and will give

businesses and Primary Authorities the confidence that is worth investing their time in developing the plans.

These measures included in the Bill are consistent with our public consultation last year and with the Government's response to that consultation[3, 4, 5] which recommended that the Primary Authority scheme be expanded to allow more businesses – particularly SMEs – to participate. The response also recommended that inspection plans 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[6]. 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 bill address this constraint through an amendment to the Interpretation Act 1978.

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

[4] 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

[5] 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

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

The amendment 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 Bill 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 Bill 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.

Since its creation the Equality and Human Rights Commission has struggled to deliver across its remit and demonstrate value for money – the NAO refused to sign off its first three sets of accounts. Most of the respondents to our public consultation were unhappy with its performance to date.

To focus the EHRC on its core functions as a national expert on equality and human rights issues and as a strategic enforcer of the law we are repealing vague and unnecessary provisions from the Equality Act 2006, the legislation establishing the EHRC.

The repeals will not impact on the EHRC's equality duties in the Equality Act 2006. The EHRC will retain its important role to promote 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.

Clarifying the EHRC's legislative remit to focus it on its core duties will enhance its capacity to develop and deliver a more integrated and coherent work programme to promote and protect equality and human rights.

These repeals are part of a wider package of reforms to give the EHRC a stronger strategic focus. The other elements of reform are: recruiting a new chair and a smaller board with stronger governance and corporate skills, conducting a comprehensive review of the EHRC's budget, and implementing tighter controls over the EHRC's performance and finances through a new Framework Document.

7. Equalities measures

Equality measures in the Bill 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 can be held responsible for repeated harassment of an employee by someone who doesn't work for them and over whom they have no control – for example a customer. We believe there is no perceived 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 plan to repeal this measure.

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 have no objection to the process of pre-hearing discovery, particularly if this results in greater use of pre-hearing settlements and the weeding out of unmerited 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 government, including prescribing the nature of the forms to be used, and the time limits involved.

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

On the obtaining information procedures measure, the Government Equalities Office will work with Acas and other parties, including the providers of the new Equality Advice and Support Service, to help ensure the success of the less burdensome and intrusive early conciliation proposals set out in section 2.1 of this document.

To support the simplification agenda we will be seeking to introduce alternatives to regulation wherever possible, including tackling gold-plating and over-compliance through industry-led initiatives to help small-and-medium-sized companies understand what they do and don't need to do, in order to comply with the Equality Act 2010.

8. Civil Liability and Health and Safety at Work Regulations

Announced by the Chancellor (2012 Budget), this measure will remove 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 Lofstedt in his independent review of health and safety, ‘Reclaiming Health and Safety for All’ (March 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 Bill will amend 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 keeping 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 wants to amend 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 Challenger Business theme of 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. 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.

11. Copyright

Following recommendations in the independent Hargreaves Review of Intellectual Property and Growth[7], Government consulted on a number of proposals to modernise the UK's copyright regime[8]. 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 Bill also contains proposals to update the UK's copyright legislation in line with the rest of the EU.

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

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

The Government proposes to remove 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 only three Member States (the others are 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 and clear any relevant existing stock.

11.2 Maintaining penalties for copyright infringement

The Government is currently able to use the European Communities Act 1972 (ECA) to make changes to the exceptions to copyright and performance rights. However, in using the ECA to make such changes, the maximum penalty that can be levied for any related offence 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.

An order making power will enable the Government to make changes to exceptions while maintaining existing penalties for infringement, thereby preserving the UK's strong copyright enforcement framework.

11.3 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. At present, 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 Government proposes to provide 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.

11.4 Reducing duration of copyright in transitional cases

The Government is also acting to reduce the number of orphan works. It is thought that a large proportion of orphan works in cultural collections are unpublished, pseudonymous or anonymous. Currently, 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. A power to reduce the duration of the copyright term for these works 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.

11.5 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. Currently, 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 in a given sector, except any that choose to opt out.

The advantage of ECL is that it creates a more streamlined clearance system, facilitating the legitimate 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.

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 support 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 conduct 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.

11.6 Codes of conduct for Collecting Societies

After looking at the collective licensing landscape in the UK, Hargreaves recommended that collecting societies be regulated with codes of conduct to give both users and members greater protections. The Review suggested that collecting societies self-regulate in the first instance and that Government takes 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 conduct to provide set standards of governance, transparency and accountability that collecting societies must adhere to. The codes of conduct are also needed to provide safeguards for non-member rights holders of collecting societies that are authorised to operate extended collective licensing schemes. Collecting societies themselves are in the process of developing a self-regulatory framework under the auspices of the British Copyright Council.

Requiring a licensing body to adopt a statutory code of practice – almost unanimously supported by users of the system in their consultation responses – would only ever be used where a collecting society's own system of self-regulation failed. The hope is that any such failure would be exceptional.

11.7 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.

12. 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 director's 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 Bill will make it possible for shareholders of UK quoted companies to have a **binding vote on**

directors pay. This will **encourage shareholders to be more engaged and companies to listen to what they say** and should lead to a greater symmetry between pay and performance.

The Government has consulted on detailed proposals for binding votes and the consultation closed on 27 April 2012. After carefully considering the responses, the **Government introduced further clauses into the Bill** during committee stage. These clauses provide more detail on how binding shareholder votes will work in practice.

13. Equal pay audits

In June this year, 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 below), we will introduce 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.

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